

Alternatives to Conservatorship 2026



Disclaimer:

The following presentation is meant for education only and does not constitute legal advice nor counsel. Your situation may be unique and require careful attention beyond this presentation.

Keep in mind that the information in these slides may change in the future, as the laws and local practices relating to these matters develop over time.

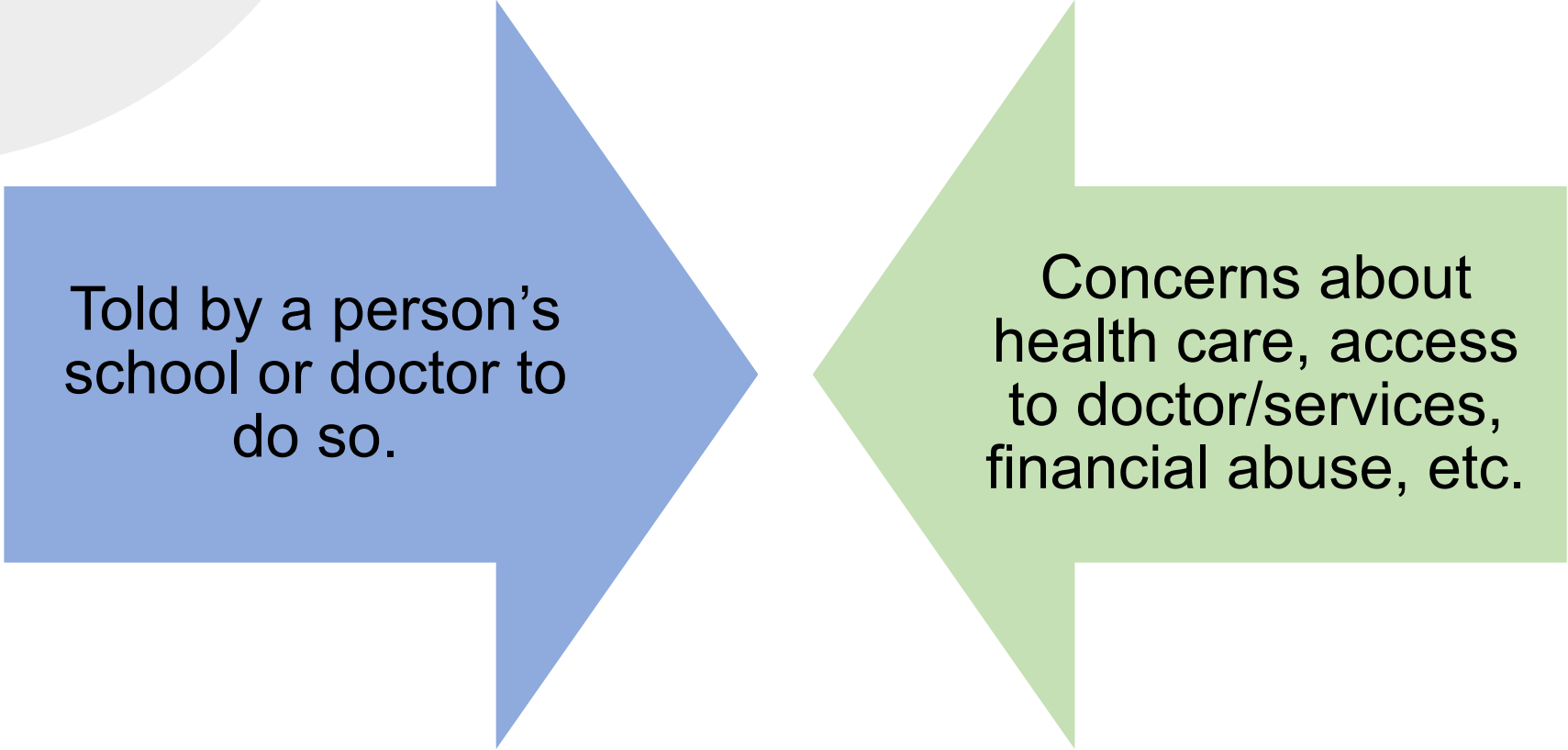
Overview of Presentation:

1. Understanding general conservatorships.
2. The risks of general conservatorships.
3. The importance of alternatives to a general conservatorship.
4. Limited conservatorships.
5. Supported decision-making.
6. Other decision-making tools and supports.
7. Resources.

What is a [General] Conservatorship?

- Created as a result of court hearing before a judge.
 - A person is presumed to have capacity unless a court finds otherwise.
- Appointed **conservator** makes all decisions for the **conservatee**.
- Conservatorship **of the estate** (person's assets) and/or **of the person**.
 - Conservatorship of the Person: Health care, who the person sees and spends time with, where the person lives and with whom, who the person dates or has sexual relations with...
 - Conservatorship of the Estate: Finances, including paying bills, protecting income/property, and filing taxes...

Why Do People Seek Conservatorship?



Told by a person's school or doctor to do so.

Concerns about health care, access to doctor/services, financial abuse, etc.

Why Do People Seek Conservatorship?



Conservatorships may be needed...

- Emergency situations**
(incapacitation, person did not identify how decision should be made, no one else available to communicate needs, etc.)
- Person has **never** been provided supports to make/communicate decisions.

Never Needed Just Because...

- “Person has a particular **diagnosis.**”
- “Person **needs overall help.**”
- “That’s the **way it has always been.**”



Risks of General Conservatorships:

No extra protections against the following:

- Financial scams;
- Physical abuse;
- Sexual abuse;
- Police arrests and/or jury convictions.

Permanent decision:

- Reversal may be difficult or expensive.

Court check-ups of conservatorships can sometimes lead to problems.

Considerations for when conservator dies:

- Court controls conservatorship;
- Chain of succession may not be honored;
- Professional conservators may be appointed.

The Importance of Alternatives:

Why think of other options before pursuing a conservatorship?

- Conservatorship **takes away** a person's rights to make important decisions about their life.
- The **court** will become a part of both the conservator's and the person's life going forward.
- Conservatorships can **change relationships**.
- Conservatorships can take **time and cost a lot of money**.

To establish a conservatorship, a judge must find that a conservatorship is the least restrictive alternative. All available alternatives to a conservatorship must be considered.

The Importance of Alternatives:

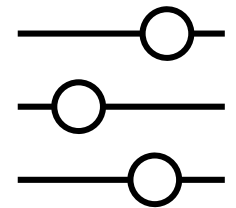
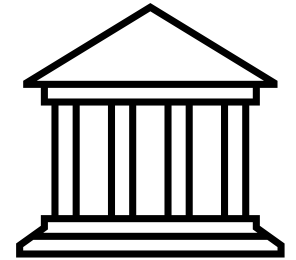
What is the goal?



Keep people as independent as possible and let them shape their own lives (self-determination)

Alternatives to General Conservatorships:

- Limited Conservatorship;
- Supported Decision-Making;
- Power of Attorney;
- Advanced Health Care Directive;
- Release/HIPAA Forms;
- Special Needs Trust;
- Representative Payee Designation;
- CalABLE Account;
- Joint Bank Account;
- Automatic Bill Pay Arrangements;
- Assignment of Educational Rights.



Choosing the Best Decision-Making Strategy:

Finding the Right Support:

- What kind of decision needs to be made?
- How much risk is involved?
- How hard would it be to undo the decision?
- Has the person made a decision like this before?

What is the least restrictive support that might work?

Limited Conservatorships:



The judge may take some or all of the following rights:

- Right to determine place of residence;
- Right to view confidential records;
- Right to marry;
- Right to sign contracts;
- Right to consent to medical treatment;
- Right to control your social and sexual contacts; and/or
- Right to make decisions related to education.

Limited Conservatorships:



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The conservator cannot do the following:

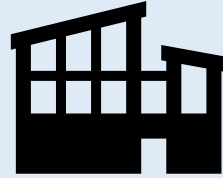
- Control salary or allowance;
- Approve harmful medical treatments;
- Force person to carry out drug treatments;
- Force person to sterilize;
- Place the person in an institution;
- Force to undergo electro-convulsive (electroshock) treatment; and
- Force person to undergo psychotherapy.

Limited Conservatorships:



Role of Investigator:

- Interviews person and informs of process.
- Interviews others/family.
- Determines need for conservatorship.
- Determines whether proposed conservator is suitable.



Role of Regional Center:

- Evaluates the person and file a report with the court.
- Confidential report must be filed at least five (5) days before the hearing.



Role of Court-Appointed Attorney:

- Meets with person to discuss conservatorship.
- Reports to the court in writing and at the hearing.

A judge must determine by *clear and convincing evidence* that the limited conservatorship is necessary to promote and protect the person's well-being.

Supported Decision-Making:



What is Supported-Decision Making?

- An approach to assisting people with making life decisions that mirrors how everyone makes decisions.
- Gives people the help they need and want to understand situations and choices they face, so they can make their own decisions.
- An alternative to a conservatorship that can strengthen the capacity of a person and avoid the need for conservatorship.

As of January 1, 2023, Supported-Decision Making is California Law.

- Establishes supported decision-making agreements as an alternative to a conservatorship.
- Petitions for conservatorship will include alternatives to conservatorships that were tried, if any, and why they are not appropriate.
- Requires courts to provide conservatees with information regarding rights.
- Court can terminate a conservatorship without a hearing if conservatee and conservator agree.

Supported Decision-Making:



Capacity **with** Supports

- Instead of: What could this person do all alone on a deserted island?
- Try: What could this person achieve with help and guidance from friends, family, and professionals?
What could this person achieve with technology, education, patience, and practice?

Everyone seeks help with difficult decisions. People without disabilities are encouraged to seek help.
People with disabilities deserve the same.

Practical Application of Supported Decision-Making and Other Alternatives to Conservatorship



HEALTHCARE
DECISIONS



FINANCIAL
DECISIONS



EDUCATIONAL
DECISIONS

Healthcare Decisions:

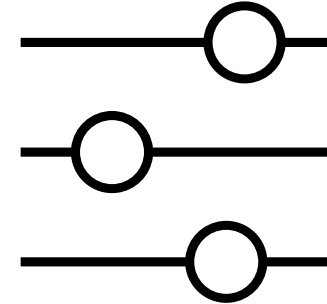
Supported Decision-Making in Healthcare:

- Support is often required to:
 - Understand health information;
 - Communicate with providers; and
 - Manage daily health needs.
- Trusted supported can:
 - Help access healthcare;
 - Understand medical information; and
 - Help make medical decisions.



Healthcare Decisions:

- **Power of Attorney:**
 - Legal document where one gives a person the legal right to make decisions for them.
 - Power of attorney can be general or limited. It can also be durable or springing.
 - For medical decisions, it is usually part of an Advanced Health Care Directive. (See Probate Code § 4701.)
- **Advanced Health Care Directive:**
 - Legal document that outlines preferences for future medical care when a person is unable to make decisions for themselves.
- **Health Insurance Portability and Accountability Act (HIPAA) Release Form:**
 - Allows a healthcare provider to share a patient's Protected Health Information (PHI).



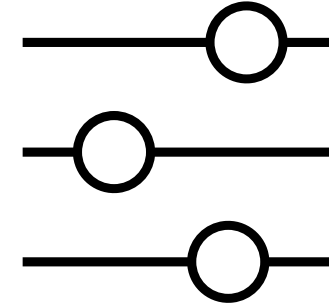
Financial Decisions:

Supported Decision-Making with Financial Decisions:

- Support is often required to:
 - Understand financial information;
 - Communicate with banks; and
 - Manage money.
- Trusted supported can:
 - Help with budgeting, managing bank accounts, paying bills, and communicating choices to financial institutions.



Financial Decisions:



- **Power of Attorney.**
- **Representative Payee Designation:**
 - Help manage Social Security benefits.
- **Joint Bank Account:**
 - Access to notification and to online account.
- **California Achieving a Better Life Experience (CalABLE) Account**
 - Tax-advantaged savings and investment account for eligible individuals with disabilities.
 - Allows them to save over \$2,000* without losing public benefits like Supplemental Security Income (SSI).
- **Automatic Bill Payments from Primary Account**
- **Regional Center Independent/Supported Living Services**
- **Special Needs Trust (SNT):**
 - May be established to manage funds of person with disability. Trustee would be assigned to manage money in the trust.

Educational Decisions:

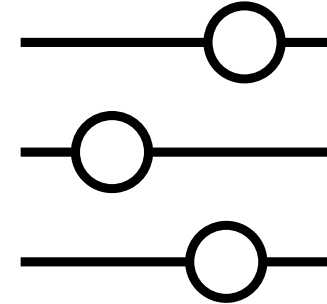
Supported Decision-Making in Education:

- Many minors with disabilities are not given the ability to make choices or learn from mistakes.
- Schools commonly promote conservatorships as the only option.
- It is important to practice decision-making from the earliest age possible.
 - Students should participate in Individualized Education Program (IEP) meetings.
 - IEP goals should be ambitious and promote student involvement.
 - IEP goals should target self-determination, self-advocacy, and problem solving.



Educational Decisions:

- **Power of Attorney.**
- **Assignment of Educational Decision-Making Rights:**
 - When a student turns 18, they retain decision-making rights under the law. However, a student with a disability may need support in making educational decisions when they become an adult.
 - Assignment of educational decision-making authority can be given to parent or legal guardian when a student turns 18 years old. (See Education Code § 56041.5; see *also* Government Code § 7579.5(n).)



Resources:

1. GC-341 (Notice of Conservatee's Rights – Probate) (California Courts):
<https://www.courts.ca.gov/documents/gc341.pdf>
2. Sample of General Conservatorship of the Person Packet (San Diego County Superior Court):
<https://www.sdcourt.ca.gov/sites/default/files/sdcourt/generalinformation/forms/probateforms/pkt045.pdf>
3. California Assembly Bill 1663 (2021-2022), Protective Proceedings and Supported-Decision Making (LegiScan): <https://legiscan.com/CA/text/AB1663/2021>
4. Supported Decision-Making Frequently Asked Questions (California Department of Developmental Services): <https://www.dds.ca.gov/newsletter/what-is-supported-decision-making/>
5. Determining Competency to Sign a Durable Power of Attorney (Sacramento County Public Law Library): https://saclaw.org/resource_library/determining-competency-to-sign-a-durable-power-of-attorney-2/
6. California Probate Code Section 4701 (California Legislature):
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=4701

Resources:

7. California Advanced Health Care Directive Template (Institute for Human Caring):
<https://www.instituteforhumancaring.org/documents/CAHCD.pdf>
8. Sample Letter of Assignment of Educational Decision-Making Authority (Disability Rights California):
<https://serr.disabilityrightscalifornia.org/serr-manual/appendix/n-sample-letter-assignment-of-educational-decision-making-authority-under-california-education-code-section-56041-5/>
9. Template Agreement of Assignment of Educational Decision-Making Authority (Bet Tzedek):
<https://courts.ca.gov/sites/default/files/courts/default/2024-12/btb24-1h-4.pdf>
10. Supported Decision-Making Library (ACLU): <https://www.aclu.org/other/supported-decision-making-resource-library>
11. Practical Tool for Lawyers: Steps in Supported Decision-Making (American Bar Association):
https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf
12. With Support and Without the Courts: Supported Decision-Making Handbook for Parents of Adults with Developmental Disabilities in California (Disability Voices United):
https://disabilityvoicesunited.org/wp-content/uploads/2020/11/SDM-Handbook_Oct2020.6.pdf

Resources:

13. Self-Help Resource for Alternatives to Conservatorship (California Courts): <https://selfhelp.courts.ca.gov/conservatorships>
14. Implementing Supported Healthcare Decision-Making for Users of Augmentative and Alternative Communication in California (Partners in Health): <https://odpc.ucsf.edu/advocacy/supported-health-care-decision-making/partners-in-health-implementing-supported-healthcare>
15. Supported Decision-Making Teams: Setting the Wheels in Motion (Suzanne Bennett Francisco and Johnathan Martinis): <https://health.ucdavis.edu/mindinstitute/centers/cedd/pdf/sdm-wheels.pdf>
16. National Resource Center for Supported Decision-Making: <https://supporteddecisionmaking.org/>

Disability Rights California (DRC):

- Intake Line: 1-800-776-5746
- TTY: 1-800-719-5798
- Monday, Tuesday, Thursday, and Friday from 9 a.m. to 3 p.m.
- Online Form:
<https://www.disabilityrightsca.org/get-help>

Office of Clients' Rights Advocacy (OCRA) for Regional Center Clients:

- Intake Line: 1-800-390-7032

