

Let's Talk About Guardianship Alternatives

Learning is a lifelong process and does not end at age 18. People with disabilities can learn new skills to increase their independence throughout their lives. Many families feel pressured into pursuing guardianship of a loved one by age 18 to retain access to medical or school records or believe that a guardianship will make the person safer. Alternatives to guardianship may provide the right supports for individuals with disabilities to live full lives while helping families reach safety and other goals.

SUPPORTING INDIVIDUALS TO LIVE FULL LIVES

WHAT IS IT?

There is a continuum of options for adults with disabilities (individuals) to get the support they need to live a full and productive life. A simple release of information form, obtaining a representative payee, or a power of attorney, can assist families to provide the support and safeguards an individual need without evoking full guardianship restrictions. Release forms and Supported Decision-Making enable the individual to maintain decision making authority. Representative Payees and Powers of Attorneys (POA) do grant decision making authority to another person in certain circumstances but have a much narrower scope of authority than limited or full guardianship.

Current decision-making support options



Release forms

Individual signs a release form authorizing a specific person access to certain information or records.



Supported Decision-Making

Individual makes all their own decisions. They identify a supporter/s to assist them.



Representative Payee

Social Security Administration appoints an individual/org. to receive SSI/SSDI benefits for a person who cannot manage their own benefits.



Power of Attorney, (medical or financial)

Formal legal arrangements that permit others to act on the individual's behalf.



Limited or Full Guardianship

Transfers some or all decision-making authority from the individual to a court-appointed guardian.

Less limiting

More limiting

*For the purpose of this publication, the term "individual" refers to an individual with disabilities and/or an aging adult.

CONSIDER LEAST RESTRICTIVE ALTERNATIVES FIRST

Less limiting



PROVIDING SUPPORT AT MEETINGS

Sometimes there are very simple solutions to address communication and information sharing concerns. As adults, individuals with disabilities have the right to choose anyone they wish to attend an IEP, vocational, medical, Financial, or any other appointment. **The individual does not give up their decision-making authority when they invite others to meetings.**

RELEASE OF INFORMATION FORMS

A signed release can give access another individual access to information when the person is not present.

- Most organizations will have release forms. If not, you can create your own.
- Hospitals and medical facilities have HIPPA forms that give permission to share information about health care with a family member or trusted friend.

The individual does not give up their decision-making authority by signing a release form.

SUPPORTED DECISION-MAKING

Wisconsin law formally recognized Supported Decision-Making agreements as legal documents that allow individuals to retain their right to make their own decisions, while also choosing trusted people (called Supporters) to help them gather and understand information, compare options, and communicate their decisions to others.

Supported Decision-Making agreements can be used for any decisions the individual feels they need additional support—such as housing, health care, financial affairs, or other areas the Person identifies on the Supported Decision-Making agreement.

More limiting



FINANCIAL ALTERNATIVES

Less limiting



DUAL SIGNATURE BANK ACCOUNTS

- The individual shares decision-making authority with another person they have approved. Financial decisions are made together.
- Financial institutions can work with individuals to set up auto withdrawal, deposits, and/or payments. They can also set up credit cards with low lines of credit.

REPRESENTATIVE PAYEE

- A Representative Payee can be appointed to assist an individual in managing their Social Security or Supplemental Security (SSI) benefits. The “rep payee” has authority to decide what the best use of the beneficiaries’ fund are; paying for rent, food, medical and other living expenses are priorities. Rep Payees are accountable for all SSI funds and must provide an annual report to the Social Security Administration on how they have used the funds to benefit the individual.
- Form and additional information is available from the social security office. <http://www.ssa.gov/payee/>.

The individual gives up decision-making authority of their Social Security benefits.

POWER OF ATTORNEY (POA) FOR FINANCES

- Financial POAs can allow another person (POA) to make financial decisions on the individual’s behalf. POAs can be written in a variety of ways; what authority is granted and remains in effect unless revoked. If you wish to change a financial POA you must revoke the old one, complete a new form, notify your agent who assisted you in creating it and anyone else affected by the form (i.e. financial institution).
- Free forms are available on line.

The individual gives up decision-making authority on financial and property decisions.

More limiting



“ Instead of guardianship of our daughter, we chose Powers of Attorney in the areas of medical and financial. These were much easier to obtain and didn’t require going to court and having a judge tell her she could no longer make her own decisions. So far, these legal documents have been just as effective as having the guardianship. ” -- Parent

HEALTH CARE ALTERNATIVES

POWER OF ATTORNEY (POA) FOR HEALTH CARE

- Health care POAs allows another individual to make health care decisions on the person's behalf under certain circumstances. POAs can be written in a variety of ways; what authority is granted, when, and for how long are all decisions that may be outlined in a POA agreement.
- Free forms are available on line.

LIVING WILL

- Allows the friend or family member to make end of life decisions when the individual is not able to make them for themselves. End of life decisions include things like life support, tube feeding, pain management and more.
- Free forms are available on line or from a health care provider.

Allows someone to make health care decision for you if you are not able to make them yourself.

FUTURE PLANNING

There are several ways to work with a financial adviser, attorney or financial institution to assist with futures planning.

SPECIAL NEEDS TRUSTS

- Managed by a trustee. Funds must be used to benefit the individual.

Can be set up through a bank or through WISPACT <https://www.wispact.org/content/wispact-trusts> .

ABLE ACCOUNTS

- Allows eligible individuals with disabilities to save money in a tax-exempt account that may be used for qualified disability expenses.

Individuals with disabilities can save money while keeping their eligibility for federal public benefits

<http://ablenrc.org/step-5-how-do-i-enroll>

OTHER RESOURCES:

Specific links can be found at the Wisconsin BPDD website www.wi-bpdd.org/SupportedDecision-Making/

Guardianship Support Center: <https://gwaar.org/guardianship-resources>

Future planning: <https://futureplanning.thearc.org/pages/learn/future-planning-101>

