



Guardianship and Conservatorship

What options are there when I think my loved one is too sick to make safe decisions?

When severe mental illness (SMI) significantly impairs a person's ability to live with safety and stability, families sometimes face a difficult decision about whether to seek a legal way to manage decisions on behalf of their disabled loved one. The terms most commonly used for this type of arrangement are guardianship and conservatorship.

In general, a guardian or conservator has decision-making authority on behalf of someone who is unable to make decisions for themselves due to disability, dementia, or another condition. The person assuming responsibility might make decisions about a person's money and property—termed “of the estate.” If they make decisions about where a person might live, contracts, and agreements, the term is “of the person.”

What are some reasons to consider guardianship or conservatorship?

- The ill individual is too compromised in executive functioning to pursue an application for benefits.
- The person with SMI refuses or lacks capacity to sign a lease or other documents necessary for their basic care.
- Due to the vulnerability that can

accompany psychiatric illness, an individual may be subject to exploitation by others and funds or benefits intended for their support are routinely being misdirected.

- Attempts to self-manage medical/psychiatric care have been unsuccessful.

Because of the significant infringement on an individual's autonomy, the burden of proving its necessity is high and a medical evaluation is required. Each state has its own laws about how someone's rights might transfer to a guardian or conservator. To find out what laws apply in your situation, contact an attorney or your county or state office on aging.

Your state bar association can help you find an attorney. The American Bar Association sponsors a website page called [FindLegalHelp.org](https://www.americanbar.org/groups/individual_needs_and_services/resources/find-legal-help/) to help narrow the search, or from your browser you can type your state's name and “bar association.” The end of this resource includes less restrictive alternatives available in some areas. In some situations, those may operate in tandem with a guardianship or conservatorship.

What power does a guardian or conservator have over treatment?

The family member acting as guardian may

be able to sign consent for treatment, but the person needs to qualify for the services and agree to participate. Guardians and conservators are rarely allowed to require medication or place someone in a psychiatric facility.

Whether an appointed guardian/conservator is a family member or someone else, is usually a personal decision and may depend on what programs are available and what laws apply in your loved one's location. Creating a situation where a person makes decisions for another person can strain relationships. Families will want to consider the nature and stability of their relationships and whether this structure will ultimately help or hurt as they try to maintain boundaries for the long-term.

Can guardianship help me get around HIPAA barriers?

Providers are responsible to share information with any individual who has a specific legal contract making them a “personal representative,” such as someone with guardianship, conservatorship, or power of attorney. According to the U.S. Department of Health and Human Services ([hhs.gov](https://www.hhs.gov)), the HIPAA Privacy Rule states that a “personal representative must be treated as the individual.”

To clarify, this federal guidance document explains that a personal representative “stands in the shoes of the individual and has the ability to act for the individual and exercise the individual's rights.”

Those rights can be for medical decision-making as well as information sharing. When seeking guardianship, power of

attorney, or a psychiatric advance directive, any person signing up to become a personal representative (sometimes called a “designated agent”) for the person with SMI will want to clarify exactly what rights are being granted through the contract. Be prepared to share that paperwork with anyone providing care.

TAC provides another resource with more information about the [Health Insurance Portability and Accountability Act](#) (HIPAA).

Alternatives to guardianship

- [Supported decision making](#) is an option for a person with a disability to choose a trusted supporter to help make choices. The individual can enlist friends, family members, or professionals who agree to help the person with a disability understand, consider, and communicate decisions. The agreement is written down and signed. How the agreement is filed and followed may depend on whether the state has written laws for this option. Type your state's name and “supported decision making” into your browser to search for information about state policies or legislation.
- [Durable power of attorney](#) is a legal document that authorizes someone to manage medical and financial decisions for another person who is incapacitated due to injury, illness, or disability. In some states, a [psychiatric advance directive](#) gives temporary power of attorney to a designated agent. States have different laws about “age of majority,” which is when a person is considered an adult for medical decision-making. Many people will ask their loved one to sign a power of attorney at the age of majority to plan

for the possibility of a medical/mental health crisis. Learn more from the [American Bar Association](#).

- [Assisted outpatient treatment](#) (AOT) is a civil court commitment process that may eliminate the need for guardianship. AOT takes place in the community instead of within a hospital. Other possible names are mandatory outpatient treatment and court-ordered outpatient treatment. Significant benefits to pursuing AOT rather than guardianship or conservatorship include the smaller degree of infringement on a person's rights and autonomy, and that AOT can be initiated without an attorney.