

Turning 18: Legal Decision-Making Options For Young Adults Who Need Support

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Today's Presentation

- **Options to Assist Adults with Decision-Making:**
 - Guardianship/Conservatorship
 - Power of Attorney
 - Other decision-making options
- Questions are welcome
- This presentation is for general information only and is not legal advice

The law presumes people over 18 can make decisions for themselves

People age 18 and up are presumed to have *capacity* to safely make legal and medical decisions.

Capacity = ability to:

1. Take in and process information
2. Understand the effect of a decision
3. Communicate decision

Types of decisions → medical, housing, education, financial, public benefits, etc.



**But what if an adult needs help
making decisions?**

Options to Help with Decision Making

Require Going to Court

- Guardianship and Conservatorship
(including emergency)
- Protective Arrangement
(for limited authority/limited time)

Don't Require Going to Court

- Durable Power of Attorney
- Supported Decision-Making Agreements
- Informed Consent Law
(for medical decisions)
- Protective/rep. payeeships

Options that require going to court



What is Adult Guardianship and Conservatorship?

Court appoints legal guardian or conservator to make certain types of decisions **on behalf of** person with disabilities

- **Guardianship:** medical, housing, educational decisions, etc.
- **Conservatorship:** financial decisions

The court can appoint a guardian/conservator when:

The adult is unable to meet their basic needs for physical health, safety, self-care, or significant property loss.

The adult is unable to receive and evaluate information or make or communicate decisions, even with support or assistance.

There must be a significant risk of harm to the adult unless a guardian is appointed.

Is Guardianship the right option?

What is the problem?

- **Risk of personal harm**
- **Risk of financial harm**

Can guardianship or conservatorship solve this problem?

- **Will not automatically make a person with disabilities “safe”**
- **Is not appropriate if you just disagree with or would make different decisions than the disabled person**

Is there a less restrictive option that can address the problem?

- **Must be considered first**

Guardianship Process – *General Overview**

(1) The person seeking to be guardian/conservator (the “petitioner”) must take an online training.

(2) The petitioner must prepare and file forms with the court.

(3) The court will appoint a court visitor to investigate and report to the court.

(4) The petitioner must have copies of all forms delivered to the person with disabilities and other parties, following requirements in the law and court rules.

(5) The court will hold a hearing to decide whether guardianship/conservatorship should be approved (approx. 60 days after petition is filed).

*This is a general overview only. It does not include all the steps or legal requirements for guardianship/conservatorship petitions. It is not intended as a guide to filing.

Guardianship Process (After Appointment)*

(6) The guardian/conservator files with the court acceptance of appointment and the court issues letters of guardianship/conservatorship.

(7) The guardian/conservator must give certain notices to the adult subject to guardianship/conservatorship and others.

(8) The guardian/conservator must file with the court a report within 90 days of appointment.

(9) The guardian/conservator must file reports with the court every year afterwards. Failure to file will lead to the letters of guardianship/conservatorship lapsing, and the court may require a hearing.

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The Court Must Consider Less Restrictive Options Before Granting Guardianship/Conservatorship

Under the law, a court may not appoint a guardian/conservator if the adult's needs can be met in other ways,

The court will ask what other decision-making options have been tried, may dismiss petition if it appears other options could meet the adult's needs.

Right to Attorney (to fight g-ship/conservatorship)

- The person who would be subject to guardianship/conservatorship if the petition is approved has the right to an attorney upon request
- The court can appoint an attorney if it determines the person's rights and interests cannot otherwise be adequately protected
- Court will appoint an attorney at public expense when:
 - The person is unable to afford an attorney;
 - Paying for attorney would result in substantial hardship;
 - The person has no practical access to funds (though may need to reimburse later)

Guardianship and Mental Illness

- Guardianship/conservatorship *may* be a remedy when an adult child has mental illness and appears to present a danger to themselves or others
- Must still meet the standard for guardianship/conservatorship
- Less restrictive alternatives may include a mental health POA
- Guardianship does not give a guardian authority to force the person into an institution against their will. A separate order is needed for that (and guardianship is not required to get such an order).

Even if Guardianship or Conservatorship is approved, the person with disabilities retains rights....

- to make decisions to the extent feasible
- to express preferences and have preferences respected to the extent feasible
- to notice of court filing and important events (right to object, before residential changes, etc.)
- to associate with others of their choosing (subject to certain limitations)

New in 2022: Emergency Guardianship

- Court can appoint an emergency guardian immediately/without notice for up to 60 days (may be extended for another 60)
- Must show risk of substantial harm to respondent's physical health, safety, or welfare
- The person potentially subject to gship is automatically appointed an attorney
- May be solution where the person needs urgent medical treatment and is unable to consent/use other forms of supported decision-making

New in 2022: Protective Arrangement

- Court appoints someone to complete specific tasks or make specific decisions for an individual
 - vs. ongoing authority granted under guardianship or conservatorship)
- Must be considered before guardianship or conservatorship, and court may order instead of guardianship or conservatorship
- Standards are similar to standards for guardianship/conservatorship

Protective Arrangement (cont.)

- Examples:
 - Court order authorizing a particular medical treatment
 - Court order authorizing action needed to establish the person's eligibility for benefits
- Court must appoint a court visitor to investigate and make recommendations to the court (as with g'ship and conservatorship)

What if the person is about to turn 18?

- ▶ In most cases, there is no hurry to file for guardianship or conservatorship
- ▶ If appropriate, you can try the other less restrictive options first
- ▶ If an urgent need comes up (medical, etc.), you can file for a Protective Arrangement or Emergency Guardianship

Options that don't require going to court



Durable Power of Attorney

- Authorizes a trusted person (the “agent” or “attorney in fact”) to take actions or make decisions on behalf of the person signing (the “principal”)
- The principle must have **capacity** = must understand the consequences of signing, but does not have to understand all technical legal terms
- POA document can be tailored to meet the individual’s needs
- “Durable” - POA remains in effect if the principal loses capacity
- The wishes of the principal rule, and the principal can revoke in writing

Durable Power of Attorney (cont'd)

- Must be in writing + notarized or witnessed
- Not filed with the court – original is shown to third parties (banks, med. providers, etc.)

Durable Power of Attorney for Health Care for

[My Name]

1. **Agent.** I choose _____ as my Agent with full authority to manage my health care.
2. **Alternate.** If _____ is unable or unwilling to act, I choose _____ as my Agent with full authority to manage my health care.
3. **My Rights.** I keep the right to make health care decisions for myself as long as I am capable.
4. **Durable.** My Agent can still use this power of attorney document to manage my affairs even if I become sick or injured and cannot make decisions for myself. This power of attorney shall not be affected by my disability.
5. **Start Date.** This power of attorney document is effective on the day I sign it.
6. **End Date.** This power of attorney document will end if I revoke it or when I die. If my spouse or domestic partner is my Agent, this power of attorney document will end if either of us files for divorce in court.

Supported Decision-Making Agreements (SDMAs)

- An agreement between a person with disabilities and one or more “supporters”
- Details what help supporter(s) will provide
- Supporter can help person with disabilities obtain and understand information, communicate decisions
- Supporter does not make decisions – helps person with disabilities make their own decisions

Supported Decision-Making Agreements (SDMAs)

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SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

I, _____ (*name of supported adult*), make this agreement of my own free will.

I agree and designate that:

Name: _____ (*name of supporter*)

Address: _____ (*address of supporter*)

Phone number: _____ (*phone number of supporter*)

Email address: _____ (*email address of supporter*)

is my supporter.

My supporter may help me with making everyday life decisions relating to the following:

(Y/N) Obtaining food, clothing, and shelter.

(Y/N) Taking care of my health.

(Y/N) Managing my financial affairs.

(Y/N) Other matters: (*specify*).

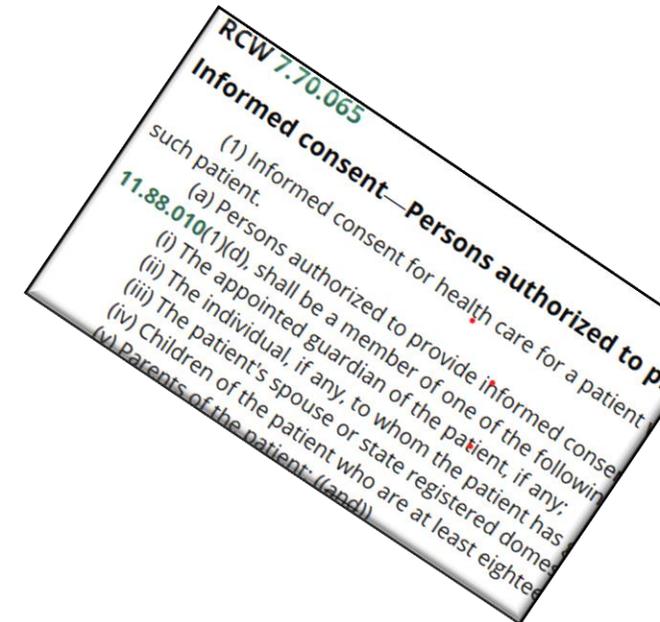
Can a person sign both a SDMA and a DPOA?

Yes! But the two have different goals:

- SDMA provides the support and tools for a person with disabilities to make a decision for themselves
- DPOA authorizes another person to make decisions on behalf of the person
- A person might choose to sign a SDMA for help with certain decisions, but a DPOA for substitute decision making with others.
- Or, a person might sign a DPOA that goes into effect only when the disabled person is incapacitated (i.e., unable to make decisions on their own).

Washington's Informed Consent Statute for Medical Decisions (RCW 7.70.065)

- WA law allows providers to accept consent from others for healthcare
 - Legal guardian
 - Agent under valid DPOA for Health Care
 - Spouse or registered domestic partner
 - Adult children
 - **Parents**
 - Other family (Adult siblings, then adult grandchildren, then adult nieces/nephews, then adult aunts/uncles)
 - An adult who has shown special care/concern for the patient, is familiar with the patient's values, is available, and signs a declaration (good for 6 months)
- The person seeking to consent to medical care must be on the list + there aren't people available in a higher category
- All the people in a particular category must be in agreement (e.g., both parents)



Representative/Protective Payeeships to help with managing money

- Trusted adult can apply to be the person's payee with Social Security Administration or Department of Social and Health Services
- Allows designated person to manage the benefits of an adult unable to manage their own benefits
- Can be sufficient option if the person's only income is benefits and they are not likely to have other income/resources

Resources

- ❖ www.washingtonlawhelp.org
- ❖ www.informingfamilies.org
- ❖ <https://arcwa.org/>



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