

The HCBS Settings Rule, Guardianship, and Client Autonomy





A Discussion About Maximizing Client Autonomy through HCBS and Guardianship, Current Issues, and Future Policies

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Table setting – elder law

- **What is elder law?**
 - Legal specialty empowering aging or disabled clients to maximize autonomy and independence financially, medically, socially, and other ways through counseling and litigation services that take into account the whole person.
- **Who are elder law attorneys and who needs their services?**
 - NAELA members rely on aspirational standards of high ethics and scrupulous consideration of client identification.
 - Any aging person may need an elder law attorney to help with retirement planning, financial or estate planning, capacity planning (what do you want to happen if/when you lose ability to make own decisions or have a loved one unable to make own decisions), end-of-life planning, medical and other benefit planning, or litigation.
- **How do you find an elder law attorney?**
 - NAELA members, CELA members, state bar association, others.

Guardianship overview

- **What is guardianship?**
 - Legal process where court appoints someone to make decisions for someone who cannot make their own (lacks capacity, determined by court).
 - Guardianship is a last resort – least restrictive option.
 - Important terms: guardianship, conservatorship, capacity, guardian, person with a guardian (not “ward”!), guardian ad litem.
- **What are some important features of guardianship law, including how they differ from state to state and legal issues these differences raise?**
 - Varies by state, no federal law. Guardianship of person vs. guardianship of estate, or conservatorship.
- **What are the alternatives to guardianship?**
 - Supported decision-making, power of attorney (to manage finances), healthcare advance directive (to manage healthcare).

HCBS Settings Rule

- **What is the HCBS Settings Rule?**
 - CMS promulgated in 2014, delayed final implementation until 2023.
 - Intended to ensure that HCBS settings funded by Medicaid provide residents with the full access to the benefits of community living and are able to receive services in the most integrated setting.
- **How does it benefit persons in need of Medicaid waiver services?**
 - Medicaid HCBS waiver beneficiaries gain “rights” (right to lock door, have visitors, choose food, etc.).
- **Who and what is affected by the rule?**
 - Medicaid provider settings, e.g. group homes, some assisted living facilities, etc.
- **What are the exceptions?**
 - Institutions such as nursing homes, hospitals, and certain facilities for mental diseases or intellectual disabilities are excluded.

- **How are guardians involved in HCBS?**
 - Make determinations about where person with guardian resides.
- **How else do the HCBS Settings Rule and guardianship interact with one another?**
- **What is important to know about enforcement of the rule?**
 - Some confusion. State enforcement. Individual enforcement. Due process, cause of action, grievance process.
- **What is the guardianship bill of rights, and what is its relationship to the HCBS Settings Rule?**
 - Bill of rights mirrors spirit of settings rule – maximize individual autonomy.
- **What are the issues with the rule? Drawbacks, inconsistencies, enforcement issues, controversies, etc.**

Resources

- **Guardianship resources**
 - NAELA www.naela.org
 - National Guardianship Association www.guardianship.org
 - Standards of Practice www.guardianship.org/standards
- **HCBS Settings Rule resources**
 - Administration for Community Living
 - Centers for Medicare and Medicaid Services

Thank you!

Questions? Contact
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