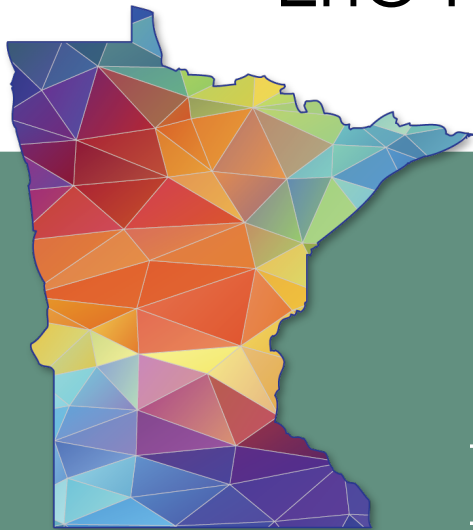


Guardianship and the Transition to Adulthood

Presenter:

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Minnesota's First Autism Resource[®]

What Is the Autism Society of Minnesota?

Established in 1971, the Autism Society of Minnesota (AuSM) is a 501(c)(3) nonprofit organization committed to enhancing the lives of individuals and families affected by autism.

We seek to:

Advocate for legislation and policies that lead to improved services, increased opportunities, and greater self-determination for people with autism.

Educate and inform individuals, families, professionals, and the broader community about autism and effective strategies for support and inclusion.

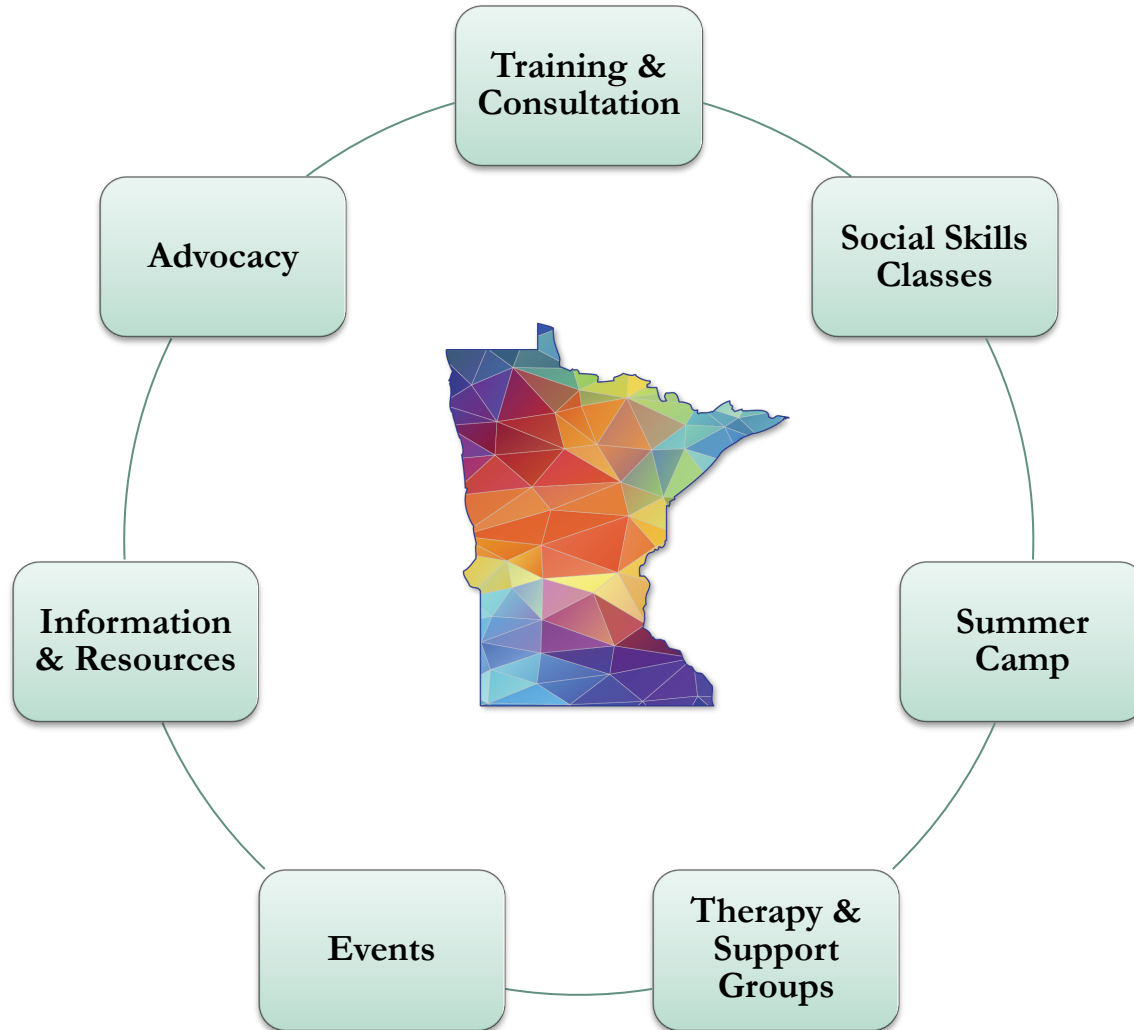
Support individuals and families through quality programs, counseling services, and resource information.

Collaborate with organizations and individuals who share our commitment to enhancing the lives of those affected by autism.

Build community and provide a welcoming and accessible environment for autistic people to connect and form their own social bonds.



AuSM Programming at a Glance



What is Guardianship?

- A person, institution, or agency appointed by a court to manage the affairs of another individual.
- Each state has specific laws that govern guardianship proceedings and the guardian's activities.
- Without an order of guardianship, all individuals are legal adults at age 18.

Types of Guardianship

- Guardianships are typically separated into two categories:
 - Guardianships of the person
 - Guardianships of the property (conservatorship)
- When the guardian controls decisions regarding both person and property, the guardianship is called plenary or full. There are also limited guardianships.

Transfer of Rights

- Some rights may be removed without being transferred to the guardian, such as the right to marry, vote, drive, or seek or retain employment.
- Other rights may be removed and transferred to the guardian to exercise on behalf of the person.
- Certain rights require a court order to be transferred to a guardian.

Example of Powers: Minnesota

- **A guardian can have any or all powers:**
 1. To have custody and determine place of abode of the person under guardianship
 2. To provide for the care, comfort and maintenance needs of the person under guardianship
 3. To take reasonable care of the personal property of the person under guardianship
 4. To give or withhold consent for necessary medical care and treatment for the person under guardianship

Example of Powers: Minnesota

5. To make or withhold approval of contracts for the person under guardianship
6. To exercise supervisory authority over the person under guardianship
7. To apply for government benefits on behalf of the person under guardianship
8. To open an ABLÉ account for the person under guardianship
9. To institute and represent the person under guardianship in civil litigation

Example of Rights: Minnesota

- **Guardianship Bill of Rights:**
 - Receive timely and appropriate health care and treatment
 - Exercise control of all aspects of life not delegated specifically by court order to the guardian
 - Petition the court to modify or terminate guardianship
 - Personal privacy
 - Communication and visitation with persons of their choice
 - Marry and procreate
 - Be represented by an attorney in any proceeding
 - Vote, unless restricted by the court



Guardian's Duties

- Ensure that the needs of the person under guardianship are met (not required to use personal funds)
- Use government benefits to meet the needs of the person under guardianship, rather than their estate
- Take reasonable care of the personal property of the person under guardianship and seek the appointment of a conservator if they have other property
- Annual Filing Duties:
 - Personal Well-Being Report
 - Annual Notice of Right to Petition for Capacity Restoration
 - Affidavit of Service



Who Can Be a Guardian?

- Current guardian
- Agent appointed by the individual's health care directive
- Spouse or someone nominated by a deceased spouse (HCD)
- Adult child
- Parents
- Adult with whom the person has resided for more than six months
- Adult related by blood, marriage, or adoption
- Any other adult OR a professional guardian

Guardianship Process

- File the petition for guardianship
- Provide notice to all interested persons
- Appointment of an attorney to represent the person
- Capacity evaluation
- Hearing
- Letters of guardianship
- Guardianship plan and initial reports

Court Determination of Incapacity

- “unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care.”
 1. The existence of a disabling condition
 2. That such condition causes the inability to adequately manage one’s person or financial affairs

Challenging a Petition for Guardianship

- Any person interested in the welfare of the person under guardianship (including the person subject to guardianship) may object to a petition for guardianship.
- Two possible reasons for objection:
 - Whether the person under guardianship is an “incapacitated person”
 - Who should be guardian?
- The court has continuing authority over guardians.
- The court may remove a guardian for cause.

Guardianship Challenges

- There is a lack of data on existing guardianships and newly filed guardianships.
- People with disabilities are widely (and erroneously) seen as less capable of making autonomous decisions.
- People with disabilities are often denied due process in guardianship proceedings.
- Capacity determinations often lack a sufficient scientific or evidentiary basis.

Guardianship Challenges

- Guardianship is considered protective, but courts often fail to protect individuals.
- Most state statutes require consideration of less-restrictive alternatives, but courts and others in the guardianship system often do little to enforce this requirement.
- Every state has a process for restoration, but this process is rarely used and can be complex, confusing, and cost-prohibitive.

Alternatives to Guardianship

- Less restrictive means of support should be tried and found to be ineffective in ensuring the individual's decision-making capacity before use of guardianship is considered.
 - Health-care proxies
 - Advance directives
 - Supported decision-making
 - Powers of attorney
 - Notarized statements

Additional Supports

- Voluntary participation in money management services
- Case management services
- In-home care services
- Food and prescription delivery
- Daily call services
- Direct deposit or bill pay
- Medical or educational release forms
- Person-centered planning
- Vocational services
- Supported living services



References and Resources

- Turning Rights into Reality
 - <https://ncd.gov/publications/2019/turning-rights-into-reality>
- Beyond Guardianship
 - <https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives>
- American Bar Association
 - https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/
- Guardianship Laws by State
 - http://jennyhatchjusticeproject.org/50_state_review

THANK YOU!

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Established in 1971, the Autism Society of Minnesota is committed to education, advocacy and support designed to enhance the lives of those affected by autism from birth through retirement.

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