

The Impact of Age of Majority on Special Needs Planning



By Kirsten L. Izatt

Attaining the age of majority is a milestone for any young adult, but for a young adult with special needs, parents must address a host of planning issues on behalf of their child, including: (1) whether to petition for Guardianship (also known as Conservatorship in some states) and (2) how to obtain access to essential government benefits—often for the first time. As a planning professional, it is important you understand the impact that age of majority has on the planning issues your clients face on behalf of a loved one with special needs. Although the age of majority varies from state to state—from the age of 18 to 21, and in some cases when the young adult graduates from high school—the most common age is 18.

Guardianship: If a disabled adult child is unable to manage their personal affairs or make health care decisions upon attaining the age of majority as designated by state law, the child's parent (or another interested person) must petition the local court to become their child's court-appointed Guardian of the Person. The law presumes that an individual who has reached the age of majority is capable of managing their personal affairs; if not, a Guardianship proceeding is necessary to appoint a responsible individual to care for the person. In addition, if the young adult has their own bank account, savings, or other assets, the parents should seek appointment as the Guardian of the Estate. If this is the case, it may also be necessary to develop a plan to deal with excess financial resources that will interfere with eligibility for public benefits. To determine whether a Guardianship is necessary, parents should consider whether the child can make and communicate reasoned decisions, understand that a decision needs to be made, consider the alternatives and consequences, implement the decision or delegate it, and evaluate alternative choices. Once appointed, a Guardian is required to report back to the court on the well-being of the individual in their care as well as provide an accounting of financial matters.

Legal Capacity: If the young adult with a disability has the required level of capacity to sign legal documents naming agents to manage these matters, he or she can select appropriate decision makers to act on their behalf and sign a durable power of attorney for financial matters and a healthcare power of attorney (also called a health care proxy or advance medical directive). Prior to signing the documents, the state statute should be consulted to determine when the individual with a disability is deemed to have the capacity to sign legal documents. Once the documents are signed, the designated agent, who is often a parent, will then have legal authority to assist the child with bill paying, managing their finances, and making health care decisions. A signed HIPAA (Health Insurance Portability and Accountability Act) release allows the designated individuals to access medical records. In addition, in some states, the child must sign paperwork to name an agent to assist with education decisions.



In the absence of such documentation, once the child attains the age of majority the parent will no longer have access to their child's school records, which can cause significant challenges. It is important to understand that the age of majority differs from state to state.

Government Benefits: These programs provide an important layer of financial and medical security for young adults with disabilities. Upon attaining the age of 18, a child may be eligible for certain government assistance and programs, including Supplemental Security Income (SSI) and state Medicaid. The state designated age of majority is irrelevant for purposes of determining eligibility for SSI. Even if an individual has not attained the age of majority in their particular state, federal law provides that individuals who are 18 and meet the disability and income/asset limitations will qualify. SSI is a federal benefit for persons with low income and resources (less than \$2,000) who are disabled or blind. SSI benefits provide monthly cash payments to meet basic needs for food and shelter. The basic SSI amount is the same nationwide, although some states provide a supplemental benefit. For 2012, the maximum Federal Benefit Rate is \$698 per month for an individual and \$1,048 per month for a couple. The Social Security Administration manages the SSI program. Although children who are under age 18 may qualify for benefits if they meet the requisite asset and income limitations, many individuals qualify for the first time once they reach age 18 because their parents' assets and income no longer count against them. If a child has received SSI before they turn 18, the parents should schedule a doctor's appointment to ensure that the child will continue to be eligible under the SSI rules governing eligibility for adults. To apply for SSI, call Social Security at 1-800-772-1213, contact your local Social Security office, access the Social Security website at www.socialsecurity.gov, or contact Protected Tomorrows for assistance.

Medicaid: Because eligibility criteria and programs vary so significantly from state to state, it is important to consult state law to determine whether attaining the age of majority impacts eligibility. Although a majority of states (39) provide that individuals who are eligible for SSI are automatically eligible for Medicaid, as of 2012 eleven section 209(b) states adopt requirements that are more restrictive than federal eligibility criteria. In non-section 209(b) states, once an individual attains the age of 18 and qualifies for SSI, they will automatically attain eligibility for Medicaid regardless of the age of majority in that particular state. In general, individuals must be disabled and have less than \$2,000 in available financial resources. Medicaid is a joint federal/state program that provides medical benefits and services to eligible individuals and families of all ages. Beginning in 2014, the Affordable Care Act (ACA) extends Medicaid coverage to all individuals between ages 19 and 64 with incomes up to 133 percent of the federal poverty level, or \$14,856 for an individual and \$30,656 for a family of four (based on the 2012 federal poverty level).



Given the expanded eligibility criteria for Medicaid as well as the ability for individuals to obtain health insurance despite pre-existing conditions, obtaining basic health insurance is likely to become much easier once the ACA is fully implemented. Despite the increase in access to essential health care, Medicaid will remain an essential benefit for young adults with disabilities because of their need to access services, including group homes, supported work environments, in-home care, assistive technology, and other community based services.

Planning for an Inheritance: If a young adult with a disability has significant financial resources upon attaining the age of majority (or age 18) that will prevent him or her from securing SSI or Medicaid benefits, the family must develop a plan to spend down or transfer the excess resources. If the individual has accumulated a modest amount of money upon attaining the age of majority, it is often possible (and cost-effective) to spend down the excess resources prior to submitting an application for benefits. On the other hand, if the young adult has inadvertently received an inheritance, either through a Will or a trust, or was named as the beneficiary of a life insurance policy or retirement account, it might be necessary to create an OBRA '93(d)(4)(A) Payback Special Needs trust for the benefit of the child and ask the court's permission to transfer assets into the trust. Once the assets are transferred to the right kind of trust or spent down, there is no need for a Guardian of the Estate.

Transitioning from childhood to adulthood by attaining the age of majority takes planning, but with proper consideration of both Guardianship issues and eligibility for important government benefits, young adults with a disability will be prepared to tackle this new stage in life.

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