



## Does Your Child Need a Guardian?

**Guardianship** (known as **conservatorship** in some states) is the legal right given to one person to protect and manage the personal care, or finances, or both, of another person. The person needing help is called the **ward**; the person who helps is called the **guardian**. A judge has to decide that the ward is unable to make decisions independently.

In some states, the term “guardianship” is used in reference to personal care, and “conservatorship” limited to finances. Or the terms may be “guardianship of the person” and “guardianship of the estate.” It’s important to understand that laws and terminology vary from state to state, and that legal assistance is always necessary to set up these arrangements.

### What Does a Guardian Do?

The powers and duties of a guardian will depend on individual circumstances. Personal care might involve deciding where the ward will live, and arranging for meals, transportation, clothing, personal care, recreation, and health care. Financial care might involve making a budget, paying bills, investing money, collecting income, and protecting assets. Some adult children may be able to take care of their personal needs, but have difficulty managing money. Or they might need help making medical decisions. Letters of Guardianship will explain what the guardian has the authority to do.

### Who may serve as a guardian?

A parent may be the best choice, or another relative or a friend. Guardianship is a big responsibility, so it’s important to choose a person who’s willing and able. A special-needs child may have a loving brother or sister, but if that person is far away, or overburdened with other responsibilities, he or she may not be a good choice. It’s never wise to pressure anyone into undertaking such an important position as guardianship or conservatorship.

Sometimes, the responsibilities may be shared by two people. One person may be appointed to take care of the personal needs, and another person, the finances. If a friend or relative is willing to serve, but is uncertain about having the financial expertise to do so, he or she may be appointed jointly with a bank or other institution. If no friend or relative can be found, a private professional guardian or a public agency may be appointed.

### **When to Start Thinking About It?**

It's never too early for a parent or caregiver to consider the issue of guardianship. Naming a guardian or conservator may be done in a will. Naturally, the person named would still have to take all the steps to be approved by a judge.

### **What Are Some Issues to Consider?**

A guardianship will necessarily mean a lot of involvement with the legal system. First of all, the guardian may have to account to the court periodically about the status of the special-needs individual and the management of the assets. Secondly, he or she may be legally responsible for some of the actions of the ward. For example, if the ward causes a car accident, the wisdom of the guardian in allowing the person to drive may be examined. Finally, every time the guardianship is questioned or changed, it must be done through the courts.

For medical management purposes, a guardianship is good. Regulations outlined in HIPAA (the federal government's Health Insurance Portability and Accountability Act of 1996) are very stringent now. If children have the inability to communicate effectively, a guardianship may be the only way to protect them, and the only way to insure that parents have access to information which is otherwise private.

If a special-needs adult is receiving government benefits, such as Medicaid and SSI, and has no other assets to manage, a conservatorship of the estate may not be necessary. If family and friends want to give gifts to the child, they can be put in a **special-needs trust** which can be set up to pay for items and services beyond the bare necessities that government programs provide. No supervision by the court is necessary.

### **Use Your Support Network!**

A team approach is best, with family members, caregivers, teachers, social workers, lawyers, and financial services professionals all working together to create the best possible future for the special-needs child. Thinking about a guardianship or a special-needs trust may be a difficult step. Basically, you are declaring a child incompetent. Many parents and caregivers don't want to classify or "brand" their child. But the time to start planning is as soon as you identify the need.

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SC3104  
CRN-201505-172357