Information Regarding Guardianship

A guardian is someone appointed by a court who is responsible for the personal affairs of an incapacitated person, called a 'ward," and making decisions for that ward. Guardianship may be awarded to make only limited decisions, such as educational decisions only, or medical decisions only, or it may be a full guardianship covering all personal affairs. A judge determines whether you have a physical or mental condition that prevents you from making decisions or taking care of yourself. Guardianship limits your freedom of choice, self-determination, decision-making, and independence. Guardianship can be an expensive process and very hard to reverse. A guardian may be appointed at any time once you turn 18. The guardian may be your parent(s) or someone else. Guardians have reporting and training responsibilities especially when there is an estate. Over time, the individual who serves as your guardian may be changed with the approval of the court. If your ability to care for yourself and make decisions later improve, the guardianship might even be ended and removed. Even while you have a guardian, you can keep the right to make some of your own decisions.

A guardian has the following rights, duties, and authorities.

- the right to make educational decisions
- the right to have physical possession of you and to determine where you live;
- the duty to provide care, supervision, and protection, and to provide you with clothing, food, medical care, and shelter;
- the authority to consent to medical, psychiatric, and surgical treatment for you (this does not include
- the authority to commit you to an inpatient psychiatric facility);
- the authority to oversee a financial trust for you; and
- the authority to sign documents necessary or appropriate to facilitate your employment.

When managing your estate, a guardian also has the following authorities:

- to possess and manage your property;
- to collect all debts, rentals, or claims that are due to you;
- to enforce all obligations in favor of you;
- to bring and defend suits by or against you; and
- to access your digital access.

A judge may also agree to limited guardianship where you make some decisions. Limited guardianship may include financial or medical decision-making, but still allow you to vote, get married and decide where you live. Your guardian would make healthcare and financial decisions for you.

Resources regarding guardianship are on the next page.

Resources Regarding Guardianship

Autism Speaks
https://www.autismspeaks.org/family-services/tool-kits/transition-tool-kit/legal-matters

Catholic Charities
https://ccaosa.org/legal-services/

Child Welfare Information Gateway
https://www.childwelfare.gov/topics/permanency/guardianship/

Coalition of Texans with Disabilities
https://www.txdisabilities.org/guardianship-reform

Navigate Life Texas
https://www.navigatelifetexas.org/en/transition-to-adulthood/legal-guardianship-for-young-adults-with-disabilities

Office of the Texas Governor
https://gov.texas.gov/organization/disabilities/guardianship
Governor's Committee on People with Disabilities

National Guardianship Association
https://www.guardianship.org/what-is-guardianship/

Texas Guardianship Association:
http://texasguardianship.org/guardianship-information/faqs-2/
http://texasguardianship.org/guardianship-information/guardianship-basics/guardianship-process-2/

Texas Health and Human Services
https://hhs.texas.gov/sites/default/files/documents/laws-regulations/legal-information/guardianship/pub395-guardianship.pdf
https://hhs.texas.gov/laws-regulations/legal-information/guardianship
https://hhs.texas.gov/laws-regulations/handbooks/guardianship-provider-handbook

Texas Parent to Parent
https://www.txp2p.org/services/services-for-parents-pathway-to-adulthood/legal-issues-guardianship-financial-planning

Texas Project First
http://texasprojectfirst.org/node/207

The Arc of Texas
https://www.thearc.org/file/Guardianship-White-Paper.pdf
https://www.thearcoftexas.org/information-resources/

The Legal Framework for the Child-Centered Special Education Process - ESC 18
https://framework.esc18.net/display/Webforms/ESC18-FW-Summary.aspx?FID=146&SearchTerm=adult+student

Information Regarding Alternatives to Guardianship

Because guardianship is restrictive, entities have acted to provide alternatives to guardianship for some adults with disabilities. Some of these alternatives are explained below.

Durable Power of Attorney: A durable power of attorney gives someone the ability to act on your behalf. A durable power of attorney limits what your representative may do. For example, durable power of attorney may be in place to allow your parent(s) to make only educational decisions for you. In this case, your parent(s) would not be able to make medical or **financial** decisions for your because the durable power of attorney, in this case, is limited to education. This sort of arrangement gives you, as an adult student, autonomy over the other elements of your life.

Special Needs Trust: Another option is a special needs trust. This type of trust allows you, as someone with a disability, to have funds available for certain expenses while protecting your eligibility for public benefits and access to care and services. Always contact an expert in special needs trust and estate planning before you open a trust.

Representative Payee: A **representative payee**, or **substitute payee**, is a person who acts as the receiver of United States Social Security Disability or Supplemental Security Income for a person who is not fully capable of managing their own benefits, i.e.,, cannot be their own payee. The representative payee is expected to assist the person with money management, along with providing protection from financial abuse and victimization.

Achieving a Better Life Experience (ABLE) Act: This Act amends Section 529 of the Internal Revenue Service Code of 1986 to create tax-advantaged savings accounts for individuals with disabilities. These tax-advantaged savings accounts can be used to cover qualified disability expenses such as, but not limited to, education, housing, and transportation.

There are also formal and informal services and supports that enable individuals to help adult students with disabilities meet their needs for food, clothing, or shelter; to care for their physical or mental health; to manage their financial affairs; and to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage. One or more of these services and supports may be helpful for you.

Resources regarding alternatives to guardianship are on the next page.

Resources Regarding Alternatives to Guardianship

ABLE National Resource Network
http://ablenrc.org/

Catholic Charities
https://ccaosa.org/legal-services/

Disability Rights of Texas
https://www.disabilityrightstx.org/resources/supported-decision-making
https://media.disabilityrightstx.org/wp-content/uploads/2018/08/16200451/The-Right-to-Make-Choices-SDM-toolkit-jan-2018.pdf
https://media.disabilityrightstx.org/wp-content/uploads/2018/08/16200431/Making-My-Own-Choices-SDM-plain-lang-guide-mar-2018.pdf

Master Pooled Trust
https://www.thearcoftexas.org/trust/

National Resource Center for Supported Decision-Making
http://supporteddecisionmaking.org/legal-resource/supported-decision-making-model-agreements

Texas Able
https://www.texasable.org/

Texas Council of Developmental Disabilities
http://www.tcdd.texas.gov/resources/guardianship-alternatives/
http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/

Texas Guardianship Association
http://texasguardianship.org/guardianship-information/guardianship-alternatives/

Texas Law Help
https://texaslawhelp.org/resources/supported-decision-making-forms

Texas Project First
http://texasprojectfirst.org/node/207

The Arc of Texas
https://www.thearc.org/file/Guardianship-White-Paper.pdf
https://www.thearcoftexas.org/alternatives-to-guardianship/

There is another alternative to guardianship that adult students with disabilities and their parents may want to be aware of: supported decision-making agreements. Information regarding this alternative is on the next page.

Information Regarding Supported Decision-Making

Texas Education Code §29.017 requires that school districts provide students with disabilities and their parents with information on, among other things, alternatives to guardianship, including supported decision-making agreements under Chapter 1357 of the Texas Estates Code. The school district must provide this information not later than one year before a student turns 18.

To understand what a supported decision-making agreement is and who may enter into such an agreement, the Texas Estates Code provides the following definitions:

- "Adult" is an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.
- "Disability" concerning an individual is a physical or mental impairment that substantially limits one or more major life activities.
- "Supported decision-making" is a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions without impeding his/her self-determination, including.
    - decisions related to where the adult wants to live,
    - services, support, and medical care the adult wants to receive,
    - whom the adult wants to live with, and
    - where the adult wants to work.
- "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter.
- "Supporter" is an adult who has entered into a supported-decision-making agreement with an adult with a disability.

State law also provides additional information about supported decision-making agreements. The following information is also from the Texas Estates Code.

Supported decision-making agreements support and accommodate an individual with a disability to make life decisions. These decisions include where the individual wants to live, the services, supports, and medical care the individuals want to receive, whom the individual wants to live with, and where the individual wants to work, without interfering with the self-determination of the individual with a disability. A supported decision-making agreement allows an adult with a disability to voluntarily, without unnecessary influence or force, enter into a supported decision-making agreement with a supporter under which the adult with a disability approves the supporter to:

- assist in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;
- assist in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;
- assist in understanding the information described in the above bullet; and
- assist in communicating the adult's decisions to appropriate persons.

Once an adult with a disability and a supporter enter into a supported decision-making agreement, it will remain in effect until either party ends it, or when the terms of the agreement specify that it will end. Also, the agreement will no longer be in effect if the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter, or the supporter is found criminally liable for abusing, neglecting, or exploiting the adult with a disability.

Regarding access to that adult's personal information, the supporter is limited to assisting the adult with a disability in accessing, collecting, and obtaining relevant information. The supporter must ensure that private information is kept confidential and that it is not inappropriately accessed, used or disclosed.

An adult with a disability cannot be forced into entering into a supported decision-making agreement. Both the adult with a disability and the supporter must sign the agreement voluntarily. They must sign it in the presence of two or more subscribing witnesses who are at least 14 years old, or they may sign it before a notary public.

For a supported decision-making agreement to be valid, it must be in a form substantially similar to the following:

SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that:

Name:
Address:
Phone Number:
E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter
Y/N taking care of my physical health
Y/N managing my financial affairs

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; or
3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20__

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

_____ _____

(Signature of Supporter) (Printed Name of Supporter)

Signature

_____ _____

(My Signature) (My Printed Name)

_____ _____

(Witness 1 Signature) (Printed Name of Witness 1)

_____ _____

(Witness 2 Signature) (Printed Name of Witness 2)

This document was acknowledged before me on _____(date)

by _____ and _____

(Name of Adult with Disability) (Name of Supporter)

_____ _____

(Signature of Notarial Officer) (Printed Name of Notarial Officer

(Seal, if any of notary) My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

Information Regarding Independent Living

Adult students with disabilities want to live independent lives. You want to set their own life goals and work toward reaching those goals. There are numerous resources available to help adult students live lives of independence. The foundation of many of these resources is the Developmental Disabilities Assistance and Bill of Rights Act (DD Act).

The DD Act speaks to "self-determination activities." It explains that these are "activities that result in individuals with developmental disabilities, with appropriate assistance . . . to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities."

Becoming independent, or self-determined, as an adult begins early. To facilitate independent living, transition requirements for students with disabilities must begin no later than when he or she turns age 14. Additional transition requirements take effect by the time the student turns age 16. These transition requirements are meant to assist students in preparing for success after high school.

Resources regarding independent living follow on the next page.

Resources Regarding Independent Living

D & S Community Services
https://www.dscommunity.com/locations/texas/

Disability Rights Texas
https://www.disabilityrightstx.org/handout/texas-home-and-community-based-supports-and-services/
https://media.disabilityrightstx.org/wp-content/uploads/2018/08/16200451/The-Right-to-Make-Choices-SDM-toolkit-jan-2018.pdf
https://media.disabilityrightstx.org/wp-content/uploads/2018/08/16200431/Making-My-Own-Choices-SDM-plain-lang-guide-mar-2018.pdf
https://www.disabilityrightstx.org/resources/supported-decision-making

I'm Determined
https://www.imdetermined.org/quick-links/transition-guide/transition-guide-independent-living/

Independent Living Research Utilization

National Center on Secondary Education and Transition
http://ncset.org/topics/sdmhs/default.asp?topic=30

National Parent Center on Transition and Employment
http://www.pacer.org/transition/learning-center/independent-community-living/self-determination.asp

Navigate Life Texas
https://www.navigatelifetexas.org/en/transition-to-adulthood/helping-your-child-build-their-independence
https://www.navigatelifetexas.org/en/transition-to-adulthood
https://www.navigatelifetexas.org/en/transition-to-adulthood/legal-options-for-age-18-and-beyond
https://www.navigatelifetexas.org/en/insurance-financial-help/texas-medicaid-waiver-programs-for-children-with-disabilities

Self-Determination.org
http://www.selfdetermination.dept.ku.edu/wp-content/uploads/2016/03/SDI-Student-Report-Guide_small.Final_.pdf

Texas Council for Developmental Disabilities
http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/

Texas Health and Human Services
https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory
https://hhs.texas.gov/sites/default/files/documents/doing-business-with hhs/providers/resources/ltss-waivers-2-8.pdf
https://hhs.texas.gov/services/health/medicaid-chip

The Arc of Texas

https://www.thearcoftexas.org/information-resources/
https://www.thearcoftexas.org/wp-content/uploads/2016/06/Supported_Decision_Making_For_Families_UPDATED_Jan_2016.pdf

The Developmental Disabilities Assistance and Bill of Rights Act of 2000

https://www.acl.gov/about-acl/authorizing-statutes/developmental-disabilities-assistance-and-bill-rights-act-2000

Transition in Texas

https://www.transitionintexas.org/Page/97