

# Guardianship Essentials: Scenarios, Solutions, and Strategies

November 26, 2024

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# Our time today

- I. Basic information on guardianship.
- II. What would you do?
- III. Solutions and paths forward.

# I. The Basics of Guardianship

→ A Primer



# Who is a Guardian?

- A person who
  - has been appointed by a court
  - to make personal
  - or financial decisions
  - on behalf of an adult
  - whom the court determines needs a guardian's decisions

# Who is a Guardian, cont?

→ Key points:

→ **Has been appointed by a court**

→ Not simply because a person is a relative and there was guardianship when the person was a minor

→ Personhood and financial guardians are not the same

# Financial versus Personhood Guardianship

## → Financial Guardianship:

- Where and how you spend your money
- How you manage your money
- Who has access to your money
- Etc.

## → Personhood Guardianship:

- Where you live
- What medical care you receive
- What contracts you sign for services
- Etc.

# Timing and Scope of Guardianships

- May be limited
  - Can make decisions over specific areas (i.e. where they live in terms of services, but person chooses city, area, etc.)
- May be plenary
  - All decisions, both personal and financial
- May be temporary
  - Until a certain condition is met (i.e. recovery, changes of circumstances)
- May be permanent
  - Not likely or anticipated to end

# How Do You Know?

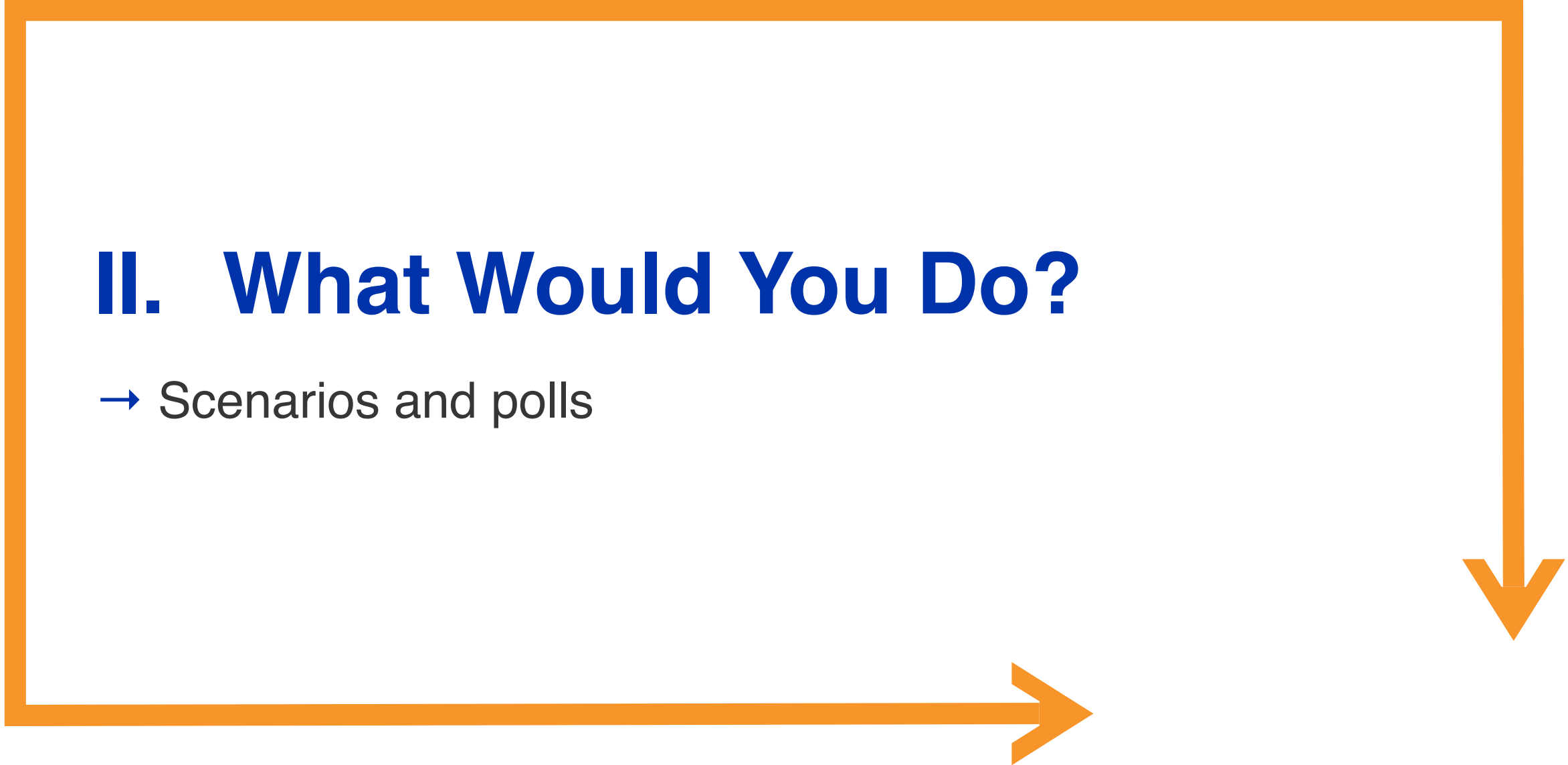
- ❑ **Read the guardianship documents**
- ❑ No documentation, no guardianship
- ❑ Documents will describe:
  - ❑ Who the guardian is
  - ❑ What decisions they have authority to make
  - ❑ Timing of guardianship
  - ❑ Letters of guardianship, letters of office, letters of administration





## **II. What Would You Do?**

→ Scenarios and polls

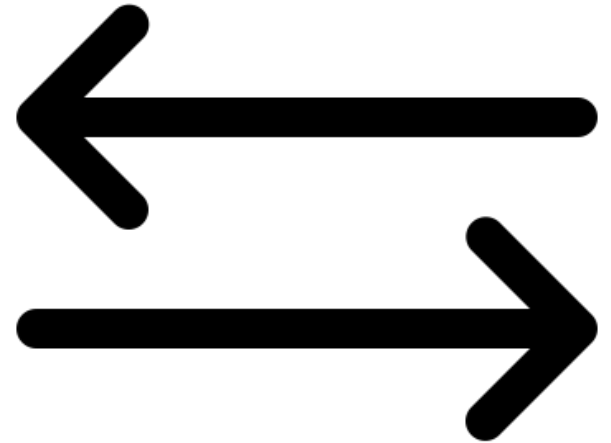


# Meet Chloe

- Chloe has come to you at your sexual assault center seeking services.
- Chloe does not disclose having a disability, nor does she ask for an accommodation.
- Before you start services, you ask her to sign a consent for services.
- **Question: What do you do? Does this bring up any questions for you?**

# Chloe, cont.

- What is the purpose of requiring consent for services?
- Do you require that in your services?

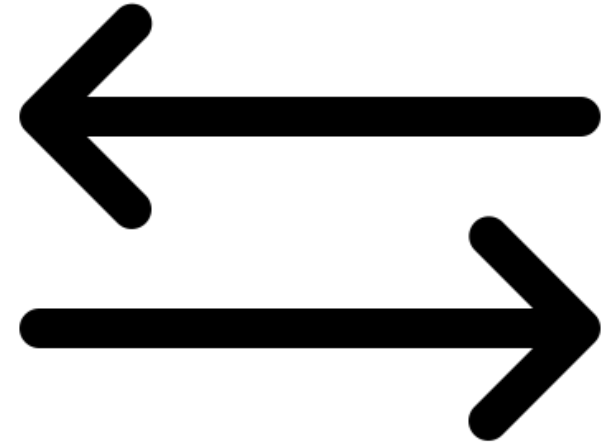


# Meet Sophia

- Sophia has arrived for counseling services at your Rape Crisis Center for a rape she experienced years ago by her direct support provider. She is having nightmares again.
- Sophia has an intellectual disability and is requesting services. She tells you about her disability and asks if you have material in plain language.
- She does not mention having a guardian, nor is a guardian present with her.
- **Question: what do you do? What questions does this bring up for you?**

# Sophia, cont.

- Sophia now tells you in conversation that she has a guardian who does not know about the rape.
- You've started services.
- **Question: What do you do? What questions does this bring up for you?**

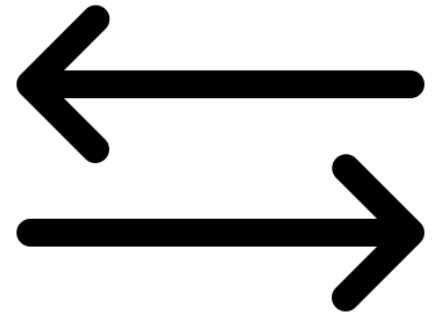


# Meet Marcus

- Marcus, 22, has come to you seeking services, disclosing that he experienced a sexual assault a few weeks ago. It happened at his high school graduation, so he's very clear on the date.
- Marcus volunteers to you that he has a guardian, and it's his mother.
- Marcus' mother, Dorothea, does not have any paperwork to show her guardianship status.
- **Question: What do you do? What questions do you have? Any concerns?**

# Marcus, cont.

- Marcus' mother is with him. She says she is Marcus' legal guardian and has paperwork.
- You review the paperwork and see she has medical and financial decision-making authority.
- She wants to decide what services Marcus can access at your agency. Specifically, she does not want him to attend any group sessions but is fine with private sessions.
- **Question: What do you do? What questions does this bring up for you?**



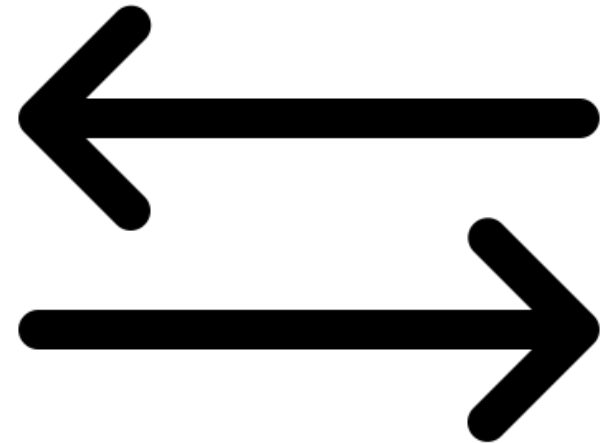
# Meet Sam

- Sam arrives for his free counseling appointment at your sexual assault center.
- Sam tells you he has a guardian, and the guardian provides the paperwork. You review the paperwork and see they have plenary guardianship.
- The guardian accompanied Sam to this appointment to provide the paperwork, to express that they don't want Sam receiving services at all, and to inform you of their decision.
- **Question: What do you do? What questions do you have?**



# Sam, cont.

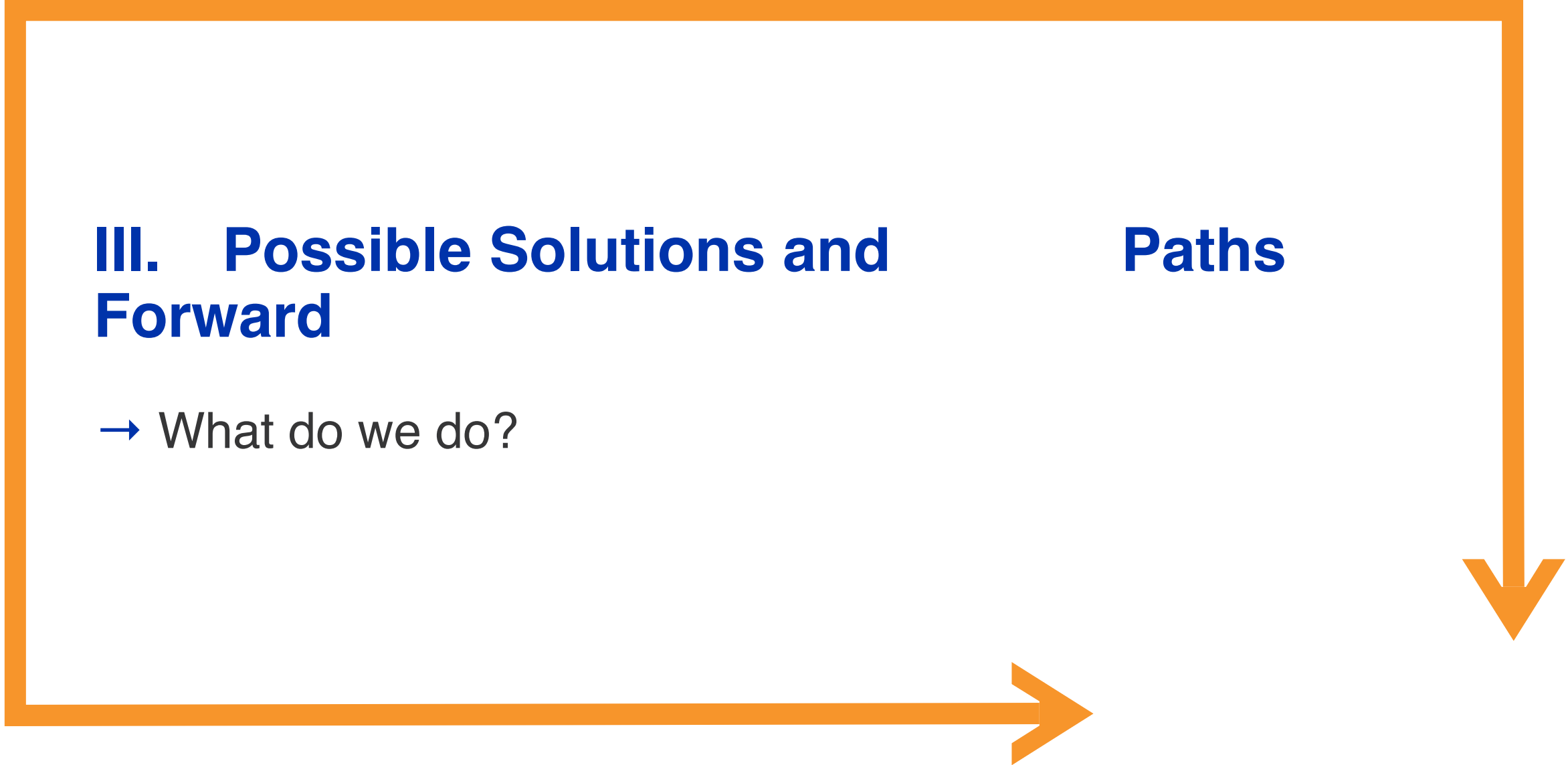
- Let's switch
- Sam is with his guardian, who brought him in for counseling services.
- Sam does not want to participate in or receive any services at all.
- **Question: What do you do? What questions does this bring up for you?**



### **III. Possible Solutions and Forward**

→ What do we do?

**Paths**



# No Guardianship Paperwork

- Proceed with services
- Individuals are presumed to be legally competent
  - Unless and until a court determines otherwise
  - Courts are required to choose the least restrictive type of guardianship

# Has a Guardian, Guardian is not With Survivor

- Proceed with services
- Again, no paperwork, no guardian

# Has a Guardian, Guardian is With Survivor, Guardian Does Not Have Paperwork

## Two Options:

- Proceed with services
- Again, no paperwork, no guardian

## OR:

- Look up guardianship paperwork with the courts
- Called Letter of Guardianship or Letter of Administration – find out what it's called in your state

# Has a Guardian, Guardian is with Survivor, Guardian Has Paperwork

- Guardian does want services and has the authority to decide:  
Proceed with services
- Guardian does not want services:
  - Does the guardian's concern over receiving services match their decision-making authority?
  - The ADA requires that people with disabilities receive the same access to justice as those without. That's the baseline.

# What Can I Tell a Guardian?

- A Guardian with authority to make decisions about your services stands in the legal shoes of a survivor, which means:
  - No release is needed to share information to the guardian
- A Guardian without that legal authority (i.e. a Guardian who only has authority to make financial or housing decisions) is legally the same as any other third party, which means:
  - A release is needed to share information

# Written Consent for Services – Should We Require?

- Could someone receive services without ever giving you their name?
- What do you do with this written consent?
- How long do you keep it?
- How do you verify it's truly voluntary?
- What are the pros and cons?



# Note: Exchange of Information Permitted

- Ask yourself what concerns you have
  - Liability?
  - CYA?
  - Whose convenience is this for?
- These are not contracts
- Conversation is permitted; passive consent (they are present, seeking services)

# Planning is Key!

## Review

Know where to find guardianship records

- Court records in the county where the person resides

## Plan

Have policies in place to guide your employees

- Ask (in the moment and prior)

# Questions?

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