



Alternatives to Guardianship and Conservatorship for Adults

When a person with a disability turns 18 and becomes a legal adult, there is an assumption that the parent must obtain a legal guardianship from the court in order to continue supporting their child. However, there are other alternatives to guardianship that are less restrictive.

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Background:

Guardianship: A guardian is court appointed to make decisions on behalf of the protected person's affairs except financial. These decisions include residence, medical treatment, personal care and education. A guardianship can be full or limited. A limited guardianship means the guardian makes decisions on behalf of the protected person only on specific needs.

Legal standard that must be met for a guardian to be appointed:

"A decision making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur."

Conservatorship: A conservator is court appointed and is responsible for making financial decisions for the protected person. The conservator takes possession of all the real and personal property of the protected person.

Legal standard that must be met for a conservator to be appointed:

"A decision making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs."

Alternatives:

Power of Attorney: A power of attorney is a written document where one person gives another person authority to act on the first person's behalf in one or more matters. There are different

forms of power of attorney. General Power of Attorney authorizes the attorney-in fact to act on the person's behalf in all personal and financial transactions. Limited Power of Attorney authorizes the attorney-in fact to act on the person's behalf only in matters specifically designated in writing.

Power of Attorney can be revoked at any time by just telling the person they no longer have power of attorney (though best practice is to revoke it in writing). This alternative for guardianship and or conservatorship is less restrictive because the beneficiary can get assistance on just the areas they need help with and they can terminate the contract whenever they may need to.

Natural Support:

When deciding whether to pursue a guardianship or conservatorship, first ask "what does this person specifically need assistance with?" Identify the things this person may not be able to do on their own and look for community based solutions, and help from family and friends. Every person needs help from time to time, even adults. If the person with disabilities is doing fine with services they already have like case management, community and adult day services, then a guardianship or conservatorship may not be necessary.

Guardianship may seem necessary when a child turns 18, but as they age, there may be disputes over the necessity of the guardianship. If the protected person wants to terminate guardianship and or conservatorship, the case must be brought to court. According to the law, protected persons must demonstrate "some decision making capacity" in order to terminate their guardian/conservator. Examples of demonstrating decision making capacity include if the protected person is living within the community, manages medication on their own, has a job, a car, or a driver's license. The burden then is on the guardian to prove that the protected person cannot demonstrate independent decision making and are putting themselves at risk for harm or injury.

Before considering legal guardianship/conservatorship of an adult, list what specific services the person with disabilities needs and what the least restrictive ways are for this person to have their needs met. Consider the idea that adults can make their own decisions and look into already existing natural supports the person has.

For more information on conservatorship and guardianship visit:

<http://www.state.ia.us/ddcouncil/Guardianship%20pdfs/Guardianship-Conservatorship%20Papers.pdf>

Sources: Iowa Legal Aid

The Substitute Decision Makers Task Force for the Iowa Department of Elder Affairs