

Adult Decision-Making A guide for caregivers

Do I automatically become my adult disabled child's guardian when they turn 18?

No. It is assumed a person can make their own decision at age 18, regardless of their previous or current disability status. This means that you no longer have a legal right to make any decisions for your child once they turn 18 unless additional safeguards are put in place.

What are the most common areas that my adult disabled child may need help with when it comes to decision making?

Three of the areas an adult disabled child may need help with are managing money, personal decision making, and health care related decisions. To begin, it is good to think of what type of decisions for your child you are worried about and then ask: Can they do it alone? Can they do it with support? Or do they need someone else to do it for them?

How can I help my adult disabled child with decision making?

The goal is for you and your child to become a team in the decision-making process as much as possible. Your child's ability to make (or help to make) their own life decisions is important for their sense of self-worth and well-being.

In any team, there is often a leader with the most influence, but the other team members have to contribute as well. You have to decide what role your child has on this team:

- Are they capable of being mostly independent and be the team leader?
- Or do you need to take the primary leadership role because they may not be cognitively able to protect themselves otherwise?
- Or maybe a little of both?

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My child can take care of themselves well and can manage money okay. I think they will only need help with health care decision making as an adult. What can they do to allow me to help with that?

If your child is able to understand they would be giving your permission to see records, your child can fill out a HIPPA release giving you access to their medical chart and information. You can ask your child's doctor for their form. If your child understands that they would be giving you authority to actually make health care decisions on their behalf, they could make you their Health Care Power of Attorney.

What is guardianship?

Guardianship is one of the protective services available under Ohio law. It can be used when one is completely unable to care for one's own personal care needs, budgets, or medical issues. Using the team example, this would mean your child requires you (or another appointed guardian) to be their team leader at all times when they become an adult because they cannot otherwise make important decisions and independently care for themselves on their own.

How is a guardian chosen?

A guardian is legally appointed by a probate court. You can apply to become a guardian with that court, or someone else can be appointed by the probate court if necessary. The guardian cares for the "helpless adult," who is called a ward. Wards are the subject of the guardianship. The guardian cares for their safety and makes all decisions related to their care.

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What does the guardianship process look like?

You apply for guardianship when your child turns 18 through the probate court. To apply for guardianship, you must prove the need for this using a Statement of Expert Evaluation prepared by a medical professional. This document is provided to you by the court. The process also includes a court hearing that the family attends, with or without the disabled individual present.

What are alternatives to guardianship?

Maybe your child is capable of making some decisions and caring for themselves, but they could use some support and protection as well. In this team scenario, your child can be a leader and influencer sometimes, but they need help with decisions, especially when things get complicated, and they may be vulnerable if left completely on their own. Alternatives to guardianship are used in these situations. These may include the following:

Power of Attorney (POA)

This is a form in which an able adult gives someone else like a parent the right to act for them. A POA can be set up so that the POA makes all choices about the adult or may just have specific decision-making power, such as medical decision making or financial decision making (see Financial Power of Attorney on a separate handout). Depending on how it is drafted, the adult may be able to end the power of attorney relationship at any time, and the probate court may have no control over a power of attorney. But, if a guardian is assigned, the guardian or court may take away the power of attorney.

Many State Bar associations have downloadable forms available on their sites. It may be beneficial to have legal guidance, and attorneys generally charge a minimal fee for overseeing a POA process.

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Resources:

- The Legal Aid Society of Cleveland
 - <https://lasclv.org/>
- Disability Rights Ohio
 - <https://www.disabilityrightsohio.org/>
- Ohio Developmental Disabilities Counsel
 - <https://ddc.ohio.gov/static/guardianship-revised-2018.pdf>