Navigating Guardianship and
Medicaid Issues for
Incapacitated Residents

SPONSORED BY:
Stotler Hayes
Group

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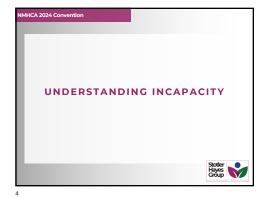
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Preliminary Issues

• Experience check-in

• Please participate and ask questions!



What Is Incapacity?

• Demonstrated over time

• Partial or complete functional impairment

• Person is unable to manage personal affairs or estate or financial affairs or both

Causes of Incapacity

• Mental illness

• Mental deficiency

• Physical illness or disability

• Chronic use of drugs

• Chronic intoxication

• Other causes

NMHCA 2024 Convention			
Identifying Incapacity			
Diagnoses alone is not enough			
Must have impact on abilities			
BIMS, MMSE, ADL's- useful tools			
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#### NMHCA 2024 Convention

#### Inability to Manage Personal Care

- Inability to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety
- Evidenced by recent behavior
- Physical injury, illness, or disease has occurred or is likely to occur soon



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#### NMHCA 2024 Convention

#### Inability to Manage Finances

- Gross mismanagement of income and resources *or*
- Medical inability to manage income and resources
- Evidenced by recent behavior
- Has led to or is likely to soon lead to financial vulnerability





Consequences of Incapacity

An incapacitated resident cannot:

-Sign documents/make contracts

-Provide consent (medical/financial)

-Assist with Medicaid process (generally)

Legal Agents

• Power of Attorney (POA)

• Guardian and/or Conservator

• Big differences: who makes appointment, are rights retained

• See it. Copy it. Otherwise, it doesn't exist.

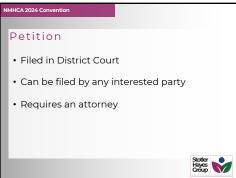
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l	Power of Attorney		
	Appointed by principal		
l	Must have capacity to make appointment		
	Principal is NOT stripped of rights		
Types: General, Healthcare			
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## Guardian / Conservator • Appointed by Court after finding of incapacity • Ward IS stripped of rights, can no longer act for themselves • Authority: Determined by Court



NMHCA 2024 Convention	
Guardian vs. Co	nservator
control of the perso	or the care, custody or n -includes limited, nporary appointments
Conservator: manage financial affairs	ge the property and/or
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## Appointment of Professionals Guardian ad litem (GAL): represent and protect the interests of alleged incapacitated person Qualified health care professional: training and expertise aid in the assessment of functional impairment

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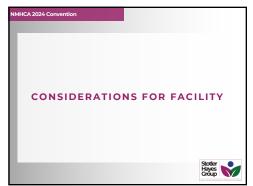
## Appointment of Professionals Visitor: neutral; evaluates the needs of the person who is allegedly incapacitated All file a report with the court

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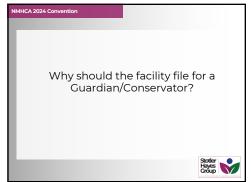
NMHCA 2024 Convention	
Hearing	
<ul> <li>Hearing is required</li> <li>Attendance of incap</li> </ul>	pacitated person
Testimony	acitated persori
• Evidence	
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NMHCA 2024 Convention	
Warning Signs	
Warning Signs	
•Incapacitated Perso Problem	n + No Legal Agent =
•Consent to treatmer Medicaid eligibility p	nt, payor source issues, process
•Act quickly to start t	he Guardianship process
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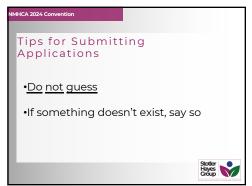
## Applications – When to File • ASAP- Just Do it • Common issues: - Resident is incapacitated and cannot sign - Excess resources An individual who wants to file an application for Medicaid must have the opportunity to do so without delay.

# Applications - Who Can File The individual who is requesting assistance (the applicant) An authorized representative An individual acting responsibly for the applicant, if the applicant is incapacitated A representative of the long-term care facility where the individual resides

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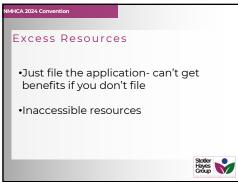


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# Tips for Submitting Applications Provide notice of incapacity with application and intention to seek Guardian Request Agency's assistance

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## Tips for Pending Applications •Regular follow-up (at least monthly) •No news - probably NOT good news •Communicate in writing •If communication is by phone, follow-up with writing or document in notes

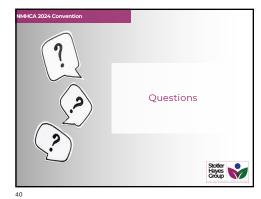
# Tips for Pending Applications •Notify Agency of changes and updates (within 10 days) •Use delays to your advantage

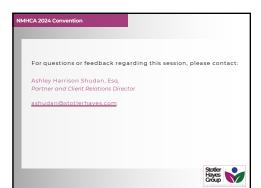
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# Appeals •If incapacitated resident is denied-file an appeal •File a new application in conjunction with an appeal

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#### Other Tips Report bad-acting legal agents to APS and have them removed and replaced Police report may also be needed File for representative payee of SSA income (even if there's a legal agent) Stotler Payes Country





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