



Disability Law Center's Self-Advocacy Materials

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Self-Determination

This document is designed for people with disabilities.

The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

617-723-8455

800-872-9992

mail@dlc-ma.org

Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

<https://dlc-ma.org>



Alternatives to Guardianship and Guardianship

You Will Learn About:

- Alternatives to Guardianship
- Guardianship and Related Topics

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

When a person turns 18 years old, that person is legally an adult. This means that all people age 18 and over are presumed to have the ability to make informed decisions about their health, money, education and safety. Many people with disabilities are able to make all decisions about their lives without any special support. Sometimes, though, a person with a disability may need some help making decisions.

What Is Guardianship?

Guardianship is a legal process involving the Probate Court. Guardianship takes away an individual's personal decision-making rights and responsibilities and gives this authority to another person. The guardian makes decisions for the other person.

Does Every Person With A Disability Who Needs Some Help Making Choices Need A Guardian?

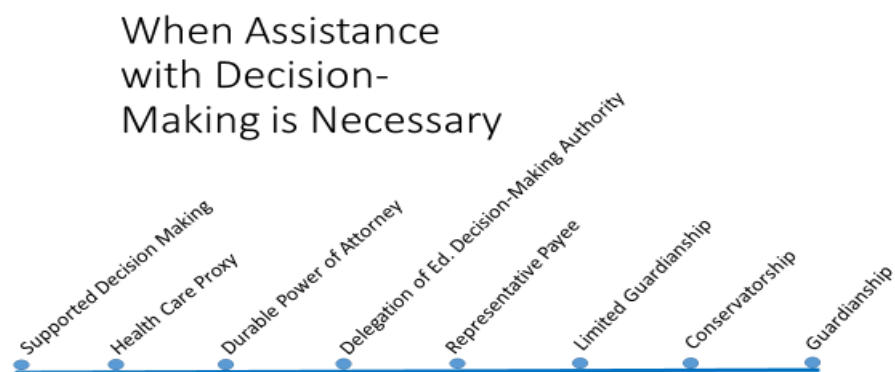
No. There is a range of options to consider when a person needs help making important decisions.

- Look to the **least restrictive alternative** to support the individual.
- The individual should keep as many rights and responsibilities as possible. This means that a person should stay in control of his/her life as much as possible.
- **Too often people immediately pursue guardianship over a person with a disability without thinking about possible alternatives to guardianship.** This can be especially true for people with intellectual and developmental disabilities.
- **Guardianship is considered one of the most restrictive options** because it takes decision-making rights away from the person. Guardianship substitutes one person's decision-making for someone else's. It can have a huge impact on **self-determination**, the ability to make decisions and take actions to shape one's own life.

Alternatives To Guardianship

What Are Examples Of Alternatives To Guardianship?

A number of alternatives to guardianship exist. The picture below contains some of the most common alternatives – **supported decision-making, health care proxy, durable power of attorney, shared or delegated educational decision-making authority and representative payee**. The picture also generally shows the full spectrum of options available with the less restrictive towards the left and more restrictive towards the right.



What Is Supported Decision-Making?

Supported decision-making (SDM) allows an adult with a disability to make his or her own decisions with the help of trusted supporters. SDM does not take away any rights, responsibilities, or decision-making power from the person with a disability.

The individual chooses people to be a part of his or her support network. The individual can choose to remove or add a supporter at any point.

Sometimes a person completes and signs a written document or a support agreement. The chosen support people would also sign this agreement. The agreement explains the role of the support people.

People can use SDM on its own or in combination with other alternatives to guardianship.

For more information about SDM, visit: National Resource Center for Supported Decision Making (<http://www.supporteddecisionmaking.org/>) and Massachusetts Supported Decision Making Pilot Project (<http://supporteddecisions.org/>)

What Is A Health Care Proxy?

A **health care proxy** is a legal document. It allows an adult to choose a trusted person to make medical decisions for the adult if he or she is incapacitated. In other words, this document allows the chosen trusted person to make medical decisions for the adult only when the adult is not able to make those medical decisions.

The person must understand the legal document and sign it. He/she may also revoke or undo the health care proxy.

The person can complete a health care proxy without involving the court system.

What Is A Durable Power Of Attorney?

A **durable power of attorney** is a legal document. It allows an adult to choose a trusted person to manage the adult's money, property and business affairs when the adult becomes unable to do so.

The person must understand the legal document and sign it. He/she may also revoke or undo the durable power of attorney.

The person can complete a durable power of attorney without involving the court system.

What Is Shared Or Delegated Educational Decision-Making Authority?

At age 18, students can make their own decisions about their education. A student can choose to **share educational decision-making authority** with a parent(s) or another adult. This means the student and the parent(s) or other adult make choices together about the student's Individualized Educational Program (IEP) and educational services. A student can also choose to **delegate educational decision-making authority** to a parent(s) or other adult. This means the parent(s) or chosen adult makes all the choices about the student's IEP and educational services.

The student or parent can obtain the necessary form through the school district. The student can revoke or undo the shared or delegated educational decision-making agreement.

If the student is under a full guardianship, the guardian already has the authority to make decisions about education. This means that the student and guardian do not need to consider this form.

What Is A Representative Payee?

A **representative payee** is a person or an organization that manages certain government benefits for an individual when that individual cannot safely do so. The Social Security Administration (SSA) can appoint a representative payee to manage a person's Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) funds.

The representative payee can only manage the individual's government benefits (SSI and SSDI) and cannot control an individual's other money or property.

For more information, go to <https://www.ssa.gov/payee/> or call your local SSA office.

Guardianship And Related Topics

When Can A Court Order A Guardianship?

The Court may appoint a guardian for someone when the Court decides someone has a clinically diagnosed condition and is not able to make decisions about his/her health, safety or self-care.

As part of this process in Massachusetts, the Court must consider a clinical evaluation of the individual's capabilities and impairments. The report is either a Clinical Team Report or a Medical Certificate. The Clinical Team Report is used when a person has an intellectual disability. The Medical Certificate is used for all other guardianship matters.

The Court must limit the guardianship as much as possible.

What Is A Limited Guardianship?

The Massachusetts guardianship laws require the Court to narrowly tailor the guardianship to protect the individual's rights and freedom. In other words, **the law requires the Court to limit the guardianship whenever possible.**

A full (or "plenary") guardianship generally removes all personal decision-making rights and responsibilities from an individual. A **limited guardianship** removes the individual's decision-making authority only in the specific areas where the individual is not able to make decisions.

Sometimes, a guardianship is limited only to medical decisions. In that situation, the Court determined that the individual is able to make informed decisions in the other areas of his or her life.

What Is The Difference Between A Guardian And A Conservator?

A guardian cannot manage a person's financial matters. A **conservator** manages a person's financial matters. The Probate Court must determine that a person is not able to make financial decisions.

A representative payee manages a person's SSI or SSDI funds. If the person's only money is through SSI and SSDI, the person likely does not also need a conservator. If a person has other money and assets, a conservator could be appropriate. Any conservatorship should be **limited to the extent possible**.

Sometimes the Court decides a person needs a guardian and a conservator. The guardian and conservator can be the same person or different people.

What Is “Extraordinary Treatment” And A *Rogers* Guardianship?

A guardian must get specific permission from the Court for any “**extraordinary treatment**.”

Generally, a guardian has the power to make medical decisions for routine medical practices and treatment. However, a guardian cannot consent to the administration or use of antipsychotic medications or other extraordinary treatment without specific court authority.

In Massachusetts, this specific type of guardianship is called a ***Rogers* guardianship**. If the Court grants the *Rogers* guardianship, the Court issues a specific order that may include forced medication, and also authorizes a specific treatment plan.

If the person subject to guardianship and the antipsychotic medication cannot afford an attorney, the Court will automatically appoint an attorney.

What Are Some Important Rights Of Individuals Subjected To Guardianship?

A person has the right to have the Court consider less restrictive options. A person has the right to have the Court limit a guardianship as much as possible.

A person under guardianship has the right to have a guardian who considers the person's expressed preferences and acts in the person's best interests.

A person has the right to be present and participate in the guardianship hearing. This includes giving the Court evidence and asking questions.

A person under guardianship has the right to ask the Court to remove the guardian. A person under guardianship has the right to ask the Court to terminate or end the guardianship.

A person has the right to an attorney. A person does not automatically get an attorney. Instead, the person or anyone else involved must ask the Court to appoint an attorney for the individual. There is a form that Court's use. It is called the request for counsel form. Here is a link to the form:

<https://www.mass.gov/doc/request-for-counsel-mpc-301/download>