

Guardianship and Alternatives for Decision- Making Support

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*For youth or young adults 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 decision-making supports and 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

When children (minors) turn eighteen in North Dakota they legally enter adulthood, and their parents' decision-making authority ends. This means young adults have 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, whom to socialize with, etc., will approach adulthood having exercised this skill early on. On-going decision-making experiences lead to confidence and 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. Supported Decision-Making is something that can be used informally or through a formal agreement(s) to help a young adult decide if they would like a supporter or multiple supporters to help them make certain decisions. The young adult can choose what kind of help they would like and for how long they would like help. The help can be for a one-time decision or can cover a longer period. To learn more about Supported Decision-Making visit the ND Protection and Advocacy website and search Supported Decision-Making.

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 payees. (See the list on the following page.)

Guardianship — More Restrictive Option with Alternatives

Guardianship is a formal, legal process in which a determination is made as to whether a young person is "incapacitated" (NDCC 30.1-26.01(2)). If a court finds incapacitation, it can appoint a guardian. This may be a parent or family member.

Please note: The North Dakota State Community of Practice would like to provide recognition to the National Health Care Transition Center. This brochure was adapted from a project completed by Center, <http://www.gottransition.org/>.

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 to provide the best assistance.

Alternatives to Guardianships could include:

Representative Payee for SSA Benefits
Co-signatures on Bank Accounts
Health Care Directives
North Dakota Informed Healthcare Consent
Law
Automatic Payments for Creditors
Power of Attorney

Alternative Resource Plan
Mental Health (Psychiatric) Advance
Directive
Trust of Special Needs Trust
ABLE Savings Account
Supported Decision-Making

For more detailed information please visit the North Dakota Legal Self-Help Center's web page and search Adult Guardianship.

AGENCIES WITH MORE INFORMATION ON GUARDIANSHIP AND DECISION-MAKING ALTERNATIVES:

Catholic Charities of North Dakota
Human Services Zones (formerly known as County Social Services)
North Dakota Department of Human Services
Family Voices of North Dakota
North Dakota Federation of Families
Guardian and Protective Services, Inc.
The Guardianship Association of North Dakota
Legal Services of North Dakota
Mental Health America of North Dakota
North Dakota Aging and Disability Resource Link
Pathfinder Services of North Dakota
Protection & Advocacy Project, North Dakota
Long-Term Care Ombudsman Program – North Dakota

