

Guardianship and Alternatives to Guardianship

Families have a variety of options available to protect their son or daughter with developmental disabilities when he or she turns 18. This pamphlet is meant to be a starting point for family discussions. Parents should explore all questions and research options regarding alternatives to guardianship before making a decision to petition for the appointment of a guardian. For more detailed information, contact an attorney who specializes in disability issues, the probate court, or your local chapter of the Arc.

It is the position of The ARC of the United States: "The majority of persons with intellectual and developmental disabilities can manage their own affairs with informal assistance and guidance from family and friends. Less intrusive alternatives to full guardianship should always be considered first. If guardianship is necessary, it should be tailored to the person's needs."

Families should seek as much information as possible before making any decisions regarding the need for a guardianship. Many organizations, agencies and attorneys are available to assist in providing such information and determining the best course of action in a particular situation. For assistance, you may call your local Arc:

Arc of Allegan County
269.673.8841

Arc of Kent County
616.459.3339

Arc of Muskegon County
231.777.2006

ARC/Advocacy & Resource Center
of Ottawa County
616.738.8570

Attorneys who have experience with Special Needs Trusts and are willing to assist with guardianship issues and alternatives to guardianship, such as financial and medical powers of attorney include:

Ryan Keenan, Thomas Sobel, or Thomas Reinsma
Scholten Fant
100 North Third Street
Grand Haven, MI 49417
616-842-3030

Daniel Blauw
1515 Michigan NE,
Grand Rapids, MI 49503
616-336-5098

Lauretta Murphy
Miller Johnson
250 Monroe Avenue, NW, Ste. 800
Grand Rapids, MI 49503
616-831-1733

Jeff Helder or Hans Mulder
Cunningham Dalman
321 Settlers Road, Ste. 2
Holland, MI 49423
616-392-1821

Kenneth Puzycki
380 Garden Avenue
Holland, MI 49424-8656
616-738-8800

James Wesseling
Wesseling & Brackman
6439 28th Avenue
Hudsonville, MI 49426
616-669-8185

This brochure developed in cooperation with

ARC/Advocacy & Resource Center
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Ottawa Area Intermediate School District
13565 Port Sheldon Street
Holland, MI 49424
1877.702.8600
www.oaisd.org

When a student with developmental disabilities nears the age of majority (18), parents need to consider whether a guardian of the person and/or estate is necessary for their young adult. In general, a guardian of the person has custody, makes medical treatment decisions, and has a duty to make a reasonable effort to secure the educational, medical, and other services that will help the young adult develop maximum independence. A guardian of the estate controls and manages the young adult's finances. The same person can be both guardian of the person and the estate or separate persons can perform these functions. A full or plenary guardian has all of these responsibilities. A partial guardian has only specific responsibilities.

For a guardian to be appointed, a petition must be filed with the Probate Court and a hearing held at the Court. A primary and a standby guardian can be named. An information packet and forms for guardianship proceedings for persons with developmental disabilities are available from the Ottawa County Probate Court.

School's role in guardianship process

As students approach the age of majority (18 in Michigan), they must begin preparing to assume their adult rights and responsibilities, including the procedural safeguards granted to them by the Individuals with Disabilities Education Act (IDEA).

IDEA states that the Individualized Education Program (IEP) Team must:

- (A) "verify that the IEP Team Report documented that the student was informed of the transfer of rights **at least one year before REACHING** the age of majority [at age 18 under Michigan law]", and,
- (B) "verify that the student and parents were notified by the agency of the transfer of parental rights **when the student REACHES** the age of eighteen (18)".
[IDEA 2004 20 USC #1415(m); 34 CFR §§300.320(c), 300.520]

Psychological test results are a part of the information considered in making a determination of the need for guardianship. However, many times school reports alone may not be sufficient for this purpose



There is no magic formula to determine when or whether guardianship is appropriate. Each and every situation is unique. An individual's abilities and needs must be the paramount consideration in deciding to seek guardianship or to find other less-restrictive approaches for legal assistance, protective services or problem solving. The determination of need for guardianship is based on the person's abilities to handle personal decisions, finances, property, medical decision making, and similar matters. The inability to handle these matters is the basis for a guardianship, not merely the presence of a cognitive impairment or other developmental disability. If guardianship is necessary, it should be tailored to the person's needs, by using various types of legal protections that fall short of full guardianship, such as partial guardianship of the person or just a guardian of the estate. A guardianship should be structured so the person retains as much independence as possible, especially in areas in which he or she possesses capable decision making skills.

Many individuals with developmental disabilities are able to manage their affairs with informal assistance from family, friends, social service agencies, and documents like a financial power of attorney and healthcare power of attorney/patient advocate. To sign a financial power of attorney, the signer must have the ability to consent to, render a degree of control over, and appreciate the significance and consequences of appointing an agent under the power of attorney. To sign a medical power of attorney the signer

must be of sound mind, i.e. has the ability to understand who the signer is naming to make medical decisions for the signer and to understand the desires concerning the signer's medical care that are expressed in the medical power of attorney. Powers of attorney may not work if the person with developmental disabilities keeps changing their mind about who should have power of attorney on their behalf.

**Alternatives
(from least restrictive to most restrictive)**

Natural supports

Advice and guidance from family members, friends, neighbors and faith community

Release of information forms

A person may sign a form to permit the sharing of information with other agencies or individuals.

Social service supports and person centered planning

Government programs (CMH, SSI, DHS), non-profit agency supports, and comprehensive planning that considers whatever supports are necessary for the individual to live an independent life

Representative Payee

If the person receives SSI or SSDI from the Social Security Administration, a representative payee can be named to handle the person's monthly checks and any Social Security paperwork

Limited Powers of Attorney

A limited power of attorney is a document which covers only a specific area, such as finances, education, etc. This allows another person (e.g., parents, friend, etc.) to be involved in and make decisions regarding the particular area. An attorney can prepare this document.

**Power of Attorney for Health Care
(Patient Advocate)**

A person may sign a form allowing their agent to make medical care decisions, specifically future medical treatment and end of life decisions. However, the patient advocate can only make medical decisions if the person has first been determined by two physicians or a physician and a licensed psychologist to be unable to participate in his/her own medical treatment decisions.

General Durable Power of Attorney

This document should be drafted by an attorney as it is very comprehensive. It covers financial, medical, educational issues, and decisions concerning govt. programs, housing, advocacy, etc.

Parents need to go to probate court for the following options:

Partial guardianship of the person or the estate

Guardian granted authority over the person only in specifically defined personal or financial matters. Allows the guardian to decide only in areas where the person is not capable.

Temporary guardianship

Can be appointed under emergency circumstances (e.g. acute illness) if necessary for the person's welfare or protection.

Full or plenary guardianship of the person or the estate

Establishes guardianship over all the person's personal decisions and/or financial matters. Since full guardianship involves controlling almost every aspect of the person's life, it is the most restrictive option.