



DISABILITY KNOWLEDGE SERIES: Fostering Independence

Alternatives to Guardianship

High functioning individuals and their parents should explore alternatives to guardianship. Having a guardian means that someone else is responsible for making all important decisions. This includes issues such as where the individual lives, what medicine they should take, and the ability to void a contract. A limited guardianship is an option for certain individuals. Alternatives to guardianship include tools called “power of attorney” and “health care directive.” These tools are less complex to use than guardianships or conservatorships and do not require a court hearing. They also enable an individual to retain their independence.

Sally has a job, rides the bus and is able to make many decisions for herself, but she has trouble paying her bills on time and balancing her bank account. She also has a chronic health condition and has difficulty understanding what the doctors tell her. She doesn't need a guardian to make all decisions for her – she can instead use a durable power of attorney and a health care directive to give someone authority to help her.

What is a durable power of attorney?

A durable power of attorney gives an “agent” specific authority to manage finances or property on behalf of a person who cannot act for himself (the “principal”). Examples of the types of transactions typically included are real estate, banking, insurance, government benefits, gifts, securities and family maintenance. A person must be legally competent to delegate that authority to an agent, which means he must be able to understand the nature, scope and extent of the power he is delegating. A durable power of attorney is effective immediately upon execution.

A power of attorney requires that an agent:

- Keep complete records of all transactions
- Provide an accounting of transactions under certain circumstances
- Act in the same manner as an ordinarily prudent person would act in managing her own affairs while keeping in mind the best interests of the person who has delegated the power.

What is a health care directive?

A person with the capacity to do so can designate an agent to make health care decisions on her behalf. This includes decisions regarding care or treatment affecting a person’s physical or mental condition and where the principal will live if it is related to the principal’s health care needs. A principal can also include written instructions for how he wants health care decisions made on his behalf.

How does a health care directive work?

An agent has the right to receive and review medical records of the principal and to consult with medical providers to determine the best course of treatment for the principal. The principal may participate in making decisions to the extent possible, even if they have a designated agent. An agent must act in good faith and according to the principal’s wishes if known.

Are both types of agents necessary?

It may be important for a person to have both a durable power of attorney and a health care directive. A principal can designate the same person for both or choose two different people. It is also a good idea to have alternate agents in case the primary agent is unable to act.

Minnesota has specific requirements for executing a power of attorney or a health care directive. We can help you determine the correct tool for your situation and ensure that it is implemented correctly.

Please contact Amy Dawson at the Autism Advocacy & Law Center, LLC for more information and a free initial consultation. The Autism Advocacy & Law Center, LLC serves all individuals who have a disability, their families, and the organizations that serve them.