



Boston Children's Hospital

What happens
when my child
turns 18?



Guardianship

Printed April 2012. All information contained in this guide is current as of the publication date. Please check your own state's resources for the most current rules, regulations, and websites regarding the guardianship process.

What happens when my child turns 18?

After your child's 18th birthday, you are no longer his/her legal guardian, even if your child has a disability. According to the law, all persons 18 years old and older are presumed competent, that is, able to make decisions about health care, finances and other important areas of life. In the health care context, competency implies the ability to provide an "informed consent" for medical treatment, or an ability to understand all the benefits and risks associated with medical treatment.

If you feel that your child is unable to provide an informed consent, you may wish to consider seeking a guardianship in order to protect and assist your adult child when he or she receives medical care.

What is guardianship?

Guardianship is a legal way to protect children and adults who cannot care for themselves, make decisions (including health care decisions) that are in their own best interests; or manage their assets. If a court determines that your child is incapable of handling her/his legal, personal, and/or financial affairs, it will appoint a guardian. A guardian can be the child's parent(s) or another trusted adult.

How do I know if my child needs a guardian?

The decision to seek guardianship for your child can be a difficult and complex one. Before you make the decision, you should:

- learn about guardianship and other legal ways to protect your child;
- ask for advice from professionals who are knowledgeable about guardianship; and
- carefully consider your child's specific strengths, vulnerabilities, needs and best interests.

What are variations of or alternatives to guardianship?

Terms may vary by state.

A Guardian of the Estate or a Conservatorship is responsible for handling your child's financial resources.

A Limited Guardianship limits decision making to certain areas, such as medical treatment. This type of guardianship can be tailored to fit your child's needs by allowing your child to make his/her own decisions in all other areas.

A Temporary Guardian or Conservator may be appointed in an emergency situation when certain decisions must be made immediately or if your child's inability to make decisions is short term.

A Joint Bank Account requires an additional signature for any activity affecting the account.

A Representative Payee can be named to manage your child's funds if your child receives checks from Social Security.

A Durable Power of Attorney grants a person the legal authority to make decisions on another's behalf.

Advanced Directives and Health Care Proxies enable your adult child to designate a health care agent (person). This person is allowed to make health care decisions if your adult child becomes unable to make them. At the time your adult child appoints a health care agent, he/she must be competent or capable of making health care decisions for him/herself.

An Appointment of Advocate and Granting of Authorization allows your child to designate an agent (person) to advocate on his/her behalf with administrative agencies like the Department of Developmental Services (DDS), the Department of Public Health (DPH), Medicaid, and other government agencies.

A Trust is a legal way to place funds and other assets in control of a trustee (person) for your child's benefit. Your child would need to coordinate access of these funds and assets with the trustee.

What is the process for obtaining guardianship?

To obtain a guardianship for your child, you will need:

- a court petition
- an evaluation of your child's capabilities and limitations completed by one or more licensed professionals.

The process for establishing guardianship varies by state, and you should contact your local court to determine what steps are necessary for a guardianship application. Most states have resources and forms available through court websites. This guide will provide an overview of the guardianship process in Massachusetts, and contact information for those resources for the other states where most of our patient families reside, namely New England, New Jersey and New York.

Questions?

Contact the main social work office at (617) 355-7965

For All States

All guardianships are granted by a court process, in most states, through the Probate Court. In sum, parents or other caring adults interested in obtaining a guardianship over an adult child need to complete a petition or application, obtain a medical and psychological evaluation of the child and submit this paperwork to the court. Those applying for guardianship are required to give notice of the application to the adult child and attend a hearing before a judge who will then decide if a guardianship is appropriate.

While courts try to make the guardianship process as simple as possible, consulting a local lawyer may be helpful, as there are deadlines to be met, parties to notify, clinical professionals to contact and a hearing to attend in order to complete the guardianship process. Courts also charge a fee to process a guardianship application, though these fees may be reduced or waived if you can provide evidence of financial need.

It is also worth keeping in mind that many courts will require that the potential ward (your child) be appointed his or her own attorney to advocate for him or her throughout this process in the event that your child wishes to oppose the appointment of a guardian to oversee his or her affairs.

These resources offer an overview of the guardianship process, but again, you should consult state-specific resources to make sure you are complying with the process in your state:

National Guardianship Association, Inc.

174 Crestview Drive
Bellefonte, PA 16823-8516
(877) 326-5992
guardianship.org

LawHelp.org

lawhelp.org

Massachusetts

Regulations state that petitions for guardianship may not be submitted before an individual's 18th birthday, though many courts will accept petitions before then but will delay scheduling a hearing to review the petition until after your child turns 18. You should check with your local Probate Court for how it will handle scheduling of the petition.

A petition for guardianship of a person with a mental illness or physical incapacity must include a medical certificate. The medical certificate must be completed by a registered physician, licensed psychologist, nurse practitioner or certified psychiatric nurse clinical specialist within 30 days of filing the guardianship petition.

Massachusetts continued

A petition for a guardianship of a person with intellectual disability must include a clinical team report (CTR).

- The CTR must be completed by a registered physician, licensed psychologist, and licensed social worker (all three). All three professionals must complete and sign the CTR within 180 days of your filing the guardianship petition.
- If a child receives special education services, the school team may be able to complete part of the CTR. School evaluations for special education services may include parts of the testing that is necessary for the CTR. However, parents should confirm that the school psychologist is a licensed psychologist (Board of Psychology), as licensed school psychologists (Board of Education) cannot sign the CTR. Some schools also employ licensed social workers, who may have the appropriate training to complete the CTR. It can also be helpful to consult with your child's primary care physician in order to see what resources he or she may be able to access.
- If the Department of Developmental Services (DDS) is involved, DDS may be able to provide referrals for a psychologist and social worker to complete those portions of the CTR, but these referrals can have lengthy waiting lists. DDS may also be able to provide legal advice for assistance with the guardianship petition.

Massachusetts Probate & Family Court (various locations)

(617) 788-6600

mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/index.html

(scroll down the webpage to link to Guardianship/Conservatorship for a full menu of online forms and instructions).

Massachusetts Bar Association

Lawyer Referral Service

20 West Street

Boston, MA 02111-1204

(617) 654-0400

(866) 627-7577

masslawhelp.com/

Volunteer Lawyers Project of the Boston Bar Association

99 Chauncey Street, Suite 400

Boston, MA 02111

(617) 423-0648

Disability Law Center, Inc.

11 Beacon Street, Suite 925

Boston, Massachusetts, 02108

(617) 723-8455

dlc-ma.org

Mental Health Legal Advisors Committee

24 School Street, 8th Floor

Boston, MA 02108

(617) 338-2345

mhlac.org

Connecticut

In Connecticut, a “person with intellectual disability” may become the subject of a guardianship. A petition may be filed up to 180 days before your child’s 18th birthday if it is anticipated that upon turning 18, your child will need a guardian. A Department of Developmental Services assessment team of three clinicians will evaluate your child within 45 days of the scheduled court hearing on the guardianship application and describe to the court areas where your child will need supervision.

Office of the Probate Court

Administrator

186 Newington Road

West Hartford, CT 06110

(860) 231-2442

jud.state.ct.us/probate/ (Guardianship forms and applications are available through the Connecticut Probate Court System website)

A guidebook entitled, “Probate Court Procedures Involving Persons with Intellectual Disability” can be accessed through this website: jud.ct.gov/probate/Guardian-MR.pdf

Maine

In Maine, besides a petition, the following papers need to be provided to the Probate Court: a guardianship or conservatorship plan, stating how the person’s medical, social rehabilitation and financial needs will be met or how the estate will be managed; a physician’s or psychologist’s report providing a diagnosis, prognoses and a statement regarding the person’s current capacity to make personal and medical decisions or to manage financial affairs; and an acceptance of appointment signed by the proposed guardian or conservator.

The Maine Probate Court System can be accessed from this website: maineprobate.net

The Maine Department of Health and Human Services also provides this useful guide on its website: maine.gov/dhhs/guardianship/qabook.shtml or contact the Maine Developmental Disabilities Services office at: (207) 287-6595.

A guidebook entitled, “A Guide to Understanding Adult Guardianship and Guardianship Alternatives in Maine” can be accessed through this website: maine.gov/dhhs/guardianship/guardianship-guide.pdf

Office of Cognitive and Physical Disabilities

40 State House Station

Augusta, ME 04333-0040

(207) 287-4200

Disability Rights Center

P. O. Box 2007

Augusta, ME 04338-2007

(207) 626-2772

New Hampshire

In New Hampshire, the first step is to complete the “petition for guardian of incapacitated person.” The petitioner must provide specific examples of the proposed ward’s inability to provide for food, shelter, health care, safety, or an inability to manage his/her financial affairs. These examples must have occurred within the last six months and one of the incidents must have occurred within 20 days of the filing of the petition. For each example the petitioner must prove that the proposed ward will or has come to substantial harm as a result of the inability, that the inability is not the result of informed judgment, and that no less restrictive alternatives are available.

New Hampshire Circuit Court Probate Division

Circuit Court Administrative Office

45 Chenell Drive, Suite 2

Concord, NH 03301-8541

(603) 271-6418

courts.state.nh.us/probate/guardianship.htm (all guardianship forms available on this website)

New Hampshire Legal Advice and Referral Center

48 South Main Street

Concord, NH 033301

(800) 639-5290

nhlegalaid.org/LARC

New Jersey

In New Jersey, guardianship proceedings occur before a Superior Court judge. The Bureau of Guardianship Services, which is located at the Department of Human Services, only assists individuals and families with guardianship of the person. If a family believes it needs to pursue guardianship of the property because a large amount of money or property is involved, it will need to seek advice from a private attorney.

Office of the Superior Court Clerk

Richard J. Hughes Justice Complex

25 W. Market Street, 6th Floor North Wing

P.O. Box 971

Trenton, NJ 08625

(609) 421-6100

State of New Jersey

Department of Human Services

Division of Developmental Disabilities

(888) 285-3036

state.nj.us/humanservices/ddd/services/guardianship/

This website provides a useful guide for assistance in obtaining a guardianship for families already receiving services from the Division of Developmental Disabilities:

judiciary.state.nj.us/prose/10558.pdf

New York

In New York, the Surrogate's Court processes the guardianship petition for a mentally retarded or developmentally delayed person. This type of guardianship is referred to as "SCPA Article 17-A Guardianship" (Surrogate Court Procedure Act). In New York, "guardianship" refers to non-parental relationships of *minor* children.

New York State Unified Court System

Office of Court Administration, Rm. 852
25 Beaver Street
New York, NY 10004
(800) 268-7869
nycourthelp.gov/diy/guardianship17A.html

You may also access guardianship forms here: nycourts.gov/forms/surrogates/guardianship.shtml

NYSARC, Inc.

393 Delaware Ave.
Delmar, NY 12054
(518) 439-8311
nysarc.org

Rhode Island

Guardianship applications are processed through the Probate Court in Rhode Island. When applying for a guardianship, you will have to demonstrate to the court that you tried to use less restrictive alternatives to guardianship (like those mentioned on page 2 of this guide) before applying. In addition to a petition, a guardianship application must include an evaluation by your child's primary care physician.

Guardianship forms can be accessed at this website: sos.ri.gov/library/probate/

Volunteer Lawyer Program

Rhode Island Bar Association

HelpRILaw.org
(401) 421-7758
(800) 339-7758

Rhode Island Disability Law Center

275 Westminster Street
Suite 401
Providence, RI 02903-3434
(401) 831-3150

A guidebook entitled, "Legal Assistance for Individuals with Disabilities and Their Families: Guardianship and Alternatives to Guardianship" can be found at this website: ridlc.org/publications/Guardianship_and_Alternatives_To_Guardianship_Booklet.pdf

Vermont

Guardianships are handled by the Probate Court in Vermont. Once a petition is filed, the court will order that a mental health professional evaluate your child within 30 days and then file a report with the court.

Court Administration

111 State Street

Montpelier, VT 05609

(802) 828-3278

vermontjudiciary.org/GTC/Probate/guardianship.aspx

(guardianship forms available from this website)

More information on guardianships in Vermont can be found here:

Department of Disabilities, Aging & Independent Living

Division of Disability & Aging Services

81 River Street, Suite 208

Montpelier, VT 05609-2210

Phone: (802) 828-3623

ddas.vermont.gov/ddas-programs/programs-guardianship/programs-guardian-addl-webpages/programs-guardianship-adult



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Contact the main Social Work office at (617) 355-7965