

DOCUMENTS USEFUL IN DISABLED CHILDREN PLANNING

1. DESCRIPTION OF CHILD'S CARE PLAN - prepared by parents

A description of the child's care, written by the parents, for the child's health and financial decisionmakers: the child's trustee, guardian and conservator.

2. PLAN FOR POSSIBLE INCAPACITY OF THE PARENT:

2.1. Power of attorney (one for each spouse)

Permits : (1) spending money for other spouse and child,
(2) creation of a trust if useful for disabled child and
(3) transfers to disabled child or to child's trust or to spouse

2.2. Advance Directive (one for each spouse)

(if parent becomes incapacitated, the health care representative directs parent's care while parent is incapacitated. The disabled child is RARELY the parent's medical representative)

- If joint living situation with disabled child desired, set it out in the medical directive. Some parents share an assisted living apartment with the adult disabled child.

You cannot sign an advance directive for a disabled child - a guardian must be appointed if the parents (natural guardians until age 18 for child, and have right to determine health care for child until age 18) are not available to serve. You rely on the nomination of guardian for minor to give priority to a selected person, and to describe the care RECOMMENDATIONS of the parent. If you have end of life instructions about your disabled child, place them in the RECOMMENDATIONS document.

3. NOMINATION OF GUARDIAN AND CONSERVATOR FOR DISABLED CHILD (one by each parent)

When a minor has no parent to be guardian (because of the death or incapacity of parents), the court appoints a guardian to make medical decisions and a conservator to spend money. If the minor has a trust to handle money, a conservator may still be necessary to handle funds and income sources outside the trust, and to push the trustee to spend money as the parents wanted it spent.

The parents can suggest a guardian "in a will or other written instrument prepared by a parent of a minor" and that nominee must be given notice of any petition by someone else for appointment of guardian, so the nominee can seek appointment by the court. ORS

125.060(2)(g) The court appoints a guardian after considering “any preference expressed by a parent of the respondent” ORS 125.200 - so the nomination gives PRIORITY to the selected person but does not absolutely ensure appointment of the selected person.

The nomination for the child has attached RECOMMENDATIONS RELATING TO APPROPRIATE STANDARD OF SUPPORT, EDUCATION CARE AND BENEFIT (ORS 125.425) - a description of the program to be followed, directions for who decides, and decision parameters.

The guardian makes decisions on health care, “to consent, refuse consent or withhold or withdraw consent to health care as defined in ORS 127.505 [ORS 125.315(1)(c)]. Includes all health care decisions, like end of life decisions and admission or discharge from health care facility including nursing and foster homes and hospice. ORS 127.505 (7),(8), (9)

Oregon law allows conservator to support the disabled child, but does not define the quality of life of the disabled child. The parent can define the standard for the disabled child and the conservator must consider the parents’ wishes. No spending can occur until “after the conservator considers **recommendations relating to the appropriate standard of support, education, care and benefit for the protected person made by any parent or guardian of the protected person.**” ORS 125.425

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