

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The text is centered in the middle of the slide.

# ARKANSAS SUPPORT NETWORK

Steven Thomas, CESP and Employment Specialist

# VOCATIONAL SERVICES

- SUPPORTED EMPLOYMENT
- EMPLOYMENT 1<sup>ST</sup>
- PLACEMENT SERVICES
- TICKET TO WORK
- PRE EMPLOYMENT TRANSITION SERVICES



# SUPPORTED EMPLOYMENT

DESIGNED TO PLACE THE INDIVIDUAL  
IN A JOB THAT BEST SUITS THEIR  
PREFERENCES

- ONE-ON-ONE JOB COACHING
- HELPS THE INDIVIDUAL LEARN  
THE TASK AT HAND AND  
APPROPRIATE WORK BEHAVIOR
- CARVES OUT ANY NECESSARY  
ACCOMMODATIONS NEEDED FOR  
SUCCESS



- **DISCOVERY**

- LEARN ABOUT THE INDIVIDUALS PREFERENCES, SKILLS, AND ABILITIES
- COMMUNITY BASED ACTIVITIES AND WORK EXPERIENCES ARE USED TO HELP THE INDIVIDUAL LEARN ABOUT THEIR OPTIMAL WORK ENVIRONMENT

- **SOFT SKILL DEVELOPMENT**

- INTERVIEW SKILLS
- EMPLOYEE EXPECTATIONS
- BUDGETING
- NETWORKING

- **JOB DEVELOPMENT**

- INFORMATIONAL INTERVIEWS
- INTERNSHIPS
- PAID WORK AT 20 HOURS A WEEK

## EMPLOYMENT 1ST

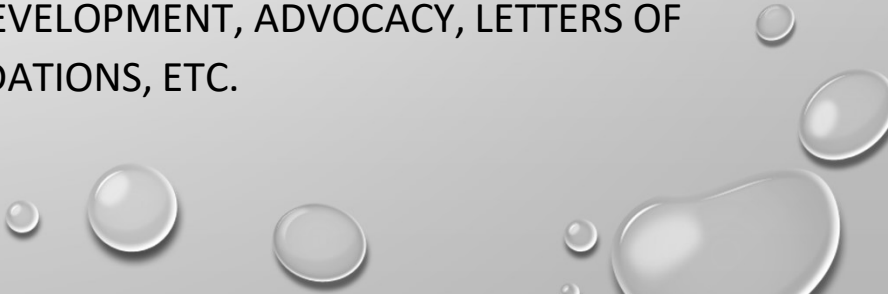




## **PLACEMENT**


- HOW TO NAVIGATE THE JOB MARKET
- RESUME DEVELOPMENT
- INTERVIEW PREP
- DEVELOP NETWORKING SKILLS

## **TICKET TO WORK**

- FUNDED BY SOCIAL SECURITY
  - BEST FIT FOR INDIVIDUALS SEEKING FULL TIME EMPLOYMENT WITH BENEFITS FROM THE EMPLOYER
  - TICKET HOLDERS WILL PROGRESS THROUGH 4 MILESTONES BEFORE COMPLETION OF THE PROGRAM
  - EMPLOYMENT NETWORK WILL HELP PARTICIPANTS WITH JOB DEVELOPMENT, ADVOCACY, LETTERS OF ACCOMMODATIONS, ETC.
- 



# PRE EMPLOYMENT TRANSITION SERVICES

- STUDENTS AGES 16 AND UP
  - FALL SEMESTER STUDENTS PARTICIPATE IN CLASSROOM INSTRUCTION
    - WORK READINESS
    - COUNSELING ON POST SECONDARY EDUCATION
    - SELF ADVOCACY
    - JOB EXPLORATION
  - SPRING SEMESTER STUDENTS PARTICIPATE IN PAID WORK BASED LEARNING OUT IN THE COMMUNITY
  - STUDENTS ARE ELIGIBLE FOR UP TO 21 MONTHS OF PRE ETS SERVICES
- 



# PRE EMPLOYMENT TRANSITION SERVICES



# BARRIERS TO EMPLOYMENT

- WORKING WITH SSA BENEFITS AND THE FEAR OF LOSING ELIGIBILITY:
  - IF I WORK WILL I LOSE MY HEALTHCARE.... FALSE
  - IF I GO TO WORK AND HAVE TO QUIT OR TAKE TIME OFF I'LL HAVE TO REAPPLY FOR BENEFITS ALL OVER... FALSE
  - IF I GO TO WORK SSA WILL NO LONGER THINK I QUALIFY FOR BENEFITS.... FALSE
- ACCOMMODATIONS: THESE ARE GOING TO BE COSTLY AND DIFFICULT TO SET UP, RIGHT?
  - FALSE, MOST ACCOMMODATIONS ARE LOW COST OR FREE IF EMPLOYERS AND EMPLOYEES ARE CREATIVE. CHECK OUT [HTTPS://ASKJAN.ORG/](https://askjan.org/) FOR AN A-Z LISTING OF POSSIBLE ACCOMMODATIONS, DISABILITIES, AND OTHER EMPLOYER RESOURCES LIKE TRAINING AND ACCESSIBILITY!
- TRANSPORTATION: THIS IS ONE OF THE MOST PREVALENT BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES THAT WANT TO WORK
  - HONESTLY, THERE ARE FEW RESOURCES AVAILABLE TO CONSUMERS FOR THIS IN OUR EXPERIENCE. SSA DOES OFFER ASSISTANCE WITH THIS THROUGH WORK INCENTIVE OPPORTUNITIES IF TRANSPORTATION IS A WORK GOAL.

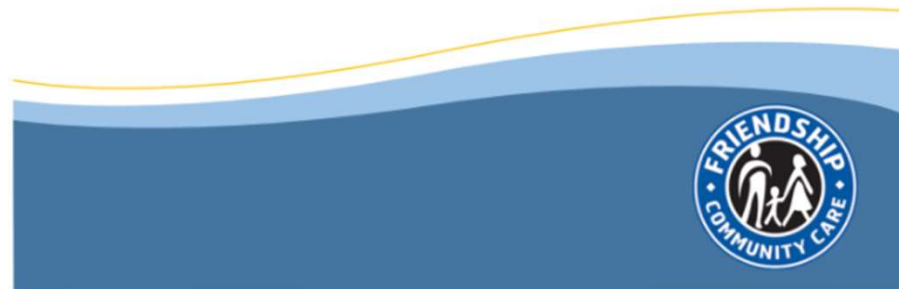




# Open House 2022



Project SEARCH: Friendship Community Care- Autism Enhancement  
Embassy Suites-Rogers, AR



# Welcome-Project SEARCH

Thank you all for taking the time to learn about Project SEARCH and the benefits to you as you begin to transition into a career.

Project SEARCH Embassy Suites is a collaboration between Friendship Community Care, Arkansas Rehabilitation Services, Embassy Suites, and Bentonville Schools. Each one of these organizations guides decisions for the program and regularly collaborates to assist with the employment process for each intern.





## Am I eligible for Project SEARCH?

- ❖ At least 18 years old and completed all of the requirements for graduation from high school by August 2022.
- ❖ Meet eligibility requirements from Arkansas Rehabilitation Services (ARS) with Shana Turner.
- ❖ Have independent daily living skills, personal hygiene, and grooming skills.
- ❖ Maintain professional behavior and social skills in a workplace.
- ❖ Take direction from supervisors and be able to communicate effectively.
- ❖ Have a means of transportation to and from Embassy Suites, 3303 S. Pinnacle Hills Pkwy, Rogers, AR 72758 each day.
- ❖ **Have the desire, family support, and plan to work competitively in the community at the conclusion of Project SEARCH program.**

# Why should I choose Project SEARCH?

Project SEARCH is an unpaid internship program that provides young people with disabilities the opportunity to engage in real world experiences in a work environment. This experience is then used to help them find competitive employment in the community that reflects the skills and goals that they have built throughout their internships. The interns are supported throughout the program by staff who provide regular feedback to the interns and their families. With this feedback and commitment from the interns we have witnessed huge growth from our young people. When the intern's feedback supports employment, we have wonderful job coaches who assist in the application and interview process.



# What will I take away from my time at Project SEARCH?

Here are things that this year's interns said when asked what they are taking away from Project SEARCH:

Work Skills

Friendships

Support System

Passion

Desire

Commitment

Life Skills





# What does a day in Project SEARCH look like?

Our day begins with interns clocking in and currently following all of the COVID guidelines (temperature, CDC questions). The interns are then updated on current events (we use this to assist in talking about work appropriate conversation and inappropriate work conversation).

They then proceed to their internships where they work side by side with Embassy employees learning about the job. This is where they spend the bulk of their day.

The interns follow this with an hour long lesson on a variety of things like: communication, relationships, budgeting money, health, etc.

The interns receive a lunch break and two 15 minute breaks similar to the typical work environment.

The afternoons are shorter spending an hour and a half in their internships and then coming back to revisit those victories and defeats in our day. This provides us time for reflection and growth each day.





# Internships

Interns rotate through 3 different internships in their time at the hotel.

Departments include:

Banquet Hall (Set-up and Server)

Kitchen (Prep and Dishwashing)

Laundry

Houseman

Housekeeping

Engineering

Spa Attendant

Front Desk Assistant

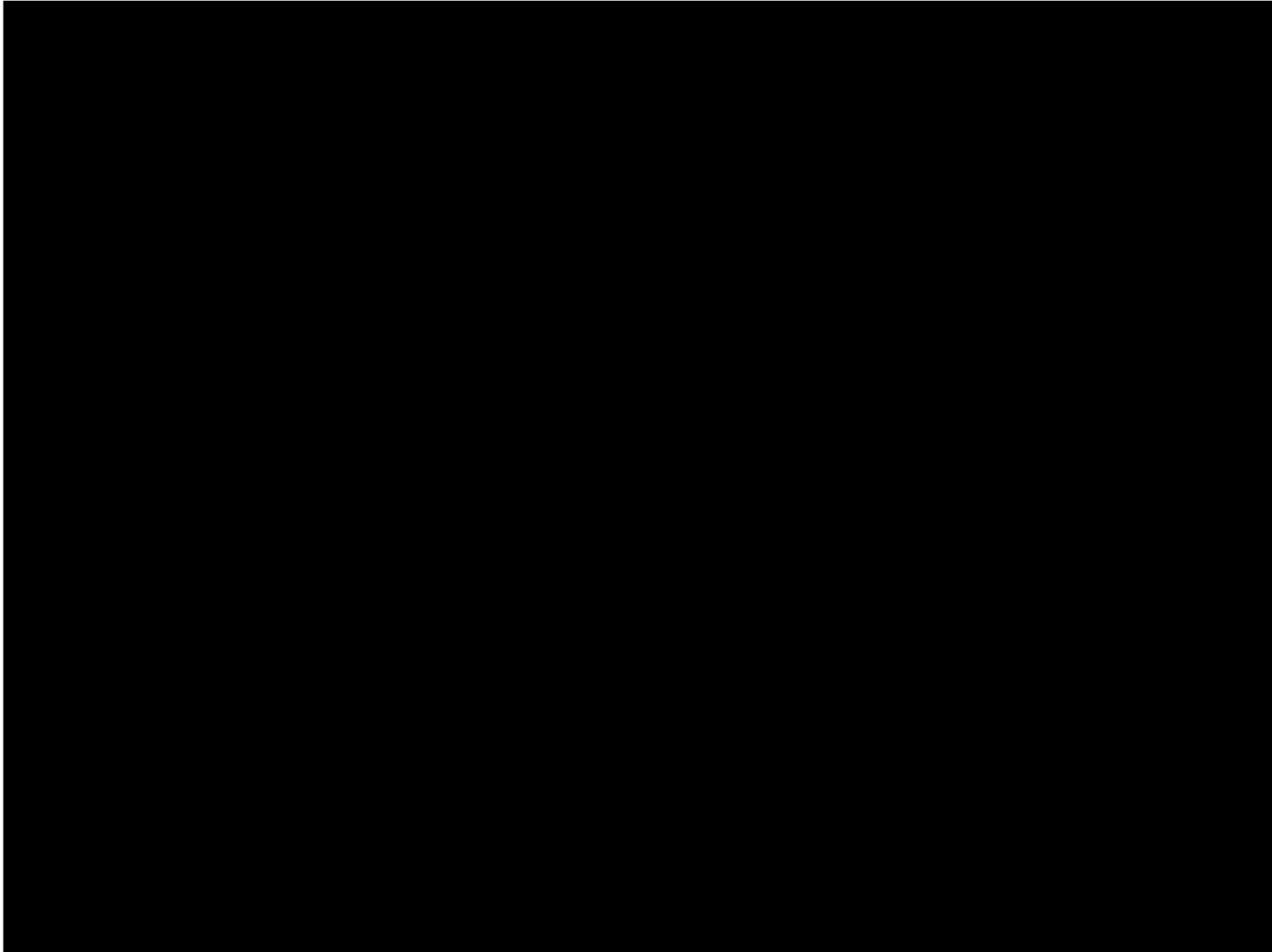
Breakfast Server

Coffee Shop Attendant



# Intern in Action!

Morgan 2021



# Application

[https://drive.google.com/file/d/1nUyU2Og6zKwzfyiHCLKrH-VDK2Xf\\_IDc/view?usp=sharing](https://drive.google.com/file/d/1nUyU2Og6zKwzfyiHCLKrH-VDK2Xf_IDc/view?usp=sharing)



Questions



# Arkansas Rehabilitation Services

What Can Transition Services Do For You?



Arkansas Division of  
Workforce Services

## Goal of Transition Services

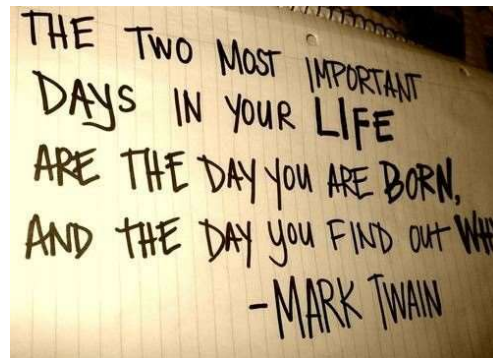
- **To prepare a job-ready, career-bound workforce to meet the needs of Arkansas employers. To help people get ready and placed in jobs.**





# Our Purpose

1. To help high school students get ready for life after high school.
2. Connect students and their families to programs and services to be successful based on your own needs and abilities.



# Two ways we can help

- Pre-ETS – Pre-employment Transition Services are activities that help you learn and discover work interests, skills, and gain experiences.
  - Help increase chance of success in the working world. \$\$\$\$
- Transition – Services for graduating seniors to help prepare for or go directly into a job.



# Pre-employment Transition Services

- Pre-Employment Transition Services includes:
  - Job Exploration
    - Do you know what career you want to have after high school?
  - Workplace Readiness training
    - Learning how to get and keep a job
  - Work based learning experiences-
    - We can pay you to get experience working....are you interested in earning money?
  - Counseling on post-secondary training opportunities
    - Do you want to continue on with training/studying after graduating from high school? How about College, Vo-tech programs, ACTI, Petra, etc.?
  - Instruction in self-advocacy
    - Do you know what your rights are in the workplace or in postsecondary training?



# Available Pre-ETS Programs

- Pre-Ets Programs Specific to Schools:
  - School to Work Programs (services provided during school hours by one of the Pre-Ets agencies listed below)
    - Arkansas Support Network (ASN)
    - JobPath by Friendship Community Care
    - Pathfinder
  - Opportunities for Work-based Learning (OWL)
  - WIN!
- Other programs available during the school year:
  - Inclusion Film Camp
  - Direct Vocational Counseling Services
- Summer Programs:
  - Summer Work programs (similar to school to work programs, but a shorter length during summer)
  - Youth Leadership Forum
  - Transitional Employment Program (TEP)



Program Type:	School-Based Vendor Programs	OWL Program/ WIN!	Vendor Summer Programs	YLF	Film Camp	TEP
Who can participate:	Juniors & Seniors  <b>-Students must be referred by school</b>	Juniors & Seniors  <b>-Students must be referred by school</b>	Juniors & Seniors (some exceptions for other 16 year olds)  -Referred by school, parent, vendor	10 <sup>th</sup> -12 <sup>th</sup> graders  -Students referred by schools or parents/ students	Juniors & Seniors  <b>-Students must be referred by school</b>	-Juniors going into Senior Year  -Referred by School/Parent <b>(School must complete section of application)</b>  -Referrals sent directly to counselor or to TEP staff (as noted in application)
Who is involved:	<b>*Partnership between ARS/School/ Pre-Ets Vendor</b>	<b>*Partnership between ARS and School</b>	Partnership between ARS and Pre-Ets Vendors	ARS program	ARS/ATS Program	
Length of Time:	School year (Social Skills in Fall; WBL in Spring)	School Year	Typically 4-6 weeks during summer	Week long during summer	Week long program in April	TBD
Are students offered paid work experience?	Yes	Yes	Yes	NA	NA	TBD



# How do I Sign up?

- Talk with your teachers about the programs available at your school.
- They will contact your school's Pre-ETS counselor.
- Some services are available to everyone regardless of school if your sixteen.





# Transition for Graduating Seniors

- Services for graduating seniors to assist them in connecting to vocational rehabilitation services to help obtain and maintain postsecondary training and employment goals.
- Open to seniors with IEPs, 504 plans, and other documented impairments and conditions
- Students are generally referred by the IEP teams, school counselors, school nurses, teachers, or self referred



# Youth Transition Services - Seniors

- Employment Counseling and Guidance
- Job Placement Services
- Assistive Technology Assessments (and possible help with purchasing recommended tools, devices, etc.)
- On-the-job training
- ACDC
- Help with purchasing tools/equipment needed for employment
- Diagnosis and evaluation of capacities and limitations (RIDAC testing)
- Assistance with funding for training programs



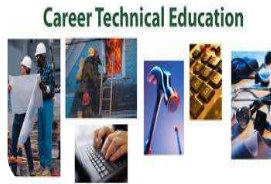
# Transition Services for graduating Seniors



Diagnosis and Evaluation



Guidance and Counseling



Career and Technical Education



Job Placement



Assistive Technology



Physical and Cognitive Restorative Services



Job Skills Training



Supported Employment Services



Transition Services for High School Students



ACDC



Financial Assistance for training programs



# Tuition and Training Policy

Training must be accredited

Must apply for FAFSA at [www.fafsa.gov](http://www.fafsa.gov)

Must take 12hrs (full time)

Maintain 2.0 GPA

- Cosmetology/Barber school policy is different

# Job Placement Services

Business Engagement Representatives

Job Placement Vendors

Employment First

Supported Employment

# Initial Intake Process

1. Obtain Information Packet from your local ARS counselor or office or school representatives will have packets.
2. Submit Completed Packet to School or ARS Counselor by Due Date!!
3. Completed Packets Due by December 10<sup>th</sup>!!!!!!!!!!!!!!!!!!!!!!
  - You will be assigned an ARS Counselor
  - ARS Counselor will meet with you at your school to start the application process
  - Counselor will work with you to develop a plan for employment (IPE)



# Referral Process for Graduating Seniors Cont.

- Completed Referral packets will include:
  1. Completed data form
  2. Signed informed consent (by parent/guardian if under 18)
  3. Signed Release of information (by parent/guardian if under 18)
  4. Social security card
  5. ID (DL, State ID, Passport)



# Thank you for listening!

- Contact Information
  - Arkansas Rehabilitation Services
    - 4058 N. College Ave, Suite 150
    - Fayetteville, AR 72703
    - 479-582-1286 – Phone



Arkansas Division of  
Workforce Services

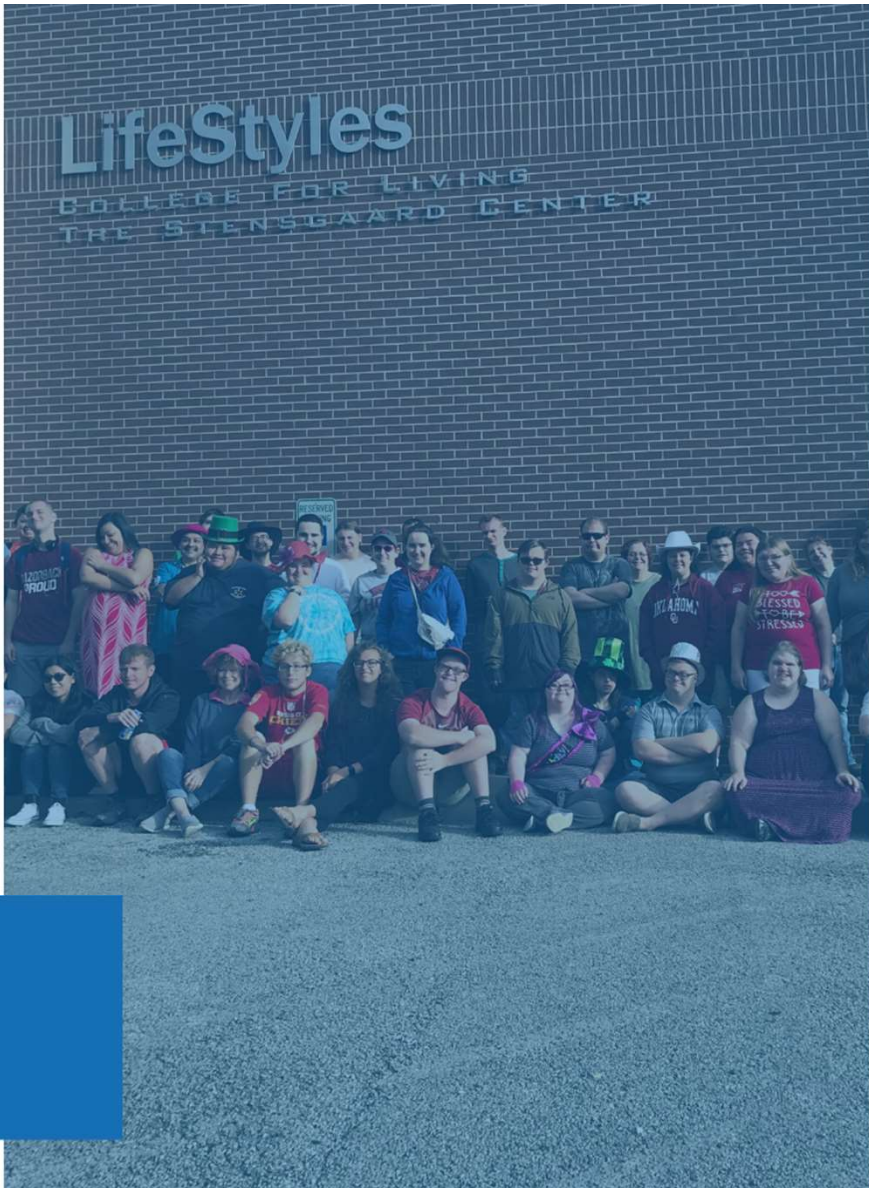




# CHAMPIONING POSSIBILITY



**Life Styles enthusiastically supports adults with disabilities in reaching their full potential as contributing members of the community.**



**Most holistic approach to disability services in NWA**

**Founded in 1976**

**400 clients, some 30+ yrs**

**300 Direct Support Professionals**

**CARF-certified since 2012**

**365 days of programming**

**Excellent facilities**

**WHO WE ARE**

# WHO WE SERVE

## DEVELOPMENTAL DISABILITY (DD)

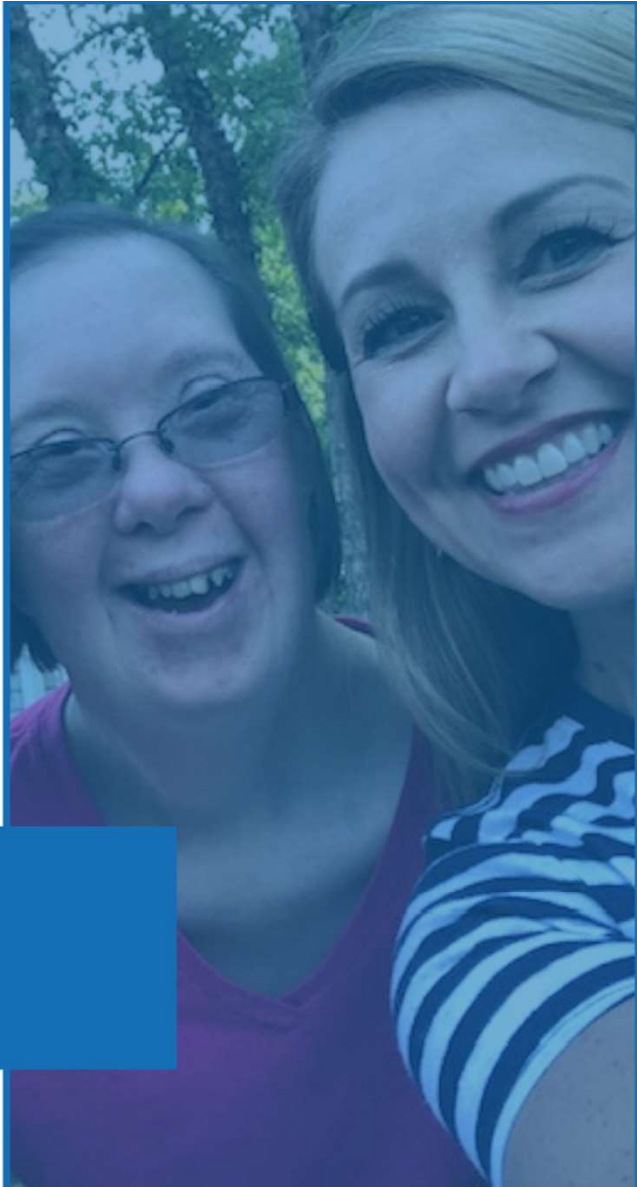
Impaired cognitive ability caused by injury, genetic disorder, or neurological challenges. Often accompanied by adaptive limitations in areas such as self-care or communication. Impaired mental, sensory, and/or physical ability and functional limitations in 3+ areas.

## INTELLECTUAL DISABILITY (ID)

Among older adults, ID only frequently due to brain injury, stroke, or Alzheimer's. Nationally, 57% of people with intellectual disabilities have 3+ chronic conditions.

**95% OF LIFE STYLES CLIENTS ARE MEDICAID RECIPIENTS**





# WHAT WE DO

**Adult Development Services**

**Supported Living Services**

**Supported Employment Services**



# ADULT DEVELOPMENT

## College For Living

16,000-sq-ft Stensgaard Center program at maximum capacity.

## LAUNCH Collegiate Experience

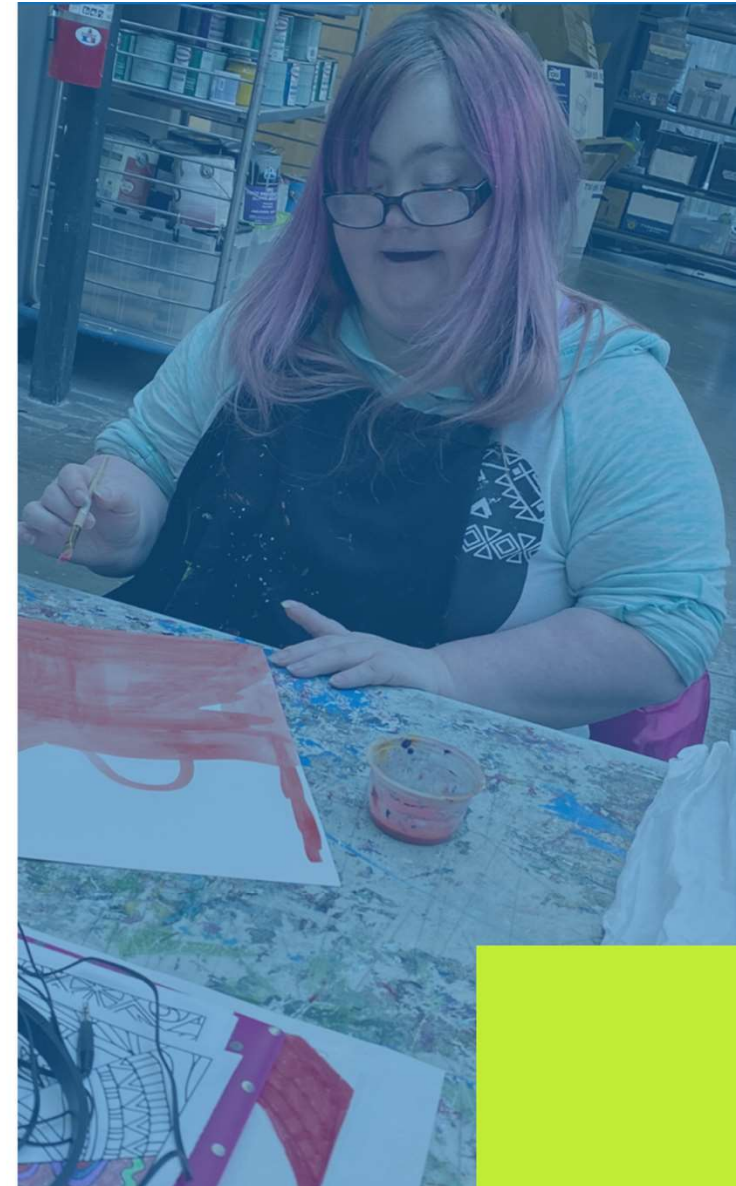
University of Arkansas program at maximum capacity with 50% enrollment increase since 2018.

## Performing Arts of Life Styles (PALS)

Produces semi-annual Talent Fest and arranges cultural outings.

## Artists of Life Styles

7,000-sq-ft Blair Center is home to in-house gallery supplemented by regular Life Styles shows featured throughout NWA.



# SUPPORTED LIVING

## **Residential Living Program**

12 apartments for phased-independence program.

## **Linda Jo Residences**

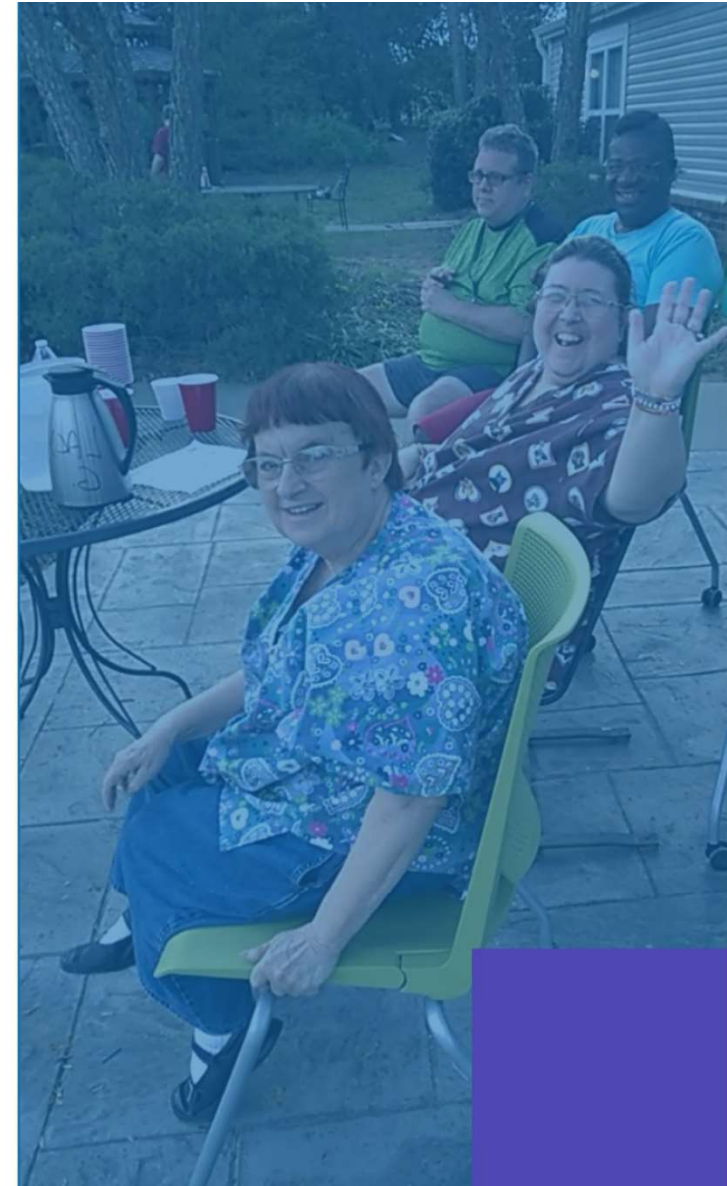
14 duplexes for independent living with supervised care.

## **Year-Round Activity Program**

Social opportunities 8AM to 10PM, seven days a week.

## **Tenant-Based Rental Assistance (TBRA)**

Helping clients find and afford housing in the community.



# SUPPORTED EMPLOYMENT

All jobs are community-based:

## **Project SEARCH**

Washington Regional partnership has 96% placement rate.

## **High School Transition**

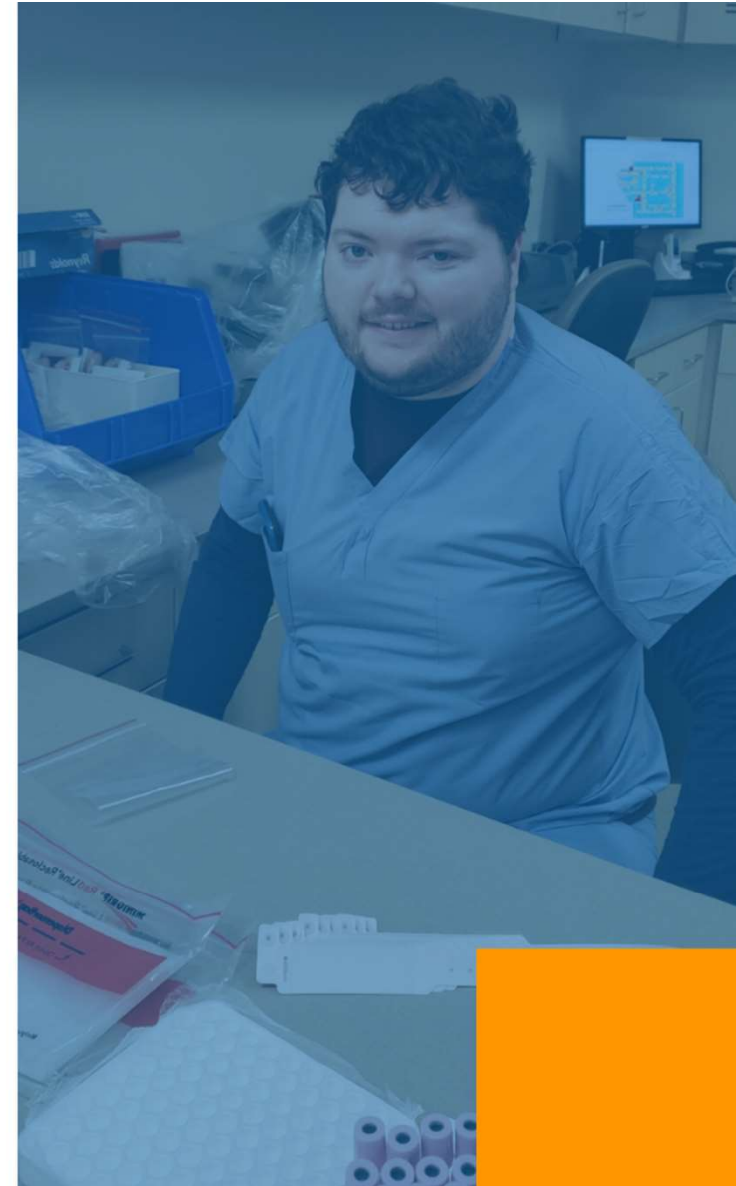
Preparing young adults for the world of work.

## **Job Search Assistance/Job Coaching**

Helping clients find jobs and stay employed.

## **Life Styles Shredding**

Internal business provides on-the-job training.





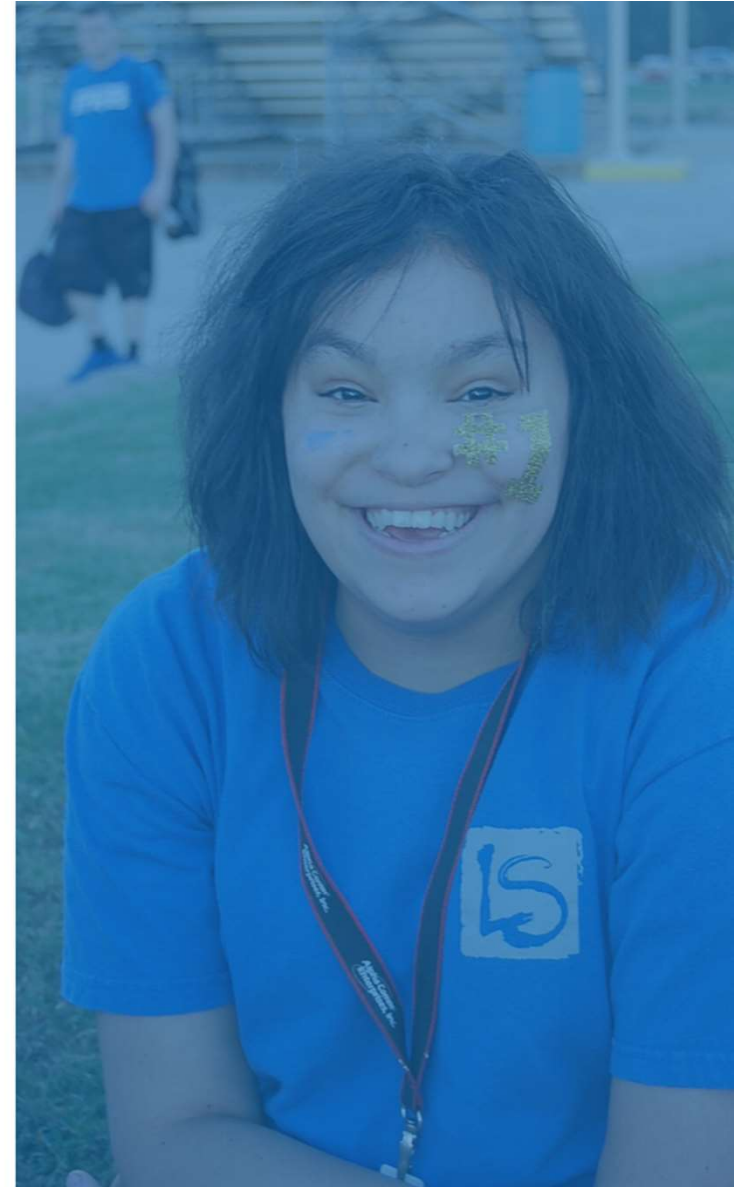
# OTHER SERVICES

## Special Olympics

Life Styles team of 28 traveled to State Games last year.

## Transportation

Seven-vehicle fleet logged 80,000 miles in 2019.



# CHALLENGES

## Growing Population = Growing Need

Available services have not kept pace with population growth.  
Applying 3% national rate of ID/DD to NWA equals 16,500 people.  
Improved medical care is resulting in longer life spans.

## Need Outpaces Available Medicaid Coverage

AR ranks 50 out of 51 in delivering Medicaid services to ID/DD.<sup>1</sup>  
4,000 in Arkansas currently receiving support.<sup>2</sup>  
3,000 in Arkansas currently on decade-long waiting list.<sup>3</sup>  
To meet current need would require AR Medicaid to grow 77%.<sup>4</sup>

## Severe Staffing Shortage

Turnover rate for Direct Support Professionals (DSPs) is 44% nationwide.<sup>5</sup>  
Low hourly wage is dictated by Medicaid reimbursement rates.  
Twenty percent of DSPs live below the poverty line.<sup>6</sup>

<sup>1</sup> The Case For Inclusion 2019. United Cerebral Palsy and ANCOR Foundation.

<sup>2</sup> The Case For Inclusion 2020. United Cerebral Palsy and ANCOR Foundation.

<sup>3</sup> The Case For Inclusion 2020. United Cerebral Palsy and ANCOR Foundation.

<sup>4</sup> The Case For Inclusion 2019. United Cerebral Palsy and ANCOR Foundation.

<sup>5</sup> The Case For Inclusion 2020. United Cerebral Palsy and ANCOR Foundation.

<sup>6</sup> Invaluable: The Unrecognized Profession of Direct Support. University of Minnesota.

# GOALS

## ESTABLISH A PRESENCE IN BENTON COUNTY

Provide life-enriching Adult Development Services to expanded population.

Capitalize on employment opportunities.

Gain greater access to additional cultural activities

## DELIVER MORE FREE SERVICES

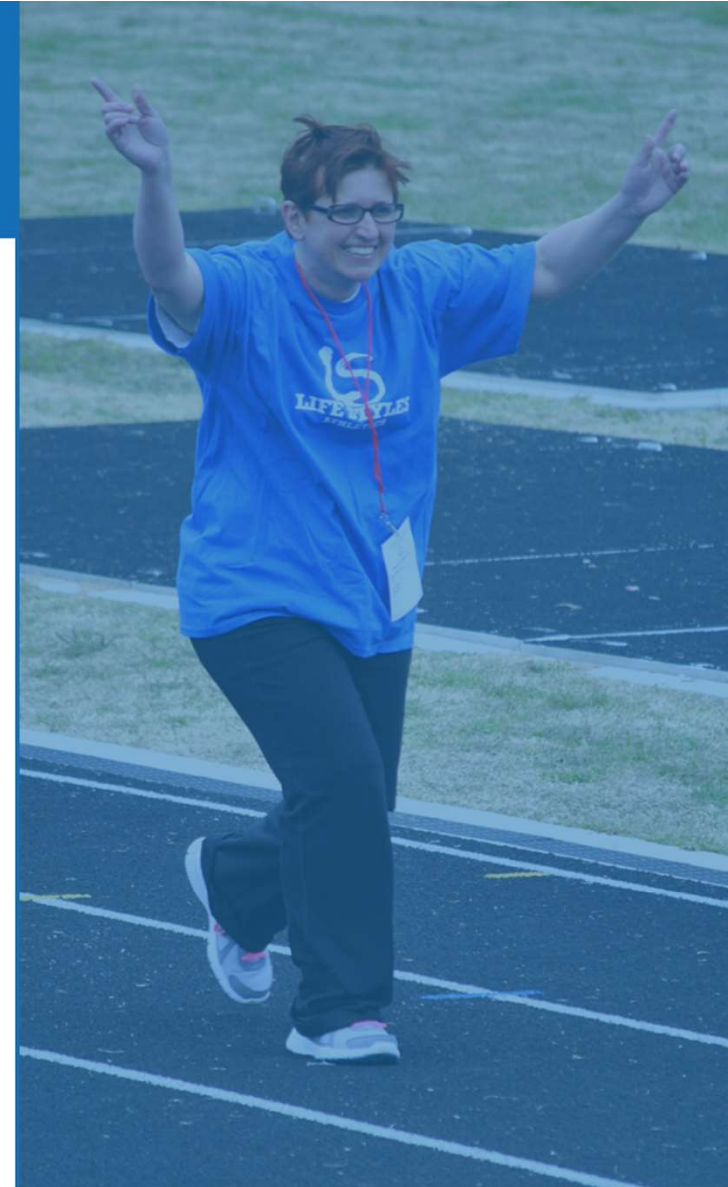
Currently deliver 5,000 hours of unpaid services annually.





**LIFE STYLES**

**THANK YOU**







Guardianships  
ATLA WEBINAR SERIES

# Elder Law



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# Elder Law



## Practice Areas

- Long-term care planning
- VA planning
- Estate Planning
- Probate Administration
- Trust Administration
- Special Needs Planning
- Guardianship
- Associated Litigation

# Estate Planning



## Goals of planning:

- Avoiding Probate
  - Decedent's Estates
  - Guardianships
- Distribution of assets
- Beneficiary creditor protection
- Keeping assets within the family
- Financial management through trustee(s) and agents
- Incapacity planning



# Estate Planning



## Categories of Planning:

- Living Documents (advanced directives)
  - Financial Power of Attorney
  - Healthcare Power of Attorney
  - Living Will
  - Digital Asset Authorization (Facebook, Google, etc.)

# Estate Planning



## Categories of Planning:

- Death Documents
  - Trust (revocable v. irrevocable)
  - Pour-over Will
- Other methods of avoiding probate
  - Joint ownership
  - Beneficiary designation
  - Beneficiary deeds

# Power of Attorney



## Definitions:

- Principal – Person granting authority to another.
- Agent – Also known as the attorney-in-fact. Person who is given authority to act on behalf of another.
- Durable – Authority granted survives the principal's incapacity.
- Springing – Authority does not vest until principal is deemed incapacitated.
- Types – Financial and Healthcare

# Power of Attorney



What if a POA does not exist?

- Principal have capacity?
- If Principal *does not* have capacity, guardianship is the other option.

# Guardianship



## What is it?

- When an individual petitions the court for guardianship to make medical and financial decisions on behalf of an incapacitated person (the “Ward”).
- Can the Ward make decisions concurrently with the guardian?
  - Generally, no.



# Guardianship



## Main Questions

- First, is the Ward an incapacitated person?
- Second, is the petitioner the best person to serve as guardian?
- Lastly, is there a lesser restrictive alternative?

# Guardianship



## Mechanics of a Guardianship

- Case begins with a petition to the probate division of the circuit court in the county where the Ward resides.
- Public record?
- Petition requirements:
  - 13 requirements found at Section 28-65-205(b)
  - Notables:
    - Nature of the incapacity;
    - Approximate value and description of Ward's property;
    - Names and addresses of others having knowledge of disability, i.e., doctors.

# Guardianship



## Procedural Issues

- Petition
  - Unless otherwise provided, every application to the court shall be by petition signed and verified by or on behalf of the petitioner.
  - This requirement shall be mandatory but not jurisdictional, and noncompliance therewith shall not alone be grounds for appeal.
  - Ark. Code Ann. § 28-1-109



# Guardianship



## Procedural Issues

- Notice

- Notice of the hearing for the appointment of a guardian need not be given to any person:
  - (1) Who has signed the petition;
  - (2) Who has in writing waived notice of the hearing, except the alleged incapacitated person may not waive notice;
  - (3) **Who actually appears at the hearing;**
  - (4) Whose existence, relationship to the alleged incapacitated person, or whereabouts is unknown and cannot by the exercise of reasonable diligence be ascertained;
  - (5) Other than the alleged incapacitated person, whom the court finds to be beyond the limits of the continental United States or himself or herself incompetent; or
  - (6) The alleged incapacitated person if the court finds that he or she is detained or confined by a foreign power or has disappeared.
- Ark. Code Ann. § 28-65-207

# Guardianship



## Procedural Issues

- Notice can't
  - Before court will appoint guardian, other than temporary guardian, notice of hearing shall be served upon the following:
    - The ward, if over 14 years old, with a statement of rights (personal service).
    - The parents, if the ward is a minor.
    - Spouse, if any.
    - Any other guardian or any other person who has the care and custody of the ward, and the director of any agency for which the ward is receiving services.
    - DHS if the petitioner is guardian of 5 or more minor wards.
    - If no known spouse or parent, at least one of the nearest competent relatives by blood or marriage of the ward.
    - As directed by the court.
  - Service by Ark. Code Ann. § 28-1-112(b) or (e).

# Guardianship



## Notice Requirements

- Temporary
  - No prior notice.
  - Immediate notice after initial order.
  - Hearing on the merits within 3 working days.
  - Notice of Hearing and Statement of Rights.
- Permanent
  - At least 20 days before the hearing.
  - Notice of Hearing and Statement of Rights.

# Guardianship



## Notice Requirements

- Statement of Rights:
  - (1) Be represented by counsel;
  - (2) Present evidence on his or her own behalf;
  - (3) Cross-examine adverse witnesses;
  - (4) Remain silent;
  - (5) Be present; and
  - (6) Require the attendance by subpoena of one (1) or more of the professionals who prepared the evaluation.
- Involuntary nature of guardianships.



# Guardianship



## Procedural Issues

- Responses
  - On or before hearing date, an interested person may file written objections to a petition previously filed.
  - Objections must be filed in writing to be heard by the court.
  - Ark. Code Ann. § 28-1-110.

# Guardianship



## Types of Guardianships

- Petition for temporary and/or permanent guardianship.
- Temporary = emergency situation.
- If the court finds that there is **imminent danger** to the life or health of the incapacitated person or of loss, damage, or waste to the property of an incapacitated person and that this requires the immediate appointment of a guardian of his or her person or estate.
- Temporary can last no more than 90 days (180 days for minors and if there is good cause).
- Notice requirements relaxed.

# Guardianship



## Types of Guardianships

- Petition for temporary and/or permanent guardianship.
- Permanent = non-emergency.
- Duration – Until the Ward passes away or the disability is removed.
- What if guardian passes away?
  - Successor guardian - statute requires successor to follow steps as if original appointment.
  - Standby guardian – chronically or terminally ill parent can appoint standby guardian with the court as if original appointment. Statute limits this to parent/minor situation.



# Guardianship



## What does “incapacity” mean?

- “Incapacitated person” means a person who is impaired by reason of a disability such as mental illness, mental deficiency, physical illness, chronic use of drugs, or chronic intoxication, to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate.

# Guardianship



## What does “incapacity” mean?

- Includes an “endangered adult” or “impaired adult” as defined by Section 9-20-103, who is in the custody of the Department of Human Services.
- Adult Protective Services.
- Minors.

# Guardianship



## What does “incapacity” mean?

- Incapacity DOES NOT mean disagreeable decisions.
  - Gifting
  - New marriage
  - Charitable donations
  - Domestic violence
  - Treatment through by spiritual means through prayer alone

# Guardianship



## How do we prove incapacity?

- Professional Evaluation
  - Professional – Physician, licensed psychologist, or licensed certified social worker with training, experience, and knowledge of disability.
  - Areas to be evaluated – medical and physical condition, adaptive behavior, intellectual functioning, and recommendations for assistance and least restrictive alternatives.
  - Timeframe – Within the past six months.



# Guardianship



## How do we prove incapacity?

- Professional Evaluation
  - Is the matter contested by the Ward or other family members?
  - Mandatory compliance with statute!
  - Professional evaluation underlying finding that individual was incompetent to handle his affairs based on his alcoholism **did not contain two required statutory elements** of findings with respect to individual's adaptive behavior and intellectual functioning, and **therefore evaluation could not sustain declaration of incompetency and appointment of co-guardians.**
  - *Matter of Bailey*, 299 Ark. 352, 771 S.W.2d 779 (1989)

# Guardianship



## Who is best person to serve as guardian?

- Guardian qualifications
  - A natural person who is a resident of this state, eighteen (18) or more years of age, of sound mind, not a convicted and unpardoned felon, is qualified to be appointed guardian of the person and of the estate of an incapacitated person.
    - Non-resident can still be guardian through designation of process agent.



# Guardianship



## Who is best person to serve as guardian?

- Guardian qualifications
  - A corporation authorized to do business in this state and properly empowered by its charter to become guardian is qualified to serve as guardian of the estate of an incapacitated person.
    - Estate only.
    - Example – Trust department.

# Guardianship



## Who is best person to serve as guardian?

- Statutory preference:
  - Parents of unmarried minor;
  - Most suitable to serve giving due regard to:
    - Any request made in a will or other written instrument executed by parent for guardian of the minor;
    - Any request by a minor over the age of 14;
    - Any request made by the spouse; and
    - The relationship by blood or marriage.
  - Any request by the Ward may be made to the Court by any means without necessity of appearance before the Court.
    - Rules of evidence satisfied (authentication and hearsay)?

# Guardianship



## Who is best person to serve as guardian?

- Competing petition?
  - Every application to the probate court shall be by petition signed and verified by or on behalf of the petitioner.
  - Mandatory requirement.
  - Court may not be willing to grant relief if noncompliant.

# Guardianship



## Who is best person to serve as guardian?

- Suitable?
  - Court has discretion to deny appointment if the petitioner is determined to be unsuitable to perform the duties of guardian.
- Contested?
  - Potential to become full blown lawsuit with discovery, depositions, pretrial motions, and appeals.



# Guardianship



## Is there a lesser restrictive alternative?

- If the Court determines incapacity of the Ward, it shall determine extent of disability and the feasibility of less restrictive alternatives to guardianship.
- Court can dismiss the action if lesser restrictive alternatives are feasible.
- Example:
  - Power of Attorney (complying with fiduciary duty?)
  - Limited appointment

# Guardianship



## Post Appointment Matters

- Attorney Fees/Guardian Fees (108 & 319)
- Annual report (322)
- Annual accounting (320)
- Managing assets (301 et. seq.)
- Litigation/Settlements (318)
- Sale of real or personal property (314)
- Long-term care
- Special needs
- Life-sustaining treatment (302)



# Guardianship



## Termination

- Adjudication of competency if other than minority.
- Death of Ward (40 days to convert to decedent estate)
- If Ward is a minor, marriage shall terminate guardianship of the person, but not of the estate except with the respect to Ward's earnings and personal services.
- Reaching majority age (can last longer if in DHS custody)

# Guardianship



## Termination

- May be terminated by court order after such notice as the court may require:
  - Reaching majority or disability removed (can continue if substantial competent evidence shown that it is best interest to continue)
  - Nonresident
  - Any other reason if no longer necessary and no longer in the best interest of the ward.



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