

Aging Happens: Make custodial decisions while you still can

By Ellen Waldman

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Nora was in the hospital in Medford. Due to cognitive impairment, she was not able to communicate her wishes for her medical care or the upcoming discharge from the hospital. She had no family, and no friends who could help her out.

Rose was still living at home, but her family did not agree on where she should live in order to meet her growing care needs. Rose herself was no longer able to understand her options, or make choices on her own behalf.

What do these two people have in common? Neither one had an Advance Directive for Healthcare and therefore, they both needed to have a guardian appointed by the court.

When it was time for Nora to be discharged from the hospital, she was not safe to go home alone. She had no legal or medical documents attesting to her wishes. The hospital discharge planner called around to see if any of the professional fiduciaries (those who can serve in a position such as a guardian) were available. They were not.

Since Rose's family was not able to reconcile their differences on care options, someone petitioned the court to appoint a professional third-party guardian. This process always includes a court visitor who interviews everyone involved. They make an informed recommendation to the court as to who is best suited for this role. The court visitor also called our local fiduciaries to try to locate a guardian.

In both scenarios, the situations required that a professional be appointed to serve as spokesperson and advocate. The obstacle for Nora was that she had no money, no friends or family, and a professional, if located, would not be paid, other than a \$50 per month stipend. For Rose, there was a small amount of money that would soon disappear as well.

We are facing a growing need for those who can hold these positions of deep responsibility. In the past, there were state funds that provided for what were called "public guardians." My understanding is that these funds are no longer as available, and herein lies the problem.

From the Oregon.gov website: While Oregon law authorizes counties to provide public guardianship services, only Multnomah County presently does so. In 2013, a statutorily authorized task force on public guardianship estimated that between 1,500 to 3,000 Oregon adults with diminished decision-making capacity are at risk of abuse, neglect or self-neglect and need but lack guardianship or conservatorship services. These individuals include person with age-related cognitive impairments, primarily dementia; persons with significant intellectual and developmental disabilities; persons with serious and persistent mental illnesses; and persons with traumatic brain injuries (www.oregon.gov/LTCO/Pages/Oregon-Public-Guardian-Resources.aspx).

I do not know what the final outcome was for Nora, but the court visitor for Rose's family was able to find someone willing and able to serve. But too often, maybe a half-dozen times a year, I hear of situations like this. There are no great answers in sight.

Where does that leave individuals who need this help? Frankly, the best way to avoid this altogether is to create your Advance Directive for Healthcare now, and review it yearly. Make sure that family and friends understand your wishes. Trying to solve this problem without this documentation is a lot messier. There are some unique situations where a guardian might still need to be appointed, even with an Advance Directive in place, but this is not the norm.

At the beginning of this New Year, can you take some time to review your documents? Check to be certain that your wishes for care have not changed, and equally important, that the person who is your health care representative is still able to serve.

If you don't think you know anyone who can be a reliable health care representative, what else might you do to begin your search for one? Those who are professionals in the field might be an option. Also, check with your doctor, CPA, investment planner, and the local senior services (Ashland Senior Center, www.ashlandseniorcenter.org, 541-488-5342; Aging and Disability Resource Connection of Oregon, www.adrcoforegon.org, 855-673-2372).

But postponing this task, thinking it isn't time yet, you don't need it, it's too much work, you don't like to talk about this, or any other thoughts, could potentially leave you where you never wanted to find yourself. From a more positive view, those who know who their representatives will be at their most vulnerable times feel great relief and satisfaction. They are relying on being prepared so they can stay off this road towards potential guardianship. This year might be good time to begin this process of preparing for future needs.