



Guardianship

What does guardianship mean?

All teens, including teens with autism spectrum disorders (ASDs), become adults and their own legal guardians on their 18th birthday. By law, when a person turns 18, her parents are no longer allowed to make medical or legal decisions for her. The only way parents can continue making decisions for their child is to become their adult child's legal guardian. It is best to start the process in a timely manner well before the teen's 18th birthday. A *legal guardian* usually makes *all decisions* about the adult child's well-being. Some families may choose to divide decision-making duties between the guardian and a conservator. A *conservator* takes care of the individual's *financial affairs* only. When the adult with an ASD can make personal and health decisions but not complex financial ones (especially those relating to Social Security or other governmental funding for daily care), she may need only a conservator.

How do we know if our child needs a legal guardian?

If, at age 18 years, your young adult is not able to make responsible decisions, a formal evaluation should be done to determine if he needs a legal guardian. Guardianship is not an easy issue, especially if your adult child has difficulty with problem-solving skills in some areas but can make some decisions on his own in other areas. Guardianship means that other people will help your child make decisions about his health and other aspects of his life. Therefore, it should be pursued only when you are sure that your child is unable to make well-thought-out decisions for himself about health care choices as well as choices related to daily life and finances. You may want to talk to your child's pediatrician, service coordinator, school team, and immediate family members about this decision. An attorney may also be helpful.

How do we plan for our child's financial future?

Youth with developmental disabilities that might preclude working full time, including ASDs and intellectual disabilities, may have Social Security (www.ssa.gov/pubs/10026.html) as their major source of income. Family members, social workers and agencies, health care professionals, commercial insurers, consumer groups, and organizations such as Special Needs Alliance (www.specialneedsalliance.com) can offer advice and help as you decide how to plan for your child's financial future and personal protection.

How do we become our teen's legal guardians?

If you, your child's physician, and your child's psychologist agree that your 18-year-old is unable to make responsible health and financial decisions, you will need to file a petition to request guardianship. In most states, the petition requests a court hearing on the case and follow-up reports from the guardian.

Do we need a lawyer?

A lawyer is not required legally. But it is better to use a lawyer because many choices need to be made in the process. Probate court officials can answer questions about steps involved in appointing a guardian, but state rules do not allow court officials to be involved in making decisions or giving legal advice. Your child's school, local The Arc (www.thearc.org) chapter, or agencies providing service coordination can refer you to an agency or a lawyer who helps families with guardianship.

What does the court decide?

If the court decides your adult child needs a guardian of "his or her person," it will rule that your child is *incapacitated*. This is a legal term that means that your adult child does not understand how to make or communicate responsible decisions about herself and cannot independently make choices on her needs for medical care, nutrition, clothing, shelter, or safety.

Who can be a legal guardian?

You, as parents, may ask to remain your child's legal guardians. Other options for legal guardians may include an adult sibling, a relative, a family friend, or a professional. Even if the court finds that your adult child needs a guardian, it will not automatically appoint the person who filed the petition as guardian. You can make a request in your will as to who will assume guardianship of your child. State law says that

1. A guardian does not need to be a relative.
2. If the person in need of a guardian has "sufficient capacity to form an intelligent preference," he may nominate the person he wishes to serve as guardian. Unless the court finds that appointing the nominee would not be in the person's best interest, the nominee will typically be named to serve as guardian.

What are the duties of a legal guardian?

A guardian has *all* of the powers or duties that follow:

- Have custody of the individual and establish her place of residence.
- Provide for the individual's care, comfort, and maintenance needs. These include food, clothing, shelter, health care, and social and recreation activities. Also, when appropriate, provide for training, education, and rehabilitation. Many adults with developmental disabilities will have income through Social Security or will have other public funding through the state helping with their care.
- Take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects.
- Give consent for the individual to receive medical care, counsel, treatment, or service.
- Approve or withhold approval of any contract that the individual may make or wish to make.

A guardian does not assume legal duty to pay for food, clothing, shelter, or any other needs out of her own funds. The guardian is encouraged to use public benefits or services to which the person in her care is entitled.

No guardian may give consent for brain surgery for behavior, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court. The guardian shall not consent to any medical care for the individual that goes against the known conscientious, religious, or moral beliefs of the individual.

States, organizations, and individual lawyers have form letters that your child's physicians or psychologists may be asked to complete to attest to the need for guardianship.

The recommendations in this publication do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate. Original document included as part of *Autism: Caring for Children With Autism Spectrum Disorders: A Resource Toolkit for Clinicians*, 2nd Edition. Copyright © 2013 American Academy of Pediatrics. All Rights Reserved. The American Academy of Pediatrics does not review or endorse any modifications made to this document and in no event shall the AAP be liable for any such changes.

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