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>> Randi: Welcome, everyone, and hello, today, to the session. Thank you for joining us. My name is Randi Turner, at the Governor's Committee for People with Disabilities. This month, guardianship is our topic. We have Richard with Disability Rights Texas, talking about supported decision-making. The session is captioned by Texas Closed Captioning. Today our captioner is Caitlin.

First, I'd like to talk about the Governor's Committee for People with Disabilities. There are 12 appointed individuals, seven of which have to be individuals with disabilities. We have represents from six different state agencies as ex officio or advisory members. Currently, we have some vacancies on that committee. If you are interested, go ahead and email the GCPD Zoom address that you see on the screen.

The committee makes recommendations to the governor and the legislature on disability issues. Those issue areas cover access, communications, education, emergency management, health, housing, recreation, transportation, veterans, and workforce, so just about everything. The staff members, of which I am one of, also provide technical

assistance, information, referral to get people connected to the right resources in the community. In addition, we work with local communities just like ours that are mayor's committees or county committee commissions that also serve people with disabilities.

We have two award programs, the Lex Frieden Employment Awards in October, and the Barbara Jordan Media Awards in April. This year, it will be April 26th and we are working with Texas State University, their journalism department. And anyone is welcome. We should have information out about that event very soon. Let's see. Okay.

If you will take a look at the PowerPoint -- I'm going to move my camera just a little bit. I do not want -- I can't monitor all these different areas. If you don't mind, we'll not use the raise hand feature. And I prefer not to use the chat feature. If you have questions and want answers, or if you have comments that you want to share with the group, if you would put them in that box, I would appreciate it. It's easier just to monitor one thing.

Richard is planning to take questions during the session, so go ahead and submit questions as they come up. I think that's it. So I'm ready, Richard, to turn it over to you. Thank you so much for joining us today.

>> Richard: Great. I appreciate the opportunity to talk about supported decision-making. It is a new alternative to guardianship. And I'll begin with providing an overview of guardianship. The one thing I'd like to say is that the supported decision-making, and major reforms of guardianship were enacted during the 2015 legislative session. There was a work group that consisted of most of the disability groups in the state, as well as family members and some stakeholders and providers, that looked at guardianship.

And because there were a lot of concerns prior to 2015, that guardianship was not working for people with disabilities. And that in the state of Texas, there was an overreliance on guardianship. So we had a major push to try to not only -- to minimize the reliance on guardianship, but to promote the alternatives. Today's presentation is just on supported decision-making, but there were fundamental changes in guardianship law in Texas that I'm pretty proud of, because I think that Texas is leading the country in reforming guardianship.

And we actually had the leadership of Texas, including Chief Justice of the Texas Supreme Court who was a big supporter of all the reforms that were enacted in 2015 to reform guardianship. And very impressive results. And

again, I've been monitoring and looking at what is happening nationally, and no one has come close to what we were able to achieve in Texas.

The one thing about this -- and a little editorial comment -- we have the law and we have the basis to really promote alternatives to guardianship. But it's up to both the lawyers and the advocates, and the courts to enforce it. And I think that's the next phase that we're entering in making sure that these laws are enacted. So let's have the next slide.

So why not guardianship? Our focus is to look at what are the problems with guardianship. So, next slide, please. What does guardianship do? First of all, in order to establish a guardianship in Texas, you have to have a court order. And not only do you get a court order to establish a guardian, but there's ongoing monitoring of the guardianship. Another aspect from the perspective of people with disabilities, it really strips the freedom of choice, self-determination, and independence for people with disabilities when you put them under a guardianship.

And it removes all of their -- in most cases, some or all of their decision-making rights. And typically what happens with a guardianship is that those rights regarding decision-making are taken from the person with a disability and given to a third party. Next slide.

Next slide. Okay. And guardianships are expensive. I mean, the reality is that typically, if you want a guardianship over a person with a disability, you have to hire a lawyer. And so you have to not only pay for an attorney to file for guardianship, but there's filing fees and costs that are associated with it. And if the court establishes a guardianship, they have to post a bond. The other problem with guardianship, at least from a perspective of Disability Rights Texas, is that we get a lot of people that have been placed under guardianship.

And they contact us saying their guardian never contacts them, they're restricting their ability to move out of institutions or associate with different people in the community. They want to work and live more independently. And the problem is, it's very hard to terminate or modify a guardianship, because typically you have to have a lawyer and the burden is so high on the termination and modification of the guardianship. So it's very burdensome for a person with a disability to get out from under guardianship.

The other thing with a guardianship that's pretty hard is that from the guardian's perspective, they have to file

an annual report on the condition of the ward. In Texas, there's two types of guardianship. You can be a guardian of the person where you're making decisions about the care and treatment of a person under a guardianship, and there's also a guardian of the estate, where you're managing the finances of the individual.

Each year, guardianship has to be renewed. So each year the guardian has to file an annual accounting and a report on the ward, as well as how they spent their finances. And the problem with these accountings, and the problem with guardianship in Texas is that often, a lot of counties -- because we have what, 252 counties here in Texas -- you have a lot of courts in Texas. We have these statutory probate courts where you have judges that just handle guardianship cases.

But in a lot -- especially rural counties, you have county judges that are nonlawyers that are presiding over guardianships. And there was a study done by the Office of Court Administration. And there was even some funding to look at what's happening regarding these annual accountings, because in Texas, a lot of the guardians do not file annual reports. So they're not even complying with the law. Next slide.

>> Randi: We have a question, Richard.

>> Richard: Sure.

>> Randi: If the annual paperwork is not updated, does the guardianship dissolve?

>> Richard: It doesn't dissolve, per se. But I would argue as an advocate that the guardian no longer has the authority to make decisions, because what happens when you do the annual accounting, the court has to issue new letters of guardianship. And so what I've done when I've talked to providers, you know, that are serving people with disabilities, no matter where they are, if they're in a nursing home, or an institution, or in the community getting services from a local authority -- and there's guardian-making decisions -- I would ask them to give you the current letters of guardianship.

And if they don't have the letters of guardianship, then you can tell them that they don't have the authority to make decisions and that they need to go back to the court to get them renewed. I think there's a liability issue from the provider standpoint. What happens if you have a guardian without the legal authority to make decisions on behalf of the person, and the individual is injured, so you don't have adequate consent?

When a child reaches the age of 18, the age of majority, the rights to make a decision are transferred from the parent to the youth. And typically what happens, for you all that deal with special education, at age 17 school districts are supposed to notify the youth that their rights under IDEA, the federal law governing special ed, transfer from the parent to the youth at the age of 18 unless something else is done.

And so often, school districts, and a lot of times doctors, tell parents that they have to get guardianship over their son or daughter in order to continue to make education, healthcare, or other decisions on behalf of their son or daughter. They also -- a lot of family members think that they need to get a guardianship in order to help the adult child handle their money.

And again, unless someone has a large estate and you haven't put the money in a trust or something like that, most youth either get their earnings from jobs or they get SSI, and you can get -- become a representative payee to manage their finances. And there's no need to get a guardianship.

Other people feel as though they have to get a guardianship in order to have their adult child access services as an adult, either vocational services, or independent living services or whatever. So they feel as though there's a need. And unfortunately, a lot of parents believe this is the only legal solution, which is false. And I'm not talking about the reforms to the law, but the reality is under statute, the legislature delineated all the alternatives to guardianship in one section.

So if you're interested in seeing what the alternatives are, they are now codified and they are in the estate code under alternatives to guardianship. So not only lawyers, but also nonlawyers could know what alternatives have been accepted by the legislature. Next slide.

So it's important things to remember. And this is something in Texas, we have a presumption of capacity. And so the law presumes that all people, regardless of whether or not they have a disability, have the capacity for making decisions. And so it's interesting, because in the Texas mental health code, it clearly articulates the presumption of competence, because a lot of times, people are committed to a psychiatric hospital and they assume given the fact that they're committed, that they lose their capacity.

In Texas, the only time that an individual loses their capacity to make decisions is when the court -- probate court removes their rights and appoints a guardian. So if

you're involuntarily committed to a state-supporting living center, a psychiatric hospital or any other setting, you retain your rights to make decisions unless the court removes them.

The other thing we need to know is that decision-making is a learned skill, that people with disabilities have to be provided opportunities, experience, and support to make well-informed decisions. One of the bigger areas that's lacking in our educational system for kids with disabilities is that we do not teach decision-making while kids are in school. I think for every child, regardless of the age, should have IEP goals and objectives that identify a goal of making decisions so that by the time they reach the age of majority we have some data as to whether or not they've been trained to make informed choices.

The last thing, I'm not going to go into detail, but there are alternatives to guardianship that allow people to make decisions and that don't restrict, limit, or remove their individual rights. Next slide. Self-determination, next slide. This is critical. Self-determination means making your own choices and learning to effectively solve problems and take control and responsibilities for your life.

As I mentioned earlier, practicing self-determination means one experiences the consequences of making choices. So we need to create opportunities where people with disabilities are provided the opportunity to make decisions, and not only experience the benefits, but also the consequences of making bad decisions. That's how you learn. So what are the benefits of self-determination? First of all -- and the amazing thing, there's research to support this.

And the studies are cited below, that people that exercise greater self-determination are healthier, they're more independent, they're more well-adjusted. And I think the other thing that's pretty important is that they recognize and resist abuse. If someone has a greater degree of self-determination, they're more inclined to report abuse. Next slide.

So, when people are denied self-determination, they feel helpless, hopeless, and self-critical. I'm going to go back to the next slide -- advance.

>> Randi: Sorry about that.

>> Richard: No problem. And they also experience low self-esteem, passivity, and feelings of incompetency. Their ability to function is decreased. I think typically -- I don't know how many of you have gone into

institutions, but often if you go into an institutional setting where a person is stripped of all their self-determination, where the staff or the institution makes arbitrary decisions about all -- when they eat, when they sleep, what activities they have during the day -- that people are going to feel hopeless.

And a lot of times, you know, you go into a nursing home, you go into a state-supported living center or into a psychiatric hospital, you have a lot of people who look institutionalized. I contend it's not because of the disability, it's because of how we treat them. We've removed their right to make self-determination. Next slide.

So, is there a slide before that? I'm just wondering. No? Okay. Now we're going to talk about supported decision-making, sorry. Next. Okay. You know, it's sort of funny, because I've dealt with supported decision-making nationally. And I always get frustrated because the elites in the East Coast -- the people that go to the Harvards, and Yale, are with all the national disability groups. And people that are smarter than all of us in Texas.

And they're big proponents of supported decision-making. And I feel good about telling them that Texas is the first state to have a pilot program designed to support -- to try supported decision-making as an alternative to guardianship. Back in 2009, the legislature created a pilot which was the first supported decision-making program in the United States. And it was run by the Arc of Saint Angelo. And DADS funded the program. Go back. They had volunteers to support individuals with intellectual disabilities in helping them make decisions.

So they had a three-year pilot and actually issued reports to show the benefits of self-determination and how they were able in Saint Angelo to help avoid several guardianships. And as I mentioned earlier, I was complaining about the East Coast elites. In Austin we're elitist, too. I've been working at Disability Rights Texas for 30 years. I wasn't aware of this. The Arc of Texas pushed it. The fact that it was in St. Angelo, I don't think anyone knew about the project because it wasn't really funded.

But the reality is, back in 2009, before anyone ever thought about supported decision-making, we were at least testing it in Texas. And so what happened legislatively that really helped when we were trying to get the legislation passed to adopt supported decision-making, our contention was, you know, we had this pilot that was very

successful for three years -- that was operating for three years. We're just asking to make this permanent.

That made it a lot easier, as opposed to us saying, this is supported decision-making, it's something they do in Europe, or they do it in Canada. And the East Coast elites are talking about it. We were able to see this is our homegrown law, and let's continue it. Next slide.

>> Randi: We have to the question. An individual says, I've worked with a probate court in Travis County and the judges are adamant that the only time they revoke rights of an individual and appoint a guardian is when the individual is in danger of themselves or others. Do you feel that many judges have a low threshold for what is considered a danger to self and others, which is leading to the mass numbers of wards with guardianship in Texas?

>> Richard: I think the problem we have are with the lawyers, not only for the applicants, but the lawyers representing -- appointed to represent the proposed ward. They don't understand. One of the things we have under our law, not only the courts must consider alternatives to guardianship, but they also need to consider supports and services, which we snuck in the law. And so only -- most lawyers don't understand HCS programs and other supports that are available to people with disabilities.

So I think part of the problem is if you don't have folks that are zealous advocates for people with disabilities -- I recently got involved in a case. I was shocked. We read the word. The attorney ad litem who was representing the proposed ward was supporting guardianship without zealously representing their client, even though the law requires it.

So I think the burden falls on lawyers, that they need to take seriously these types of -- you know, promoting alternatives. In Texas we have some great judges that understand guardianship, and they know the law. And I think they do a good job. In other parts of the state, you know, the courts, they only look at guardianship as the only alternative. Next slide.

Now I'd like to talk about Justice for Jenny. If you're interested in learning more about Justice for Jenny, you can Google Justice for Jenny or look at the Jenny Hatch project. This is the first case where a court ordered the use of supported decision-making instead of full guardianship. Next slide. Jenny's case came out of Virginia. Jenny was a 29-year-old woman with Down syndrome who won

the right to live and work where she wanted to, instead of the decisions being made by her guardian.

Jenny's parents filed a guardianship to take away her right to decide where she was going to live, who she was going to associate with, and what she could do with her life. When her parents were appointed as her temporary guardian, they placed her in a group home, took away her cell phone and laptop, and wouldn't let her see her friends.

Unfortunately, there was a group called Quality Trust for Individuals with Disabilities, which is similar to Disability Rights Texas, but their focus is more on guardianship issues and they're out of Virginia. And they represented Jenny. And they were able to show in the case that the -- they showed the court that Jenny didn't need a guardian, because she had a history of making good decisions when she was given appropriate support. Next slide.

And in the context of Jenny, they defined supported decision-making as using trusted friends, family members, or professionals to help her understand situations and make choices so she could make her own informed decisions, and not having someone else do it. So Jenny won the right to make her own decisions. She now lives and works where she wants, and has friends she chooses.

So her parents were not her guardian. The interesting thinking regarding Jenny is that she's a celebrity. She goes around the country now. There's this big movement to get laws to enact supported decision-making. And I frequently -- this morning I got an email from folks in Rhode Island that are proposing legislation on supported decision-making. And they're actually using our Texas law as a model for their state statutes.

But Jenny goes around the country. And she goes and testifies at legislative hearings, and promoting supported decision-making. So she's like the poster person for supported decision-making. Next slide. So, what is the underlying principle? I think this is really important, that supported decision-making isn't a one size fits all, that it has to be based on the individual needs of the person with a disability, and what type of help that they need or they want in assisting them to make choices and options on their own behalf. Next slide.

And so the underlying principle for supported decision-making is that we have a Constitutional right to -- a person has the right to make their own decisions. So supported decision-making evolves from that. And the rights should not be dependent on the quality of any

decision. I lot of times when I talk to family members or providers about supported decision-making, their concern is that their adult son or daughter might be adversely influenced by someone who will take their money, or take advantage of them.

And, you know, I just think for all of us, how many of us have made bad decisions in our life, you know? I mean, I know for my sake that my parents probably would have loved to have had a guardianship over me when I was younger so they could control what I was doing, but the reality is we have to learn about making decision-making. And part of learning is making mistakes. And the minute -- unfortunately, for you or I, when we make a mistake, we just chalk it up to experience.

But what happens with a person with a disability, the minute they make a mistake, everyone wants to either put them in a more restricted setting, they want to take their rights, or they want to get a guardianship over them. It's not right. Our folks need to learn how to make decisions. And we've got to get away from this whole paternalistic model or approach to dealing with people with disabilities. Next slide.

The other thing, which I think is pretty amazing, and the timing behind supported decision-making is the Americans with Disabilities Act. This thing. We have the first generation of people with disabilities who've grown up under the ADA, where they have been treated as first-class citizens and not second-class citizens. So the young people that are coming up -- that's why when I'll talk a little bit more about who we've been representing in getting supported decision-making, all these kids coming out of school that are aging out all want to be treated like everybody else, and it's because of the ADA and that they've heard that they have all these rights.

The other thing, some advocates in other parts of the state or country as well as some law professors have argued that in a state where there's an overreliance on guardianship that prevents the inclusion or self-determination, or integration of people with disabilities, that can be a violation of the ADA. So I think that, you know, supported decision-making is coupled with the ADA to really promote the full inclusion and first-class citizenship of people with disabilities. Next slide.

>> Randi: We have another question.

>> Richard: Sure.

>> Randi: If a parent has guardianship, does it require them to make the decisions, or can the adult child make decisions with the guardianship, only stepping in when necessary?

>> Richard: You know, technically, a guardian should talk to the person with a disability to get their input before they make a decision on their behalf. But the bottom line is the guardian still has the authority. You know -- I'm not talking about it today. If Randi wants me to talk about it, one of the things that we did with the guardianship reforms is that we had a bill of rights that guaranteed to people with disabilities that they had rights, because based on our experience at Disability Rights Texas, guardians were taking people's right away from who they can visit with, what they could do in the community, who they could talk to.

And a lot of examples where the guardian was basically preventing people from disabilities from having any access to the community. So even though technically a guardian should and could get input from the person with a disability, why? Why do you need that check and balance? I think the bottom line behind guardianship and everything else -- and I think it's something that is critical -- is the trust between the person with a disability and the guardian. And you've got to establish that relationship in the trust.

And so I think, you know, that's what's key, not the authority to make decisions. So under -- from the Jenny situation, some articles on this. So what supported decision-making does is it helps a person with a disability understand issues and choices. So the supporter can help them get that information. The focus is on decision-making, and it allows the person with a disability to weigh their options and ensures the decisions are based on their own preferences.

So the question about the guardian getting input from the ward about what should happen, it violates this last point. Because it doesn't necessarily mean that a guardian is required to follow the preferences of the ward. And finally, which I think is really important, is that the supporter doesn't make a decision on behalf of the person, but he helps interpret or communicate decisions to other parties. And I'll be talking a bit more about that when we talk about the Texas law. Next slide.

So this is a good example of where we are with traditional guardianship. And the universe focuses around the guardian.

>> Randi: Let me interrupt real quick, because I think this next question -- you might be going right into it. What are the most important characteristics to determine if guardianship is a better option than decision-making?

>> Richard: See, I think the bottom line, if you read the statute, and the reforms that were instituted, that in a guardianship, that when an applicant, meaning the person filing for guardianship, has to state under oath that they considered alternatives to guardianship and they determined they weren't feasible. And so the presumption is in every case we have to look at alternatives to guardianship. And there's a wide array, not only supported decision-making, but you can do powers of attorney. You can do special needs trust. You can do -- even person-centered planning are considered alternatives for people with psychiatric history, you can do advanced directives regarding mental health treatment.

There's a full array of alternatives. So the presumption is, you've got to consider -- and I would even argue you have to try these alternatives. So what happens with a guardianship is that the guardian -- and you can see. They can decide -- depending on what the order says, if it's a full guardian, they decide where a person lives. They may call the medical decision. They can control their money. They can decide if a person could work or not work.

They can decide who visits, who their friends are. And it can even impact whether or not a person has the right to vote. So the whole thing with guardianship is that the guardian makes all the decisions. Next slide. And the difference visually from the standpoint of supported decision-making is that the person with a disability makes all the decisions with the help of the supporter. And so they can decide where they live, what medical care, how they're going to spend their money, if they're going to work, who their friends are, all of that.

And so it really is a major shift in paradigm regarding decision-making, instead of having it focused to a guardian and the parent. The person with the disability makes that. The one thing -- the big failure, we had eight proposals of guardianship. And the one thing that I found totally -- because I've been doing a lot of legislative advocacy. And we came up with, through the GRSDM, that we would -- you know, we came up with these proposals.

The one proposal that led off was, we wanted to get rid of the word "ward," because, you know, the ward is a 19th century term. It's a term where you consider someone as a

piece of property or chattel. I thought, supported decision-making would never get passed, and the one thing we would get passed was getting rid of ward. Ironically, we got rid of everything except ward. We still refer to people with this outdated term.

To me, it personifies and captures the attitude that we have towards people with disabilities. Because once you call someone a ward, they're a second-class citizen. They're not equal. They're not entitled to being part of our community. So I personally find it offensive to refer to someone as a ward, even though the law still refers to people as wards. Next slide.

>> Randi: Another question. I currently have a supported decision-making agreement with my 22-year-old son. He has struggled for five years with elopement and he does not make good decisions when he is un-supervised. He has fetal alcohol syndrome and a mental illness. He is, however, very capable of doing many things, as long as there is supervision. I'm debating guardianship for him. In this case, do you think the SDMA is still appropriate?

>> Richard: You know, just hearing -- you know, I can just tell you -- and I've been representing people with disabilities for many, many years. And in the early '90s, we had a disagreement with NAMI. And a lot of parents were coming forward, and they were concerned that that I had sons or daughters that were homeless, or were refusing treatment or whatever, and that they were wanting to get guardianships as a solution to get people in the psych hospitals or whatever.

And we took the position that getting guardianship is not going to fix those problems. You know, as a guardian, you can't involuntarily commit somebody. And so you still have to go through the court process of showing that someone's dangerous to themselves or others. And so I would look at -- before you -- because even though you become a guardian, and you can decide where your son or daughter lives, unless you lock them up, how are you going to achieve it?

I think it's still something that getting appropriate supports and services, and looking at the reasons why your son is eloping or whatever, you need to try to address it as opposed to going the route of getting a guardianship. Because it may not fix the problem. Next slide.

>> Randi: And another question. In what ways have you seen court-ordered guardianship protect a person from abuse, neglect, or exploitation? Or have you?

>> Richard: I haven't. I mean, we hear about people getting abused or exploited by their guardians all the time. Yeah. It doesn't necessarily mean that just because someone's under a guardianship they're protected. The assumption is -- you know, this whole process that we got involved in, you know, with guardianship reform, it all started because there were a group of parents who were guardians over their adult sons and daughters.

And for some reason, the probate courts removed them as guardian. And someone made accusations that they abused or exploited their son or daughter. And so what the judges did is they removed the family members. And then they appointed a professional guardian. And so they came to Disability Rights Texas, and they wanted us to represent the family member, and we can't. We only represent people with disabilities. And I know that in our efforts under GRSDM, there were a lot of parents that were part of this guardianship reform.

And a lot of them didn't want to get guardianships, because they were worried that as a result of getting guardianship, that people would file complaints with the court. And then they would refer to adult protective services, and then they would lose custody of their sons or daughters. So I don't know in those cases with parents were removed as guardians whether or not they -- the court had legitimate reasons. Because I wasn't involved in litigation. The family members said they weren't. But the reality is there's no assurance that just because someone's a guardian they're not going to be abusing.

Just think of this. We have a system in Texas, you know, people can file complaints against guardians. But we also have a system where we do annual reportings. It's a piece of paper. Is filing a piece of paper going to protect a person with a disability from being abused? I don't think so. One of the things that we got in the Bill of Rights and to be honest with you, I don't know if it's being followed in Texas, or in the courts.

But to me, as an advocate, a lot of the people that complain to us about guardianship said they never saw their guardian. And the guardian wasn't responsive when they asked for something. And so -- but the courts -- what happens is that the review of the guardianship is always done by paper. You file your annual report. People are following the law. The court will look at the paperwork. And they'll extend the guardianship.

So there's really no real monitoring of the guardianship to see, are people being abused, are people being exploited.

And so what we did in the Bill of Rights is that we said that people with disabilities are under a guardianship, they have a right to request a hearing and appear in court when the court is renewing their guardianship. So if they have complaints about their guardian, there's a mechanism for them to go to court in person and say, this is not working. You know.

So it's giving voice to people that are under a guardianship. But to be honest with you -- because my practice is not, you know, I don't exclusively do guardianships. And Disability Rights, we don't have a high volume of guardianship cases. I don't know if this is happening around the state, that if a person says in whatever -- you know, in a certain county that they want to go to court when a guardian is renewing their guardianship that they have a right to appear and have complaints. I don't know.

But at least we have the framework, and we have a law, a Bill of Rights that says a person has a right to do this.

>> Randi: Can someone under guardianship vote?

>> Richard: It depends on the guardianship. As part of the reforms, it says that when a court -- even when they grant a guardianship, the court has to make specific findings. Does the person retain the right to decide where they want to live, to operate a motor vehicle, and do they retain the right to vote. So those are all issues that the court could -- must consider. And if a court -- if you have a guardianship order and it's silent, even if it's a full guardianship and it's silent on whether or not the person under a guardianship can decide where they want to live or whether or not they can drive a car or vote, the presumption is under the law they retain that right unless the court takes it away.

>> Randi: Where can people get the copy of the bill of rights?

>> Richard: I'll send it to you, Randi. I don't have the estates code. So I can tell you where the bill of rights is. But, you know, the irony -- and this is something where I don't know how many of you are involved with people under a guardianship. And you work for a professional guardianship program, or you're a lawyer or whatever. The absurdity of this question is that every person who goes under a guardianship, the law requires that they be given a copy of the bill of rights.

And then each year thereafter, their guardian has to give them a copy of the bill of rights. And, you know, when

we got the law passed in 2015, and we were worried that there would be a backlash against guardianship reforms. And, you know, the one complaint that the professional guardians had against the law is that they had a problem with giving people under a guardianship a copy of their bill of rights, which I think is ridiculous.

And if someone cannot read, they just have to read it to them. And their whole concern is what if they're delusional, they don't have the mental capacity to understand, why do we have to do it. My feeling is why not? What's the harm? And so people pick on things, because they're doing it for the convenience of the guardian, you know, and not the person.

>> Randi: There's another comment. Actually, this says, actually, court investigators and court visitors are required to make at least one home visit each year and complete a packet to ensure the well-adjusted of the person under guardianship. When the guardian and/or care is insufficient, the probate court will advocate for the person under guardianship. While it is not great oversight, there is some that is in place.

>> Richard: But isn't that true that it's only in the statutory probate courts in the urban areas. So in Muleshoe, you have someone under a guardianship that was created by the county judge who's not a lawyer, they don't have a court visitor program. I think they may have the ability to have volunteers, but where are you going to volunteer? And so I think that the problem with it is that we don't have a system in place that is across the whole state, in every county, that ensures some type of monitor.

So, let's talk about supported decision-making. Under -- in 2015, the legislature recognized supported decision-making as an alternative to guardianship. And what I did is that you'll see that I cite the statutes. And a lot of times when people give presentations about the law, they'll cite the bill number, which makes no sense, because each session, it's hard to find the bills. And so what I've done is I've cited the statutes. And as an advocate in all areas of disability that I've worked on, I always feel strongly that nonlawyers need to learn the law.

You don't want to trust a lawyer to explain to you what the law is. And Randi is a good example, because Randi used to torment me over issues, because she knew the law in some areas better than I did. And I think that that's great, that people have interest in specialties. And so I think everyone needs to start reading the law, because a lot of

times you'll hire lawyers who don't have a clue what the law is. Next slide.

And again, which is pretty amazing, we had our first pilot in 2009. And Texas is the first state in the union to create -- authorize supported decision-making as a substitute for guardianship, which is again, pretty mind-boggling. In the statute, there's a definition of supported decision-making. And what it is, it's a process of supporting and accommodating an adult with a disability to help them make life decisions, including the decision to decide where they live, what services and supports they want, what medical care they want, who they want to live with, where they want to work, without -- and this is important -- without impeding their self-determination. Next slide.

And so who can enter a supported decision-making agreement? And it's sort of interesting, when we were working on the legislation, you know, we tried to define who can enter a supported decision-making agreement. And we tried to say that the person had to have a disability, but their capacity did not have to be as high as the level that you would have to have in order to enter a contract. So we drafted language like that and ran it by some of the probate judges. They went nuts.

So we just took it out. We just said that anybody -- you have to be at least 18 years old. If you have a mental or physical disability that substantially limits one or more major life activity, you can enter into supported decision-making. This is the definition of a person with a disability under section 504 of the ADA, very broad.

And so we also, to avoid the debate that we had with the court, we didn't put in any level of capacity. The law is silent as to who has the capacity to enter into a supported decision-making agreement. It was intentional not to do that. And, however, what I tell people is that a person who enters into a supported decision-making agreement needs to understand the nature and the consequences of the decision when they're entering a supported decision-making agreement. This is -- and I cite a case.

And it's basically the standard that you have to -- that applies to a power of attorney. But the reality is -- I think that -- I always tell people -- and I only represent people with disabilities. I say, you get to pick who is your supporter. And so the first thing is the person needs to be able to understand and state that they want someone to make a decision for them, or to assist them in making

decisions. So they have to understand the need and the benefit of doing that. Next slide.

>> Randi: A question and a comment. So, just to clarify, I think this is the last comment. Do you think that guardianship should be eliminated altogether?

>> Richard: No. And it's sort of interesting. And I'm not -- we have people -- and there's different advocacy groups. There's one group called GRADE, I forget what it stands for, but it consists of parents against guardianship. They think guardianship is un-Constitutional. And they've wanted us to litigate that. I disagree with them. And there are individuals who lack the capacity to make decisions that need a guardian. So I'm not opposed to guardianship, I just want to limit the guardianships.

And if there's ways -- the other thing with guardianship, you can do a full guardianship or a limited guardianship. So you can limit the scope of the guardianship. And so we should not do away with guardianship. And it's sort of interesting, with the GRSDM. You know, we went through supported decision-making, came up with all the alternatives. And some of the parents -- and I've known these people for 20 years. And I know their sons or daughters have pretty significant disabilities.

And at the end of the process, they accused me of selling them out. The reason was, you got supported decision-making, all these other alternatives, but it's not helping me and my son or daughter. I want to continue to make decisions on behalf of my son or daughter without having to get a guardianship. I said we're just not there. We haven't gotten to the point -- maybe some point down the road we'll develop the technology or the ability to communicate with people with significant disabilities where they could tell you what they want.

You know, the one thing that I'd like to have folks look at, if you go to our website at Disability Rights Texas, and we have a section on supported decision-making agreements. And I have the link to our site later in the presentation. But there is a video done by the ACLU about making medical decisions. It's out of California. They don't have supported decision-making. To me, it's the best example of supported decision-making regarding medical decisions.

And they had one young man that had -- was unable to communicate verbally and had cerebral palsy who was able by gesturing or nodding to consent to medical procedures. And so I think it's something that everyone should look at, because I think again, we automatically assume just because

a person doesn't communicate verbally or whatever, they lack capacity. And that is not the case, so we've got to look at assistive technology.

We have to look at the modes of communication for different people with disabilities. So go look at that video, it's pretty amazing.

>> Randi: We have a couple more questions, but I think we'll move on for now. We'll grab those.

>> Richard: So who can be the supporter? If you look at the law, it doesn't place any restrictions on who can be a supporter. And, you know, when we first drafted the bill, we put restrictions. We said you couldn't be a provider. You work for an institution, you work for a group home, you couldn't be an educator, whatever.

And then some of the lawyers here at Disability Rights who represent people in state-supporting living centers said this is fine for people who have family members or people they know in the community, but we have a lot of people that are in institutions that could benefit from supported decision-making. And if you've ever represented or been involved with people in institutional settings, they often find advocates within the institutional setting that will help them advocate for them and whatever.

And so if we put a conflict of interest provision, they would not be able to select someone that they perceive as an advocate. We took it out and we basically just said that the person, you know, can pick anybody. The most important thing is that they have to select someone they trust. And to me, that is critical here, is that the person with a disability has to have a relationship with the person that's going to be their supporter.

And normally it's going to be a family member, relative, or a friend that can serve as the supporter. You know, people approached me saying-- because a lot of the guardianship programs want to enter supported decision-making. And they say, well, can we do supported decision-making, because we have volunteers. And we can match them up with a person with a disability and do supported decision-making. It's a great idea. Unfortunately, the people asking the question don't understand supported decision-making.

Because when you assign someone to be the supporter, it eliminates the choice from the person with a disability. They need to select. So what they were trying to do was something similar to the CASA program that's involved in court-appointed special advocates in the child welfare

system. They assign a volunteer. That is not supported decision-making. Next slide.

>> Randi: Oops.

>> Richard: Sure.

>> Randi: There we go.

>> Richard: So, supported decision-making is voluntary. And it's exactly like a power of attorney. In a power of attorney, the person with a disability or any of us -- I mean, we all should have powers of attorney right now. We decide who we're giving that power of attorney, who's going to be our agent. And so it is informal and doesn't require going to court. At one point, when we were negotiating over supported decision-making, some of the probate judges wanted to say, we'll go along with supported decision-making, but we want to approve it so there will be some oversight and monitoring.

I'll be honest with you. There is such a bias in the disability community and with family members against probate judges and lawyers, they didn't want to have anything to do with the court. They said no, we won't agree to this if the court has to approve. Next slide. So, how is a power of attorney different? I think a lot of people -- I think there's a lot of misunderstanding on the part of supported decision-making.

And the person with a disability retains the right to make decisions, where with a power of attorney, the person under -- that is the agent for the person with a power of attorney, they get to make the decisions. So sometimes I've heard people say, oh, if you have a supported decision-making agreement, the supporter can go to the bank and take money out, take advantage of the person.

And I respond by saying, no, that's not true. Because the person with a disability does it. The supporter does not have the authority to make any of those decisions, or to act on behalf of the person with a disability. And it's sort of interesting, because people talk about exploitation and abuse. I went back and I was looking at the APS data on financial exploitation, just to rebut some of the arguments against -- that people were afraid of supporters taking advantage of people.

And some of the stories that the APS reported on were examples where you had someone who was 80 years old, and their niece had a power of attorney. The niece took \$50,000 out of their bank account and spent it on whatever. So I think there's a greater risk of exploitation with a power of attorney than there is with a supported decision-making

agreement. And so when we got pushback on supported decision-making -- because all the lawyers were freaking out over all these people are going to take advantage of people with disabilities -- I always responded, sure.

You could have oversight and monitor supported decision-making agreements. But you've also got to do it for powers of attorney, because there's a greater risk of exploitation. And no one would ever do that. Next slide. So, what can a supporter do? This is in statute. And the supporter can assist an adult with a disability in understanding the options, responsibilities, and consequences of life decisions.

So in the beginning they're talking to them and giving them advice. They also can assist the person with a disability in getting their records. They can be medical, financial, psychological, financial, and treatment records. They can get those records. They can also assist the person with a disability in understanding the records. You know, as a lawyer who's represented people with disabilities for 30 years -- and I get records all the time.

I never sit down with my clients once I get a psychological or medical record. It's very rare for me to sit down with my client and to explain what's in the record. We never do that. But if a supporter is to get those records, they are required to not only get the records, but help the person with a disability understand what's in the records. And finally, can assist the person in communicating his or her decision with the appropriate person.

And the example I'd like to give -- and I think we all use supporters. I know nothing about cars. And so if I go to a mechanic and my car isn't running or working properly, they'll say this whatever, you know, the computer says we've got to do this or that. I don't have a clue what they're talking about. Typically I'll go and talk to a friend of mine who understands cars and say hey, they want me to do X, do I need to do this. My friend will advise me what to do.

That's what supported decision-making is about. The one example that I like -- we'll talk later. Next slide. So, regarding confidential information, the supporter is only authorized to assist the person in getting the records. And so this could include protected health information under HIPAA, as well as education records under FERPA. And the supporter, once they get the records, have to keep the records confidential.

And it's privileged information. And they are not authorized to disclose this information to anyone unless

the person with a disability agrees. And what I always tell people when I'm representing them and a supporter comes in, is I tell them, the supporter, I'm not representing you because if I hear that you're getting confidential information about the person with a disability and disclosing it, I'm going after you for violating or breaching confidentiality, because you're supposed to protect this information.

The other thing is that if a person has a supported decision-making agreement, it doesn't prevent the person from getting access to records on their own. So if a person wanted their medical records and they had a supporter, they do -- the doctor can't say, you can't get the records, your supporter has to do it. The person retains the right to do that. Next slide. Next slide.

>> Randi: Hang on. I was trying to un-mute my mic. [Laughter] If a parent of a child that has a mental disability is already doing everything as a supporter, then why do the paperwork? If the child wants your help and assistance, does it matter if the paperwork is signed or not?

>> Richard: It doesn't matter. I think if you're already doing it, it's not necessary. But the reality is it formalizes it. And so it gives you the right -- I mean, the party you're dealing with on behalf of your son or daughter, it shows that you have this formal relationship. And so I think that that's the benefit. You know, I take the position if the legislature didn't enact the supported decision-making law, we were going to go forward with supported decision-making regardless if there was a law.

Some states like Massachusetts haven't passed a law on supported decision-making, but they have these agreements and contracts between the person with a disability and the supporter. And I mean, there's no reason that would prohibit you from having those agreements. But the bottom line is it just gives you a little bit more clout.

>> Randi: And so does the supporter and individual with disabilities need to have legal documentation to indicate the agreement?

>> Richard: Yeah. We're going to talk more about it.

>> Randi: Okay. Go ahead.

>> Richard: We're getting there. Fiduciary duty -- it's a legal term which basically means that if someone is assisting a person with a disability or has a power of attorney or whatever, that they have an ethical or moral duty to act in their best interest and not take advantage

of the person. And there's been a lot of litigation even prior to supported decision-making where if someone takes advantage of the trustee relationship between a person with a disability and the friend who's helping out, they can be sued for breach of a fiduciary duty.

In 2017 in Texas, the legislature made it clear that there was a fiduciary duty between the supporter and the person with a disability. And again, it creates a relationship, a trusting confidence between the person with a disability. But it doesn't undermine the decision-making authority of the person with a disability. Next slide.

So, when does it end? Supported decision-making agreements can end at any time. I mean, a person can sign a supported decision-making agreement and the person with a disability or the supporter can terminate it at any time. Or when they enter the supported decision-making agreement, they can say that this is only going to be good for a year, or it's only going to last until I'm in college or whatever.

So in the terms of the agreement, you can specify. finally, in the Department of Protective Services finds that an adult with a disability has been abused or neglected, it can terminate. Or if the supporter is criminally liable for exploitation. Next slide. What are the requirements for supported decision-making? First of all, the agreement has to be voluntary. And this is totally critical.

And the reason for that is that you can't have -- for example, you can't have a parent tell their son or daughter, you know, you'd better enter a supported decision-making agreement with me, making me your supporter. If not, I'm going to go file for guardianship. Because then it's not voluntary. So the person with a disability has to agree and cannot be coerced or pressured into signing a supported decision-making agreement, and the supported decision-making agreement has to be witnessed by two witnesses over the age of 14, or a notary public.

And you ask why 14. It's in the estate code with wills and stuff that you can be over 14 and witness wills, so they followed that. In the statute -- and there's the cite, section 1357.056, there is a sample supported decision-making agreement. And the law says that any supported decision-making agreement that substantially complies with this provision is acceptable. And Disability Rights -- we're always in the process of trying to make our forms in plain English so that people with disabilities can understand it.

And so we tried to develop a form that was a little bit more simplified than the state code. And we worked with the Arc to try to work on that language. And it's evolving. I'm not wedded to our form. I mean, if people have suggestions on making it more user-friendly, I'm open to hearing their suggestions. Next slide.

>> Randi: Sorry.

>> Richard: A person can rely on the original or a copy of the supported decision-making agreement. And so what this means is that if I have a supported decision-making and I want to give it to my bank, or my doctor, or my school, my employer, whatever, you don't have to have multiple originals to give to everybody. You can just make a copy of the agreement and give it to folks. And then it has language saying that a person is not subject to criminal or civil liability, or professional misconduct if they act in good faith and they rely on the supported decision-making agreement.

This is pretty standard, that if we're presenting something, someone is acting in reliance on it, they can't be penalized. Next slide. If someone is suspected of abusing or exploiting a person with a disability by the supporter, then they shall report the abuse, neglect, or exploitation to the Texas Department of Family Protective Services. Next slide.

Is the supported decision-making agreement binding on third parties? This is a big debate. And I actually have had people call me from other states telling me that the Texas law requires third parties, meaning doctors, are bound by any decision by an individual made that has a supported decision-making agreement. There's some lawyers in Texas that disagree with me. I just can tell you that, you know, I testified in support of supported decision-making.

And I appeared before the Health and Human Services Committee, and there were two doctors on the committee. And when I testified, I knew that if I told the doctors on that committee that this agreement was binding a doctor, then it would never get out of committee. And so I just basically said even though we have the supported decision-making agreement, the person with a disability needs to demonstrate that they have the capacity to provide informed consent.

And so I think what has to happen, especially in the medical context, is that -- and when I tell people, if a person has a supported decision-making agreement -- and for example, they're going to have surgery or something

else -- the supporter will -- should meet with the person with a disability, get information from the doctor, get information online, and just talk about the procedure.

And so even though they're not providing them information, the doctor has to do that, they're educating the person with a disability about it. And then in the context of that talking, if you have any questions about this that you want to ask the doctor or what have you. And then what would happen is that when the individual has to go and give informed consent for the procedure, they would go in with their supporter. And then the doctor will be talking to them and telling them about the risk and benefits.

And then if the person with a disability doesn't ask one of the questions that they told the supporter they wanted an answer to, instead of having the supporter ask the question, I would think that the supporter should prompt the person with a disability and say, remember when we talked about this, and you had some questions, could you -- now is the time to ask the doctor. And to me, what that does is it demonstrates that the person with a disability is providing informed consent. And so I think that's pretty important.

Next slide. Yeah. And so can supported decision-making agreements be done along with other alternatives? Yes. The whole purpose of supported decision-making is to avoid guardianships. And so for example, if we have a young person who turns 18 and they have a supported decision-making agreement, and they're getting SSI for the first time, and they have no experience managing their finances, there's nothing wrong with getting a payee. But the rep payee should work with the individual to train them how to make decisions about managing their money.

And then at some point, once they feel comfortable that the person has the ability to make decisions about their finances, they can go to the Social Security Office and say there's no need for a rep payee anymore. And you can use supported decision-making agreements in conjunction with power of attorney. All of the alternatives. So I say yes to that. Next slide.

So, this came up. And the reason for it is I went and I was -- I gave a talk in a county and they had some private guardianship programs. So they had social workers that all served as guardians. So one person came up to me, because I explained what a supporter needed to do. And they said, boy, that's hard work. And the reality is -- and I think a lot of family members understand. If you really want to

establish trust with a person with a disability, you've got to spend time with them.

You've got to talk to them. You've got to respond when they have a question. Professional guardians don't do that. They're paid. They treat you like a client. And they do the minimum in making decisions. Often, I've seen professional guardians make decisions about medications, whatever, without even talking to the person with a disability. They just make the decision.

And so you need to understand that the supporter is not the decider, that the person with a disability makes decisions, and that it requires time, commitment, and open communication between the person with a disability and the supporter. Now we're getting into ethics for the lawyers. And I'll be quick on this. First of all, the individual -- the lawyer has to assess when they're representing a client regarding supported decision-making, does the client have the ability to establish and maintain -- the capacity to establish the attorney-client relationship.

So it requires the lawyer to make some type of assessment if they understand what they're doing. And my feeling is, we as lawyers do it all the time. Even before I came to Disability Rights and I was a legal attorney, I would assess whether or not my clients had the ability for me to represent them. And I think in the legal profession, we do that all the time. And next slide.

So, who is the client? And if a person comes to the lawyer, is it the person with a disability or the supporter? And the amazing thing about this -- because I've gone around and I've talked to a lot of lawyers about supported decision-making. I've done CLEs with the state bar. And, you know, the reality is, a handful of lawyers have done supported decision-making. And the reason is, I think, is there's no money in it.

You know, the forms are online. The dilemma that a lawyer has, who pays them? Are they going to charge the person with a disability, or are they going to charge the supporter? And so -- and often the supporter is a family member. And there's nothing in the rules that would prohibit someone else to pay for legal services for a client. You've just got to make sure -- who's the client? And next slide.

So, you know, the one thing -- and I had debates with people that are good advocates about whether or not a lawyer can represent both, both the supporter and the client. And under the disciplinary rules for lawyers, they talk in terms of loyalty as an essential element of the

relationship between lawyer and client. And even though there aren't any ethical rules or opinions on this issue, the comments to our rule, 1.06, warns about conflicts in non-litigation situations that sometimes are difficult to assess.

And I just found this kind of mind-boggling. And this is an exact quote. Conflicts may arise in estate planning, estate administration, even in matters as simple as procuring a will for a spouse. How many of us have gotten wills where we've both gone through the same lawyer, husband and wife, and there's a potential there that there could be a conflict. And so -- and then we've talked about joint representation.

And this is under the rule. And it's 1.06B, where a lawyer could represent both -- several parties in the case. And they have to determine that the representation of each client will not be mutually affected by representing both of them. And they have to go through this whole litany of disclosing any conflicts and all this other stuff that I'm not going to go into. Next slide.

The one thing that is important is a comment under joint representation. It says disclosure and consent are not formalities. You just can't have your representation agreement have a joint representation provision and have the person with a disability sign. And the disciplinary rules warn against the disclosure has to be sufficient -- disclosures that are sufficient for sophisticated clients may not be enough for someone who is less sophisticated to provide full informed consent.

This is a classic supported decision-making. You have a person with a disability who may not be as sophisticated as the supporter. I think there's a major problem. I would personal never represent both the supporter and the person with a disability. Next slide.

The other thing under the rules is that lawyers, they're representing people, have a duty to explain to their clients, you know, what's happening in the case so they can provide informed decisions. So there's a duty on the part of our lawyers to communicate with clients. So if you have a supporter coming in with their son or daughter, you've got to meet alone with the person with a disability. You need to talk to the person with a disability, not the parent, you know.

Finally, there's some resources available through the National Resource Center for Supported Decision-making, as well as Disability Rights Texas. And we have a whole section

on supported decision-making. Next slide. And so Randi, do I still have 15 minutes? Or am I out of time?

>> Randi: I'm sorry, my mic was muted. We have until 11:30, yes.

>> Richard: Perfect.

>> Randi: Questions, too.

>> Richard: Sure.

>> Randi: Which do you want first? [Laughter]

>> Richard: I like questions.

>> Randi: Okay. In my experience, courts have little experience with limited guardianship. As you are training on the supported decision-making process, will you also be educating on the benefits and possibilities of limited guardianship?

>> Richard: And this is sort of -- it's mind-boggling for me to say this. And the reason for it is, as long as I've been a lawyer, there's been a requirement of looking at a limited guardianship before getting the full guardianship. So, I mean, it's been 30 years and they don't get it? Something's wrong. We need new judges, you know? I mean, that's problematic. If you look at the law, it requires -- and the interesting thing, when we were drafting the reforms to guardianship, you know, in the old code there was preferatory language, which means language encouraging people to do right.

And it says you're supposed to do the least restrictive type of guardianship to promote the independence and whatever of people that are being subject to guardianship. And we could have done that the same thing. We could have said, you also need to consider supports and services and alternatives to guardianship and just leave it there. But we didn't trust the lawyers, and we didn't trust the judges.

And what we did, which is pretty amazing, is we embedded in the statute all the requirements that the courts had to find by clear and convincing evidence that there were no alternatives available, or there were no supports. And that we also included in the assessments by doctors, who were horrible that don't know the alternatives. And so they always recommend full guardianships. So we've got a lot of work to do not only with the courts and judges, but these doctors that they don't get it.

And they are overprotective. They're concerned about their own personal liability. And that they are always wanting a full guardianship. So that's a problem. So if you look at the statute, we put it in the duty of the attorney ad litem, all these things. And I raised question, if

there's a lawyer who is appointed to represent a ward and doesn't talk to them about alternatives, doesn't zealously object to a guardianship and advocate for them, don't you think that would be grounds for agreements with the bar? They're not representing the client -- grounds for a grievance.

We need to take this seriously. If we're not having lawyers effectively representing their client, because it's a serious matter. We're stripping people of their Constitutional rights. The thing that angers me from a perspective of an advocate, we represent a lot of people in state-supporting living centers. We work with the treatment teams to get people to move into the community with HCS. Often, the state-supported living centers will notify an absent relative, for 20, 30 years has never had a contact with the person with a disability.

They may be an adult sibling or whatever. And so they come in, they file for a guardianship, and they block the guardianship. I mean, they block the movement in the community. They become full guardian and they say no. To me, the person with a disability, you may have a case for limited guardianship, or supports and services, or an order saying this person has the right to move out of this institution.

So I think part of the problem-- we've got a lot of problems. We've got problems with lawyers, with judges, with professionals, doctors, and social workers, and all these people that don't have a clue about what we're talking about. And this is the law now. And so they need to come into the 21st century and not still live in the 19th century where we treated people with disabilities as second-class citizens.

>> Randi: So how can an advocate, a person advocate for an individual on a caseload that has a legal guardian that's been arrested for assaulting the individual? The guardian has untreated mental health issues by choice, as does the individual who is also IDD, and is on the IDD waiver program, living in a home in the community. Adult protective services has been involved many times and has closed the cases since the individual reports that they are fine with their environment in the home.

The individual is verbal and capable of making her own choices, and would benefit from supported decision-making. The guardian has not completed the annual guardianship documents and says that her guardianship order does not require this. So how do you advocate for somebody like that?

>> Richard: First of all, I mean, you have a lot of nice options. One would be to -- if you're a professional working -- because we need people that will come to court and say, this person -- guardianship. I know them, and I'm a mental health professional or psychologist or whatever, to support a restoration of capacity. And so that the person goes to court and says I no longer need a guardian.

And then the alternative -- if I have access to supports and services, like I'm a provider, I don't need them. And so you can go in and either remove -- have the capacity restored, or you can limit the guardian if it's full. The other flip side, the alternative, and I would plead that also, is that you could ask for the removal of the guardian, that they haven't done their job in filing the annual accounting, and they should be disqualified.

On our website, if you go to supported decision-making section, we have a manual that we have on restoration of capacity. So it lays out what a person can do if they want to have a change. You know, the one thing that I don't like -- and if I were able to change the law -- is that in the statute, in order for a person to have their capacity restored, you need to have an expert state that they no longer need a guardianship.

The problem, if someone is in a community in a home, I would hope you could get that. But, if you have someone who's inappropriately placed in a state-supported living center or nursing home, it is really difficult. They want to keep the clients in the institution. And so it's hard to find somebody. So you've got to go out and find an expert that would write an affidavit and testify saying the person doesn't need a guardianship. And that makes it real hard.

And even if you had a guardian that came in and said look, I don't think this person needs me as a guardian anymore, I would think that should be enough. But we're not there yet. We've got to change the law.

>> Randi: Have you seen any cases yet where someone challenged a person's capacity to enter into a supported decision-making agreement, or in which a judge awarded guardianship because they thought a person with a disability didn't have the capacity for supported decision-making?

>> Richard: I have not seen a case yet. I've heard anecdotally, because I was meeting with a judge. And the judge said there was a battle over a guardianship between -- there was an adult child who just was turning 18 or whatever. And the parents were fighting over

guardianship. And this is probably an extension of a dispute that they had when they were, you know, in a divorce and trying to get custody. And so what happened was that the mother went and downloaded a supported decision-making agreement from either our website or from the statute, and got her daughter to sign it.

And so they went into court saying there's no need for a guardianship, we have a supported decision-making agreement. And what happened in the case, which I thought was pretty interesting, is that the judge had the young lady, who signed the supported decision-making agreement, testify about what she signed. And she didn't have a clue what she signed. And so, you know, even though the law allows laypeople to enter these supported decision-making agreements, I'm not a fan of this.

When the law first passed in 2015, I wasn't on the bandwagon trying to get the agreements entered. I tend to be a control freak. And I do not want bad situations where someone has a horror story where someone abused the supported decision-making agreement and then the legislature comes back and repeals the law. And so I've been really wanting lawyers -- my lawyers -- to represent people -- or we do pro bono clinics to assess whether or not a person has the capacity to enter a supported decision-making agreement, and then advise them about it to prevent these abuses.

So, what I'm showing you now is our supported decision-making agreement, which is the one on the disability rights Texas website. And the one that is in our supported decision-making toolkit. And you'll see it, in the first section, defines what is supported decision-making. And what we did is we tracked the statute. And it just states what the law requires. Delaware just passed a supported decision-making agreement and in bold they have a statement that says that the person with a disability makes all decisions and not the supporter.

And I want to change our form to say that so it's really clear and people know it upfront. And the next step is who is making the agreement. And so the first section is you have the person with a disability that they put their name. And they state that they're entering into the agreement voluntarily. And again, they're choosing who can be the supporter. So then they'll put the name of the supporter and their contact information.

The one thing that our form does that it only has room for one supporter. More and more I think there's no problem having more than one supporter, that a person can choose

several people to serve as their supporter. I was at a national conference and there was someone there with a disability who said she had nine supporters. She couldn't decide amongst her family members and friends who would be her supporter, so she chose nine different people and she delegated different decision-making systems to each one.

And to me, that's good checks and balances. So people are worried that a supporter may be exploiting a person -- have more than one supporter. Or if the person with a disability wants more than one supporter, do it. Next slide. And so next, you see the choices of what a supporter can do. And basically, the person with a disability would go through and check whether or not they want the person to assist in helping find a place to live, to help them make decisions about their physical health, their mental health, managing money, accessing supports and services, finding a job, or other.

It's sort of interesting, a lot of the young adults that I've represented, they've added in under other, helping them get a driver's license. And so they have that opportunity. And then the next section under the agreement is -- and this has -- the person -- so a person can say, I want the person to help me make medical decisions, or mental health or whatever. But in order for the person with a disability to allow the supporter to access their private health information, not only do they have to check yes, but they also have to sign a release, a HIPAA compliant release, and the same with educational records.

So you just don't have the person, you know, bringing the supported decision-making agreement. And if the person doesn't have a release signed by the person with a disability, they can't get the records. And when does the agreement end? Again, it says it will continue until -- you can put a date, or until they terminate it, or they can state whatever in it. And then at the bottom of the agreement, you have the signature of the person with a disability who signs and dates the agreement. Next slide.

And then there's a warning in there. It talks about the fiduciary duty. And I think a lawyer who is representing the person with a disability needs to explain what fiduciary duty means. And what we did in statute was we tried to make it real simple about what is fiduciary duty. And basically, the supporter has a duty to act in good faith. They have to be loyal. They can't act out of self-interest where they're trying to take advantage of the person. And they have to avoid conflict of interest. It's real simple. And then the supporter will sign the agreement.

And then the agreement can be witnessed by two people that are over 14, or it can be notarized. Next slide. And in our supported decision-making agreement, the form, it talks about reporting abuse, that if anyone gets a supported decision-making agreement and they think the person with a disability is being exploited, you've got to call APS. And there's the contact information.

And then it also talks about people relying on the agreement. So you can rely on both an original or a copy of the supported decision-making agreement. And then you've got the good faith immunity for the supporter that I talked about. So that's it. And it's 11:30. We made it.

>> Randi: [Laughter] If you have additional questions, if you will just email us, I will get those to Richard and we'll get some responses out to the group, as a group, because I know that you learn from each other. Since we are out of time, I'd like to thank Richard for joining us today. I'd like to thank Texas Closed Captioning for the captioning, and I hope you have a great afternoon. Thank you.

>> Richard: Thank you.

>> Randi: Bye-bye.

[End of Session, 11:31 a.m. CT]