

The Importance of Establishing Guardianship for a Disabled Child Reaching Age 18 in Massachusetts

Services

Conservatorship & Guardianship

- Appointment of Guardians and Conservators For Adults

January 29, 2025

When a child with a disability reaches the age of 18, they are legally considered an adult under Massachusetts law. However, if they lack the capacity to make important decisions about their health, finances, or daily living, parents or caregivers may need to establish legal guardianship to continue making those decisions on their behalf. Without guardianship, families may face significant challenges in ensuring their child's well-being and accessing necessary care and services.

Why Is Guardianship Necessary?

Upon turning 18, individuals are presumed to have the legal capacity to make their own decisions. For a disabled child who lacks this capacity, the absence of a legal guardian can lead to serious consequences, such as:

- **Inability to Access Medical Care:** Without guardianship, parents may not have the authority to consent to medical treatments, surgeries, or therapies on behalf of their child.
- **Challenges Managing Finances:** Banks and financial institutions may deny access to accounts, benefits, or other financial resources.
- **Educational Barriers:** Schools or institutions may refuse to share information or allow parents to participate in Individualized Education Program (IEP) meetings without legal authority.
- **Legal and Safety Risks:** A disabled adult may unknowingly make harmful decisions or be vulnerable to exploitation without the oversight of a guardian.

The Guardianship Process in Massachusetts

The process of pursuing guardianship is designed to protect the rights of the individual while ensuring they receive necessary care and support.

Filing a Petition

The process begins by filing a Petition for Guardianship in the Probate and Family Court. This petition outlines the reasons guardianship is necessary and identifies the areas in which the individual requires assistance.

Medical Evaluation

A physician or psychologist must complete a Clinical Team Report (CTR) or provide medical documentation confirming the individual's incapacity to make decisions independently.

Tailoring the Guardianship

Guardianship can be A "plenary guardianship" where all categories of personal and medical

decisions are made by the guardian or can be a “limited guardianship” that is customized to address only the areas in which the individual requires assistance, such as:

- Healthcare decisions.
- Personal Decisions.
- Living arrangements.

A guardianship limited to only those areas where an individual needs assistance ensures that the individual retains as much independence as possible while receiving necessary support. Notably, guardianship does not confer authority to manage financial matters, which require a separate “conservatorship” in Massachusetts.

Additional Authority Required for “Extraordinary Medical Treatment”

If the individual requires treatment with antipsychotic medication or other extraordinary medical treatments, such as invasive surgeries or end-of-life care, the guardian must obtain special legal authority from the Court to approve that treatment. This involves a separate court “substituted judgment” process to determine the appropriateness of such treatments.

Consequences of Not Establishing Guardianship for a Disabled Child at Age 18

Failing to establish guardianship can lead to significant challenges for families and disabled individuals, including:

- Delays or denials of critical medical care or therapies.
- Loss of access to financial benefits or resources.
- Increased vulnerability to exploitation or harm.
- Strained relationships with educational or medical providers due to lack of legal authority.

These risks underscore the importance of acting promptly to secure legal guardianship for a disabled adult child.

The Benefits of Legal Representation

The guardianship process is complex and involves significant legal and procedural requirements. Experienced legal representation ensures that families:

- Navigate the process efficiently and avoid unnecessary delays.
- Tailor guardianship to meet the unique needs of the individual.
- Secure additional authority for specialized medical treatments under Rogers, if needed.
- Protect the rights and interests of the disabled adult while ensuring their well-being.

At Cohen Cleary, P.C., our attorneys provide compassionate and knowledgeable guidance, helping families make informed decisions during this critical transition.

Contact Cohen Cleary, P.C. for a Complimentary Case Consultation

If your disabled child is approaching adulthood and requires [guardianship](#), Cohen Cleary, P.C. can help. Our experienced attorneys will guide you through the process, ensuring your loved one receives the care and support they need.

Call us today at [508-880-6677](tel:508-880-6677) to schedule a complimentary case consultation. Let us help you navigate these important legal matters with confidence and care.