

Congress of the United States
Washington, DC 20515

July 20, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Attorney General Garland and Secretary Becerra,

I write to bring to your attention serious concerns with the current state of our nation's adult guardianship system, which threatens the civil rights of an estimated 1.3 million individuals, including individuals with disabilities and the elderly. As recent events have demonstrated, such as the circumstances concerning Britney Spears and her conservatorship, significant reforms are needed to address civil rights abuses. I urge you to adopt the recommendations concerning supported decision-making adopted at the National Guardianship Network's Fourth National Guardianship Summit, which would increase autonomy and vastly improve accountability in the guardianship system.¹

An adult guardianship, also referred to as a conservatorship, refers to the legal process used when an individual is perceived or deemed to be no longer capable of making personal decisions about their person or property. Under these circumstances, a guardian or conservator is typically appointed by a court to make decisions regarding the incapacitated individual's personal and financial affairs. Given that a guardianship removes significant civil rights from an individual, it should only be considered after all viable alternatives have been exhausted. It is estimated that nearly 1.3 million Americans with disabilities are in a guardianship, although there are significant gaps and inaccuracies in the data collected by states.²

Unfortunately, guardianships are often viewed by courts as harmless, and are imposed routinely with minimal information for determining capacity and without due consideration of less restrictive alternatives. Depending on the state law, these individuals are stripped of fundamental rights. Too many Americans suffer abuses from guardianships that fail to consider or meet personal needs and preferences, and take unwarranted control of their interpersonal relationships. Additionally, a 2016 GAO report found that individuals under guardianships are at risk of significant financial exploitation.³

A guardianship is a significant legal decision that can impact an individual's entire life. It is therefore imperative that less restrictive alternatives be exhausted before a guardianship is imposed on an individual. One such alternative is supported decision-making, which is an arrangement in which an individual with disabilities retains their decision-making capacity by choosing supporters to help them make personal and financial decisions. Supporters, who are typically family members, friends, or trained professionals, are in place to help an individual understand, consider, and communicate personal and financial decisions. Unlike a guardianship, an individual using supported decision-making retains their civil rights and is thus less likely to suffer from abuses and exploitation. In addition to supported decision-making, there are other viable alternatives to guardianship, including a durable power of attorney, a special needs trust, and more.

¹ <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability>

² [Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination \(ncd.gov\)](#)

³ [GAO-17-33, ELDER ABUSE: The Extent of Abuse by Guardians is Unknown, but Some Measures Exist to Help Protect Older Adults](#)

Our nation's current adult guardianship system is broken, and significant federal leadership is needed to demand reform. In the Fourth National Guardianship Summit's May 2021 report, there are several recommendations regarding supported decision-making that I urge your Departments to consider.⁴ These recommendations, which were the result of thoughtful policy discussions of more than 125 advocates, judges, lawyers, scholars, and family guardians, would be proactive and effective measures that would improve the quality of life and safety for over a million Americans.

Specifically, I urge you and your Departments to consider the following recommendations:

1. The Department of Health and Human Services (HHS), in partnership with states and National Guardianship Network organizations, should provide education, training, and outreach programs about supported decision-making as an alternative to guardianship. These resources should be directed toward those at risk of or subject to guardianship, and efforts must be made to ensure targeted outreach to marginalized, underrepresented populations.
2. HHS, in partnership with Congress, should work to expand supported decision-making through the promotion and expansion of federally funded pilot projects. These pilot projects, if done correctly, should target diverse and marginalized populations, including those with differing disabilities, and should establish and scale up best practices to help address disparities in the quality of care.
3. The Department of Justice (DOJ) must ensure that courts seriously consider supported decision-making as an alternative to guardianship, not only during the initial appointment, but periodically thereafter. This includes requiring evidence that supported decision-making was affectively tried as an alternative, or why it is not a feasible option.
4. DOJ, in conjunction with federal and state agencies, must recognize supported decision-making as a reasonable accommodation under the Americans with Disabilities Act of 1990, as amended.

Adoption of these recommendations would be a positive and critical first step toward restoring civil rights for more than a million Americans across the country. Every individual, regardless of whether they have a disability or not, deserves a life of dignity and respect. Implementing these recommendations regarding supported decision-making would help to significantly address current and future abuses under the guardianship system.

Again, I urge you to adopt the recommendations from the Fourth National Guardianship Summit concerning supported decision-making. I appreciate your attention to this critical issue, and stand ready to work alongside you to improve our nation's guardianship system.

Sincerely,



A. Donald McEachin
Member of Congress

⁴ [Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination \(ncd.gov\)](https://www.ncd.gov/Beyond-Guardianship-Toward-Alternatives-That-Promote-Greater-Self-Determination)