

Guardianship: Questions Families Ask

Michigan law allows for the appointment of a guardian for a person with a disability only when necessary and only if the person is unable to care for himself/herself or his/her estate. This appointment becomes a legally recognized relationship between the chosen guardian and the person with a disability (often referred to as the "ward"). When a guardian has been appointed, the court may authorize the guardian to exercise all of the ward's legal rights. When all of the rights are taken from the ward, the individual is deemed incompetent.

In Michigan, once a child reaches the age of majority (18 years old), the parent's status as guardian is automatically terminated. Only through appointment as guardian by a probate court does this status continue. There are many different options to consider before seeking guardianship. This is a very restrictive procedure and should be used only when necessary!

What is Truly In The Best Interest Of The Person?

What is your major area of concern? Is it medical, financial, or emotional? Is it truly for the benefit of your child or is it just to "ease your mind" or make life easier for you?

When your child has a supportive group of people in his/her life and access to needed adult services, guardianship does not "promote and protect the well being of the Individual." With the right supports, many people with disabilities are able to manage their own personal and financial affairs. It is very important to first consider the least restrictive options in each and every case.

Families (parents) have a variety of options available that should be considered first. The information provided here might not be all-

inclusive, but is a good beginning point of reference. For more detailed information, please contact an attorney, probate court, or an advocacy group in your area.

What Will Happen When I'm Gone?

Isn't this typically one of the first questions in a parent's mind when he/she is told that his/her child has a disability? The parent may begin by talking to other family members and closest friends. Maybe a minister, teacher, or physician can offer some suggestions.

Generally speaking, when confronted with a major decision in their daily life, most people ask the opinions of the people they respect and trust the most. Family members and friends usually provide much needed help, insight, support, and guidance. They can help you weigh the advantages and disadvantages and help you see the consequences of your decisions. This is where you can start!

For a person with a disability, the people who know him/her best might be the people most able to explain things to him/her in the way he/she can best understand. This is where the Person Centered Planning (PCP) process would be most helpful for families-so they do not feel like the whole burden of future planning is on their shoulders.

PCP is a process by which a collaborative team of people who know the individual work together to identify his/her strengths, interests, and preferences and to help him/her prepare his/her life goals. The planning group will identify the necessary supports and ways to implement the goals. This is where the "Who will be there?" question can get some real answers.

Who Will Be There When I'm Not Able To Be?

Through the Person Centered Planning Process, some of the people who could be of assistance (and relied upon) are identified. Some suggested participants to invite in addition to the person with a disability are:

Parents	Personal Friends
Siblings	Pastor/Minister
Grandparents	Paraprofessionals
Other Relatives	Teachers
Neighbors	Principal
Family Friends	Therapists/Counselors

This list could include anyone who knows the student well or interacts with him/her on a daily basis.

Also consider groups in our area such as:

- Regional Interagency Coordinating Councils (RICCs)
- ARC/Muskegon
- Disability Awareness Center for Independent Living
- Citizens Alliance to Uphold Special Education (CAUSE)
- Community Mental Health

These groups usually have trained professionals and volunteers to be of assistance to people with disabilities in a variety of area such as budgeting, bill paying, shopping, information and referral, transportation, and housing. Each organization may offer different services so it is important to find out what are available in our community.

What Are The Financial Needs And Who Can Help?

One of the main concerns for families and their children with disabilities is usually financial. Will there be enough money for the individual with a disability to have a comfortable life? Who will protect his/her financial interests? Who will see that he/she is not taken advantage of?

Through proper transition planning while they are in school, most students can begin to develop some sense of money. All Students may not reach the same level of understanding, but most are able to comprehend coins, currency and "pocket change."

With the Person Centered Planning Process, the financial needs can be identified and options discussed (such as the ones listed below).

- Social Security Payee
This can be a parent or other family member, a close friend, agency, or attorney.
- Limited Bank Accounts
Co-signers
Ceiling Limits
- Trusts
Living Trust
Testamentary Trust
Revocable Trust
Irrevocable Trust
Insurance Trust
Special Needs Trust

This is only a partial list of options. Please ask your financial institution or attorney for more detailed information.

What Are The Medical Concerns/Needs?

One of the most urgent questions usually concerns the medical needs of the young adult with a disability. Who will tend to his/her ongoing medical needs? Who will make sure he/she takes his /her medicine or makes it to doctor's appointments on time? What will happen in an emergency situation? To whom can he/she turn for advice about sex?

Unless the young adult is married, the parents are usually considered "next of kin". In an emergency situation, most hospitals will ask the patient (with or without a disability), "Who is next of kin?" If the parents are not available, siblings or other relatives will be considered.

In 1990, the state of Michigan authorized a durable power of attorney for health care. Most doctors' offices or hospitals can provide information about appointing a patient advocate. A patient advocate can be any family member or friend the person chooses.

Some information may be available through local Community Mental Health offices and other agencies regarding home health care aides or personal assistants who can check on individuals on an "as needed" basis to monitor their health needs and administer medication.

Local community advocate organizations such as Arc/Muskegon and Disability Awareness Center For Impendent Living will also help an individual with disabilities locate health care providers, assist him/her in making appointments, and help him/her arrange transportation if necessary.

If family member or good friends are not available, a public health nurse, agency, or minister may be available to offer advice about sexual questions. In cases of sexual harassment or abuse, a protective order from the court may be necessary.

What Are The Legal Concerns?

Legal questions usually revolve around placement issues after the young adult reaches the age of 18. Whether questions are related to high school, college, vocational training, or any adult service, someone may ask if there is a guardian for the individual.

Guardianship should NOT be considered necessary just because an agency or other public entity deems it so. While an agency or public entity may be concerned about its liability, there is ABSOLUTELY no legal requirement for guardianship in order to receive services. It should be used only as necessary and not for the convenience of agencies or adult service providers.

One or any combination of the following options should be considered first to fit the needs of the individual:

- Advocates (family members, friends, or agencies)
- Power of Attorney (can be broad or specific, representing only designated areas)
- Conservatorship
- Partial/Plenary Guardianship
- Representative Payee (family member, friends, advocate)

Seek the advice of a professional for more complete information and/or further legal counseling.

Maintaining Guardianship When Children Reach Age 18

Until your child turns 18 years old, the parents are assumed to be the legal guardians, unless a court has deemed otherwise. Guardianship should not be thought to be the next natural step just because your child turns 18. Only when all other alternatives have been considered, and only when a "need" justifies guardianship, should we even think of stripping our children of their civil rights.

If any legal action is to be taken, it is best to start planning when your child is 17 years old. Legal guardianship can only be obtained through the Probate Court. This can be an expensive and exhausting experience. It is important to first seek qualified, experienced counsel in the specific area so guardianship. Prepare a list of questions and /or concerns you may have prior to the initial meeting.

Consider that because guardianship is obtained through the court, request for change can only be done by a petition to the court. While either the guardian or the ward can request a change it can be a long and difficult process.

When dealing with the judicial system, be aware that you may have to cover any or all expenses that may be incurred such as costs for evaluations, cost of hearings, attorney's fees, and court costs. You also risk the chance of working with a professional who might not understand the full intent of the law regarding guardianship-which should be to promote freedom of choice and independence for each individual to the fullest extent possible and with as much or as little support as necessary.

EACH AND EVERY SITUATION IS UNIQUE. FAMILIES SHOULD SEEK AS MUCH INFORMATION AS POSSIBLE BEFORE MAKING ANY DECISIONS

Reasons To Avoid Guardianship And What Others Say

1. You will be making a public "declaration of incompetence" about your child that may be difficult to modify or terminate at a future date.
2. You will not be ensuring that your child will have the same "freedom of choice" that is guaranteed all citizens of the United States.
3. There may be a potential for the misuse of funds.
4. Choosing a guardian who will be able to handle this responsibility for the life of your child may be difficult.

Information provided by the Transition Services Project
702 Lake Lansing Road, Suite D
East Lansing, Michigan 48823
(517) 332-3587

Additional copies are available through the Center For Educational
Networking. Call (800) 593-9146, \$1.25 each

What Others Say About The Guardianship Issue

Tricia Luker, Parent

"Guardianships of any type, whether limited or complete, defeat the self-determination concept and are the alternatives of last resort. The time has come to emphasize maximizing personal choice by referring to the process of teaching decision-making skill to young adults as "developing self-determination " skill, rather than shifting the focus to third parties by using the terms "guardianship" or "alternatives to guardianship."

Rom Self-Determination and Young Adults, Seeking a State of Mind-2000, Calvin and Tricia Luker