


Do I Need to Apply for Guardianship?

Guardianship does not have to be an all-or-nothing decision. If your family member needs help in some areas of life there are a range of options that let you help.

Below is a quick chart of the range of options:

	OPTIONS	DEFINITION	RESOURCE LINK
<p style="text-align: center;">LEAST RESTRICTIVE</p>  <p style="text-align: center;">MOST RESTRICTIVE</p>	Self-Advocacy	The ability to articulate one's needs, and make informed decisions about the supports necessary to meet those needs. Not all people with disabilities need guardianship or legal alternatives to guardianship.	http://www.selfadvocacyonline.org/ http://peoplefirstwv.org/
	Supported Decision-making	An alternative to guardianship that allows an individual with a disability to work with a team and make his/her own choices about his/her own life. Under this model, the individual designates people to be part of a support network to help with decision-making through a written, voluntary agreement.	http://supporteddecisions.org/about-sdm/
	Other alternatives not involving the court system	A range of options that can help maximize independence while providing decision support, including the appointment of a: Durable Power of Attorney, Financial Power of Attorney, Medical Power of Attorney, and/or Representative Payee.	See Page 2 for Resource Links
	Limited Conservatorship	Specifies specific areas of financial management where the court-appointed conservator makes decisions on behalf of the person with a disability. The individual can make all other financial decisions.	See Page 2 for Resource Links
	Full Conservatorship	The court-appointed conservator has full control over the finances of the person with a disability. The individual's decision-making rights regarding their money are significantly restricted.	See Page 2 for Resource Links
	Limited Guardianship	Specifies specific areas of life where the court-appointed guardian makes decisions on behalf of the person with a disability. The individual maintains decision-making rights in all other areas.	See Page 2 for Resource Links
	Full Guardianship	The court-appointed guardian has authority to make all decisions in all areas of life on behalf of the person with a disability. The individual's decision-making rights are significantly restricted.	See Page 2 for Resource Links

RELATED INFORMATION

As of January 1, 2018

Durable Power of Attorney – A Power of Attorney (POA) can be set up for either financial or medical purposes. WV treats all powers of attorney as durable unless the document expressly prohibits it.

WV Code Chapter 39B - <http://www.wvlegislature.gov/WVCODE/Code.cfm?chap=39b&art=1>

Medical Power of Attorney – sometimes referred to as a power of attorney for health care or health care proxy. A medical power of attorney (MPOA) gives another person (chosen by the individual) authority to make decisions about the medical care the individual receives if that person is unable to make his/her own decisions.

WV Code Chapter 16 – Medical Power of Attorney: <http://www.wvlegislature.gov/WVCODE/Code.cfm?chap=16&art=30#30>

(The term Health Care Surrogate is sometimes confused with an MPOA. A Health Care Surrogate is chosen by medical personnel to make medical decisions on behalf of an individual who is incapacitated and has not designated someone to make decisions for him/herself through an MPOA.)

Guardianship -

WV Code Chapter 44A – Guardianship: <http://www.wvlegislature.gov/WVCODE/Code.cfm?chap=44a&art=1>

Conservatorship – A conservator is someone appointed by the court to manage the financial matters of a person deemed incompetent.

WV Code Chapter 44A-1-8(k): A conservator shall not be appointed when the alleged protected person's total assets are worth less than \$2,000 or the alleged protected person's income is: (1) From the Social Security Administration and a representative payee has been appointed to act in the best interest of the individual; (2) From Medicaid and the only income distributed to the individual is the personal account allotment; or (3) Less than \$50 per month or \$600 per year. In these instances, the guardian, representative payee or health care facility, if there is no other person or entity, shall manage the personal care account or assets.

Further info on Conservatorship: <http://www.wvlegislature.gov/WVCODE/Code.cfm?chap=44a&art=1>

In practice, when WV Courts determine a person with I/DD to be in need of guardianship, they typically appoint one person as guardian and conservator. An exception would be when DHHR Adult Protective Services is appointed guardian – then the Sheriff of the county in which the individual resides is appointed Conservator.

Representative Payee – provides financial management for the Social Security and SSI payments made to a beneficiary who is incapable of managing his/her own finances.

Social Security Administration - <https://www.ssa.gov/payee/>