



Is Guardianship the Right Choice for Your Adult Child with Disabilities?

As a parent of a child with an intellectual or developmental disability, you are the expert in the care of your child. You understand the complexities of coordinating medical, educational, and various other needs that your child requires. You are the decision maker, the advocate, the researcher, and the supporter.

Then your child turns 18. You call his doctor's office because you haven't heard back about his lab work, and you're told they can only release that information to your son. It's the same at the Social Security office, his school, and his therapist's office. You've managed his affairs his entire life, but now no one can talk to you because he is a legal adult.

For many, the next logical step, and often recommended step, is to petition the courts for guardianship. Yes, guardianship will allow you to manage your adult child's affairs, but is it the best or only option? Is there a downside to legal guardianship?

What is Guardianship?

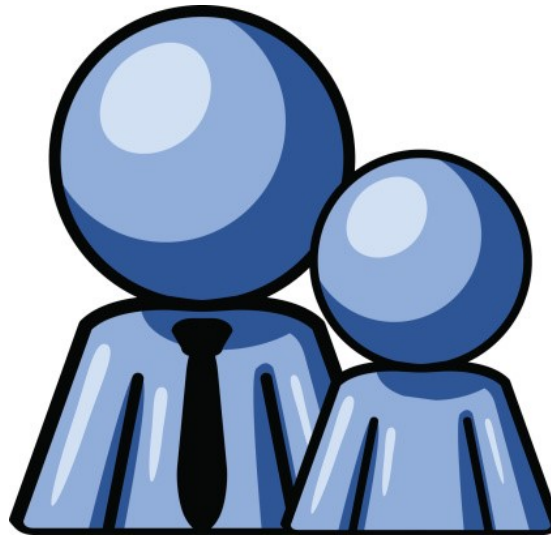
Guardianship, also known as conservatorship, is a legal proceeding in which someone (often a family member) asks the court to find that a person is unable to manage his or her physical health and safety because of a disability and needs

assistance in doing so. The guardian then takes legal responsibility for making those decisions and managing affairs ranging from basic day-to-day care, to finances, medical care, housing, or needed social services.

Considerations before Petitioning for Guardianship

Although it may seem like the best or perhaps the only way to proceed to assure your adult child is well cared for, guardianship is a serious decision with serious implications that you and your child may not be aware of. Some hard questions to ask before asking for guardianship include:

- Is your adult child incapable of making his or her own decisions, or just in need of assistance?
- Could your adult child learn to manage some of his or her affairs if given the tools and opportunity?
- Does your adult child have the capacity to understand what guardianship is and is he or she in agreement that it is necessary?
- What are your adult child's plans for his or her future? Are you and your child aware of how guardianship will impact



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those plans?

- Does your adult child have a support system of trusted friends, family, and professionals who could be offering assistance?

Implications of Guardianship

A guardianship petition asks a state court to determine that a person lacks the capacity to make his or her own decisions about health, safety, welfare, and/or property. What many people may not be aware of is that, although governed by state law, guardianship involves the stripping away of rights protected by the U.S. Constitution. This may include the most fundamental of rights such as the right to vote, consent to marriage, to work, or even enter into intimate relationships. And it's important to note that these are decisions that cannot be made for an individual by a guardian.



In addition, the process of establishing “incompetence” in order to obtain guardianship can be a painful one for you and your child. As one adoptive mom put it, “It felt horrible trying to make a case for my daughter being ‘incompetent.’ How would that make her feel? In reviewing the needed documentation, I had to ask myself, was she truly incapable of making decisions, or was I so used to caring for her that I missed opportunities to provide her with the skills she needed to care for herself? I discovered there are services available to help her be more independent that we just hadn’t explored.”

Alternatives to Guardianship

Less restrictive alternatives should always be explored before pursuing guardianship. For example, could concerns regarding healthcare decisions be addressed by a

Power of Attorney (POA) for healthcare? Could concerns regarding finances be addressed with joint banking accounts? Is there adaptive/assistive technology that could aid in independence? Are there services provided by the Division of Vocational Rehabilitation (DVR) or other community programs that could help fill the gaps or assist with care?

Much has been written of late on building support networks comprised of a team of trusted adults in the person’s life to aid in “supported decision making.” This system encourages individuals to ask for assistance from family, friends, and professionals with whom they are comfortable and trust. This team then becomes a collective decision maker. There are even tools available through disability service providers to assist in determining what help is needed.

There are certainly instances where

guardianship is absolutely necessary for the safety and protection of an individual with disabilities. Before taking this drastic step however, you are encouraged to seek out the help and expertise of a disability services professionals or an attorney who specializes in disability rights to explore if other less restrictive alternatives are available.



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Resources

Additional Resources

- [Life Navigators](#)
- [Disability Rights Wisconsin](#)
- [Wisconsin Court System](#)
- [Wisconsin Department of Health Services](#)
 - [Disabilities and Impairments](#)
- [Wisconsin Division of Workforce Development](#)
- [Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination](#)
- [National Council on Disability](#)
- Wisconsin Guardianship Support Center Hotline (1-855-409-9410, guardian@gwaar.org)



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