

Guardianship and Alternatives for Decision- Making Support

Written by
the North
Dakota State
Community
of Practice
on Transition

For a youth or young adult with disabilities and their families, thinking about life after high school often raises questions about supports regarding decision making. This document provides a general overview of guardianship and other decision-making supports. In addition, it also includes resources that will provide more in-depth information.

Reaching the age of 18 — Opportunities and Challenges for Young Adults with Disabilities

Reaching the age of majority (18 years) means, under state law, an individual is no longer a "minor." As such, the person has the right and responsibility to make certain legal choices that adults make. For some young adults with disabilities this may be an exciting opportunity for increased independence. However, there may also be family concerns about how to best support that person's self-determination in making life decisions such as: health care, marriage, voting, military services, education, housing, money management, employment, etc.

States and jurisdictions have different laws and options. Each state defines the categories and rules for guardianship in its laws. It is important to know all of the options before deciding which one to pursue since every young person has a unique situation and individual needs for support.

Decision-Making — A Skill that Requires Practice and a Variety of Experiences

Decision-making is a learned skill. Children and youth who have support and experience choosing what to wear, eat, who to socialize with etc., will approach adulthood having exercised this skill early on. On-going decision-making experiences lead to confidence and a self-awareness that "I am able to make decisions that direct my life." When a youth or young adult is denied the opportunity to make decisions or to participate in a shared decision-making process, this lack of skill building may lead to a perceived "incapacity" either by the family or by the young adult.

Despite having opportunities for decision-making early in life, not all young adults with disabilities are able to make all decisions that result in a great impact on their lives.

The Right Support at the Right Time

"Informal" support from a circle of friends and family may be enough to help the young adult talk over life decisions. When it comes to issues such as health care decisions or money management, there may be alternatives available to assist the young person to "share" decision responsibilities; such as health care directives and/or representative payee's.

Guardianship — More Restrictive Option with Alternatives

Guardianship is a formal, legal process in which a court is requested to assume responsibility for a person as a "ward" and then may appoint a guardian. This may be a parent or family member.

The guardian's authority is determined by the judge's order or state law. The guardian may have certain responsibilities to the court i.e. submit written reports, attend additional hearings as needed, and maintain standards that preserve the ward's decision-making process, as much as possible.

While some form of legally arranged guidance may be needed, full guardianship may not be the only option. There may be forms of guardianship that can provide temporary or specific decision-making support while not completely denying the young adult's participation in that decision. When it comes to determining what is the best option, the "least restrictive" ones may best support and promote the young adult's decision-making skills and rights.

Families may want to research the availability and appropriateness of options; such as, "emergency," "temporary," "limited," or "provisional" guardianship, or conservators. Sometimes a combination of different and least restrictive options may be required in order to provide the best assistance.

Alternatives to Guardianships could include:

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| Representative Paye | Power of Attorney |
| Co-signatures on Bank Accounts | Alternative Resource Plan |
| Health Care Directives | Mental Health (Psychiatric) Advance Directive |
| North Dakota Informed Healthcare Consent Law | |

For more detailed information please request a copy of the Guardianship Handbook, A Guide for Court Appointed Guardians in North Dakota

RESOURCES FOR MORE INFORMATION ON GUARDIANSHIP AND DECISION-MAKING

ALTERNATIVES:

- Catholic Charities www.catholiccharitiesnd.org
- County Social Services www.nd.gov/dhs/locations/countysocialserv
- Department of Human Services www.nd.gov/dhs/
- Family Voices of North Dakota, <http://www.impactgiveback.org/home>
- Federation of Families, <http://ndffcmh.org/>
- Guardian and Protective Services, Inc. www.gapsinc.org
- The Guardianship Association www.gand.org
- Legal Services of North Dakota www.legalassist.org
- Mental Health America of North Dakota www.mhand.org
- North Dakota Aging and Disability Resource, www.carechoice.nd.gov,
- Pathfinder Parent Center www.pathfinder-nd.org/
- Protection & Advocacy Project www.ndpanda.org
- State Long-Term Care Ombudsman Program www.nd.gov/dhs/services/adultsaging/ombudsman

