

As a parent of a special needs child, you have likely made all of the financial and medical decisions for your child during the school-age years. Many parents, unfortunately, assume they will continue in the same fashion after their child turns 18 years old. However, that is simply not the case. Parents often do not realize that they will need special court authority to make decisions for their disabled child after the child turns 18. Once children reach the age of 18, regardless of any disability they may have, they automatically become a legally competent adult in the eyes of the law. You, as a parent of a disabled adult child, have no power to make financial, educational, and medical decisions for him/her. You cannot even discuss your adult children's medical needs with their physicians thanks to the Health Insurance Portability and Accountability Act (HIPAA). "Capacity" is something we take for granted. Capacity is a person's ability to make and communicate decisions about his/her day-to-day needs and physical health and safety. While the majority of adults have capacity, a special needs child may not. In those cases where an adult does not have capacity, a guardianship is required.

A guardian is a court-appointed decision maker. Guardianship is the legal process by which a guardian is appointed. If your child has limited ability to make decisions or to communicate, you will have to go to court to obtain a guardianship. In the process, you will have to show that your special needs child is legally incapacitated and unable to make decisions alone. You must show that your child still needs you to act for him/her, despite turning 18 years old.

In Pennsylvania, guardianship is a complex legal process,



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which includes filing petitions, presenting evidence and testimony to the court, and proving that the individual in question is incapacitated and does need a guardian. Our firm can guide you through this process and help you obtain guardianship of your adult special needs child. We recommend that you start the guardianship process as soon as possible, preferably before your child turns 18. If you start to prepare in advance, the process can move quickly once your child reaches legal adulthood. Depending on the court's schedule, you can obtain a guardianship in a little over a month.

Our firm regularly helps families with adult special needs children obtain the legal decision-making authority they need. Attorney Brooke McMorrow appreciates that protecting your special needs adult child is a top priority. She knows the ins and outs of what the courts require and handles each case diligently and expeditiously to achieve the desired result. For those with concerns about maintaining governmental benefits for their child, she also assists families with estate planning and special needs trusts.

Our firm strives to make those challenges just a little bit easier so you can get back to what's really important – caring for your child.

This **Industry Insight** was written by Brooke McMorrow, Esquire of McMorrow Law, LLC.

Attorney Brooke McMorrow is the founding member of McMorrow Law, LLC located in Wexford, Pennsylvania. McMorrow Law focuses on guardianships, estate planning, probate and estate administration, family law, adoption, mediation and collaborative law. Attorney McMorrow is licensed to practice in Pennsylvania and New York. For a free initial consultation call 724.940.0100 or visit our website at www.mcmorrowlaw.com.