



Guardianship is Not the Only Option:

Supporting Decisions in Adulthood



Center for Public
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WELCOME

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Today's Topics



- What Happens at Age 18?
- What is Adult Guardianship?
- Why Think About Other Options First?
- What is Supported Decision-Making?
- What are Other Options in:
 - Education?
 - Health Care?
 - Finances?

What happens at 18?

- In Massachusetts, people become legal adults when they turn 18
- Under the law, they get to make their own decisions, regardless of whether or not they have a disability
- Schools call this “Transfer of Rights”



Main Legal Tools for Decision-Making in Massachusetts

- Supported Decision-Making
- Shared Educational Decision-Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision-Making Authority
- Representative Payee
- Court-appointed Guardian or Conservator
 - Temporary Guardianship
 - Limited Guardianship
 - Conservatorship
 - Guardianship
 - Rogers Guardianship



What is Guardianship for Adults?

- **Different** than guardianship of a **child**
- A **formal legal process** where a **court** decides an adult is “**incapacitated**” and that someone else (a “**guardian**”) must be **appointed** to make all or some decisions for them.
- **Guardianship = Court**
- **Different kinds** in Massachusetts
 - Temporary
 - Limited Guardianship
 - Conservatorship
 - Guardianship
 - Rogers



What does “Incapacitated” Mean in Massachusetts?

The law defines an “incapacitated person” as an individual who:

- For reasons other than advanced age or minority.
- Has a clinically diagnosed condition
- That results in the inability to receive and evaluate information or make or communicate decisions
- To such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self care
- Even with appropriate technological assistance
 - Mass. Gen. Laws c. 190B § 5-101(9).

HOWEVER – Capacity is:

NOT “All or nothing” or based solely on diagnosis

What is Guardianship NOT?

- Guardianship is NOT the **only option** to consider
- Guardianship is NOT just a **piece of paper**
- Guardianship is NOT **all powerful**
- Guardianship is NOT a **guarantee of safety**
- Guardianship is NOT **without downsides**



Why Explore Other Options First?

- **It's the law** – Least restrictive alternative doctrine
- Guardianship can be **time-consuming, complex, costly**
- Guardianship can be **difficult to end or change**
- **Decision-making is a learned skill**
- **Self-determination** is linked to better life outcomes



What Are Other Options?

- Supported Decision-Making
- Shared Educational Decision-Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision-Making Authority
- Representative Payee
- And MORE!



What is Supported Decision-Making?



- People make their own decisions, with the help of others they pick and trust.
- Supporters provide guidance and assistance.
- The person keeps their legal rights.
- The person builds decision-making skills over time and learns from mistakes.
- It can be formal or informal.
- It is flexible and can change over time.
- It can be used in any state, including Massachusetts.

What is Supported Decision-Making NOT?

- It is NOT someone else making decisions for – and instead – of the person.
- It is NOT the person making decisions **alone**, without any help.
- It is NOT the person making decisions **only** if the supporters agree.
- It is NOT “one size fits all.”
- It is NOT **only** for people with certain kinds of disabilities



Common Questions about Supported Decision-Making

- Is it new?
- Who can use it?
- How is different from substitute or surrogate decision-making?
- Is it legal?
- Is it safe?



Five Steps in Supported Decision-Making

Start the
Conversation

Identify supporters who
can and want to help.

Plan and
communicate

Consider writing
down and
signing the plan

Share the plan with
people who need to
know

Practice Tips for Supported Decision-Making

- Supporters work with the person to find out:
 - What are the person's goals?
 - What help does the person want and need?
 - Who does the person want to help?
 - How does the person want the help to be given?
 - What will it take to make their own decisions with support?
- Supports can also include:
 - Behavioral and mental health support
 - Communication aids
 - Personal supports
 - Educational resources
 - Written agreements or plans
 - And more!



Huck's Perspectives on Supported Decision-Making



Common Legal Tools to Use Along with Supported Decision-Making

- Release of Information Forms
- Health Care Proxy
- Durable Powers of Attorney





What are Other Options in Education?

- Supported Decision-Making
- Shared Educational Decision-Making
- Delegated Educational Decision-Making

Massachusetts 2024 IEP Form

DECISION-MAKING OPTIONS FOR STUDENT*

Complete for student who has turned 18. Please indicate the decision-making option that the student or court-appointed legal guardian has selected:

- The student will make their own educational decisions.
- The student will share decision-making with their parent, caregiver, or other adult.

Individual with whom the student will share decision-making: _____

- The student has delegated decision-making to their parent, caregiver, or other adult.

Individual to whom the student has delegated decision-making: _____

- A court has appointed a legal guardian for the student who will make educational decisions.

Name of court-appointed legal guardian: _____

What Other Options in Health Care?

- Supported Decision-Making
- Health Care Proxy
- MOLST/POLST



What Are Other Options in Finances?

- Supported Decision-Making
- Durable Power of Attorney
- ABLE Accounts
- Joint Bank Accounts
- Representative Payees
- Trusts



- Making decisions changes your life.
 - Support your loved one in building capacity to make decisions over time.
- “You can’t make decisions based on fear and the possibility of what might happen” – Michelle Obama
 - Explore alternatives first before considering guardianship.



Resources

- <https://supporteddecisions.org>
- <https://www.wearemass.org/supported-decision-making>
- <https://www.conexioneslatinx-ma.org>
- <https://www.dlc-ma.org>



Questions Now or Later

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