



DOWN SYNDROME GUILD
OF DALLAS

Guardianship and Alternatives

Many people assume that because their child has a disability they are automatically the child's legal guardian. However, ***every person over the age of eighteen is presumed to have the legal rights of an adult no matter what their abilities.*** In order to become someone's guardian a parent or sibling must go to court and petition to become responsible for that person. They must demonstrate to the court that the disabled person is incapacitated---that they are unable to act responsibly on their own behalf.

Just like making educational decisions (inclusion vs. self-contained classes), each family has to weigh the options (from least restrictive to most restrictive), and make the decision that is best for them and for their child.

Guardianship is a legal process designed to protect vulnerable persons from abuse, neglect (including self-neglect) and exploitation. There are several types of guardianship. If you are contemplating establishing a guardianship you need to discuss the specific details of your situation with your attorney to determine what form of guardianship is most appropriate. It is also important to understand guardianship-and its consequences, some of which may not be desirable for the individuals or families:

- ◆ In the legal system, guardianship declares a person *incapacitate*, and *removes rights and privileges* from a person with a disability. These rights may vary, but could include entering into contracts, end of life and medical decisions among others.
- ◆ Obtaining guardianship involves the court system and, typically, attorney fees. This can create an unnecessary financial hardship on families.
- ◆ For many people, it is applying a legal solution to personal issues that can be handled through less intrusive means.
- ◆ The Arc and many other advocacy groups feel strongly that there are alternatives to guardianship that respect the person's rights and privileges yet can define the needed supports for a person with a disability to be safe.

The following alternatives can help individuals with disabilities and their advocates handle decision-making in a way that enables the person the dignity and freedom to live the lives they choose, while also protecting them:

- ◆ **Power of Attorney (POA):** Executed by an adult, called the principal, authorizing another person to act as his or her agent. The power to the agent may be either specific or general.
- ◆ **Durable Power of Attorney:** A power of attorney that remains in effect if the principal becomes incapacitated. If a power of attorney is not specifically made durable, it automatically expires if the principal becomes incapacitated
- ◆ **Durable Power of Attorney for Health Care (also called Medical Power of Attorney):** an instrument executed by an adult giving another person the authority to make health care decisions for him or her.

- ◆ **Social Security's Representative Payment Program:** Provides fiduciary assistance for Social Security beneficiaries who are incapable of managing or directing someone else to manage their Social Security or SSI payments. Generally, family or friends are asked to serve in this capacity. For more information, see the Social Security Administration website:
<http://www.socialsecurity.gov/payee/faqrep.html>

- ◆ **Trustee:** Because owning even a small amount of money can jeopardize government benefits, a trust may be needed to hold assets to provide for an individual's supplementary needs and desires. The trustee is someone responsible for the management and distribution of such funds. For more information see *Special Needs Trusts Frequently Asked Questions*.

- ◆ **Release of information form:** In this age of privacy and the Health Insurance Portability and Accountability Act (HIPAA), some agencies might have you believe that because your child is their own guardian, you may not have access to pertinent information regarding their personal issues- **NOT TRUE!** Simply have the person with a disability sign a "release" form granting you permission to have access to their personal information.

For more information about guardianship, check out this publication from Advocacy Inc.
www.advocacyinc.org/CS5.cfm

Also check out: www.texasguardianship.org

