

Making it happen



CONSERVATORSHIP: A GUIDE FOR FAMILIES



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Introduction

When your child reaches age 18, he will be considered an adult under the law and will have the right to make all of the decisions about his life that any other adult without a disability can make. This may include, for example, decisions about medical care, a decision to enter into a contract for the purchase of goods or services, or even a decision to marry and have a family. The law does not treat a person differently – limit his rights – just because he has a developmental disability. Because of your child's disability, however, you may worry about his capacity to make some of the decisions that the law allows once a child reaches the age of eighteen and becomes an adult.

If you have a concern about your child's ability to make decisions independently, there is a legal way to limit the decisions that he is allowed to make on his own. It is called a *conservatorship*. This booklet provides information about the types of conservatorships that are available to residents of California. It describes the ways in which conservatorships limit the ability of a person with a disability to make independent decisions about his life. The booklet also suggests alternatives to conservatorship for families who want to protect their son or daughter with a disability while encouraging independence and self-determination.

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What is a

WHAT IS A CONSERVATORSHIP? Conservatorship is a legal

process that gives one person the power to make decisions for another person who is unable to make decisions for himself. The person who obtains the right to make decisions is the conservator and the person whose rights are taken away is the conservatee or is said to be conserved. This is a legal process in which a judge makes the decision about whether or not the person needs to be conserved.

California law recognizes three types of conservatorship, but only two of them are relevant to this discussion: *General Conservatorship* and *Limited Conservatorship*. A third type, a Lanterman-Petris-Short (LPS) Conservatorship applies only to a person with serious mental illness.

The General Conservatorship may apply to anyone with a disability while the Limited Conservatorship was created especially to meet the needs of people with a developmental disability. Let's take a closer look at these two types.

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GENERAL CONSERVATORSHIP. A General Conservatorship

can apply to anyone who has a disability that interferes with decision-making. For example, an elderly person with dementia may be subject to a general conservatorship. Under this type of conservatorship, the responsible party may be appointed *conservator of the person* or *conservator of the estate*, or both. The difference between these two types of conservatorships is captured in their titles. Conservatorship *of the person* gives the conservator authority to make decisions about how the person is cared for (e.g., medical care, where and how he or she lives). Conservatorship *of the estate* relates to decisions about the person's money and property.

Before a court will appoint someone a conservator of the person, the party requesting the conservatorship must demonstrate to the court that the proposed conservatee is unable to properly provide for his or her own needs related to food,

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clothing or shelter, and health care. Similarly, to be appointed conservator of the estate, a party must demonstrate that the person is unable to manage his or her personal finances, or would be vulnerable to fraud or to “undue influence” of another who may not have the best interest of the person as a primary concern.

LIMITED CONSERVATORSHIP. A Limited Conservatorship applies only to adults with a developmental disability, as defined in California law. When petitioning for a conservatorship for a person with a developmental disability, the petition must be for a limited conservatorship, although the judge has the right to award a General Conservatorship.

The protection is “limited” in that the conservator is given authority to make decisions only in areas where the court believes the disabled person needs help. Therefore, the judge must make a separate decision about each of the following seven rights:

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- The right to determine where and with whom he or she lives
- The right of access to his or her confidential (educational, medical, etc.) records
- The right to marry
- The right to enter into a contract
- The right to consent to medical treatment
- The right to have social or sexual contacts
- The right to make decisions about his or her education.

A Limited Conservatorship can give the conserved person a higher degree of control by allowing him to make some, but not all, decisions about his life. It encourages the person to be independent and engage in self-direction to the extent that he is able.

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WHO CAN BE THE CONSERVATOR?

When a regional center client is conserved it is most often a parent or a sibling who becomes the conservator. There is no rule that says a conservator must be a relative, but it should be someone in whom the family has a great deal of trust. There are professional conservators who will take on this role for a fee, but selecting a person for this role is itself a challenging task. Institutions such as the regional center or the public guardian's office may also serve as conservator for a person who has no one else in his or her life who could effectively play this role.

If you are considering asking one of your other children to become conservator for his or her sibling with a disability, we encourage you to have a full discussion about this well before it is time for him or her to take this step. This type of arrangement works well for some families, but being a conservator brings with it significant responsibilities over a long period of time. You will want to know that the sibling who is to take on this role understands it fully and accepts it willingly.

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WHAT DO I NEED TO THINK ABOUT WHEN MAKING A DECISION ABOUT A CONSERVATORSHIP?

If you are considering seeking a conservatorship for your son or daughter, we encourage you to think about the following questions:

- *Do people who have provided support or otherwise worked with our son or daughter recommend a conservatorship?* Sometimes someone outside of your family has been in a position to observe your child extensively and may have information that can be helpful in your decision-making. Talk to your HRC Counselor, your child's teachers, job coach, or others who provide him with support and ask them for their opinion about your child's ability to make decisions in specific areas. They may have observed a level of independence in certain areas that you yourself have not seen in your child.

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- *Can we gain decision-making powers in some areas through means other than a court-appointed conservatorship?* There are alternatives to conservatorship for parents concerned about their disabled child’s future welfare. For example, the use of the “Assignment of Educational Decision-Making” may provide an effective way for you to continue involvement in your child’s education and health care. This and other possible strategies are discussed below.
- *Can we address our concerns in the IFSP team process?* Your HRC Counselor or the service providers who work with your son or daughter may be able to help you develop ways to address your concerns, particularly about issues such as social and sexual relationships and entering contracts.
- *If we decide to pursue a conservatorship, what are the areas in which we really believe he needs our help and in what areas can we give him more of a role in decision-making?* The Limited Conservatorship was developed specifically for people with developmental disabilities to allow them to participate in decision-making to the extent appropriate. For example, although a person may not have the judgment necessary to consent to a complex medical procedure, he may, simply with your guidance and support, be able to decide where and with whom he wants to live.

WHAT ARE SOME ALTERNATIVES TO CONSERVATORSHIP?

Obtaining a conservatorship is a legal process that takes some time and has associated financial costs. In addition, most people find they need to hire a lawyer to complete the process.

A conservatorship is a useful and appropriate tool for many families who want assurance that someone will be there for their disabled son or daughter after they are gone. At the same time, it is not the only way for parents to deal with their concerns about their child's future. Before seeking a conservatorship, families should realistically evaluate their child's capacity to make appropriate decisions in each of the seven areas, either independently or with support. They should also investigate other possible ways to ensure their child's welfare while allowing him to retain his civil rights.

Over the years we have found that if families discuss issues of concern with their regional center Counselor or other professionals, they are often

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able to create reasonable alternatives that balance their need to protect their child against the child's right to self-determination and desire for independence. Below we give some examples of strategies that families have used successfully to help their adult sons and daughters participate in decision-making about their lives while ensuring that they are safe from harm and exploitation.

EDUCATIONAL DECISIONS. Your child with a disability is likely to remain in a public school program until he is 21 years of age. When he reaches the age of 18, however, all educational decision-making authority transfers from you to him unless he has been determined incompetent under California law. You may have become accustomed to close collaboration with the school district in planning for your child's future and would like to continue that involvement.

There is a way for you to continue being involved after your child turns 18 that is effective and not as costly or complicated as seeking a conservatorship. You may have your son or daughter sign an "Assignment of Educational

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Decision-Making,” giving consent for your continued involvement in his educational program. When signed, this form gives you the right to make a variety of decisions about his education and transition from school. (You should renew this document each year that your child remains in school.) We have included a sample of this document at the end of this booklet. It was taken from the Web site of Protection and Advocacy, Inc., California, www.pai-ca.org. We have found that school personnel are often unfamiliar with this document, so you may need to refer officials from your child’s school to the PAI Web site.

SOCIAL AND SEXUAL CONTACTS. Some families consider becoming conservator of their children because they have concerns about social relationships and sexual contacts that their children may become involved in as they enter adulthood. Sometimes parents believe that their son or daughter will be unable to safely and effectively handle the complex issues and potential consequences of intimate relationships.

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Many people with a developmental disability have intimate relationships, and some even marry. As an alternative to pursuing a conservatorship, you may wish to talk to your HRC Counselor about programs that are available through the regional center to help young adults learn about dating, sexuality, and developing healthy social relationships. Your Counselor can also share with you ways these matters have been handled by other families. The HRC Resource Center is another place where you can find a variety of books, videos, and DVDs dealing with these subjects.

You also have an important role to play by having ongoing open discussions with your child about relationships. Thoughtful discussion, effective planning, and appropriate education can give him a sound basis for dealing with interpersonal situations that arise. HRC professionals and service providers who work with your child can give you suggestions for how to structure these discussions.

MEDICAL CONSENT. Some families seek a conservatorship so they will have the right to consent to medical care to ensure their son or daughter receives

recommended preventive care or necessary medical procedures. This may not be necessary if you maintain collaborative relationships with the medical professionals who treat your child. Maintaining these relationships will help smooth the way for your continued involvement as your child makes his transition to adulthood so that, with his or her consent, you can continue to be involved in decision-making about his health care.

FINANCIAL AGREEMENTS AND CONTRACTS.

Sometimes families believe they need a conservatorship to prevent their child from entering into legal agreements (for credit cards, cell phones, etc.) that are exploitive or that he may not be financially able to honor. The first strategy for addressing this concern is to help your child develop the tools he will need to be a smart consumer. You can begin by talking to him about things such as offers he may receive in the mail or on e-mail, and the consequences of signing a document without first discussing it with you or another trusted adult.

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The regional center can help here also. The HRC Resource Center offers a class in budgeting and banking for clients 18 and older. (Parents and caregivers are encouraged to attend with the clients.) Information about this class is available in the *Training and Events Calendar* posted regularly on the HRC Web site, www.harborrc.org. The HRC Resource and Assistive Technology Center also has a variety of curricula, books, DVDs, and videos that parents may borrow to help their child learn about financial issues and decision-making. You can also encourage your child's school to include budgeting and money management as a goal on his IEP.

If you decide that your child will always need help managing his money, you can become, or arrange for someone else to become, his "representative payee." This is a relative or trusted friend who will receive his Supplemental Security Income (SSI) to use on his behalf. More information about a representative payee is available on the Web at <http://www.ssa.gov/pubs/10076.html>. If your child were to enter into a contract that you believe he doesn't understand or that he will be unable to honor, you may want to talk with your HRC Counselor about requesting a consultation session with HRC's legal consultant. Over the years, he has assisted other regional center families to secure reversal of contracts or dismissal of legal actions intended to enforce contracts.

IF I SEEK A CONSERVATORSHIP, DOES THE REGIONAL CENTER GET INVOLVED?

If you choose to seek a conservatorship for your son or daughter who is a regional center client, we will be asked by the court to provide a report with our opinion about his or her need for a conservator in each of the seven areas. His or her Counselor will review the IFSP, current psychological and medical evaluations, and other assessments or service provider reports that describe current functioning. If necessary, the Counselor may arrange for additional evaluations. After gathering all of the necessary information, the Counselor will write the report and include the regional center's recommendations in each area. Because we know that families almost always take this action because of their concern for the health and safety of their adult child with a disability, Harbor Regional Center usually supports the families' decisions

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in these matters. In rare circumstances, we may disagree that the client is in need of a conservator or that the conservatorship should extend to all of the areas requested by the family, and we will give our rationale for our views to the family and the court. Our findings and recommendations are not binding on the court, however.

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WHERE CAN I GET MORE INFORMATION ABOUT CONSERVATORSHIPS?

If you are just beginning to think about conservatorships, you may find it very helpful to attend one of the semi-annual educational sessions on this topic conducted by HRC's consulting attorney. He has 25 years of experience advising families about this and similar issues, and he has helped many families make a decision about this important step. These sessions – which are always well attended and well received – cover what a conservatorship is, what it can and can't achieve, and what the process is for obtaining one. Dates and times for these sessions are listed on the *Training and Events Calendar*, posted regularly on the HRC Web site at www.harborrc.org.

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If, after considering the alternatives, you believe that obtaining a conservatorship is the best thing for your son or daughter and your family, we encourage you to speak with your regional center Counselor. He or she may suggest a meeting with our consulting attorney who can help you better understand the law governing conservatorships and the steps involved in obtaining one. Your Counselor can also direct you to the HRC Resource Center where you will find a variety of books, videos, and brochures on conservatorships and how to obtain one.

At Harbor Regional Center we know that many families have questions about how to promote their young adult's independence while continuing to protect them from potential harm. Conservatorship is one way to shelter them from the consequences of poor decision-making, and this is why we want to make sure that family members are well-informed about this legal alternative. We also know, however, that conservatorship can limit an adult's freedom and independence unnecessarily.

Harbor Regional Center is committed to promoting a strong, ongoing relationship between people with developmental disabilities and their family members while helping our adult clients live more productive, independent lives. We encourage you to seriously consider every alternative to conservatorship before proceeding with this approach, and we will provide you with all of the support and guidance needed to help you make the best decision for your unique circumstances.

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ASSIGNMENT OF EDUCATIONAL DECISION-MAKING AUTHORITY

California Education Code Section 56041.5

I, _____, having reached the age of 18 years, having never been determined to be incompetent for any purpose by a court of competent jurisdiction, and having received, at the age of majority, all educational decision-making authority pursuant to California Education Code Section 56041.5, hereby authorize my parent, _____, to make any and all decisions for me regarding my entitlement to a Free Appropriate Public Special Education. Such authority shall include, but is not limited to:

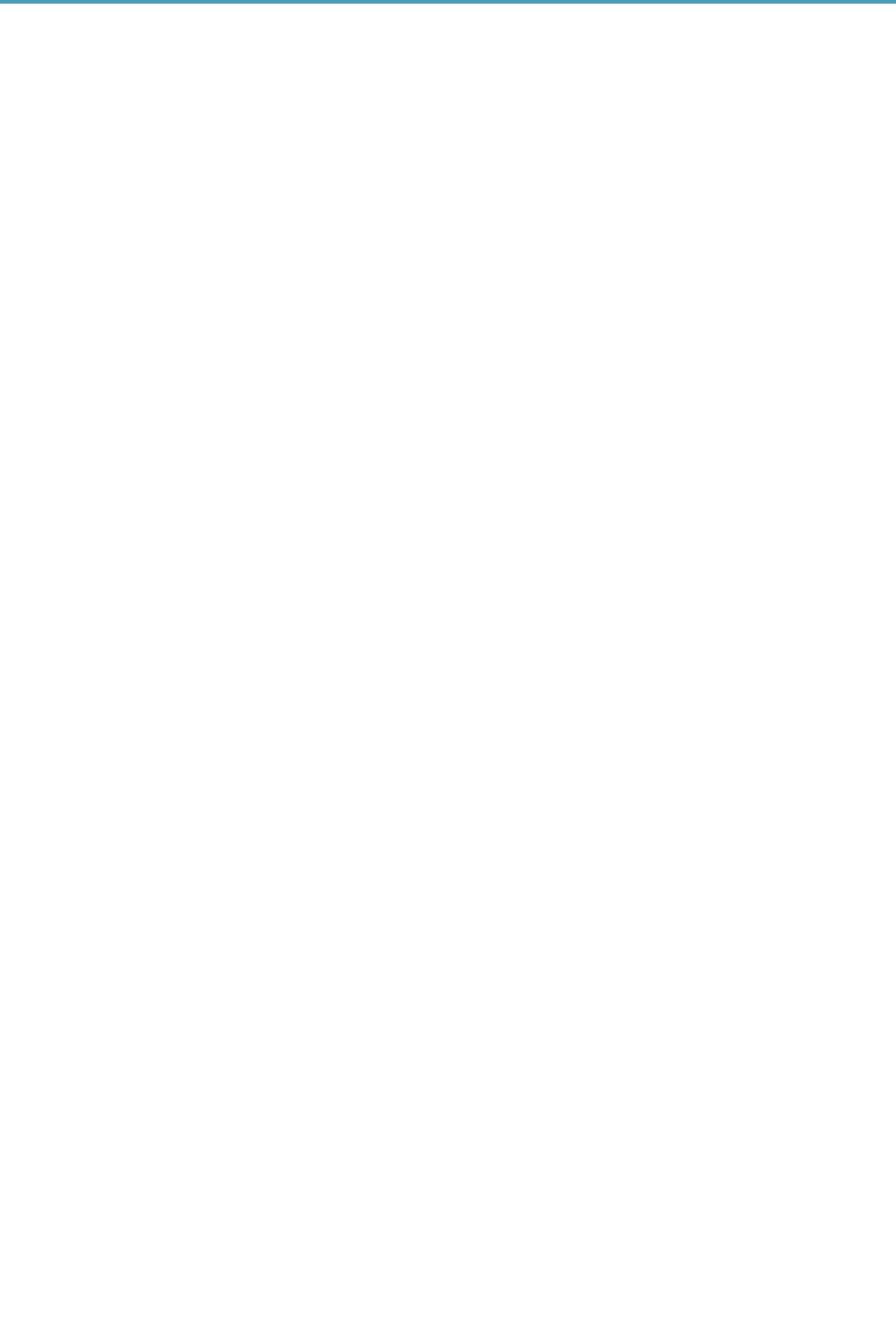
- Filing complaints with any public agency, such as the California Department of Education and U.S. Department of Education, Office for Civil Rights;
- Initiating and pursuing special education due process proceedings pursuant to Cal. Education Code Sec. 56500, et seq. and any judicial appeals thereof;
- Attending IEP meetings and due process mediations and pre-due process mediations and signing IEP documents and mediation agreements with the same legal effect and authority as I would have absent this assignment;

- Authorizing or refusing to authorize assessments, services, or placements;
- Obtaining copies of any of my educational, psychological, medical, behavioral, or juvenile justice records, or any other materials and information related in any way to my special education, related services, supplementary aids and services, or transition services;
- Receiving information orally from any individual or agency (public or private) regarding my special education rights or services;
- Exercising any other right or action on my behalf concerning my education with the same authority as I would have absent this assignment.

A photocopy or facsimile of this document shall have the same effect as the original.

Dated: _____

Source: http://www.pai-ca.org/pubs/505001.htm#_Toc122236172





HARBOR DEVELOPMENTAL DISABILITIES FOUNDATION, INC.
21231 Hawthorne Boulevard, Torrance, CA 90503
(310) 540-1711
www.harborrc.org