

# Planning for the Future: Legal Considerations for Decision Making

---

Barbara Jackins, Attorney  
Legal Planning for Special Needs

Karen B. Mariscal, Esq.  
Mariscal Special Needs Law

# Turning 18: Your child is now an adult!

- Medical: privacy, giving consent, capacity to make medical decisions
- Education: School services near an end; preparing for what comes next
- Transition to adult services: which agencies? DDS, MassAbility
- Getting public benefits and services: SSI/SSDI, MassHealth, housing, day program, self-directed funding

# What is guardianship?

For people 18 and older

Who have a clinically diagnosed condition that prevents them from evaluating information or making and communicating sound decisions in important areas so that their physical health or safety is at risk

A Court process is required

# What do guardians do?

- Make decisions – medical, educational, legal. Privacy rules do not apply
  - Advocate for educational, public benefits, and other services
  - Communicate decisions
  - Intervene when appropriate
- 
- **IMPORTANT:** A guardian may not micromanage a person's life and they **MUST** discuss options with the person and consider their values and preferences

# Does your child need a guardian?

- *Medical*: Lacks understanding about medical care, procedures, medications, alternatives, risks and benefits, etc.
  - Medical care may be denied or postponed
- *Educational/ adult services*: Naïve, too agreeable about education services, transition program, adult services, etc.
  - May be persuaded to forfeit services or accept sub-standard services
- *Advocacy*: Can't/won't advocate for themselves: health, welfare, services
  - Staff may not listen to parents; inertia, path of least resistance

# Not sure if your child needs a guardian?

- Discuss with their doctor, therapist, clinician, teacher, or other provider
- Obtain a guardianship evaluation from a licensed psychologist
  - This is DIFFERENT from a neuropsych evaluation
  - Assesses your child's ability to make sound decisions in important areas like medical care, education services, contracts, health and welfare

# Alternatives to guardianship

If your child does NOT need a guardian, you can consider having them sign these documents:

- *Medical Release*. Allows you to talk to medical providers and review records
- *Health Care Proxy*. Allows you to make medical decisions if your child is seriously ill and unable to direct their own medical care (but must be “invoked” by their doctor)
- *HIPAA Release*. You can obtain private medical or therapy records
- *Durable Power of Attorney*. Covers non-medical matters like banking, acting as MassHealth representative, anytime “legal authority” is needed

# More Alternatives to Guardianship

- *Age of Majority Consent Form for education decision making.* Allows your child to share decision-making with you, or delegate it to you, or make their own education decisions.
- *Representative payee for Social Security Income (SSI) and Social Security Disability Insurance (SSDI).* Allows you to receive and manage your child's government benefits.

# Supported Decision-Making

Supported Decision Making is an alternative to guardianship; however, Massachusetts does NOT currently have an SDM law.

In SDM a person with a disability and their supporters agree on areas where support will be provided such as medical care, education, work, food, leisure time, and finances.

The supporters help the person make decisions and communicate them to third parties.

In Massachusetts, a SDM agreement would probably NOT be honored by medical providers, state agencies, and others.

For more information, see [supporteddecisions.org](http://supporteddecisions.org).

# Does your state have a Supported-Decision-Making Law?

As of March 2026, 39 states and the District of Columbia have enacted some type of support decision-making law.

For a list, go to <https://supporteddecisions.org> and search under U.S. Supported Decision-Making Laws.

In some states, decisions are limited (only for transition planning or for organ donation)

In other states, SDM can apply to all decisions (medical care, education, finances, etc.)

# Guardianship versus Supported Decision-Making: Key Differences

## Guardianship

- Guardians can make and communicate decisions in all areas unless limited by the Court
- Guardianship cannot be changed without returning to court
- A change of guardianship (such as parent to sibling) requires starting a new guardianship proceeding in most states
- Many courts monitor guardians through annual care plan reports

## Supported Decision-Making

- No court involvement
- The adult chooses their supporters
- The adult and the supporters sign an agreement describing the kinds of help to be provided
- Supporters gather and evaluate information but do not make decisions for the person
- Supporters may be present with the person at appointments to communicate decisions
- The person can cancel the SDM agreement at any time and choose different supporters (or have no supporters)

# Who Should be the Guardian?

Both parents as co-guardians?

One parent, so that the other can be the AFC caregiver?

One parent and one sibling, if sibling is over age 18?

There is no “successor guardian” system – once the parent no longer can serve, the next person will need to file a new guardianship petition and start the process all over again.

# The court process for guardianship

Clinical documents needed to apply for guardianship:

- *Clinical Team Report*: If your child has a diagnosis of Intellectual Disability (ID), a clinical team report completed by three clinicians: 1) a licensed psychologist, and (2) a licensed social worker, and 3) a licensed physician, OR
- *Medical Certificate*: If your child does NOT have a diagnosis of ID, a Medical Certificate completed by a licensed psychologist, or a licensed physician, or a clinical nurse specialist

You will NOT need both documents

# The court process for guardianship

- File a Petition and Bond, with the CTR or Medical Certificate
- Court issues a Citation (legal notice)
- The legal notice must be given to your child and to all other “interested parties.” Service to your child must be “in hand.”
- Prepare a decree form with (or without) limitations
- Fill out a CARI release
- A hearing is scheduled
- If everything is in order, the court will approve the guardianship

## Two kinds of guardianship: full and limited

- Full (plenary) guardianship lets you make decisions in all major areas: medical, educational, adult benefits and services, health and welfare
- Limited guardianship lets you make decisions only in areas that the court specifies, for example, medical care. Your child can make all other decisions on their own.
- Before applying to the court, ask the clinicians for their recommendation. The guardianship process is the same, whether full or limited.

# What about voting?

- A Massachusetts resident doesn't lose their right to vote even if they are placed under guardianship. This is a civil right that belongs to all residents, regardless of their intellectual capacity.
- They maintain this right even if the "right to vote" box on the Limitations schedule isn't checked.

# Adding limitations to a full guardianship

- You can add “limitations” to a full guardianship. These preserve your child’s independence and rights in certain areas such as employment, choosing roommates, friendships, religion, etc. See our separate handout for the court form (“Schedule of Limitations”).
- You can add “with supervision” or “with assistance” to any of the limitations.

## Will both parents be guardians? The Adult Family Care wrinkle

- If your child receives MassHealth, they may qualify for the Adult Family Care (AFC) program.
- AFC pays a caregiver to help with Activities of Daily Living (ADLs) such as bathing, dressing, toileting, transfers, etc. The rate is currently \$9,000/year (Level 1) or \$18,000 (Level 2).
- The caregiver must live with the MassHealth recipient for whom they provide care.
- The program will NOT pay a guardian to be a caregiver.
- For information, see [www.massafc.org](http://www.massafc.org).

## *Rogers* authority for antipsychotic medication (Massachusetts only)

- Required if a person under guardianship takes antipsychotic medication
- Add-on to a regular (full or limited) guardianship
- A judge must approve the medication
- An attorney is appointed for the person under guardianship
- Medication orders are reviewed every 12 months

## Other “extraordinary” treatments that require court authority

- Electroshock therapy treatments (ECT)
- Abortion
- Any procedure that causes a person to become permanently sterile (hysterectomy or tubal ligation for a female; vasectomy for a male)
- Placing a Do Not Resuscitate (DNR) Order or a Medical Order for Life-Sustaining Treatment (MOLST) Order. A guardian may *not* sign these orders without court approval. NOTE: A health care agent may sign these orders.

# What can guardians NOT do?

- May *not* micromanage the person's life
- May *not* admit the person to a psychiatric facility or locked unit in a psychiatric hospital. This is done through the emergency room or through the civil commitment process (or both)
- May *not* manage the person's money (conservatorship is required). Instead, use representative payee for government benefits, or an ABLE account
- May *not* sign a Do Not Resuscitate (DNR) Order or a Medical Order for Life-Sustaining Treatment (MOLST) Order without a court order. NOTE: Currently a health care agent may sign these orders.

# You're the guardian: What happens now?

- Your guardianship is permanent unless you return to court to cancel it
- Give a copy of your court appointment to everyone you are dealing with on behalf of your child (medical providers, Social Security, school, state agencies), etc.
- Guardians' Responsibilities
  - File Guardian Care Plan Reports (initial 60-day report, then annual reports). Download form MPC 821 from the court website: [www.mass.gov/courts](http://www.mass.gov/courts).
  - If applicable, renew *Rogers* treatment plans every 12 months

# Questions?

Barbara Jackins, Attorney

[www.legalplanningforspecialneeds.com](http://www.legalplanningforspecialneeds.com)

[Barbara@legalplanningforspecialneeds.com](mailto:Barbara@legalplanningforspecialneeds.com)