



# GUARDIANSHIP

Guilford County Department of Health and Human Services –  
Aging and Adult Services Division

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Date: October 5, 2017

# Guardianship

- The essential purpose of guardianship for an incompetent person is to replace the individual's authority to make decisions with the authority of a guardian when the individual does not have capacity to make such decisions. G.S. 35A-1201(3)
- Limiting the rights of an incompetent person by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights. G.S. 35A-1201 (4)
- Guardianship is not a means to control behavior or eliminate poor decisions.



# Types of Guardianship

- **Guardian of the Person:** related to the individual care and needs of the ward. G.S. 35A-1202 (10)
- **Guardian of the Estate:** manages property, estate, business affairs, assets, etc. G.S. 35A-1202 (9)
- **General Guardianship:** both Guardian of Person and Estate. G.S. 35A-1202 (7)
- **Limited Guardianship:** limits removal of rights and should be tailored to the specific needs/abilities of the adult. G.S. 35A-1215(b)



# Who May File A Guardianship Petition

**Anyone:** individuals, families, hospitals, residential facilities, Mental Health providers, DSS (**Adult Protective Services**), etc.

**Legal Representation** is required when a petition is filed by a corporation (such as hospitals, residential facilities, community organizations, and DSS).

A petition for adjudication of incompetence should be filed in the county where the adult resides.



# Priorities for Appointment of a Guardian

- The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent. G.S. 35A-1214
- “Disinterested Public Agent” means the director or assistant/division director of the Department of Social Services. Legislation eliminated the option of other publicly funded agencies (Public Health/Mental Health) from serving.



# Alternatives to Guardianship

- **Power of Attorney:** authorization for an individual to act on behalf of another regarding business affairs.
- **Health Care Power of Attorney:** authorization to make health care and medical decisions for another.
- **Durable Power of Attorney:** authorization to handle both business and medical affairs for another.
- **Mental Health Advance Directive:** a legal document that outlines a support plan in the event of a mental health crisis (Supported Decision Making).
- **Representative Payee:** individual assigned to assist in management of income, bills, budgeting, and general finances, etc.
- **Family or Friends:** individuals may have family or friends willing and capable of providing for their needs.



# Comprehensive Case Management

## Intensive Guardianship Case Management is provided by Protective Services Social Workers

- Link services/resources such as mental health, medical, substance abuse, housing resources as available
- Crisis planning and intervention
- Decision making assistance regarding care and daily living
- Comprehensive assessments of strengths and needs
- Frequent monitoring of client's overall well-being
- Transport/accompany to medical, mental health, dental, and other appointments
- Collaboration and contact with family, medical professionals, attorneys, payee's, community resources, end of life recommendations, and funeral services
- Guardianship requires 24/7 accessibility for crisis intervention, consents for treatment, emergency moves



# Liability

- Guardianship is an intrusive process which restricts or removes an individual's rights.
- Guardianship, for most who are adjudicated incompetent, is a life long appointment. We have adults for whom DSS has served 30+ years.
- Social Worker Protective Services (SWPS) staff are front line with adults (ward) for whom DSS has been appointed legal guardian. They are required to make and document contacts, changes, medical, mental health efforts/decisions and crisis intervention. SWPS make recommendations for the guardian's consideration about treatment options.
- Among the most difficult decisions a guardian may be required to make on the ward's behalf are those involving invasive medical treatment that require the guardian to authorize, continue, or discontinue risky, perhaps life threatening treatment including end of life decisions.





# Liability

- Our SWPS staff are often in vulnerable situations with highly unpredictable/potentially violent adults who have Severe and Persistent Mental Illness and/or Substance Abuse diagnoses.
- Our wards, though adjudicated incompetent, make independent decisions often refusing service provision.
- SWPS must transport adult wards, move them and their belongings, work alone, and are in unsanitary conditions.
- Staff utilize safety precautions such as cell phones, buddy systems when available, Personal Protection Equipment(PPE), traveling together when possible, and must occasionally contact law enforcement to assist.
- The change in population under guardianship involves a significant shift in resources needed, staff training, safety needs, risk, and demand on SWPS staff.



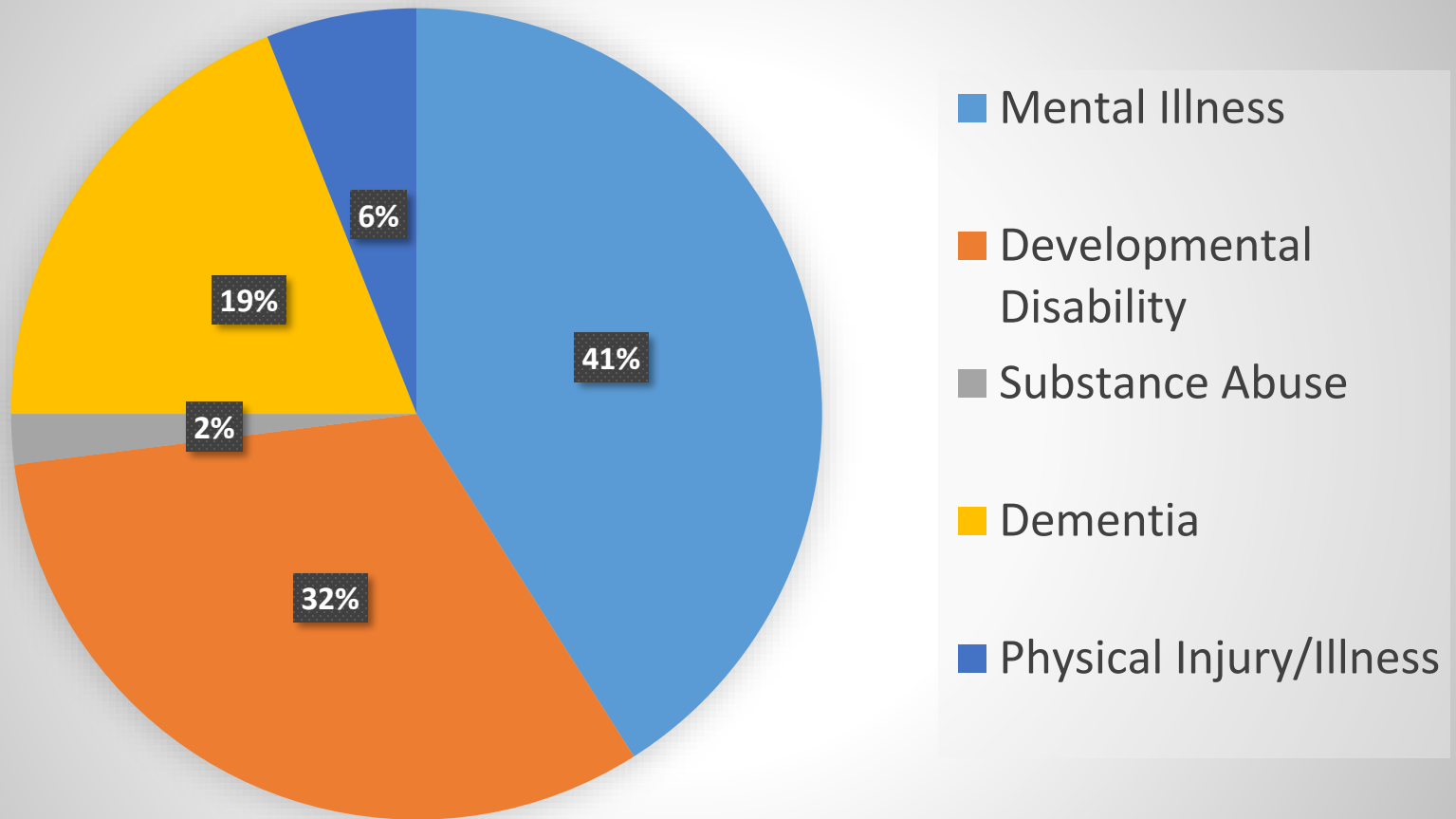
# Trends, Data, and Caseloads

- There are currently 248 adult wards in Guilford County with a historical high of 260.
- The state recommended case load size is 25 per worker. Our SWPS staff currently average between 33-36 cases with increasing numbers of younger adults with mental health/substance abuse issues.
- Recent trends reflect an increase in wards under the age of 45 (93). Currently we have 58 wards under the age of 35.
- Of our 248 wards, 100 have a primary diagnosis of mental illness.



# Current Caseloads-Primary Diagnosis

(many are dually diagnosed)



# Where do our wards live

Adults under DSS guardianship live in a variety of environments:

- Adult Care Homes/Assisted Living Facilities
- Skilled Nursing facilities
- Psychiatric Hospitals
- Mental Health Group Homes
- Independent homes/apartments
- With family members
- Boarding houses
- Shelters

Guilford County wards live across the state of North Carolina depending on their preference and where appropriate services and housing can be obtained.



# When Guardianship Ends

- **Death**: responsibility ends at death. In the absence of family able/willing to handle final arrangements, Guardianship SWPS staff have assisted with funeral, burial, and cremation.
- **Removal of Guardian**: Clerk of Court may authorize this in the event a guardian is not fulfilling their obligation on behalf of the ward.
- **Restoration of Rights**: Example: a person who was adjudicated to be incompetent during a serious medical illness, has recovered to a point of being able to make important decisions and manage their own affairs.



# Barriers/Supports Needed:

- Improved Mental Health and Substance Abuse resources in Guilford County for long term treatment and stabilization.
- Community education regarding what constitutes *incompetency*, least restrictive alternatives, the role/responsibility and supports for serving as a guardian for family members to minimize fear of accepting the appointment when it is required.
- Increased awareness that Mental illness and chronic substance abuse do not always equal incompetency
- Explore and implement alternatives to guardianship, where appropriate, to assure that DSS is being utilized as the last resort.
- Expand the availability of disinterested public agents which has been legislated solely to DSS.
- Provide additional SWPS staff as caseload sizes grow to decrease the high risk for staff and wards.



# Conclusion

The challenge of accessing adequate housing, mental health, and substance abuse services has a collective impact on our community. Adults who are in of need services, treatment, and supports are going to our hospitals, homeless shelters, and jails raising costs to the county.

Without needed services, treatment, and appropriate housing for adults and their support systems, Guardianship use will grow as a means to access supportive services, thereby increasing the direct county liability and responsibility.



# Questions?

