

Alternatives to Guardianship

Adapted from information provided by Guardianship Alternatives Information Network (G.A.I.N.)

Many young adults with developmental disabilities and their families are told that they need to have guardians appointed when they turn 18 years old. Guardianship is not only rarely necessary, it is a very bad way to support someone who needs assistance with decision-making and other matters.

Legal Presumptions

A discussion of Alternatives to Guardianship must start with the following legal presumption:

- Every person, regardless of disability, is presumed to have the capacity to make choices and decisions. Only a court—not a doctor, a teacher, a psychologist, another person, or a parent—can make a legally binding declaration—that an individual lacks capacity due to a developmental or other disability.

In addition, there is a presumption that an individual's family will act in his or her best interest. Most of the time, this presumption is true. Sometimes, it is clear that this presumption is not true. Under those circumstances, alternative means of supporting the individual, outside of those family members.

There is no law that states a person with a developmental disability has to get a guardian at age 18; in fact, the law states that guardianship is an option **if other alternatives are not available**.

Alternatives—Supporting an Individual with a Disability

Given those two presumptions, Alternatives to Guardianship can provide formal and informal methods for supporting individuals with developmental disabilities to make choices and decisions and seek a life that meets his or her needs. This support may include:

- Medical Power of Attorney to help with medical decisions
- Authorization for Advocacy to be involved in development of Individualized Education Plans or in the Person-Centered Planning Process for CMH services
- Representative Payee to handle Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) payments.

The more unpaid people involved in an individual's life and supporting him or her in a variety of ways, the more likely the individual will be able to build a life that meets his or her needs and preferences.

Advocates and Attorneys involved in preparing legal documents (such as a Medical Power of Attorney) will look at the relationship between the parties and the totality of the circumstances before executing such a document; the capacity level for this document is very low. Lawyers and advocates will recommend other methods of support and assistance if it is clear that the familial relationship is not good or that a person is trying to take advantage of the individual with the developmental disability.

Some arrangements, like online bill paying or Representative Payee do, not require that the individual with a developmental disability execute a document.

Sometimes, individuals may enter into contracts that they cannot afford (expensive home renovations), for which they do not understand the consequences (a long-term installment contract), or which is clearly not appropriate for them (a book club subscription for someone who doesn't read). If an individual does not have the capacity to enter into a contract, then any contract he or she enters into is voidable. A call or a letter to the other party with an explanation that the individual has a developmental disability and that the sole income is government benefits, which are protected from creditors, will almost always result in the voiding of the contract.

Why Guardianship is Not a Good Way to Support an Individual

Guardianship is a public proceeding in which an individual is stripped of his or her rights. Rather than supporting an individual to make his or her own decisions, a surrogate decision maker (guardian) is appointed. Often, other support (friends and families) back away and leave everything to the guardian. The court becomes a third party to that previously private relationship and the guardian must account to the court regarding the individual's well-being every year. The Court can remove a guardian, and even appoint a stranger or a public guardian, if it chooses to do so. In fact, over the course of their lives, most individuals who have guardians will have a stranger serve as guardian at some point in their lives.

Additional Resources

For more information on Alternatives to Guardianship, ask for the Michigan Alliance for Families Folder on Alternatives to Guardianship or visit www.michiganallianceforfamilies.org.

Thank you to Guardianship Alternative Information Network (G.A.I.N.) for permission to use and adapt their information for this mini folder.

For more information on G.A.I.N., an information and referral network promoting self-determination through alternatives to guardianship, call toll-free 866 365-3231. G.A.I.N. is a joint project of The Arc of Northwest Wayne County and The Arc of Western Wayne County, funded through a grant from the Widman Foundation.

