

# PREPARING FOR GUARDIANSHIP

Not every child with a disability requires guardianship, but for any child who has a disability that results in the inability to make decisions concerning his or her own personal or financial care, parents should consider planning for full or partial guardianship for their child's adult life. Whether because the minor child reaches the age of majority – usually 18, though it varies by state – or the parents are unable to provide further care due to death or incapacity, guardianship issues will arise.



## Guardianship and conservatorship

Once a child reaches the age of majority, parental rights are terminated. This means that unless the parents are appointed as the child's legal guardians they will no longer be able to manage their adult child's medical, educational or financial matters. Anyone seeking guardianship must petition a court to be appointed. The court will consider whether the adult with special needs can provide for his or her own personal or financial affairs. If the court finds the adult to be not competent to handle these needs and affairs, a guardian will be appointed. A guardian *ad litem* is someone, often a lawyer, appointed by a court during a legal matter to protect the rights of a minor child or person with a disability. A guardian *ad litem* will also be appointed by the court to represent the child or person with the disability's legal rights, during the process.

Once appointed, a guardian can assume powers and

duties related to both personal and financial matters, but sometimes a conservator is also appointed. A conservator is granted the power to make financial decisions, while the guardian retains decision-making powers related to the person.

Guardians and conservators (if necessary) of a minor can also be selected by a parent through a will or other formal writing. It is important for a parent to consider alternative guardians if their first choice is unavailable. A court will select a guardian or conservator if preparations have not been made by the parents.

## The impact of an interstate move

An interstate move requires a guardian or conservator to obtain a court order from the current state of residence allowing the transfer of guardianship to another jurisdiction. Again, laws and procedures vary greatly by state and it is important to consult with local counsel.

Planning ahead for guardianship can help families avoid major problems when a child with special needs reaches the age of majority or in the event of an unexpected death of a parent. Your installation's Exceptional Family Member Program office and Office of the Judge Advocate General can provide additional information.



For additional assistance, including specialty consultations, planning tools, non-medical counseling and more, call or visit <https://www.militaryonesource.mil> | 800-342-9647



**EFMP** Exceptional Family Member Program