

# ALTERNATIVES TO GUARDIANSHIP & CONSERVATORSHIP

## [Power of Attorney \(Idaho Code 15-12-301\)](#)

<https://legislature.idaho.gov/statutesrules/idstat/Title15/T15CH12PT3/>.

A legally recognized document that allows a friend or family member of a person to make decisions, including financial decisions, for the person in the areas designated in the Power of Attorney (POA).

POA forms are free on Idaho Legal Aid Services website at:

<https://www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms>.

## [Medical Durable Power of Attorney and Living Will \(Idaho Code 39-4510\)](#)

<https://legislature.idaho.gov/statutesrules/idstat/Title39/T39CH45/SECT39-4510/>.

A legally recognized document that allows a person to give or delegate the right to make medical decisions including end of life decisions to another person.

Medical POA forms are free on Idaho Legal Aid Services website at:

<https://www.idaholegalaid.org/node/2233/living-will-and-durable-power-attorney-health-care>.

## [The Medical Consent and Natural Death Act \(Idaho Code 39-4503 & 4504\)](#)

<https://legislature.idaho.gov/statutesrules/idstat/Title39/T39CH45/>

The recently amended Section 4503 ensures that individuals with developmental disabilities who do not have a guardian have the right to provide consent to medical treatment. The statute reads:

**PERSONS WHO MAY CONSENT TO THEIR OWN CARE.** Any person, **including one who is developmentally disabled** and not a respondent as defined in section **66-402**, Idaho Code, who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite comprehension at the time of giving the consent.

Further, if a person, including a person with a developmental disability, cannot provide consent and does not have a Medical Durable Power of Attorney or a guardian, Section 4504 of the statute provides a list of people who can provide consent to medical treatment, including, but not limited to, a spouse, adult child or a parent.

### [The Health Insurance Portability and Accountability Act \(HIPAA\)](#)

A federal law created in 1996 by the US Congress to protect the privacy of a person's health information. If a person wants someone to have access to their medical information, talk to their doctor, or accompany them during a doctor appointment, the person can sign a HIPAA release.

To access a free HIPAA release ask, your doctor or visit:

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/sampl\\_ehipaaauthorizationformforfamilymembers.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/sampl_ehipaaauthorizationformforfamilymembers.authcheckdam.pdf) .

### [Family Educational Rights and Privacy Act of 1974 \(FERPA\)\(20 U.S.C. 1232g\)](#)

A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise provided by law. When special education rights transfer to a student under the IDEA and Idaho Code, the FERPA rights regarding education records also transfer to the student. However, FERPA gives the parent of a high school student claimed to be a dependent for IRS purposes the right to request access without the consent of the student. Moreover, at any time, including after high school, a student can sign a FERPA release and allow a parent to access to records. A student can always invite a parent to attend an IEP meeting.

A sample FERPA release can be found at: <https://www.sde.idaho.gov/.../Year-7-FERPA-Release-Form.docx>.

### [Declaration For Mental Health Treatment \(Idaho Code 66-601 through 66-613\)](#)

Legally recognized document that allows a person to make decisions about their mental health care prior to a crisis, including designating another person to make decisions on their behalf, consenting to certain types of medications or treatments and placement in a facility. A Declaration form is used only when a person is unable to understand and make decisions about their mental health treatment.

For more information, contact: NAMI - 1-800-572-9940, <http://idahonami.org/> .

For the free Declaration form visit: <https://www.nrc-pad.org/states/idaho-forms/>.

## Representative Payee for SSA or Veterans Benefits

If a person's only income is Social Security benefits, the Social Security Administration (SSA) may have already appointed a representative payee to manage these funds. The representative payee receives and manages the payment, using it to pay for current and foreseeable needs such as rent, food and spending money. An individual can apply to Social Security to become a payee for a recipient, or designated organizations can serve as payees for many recipients. The representative payee has authority only over the benefits and cannot make any other decisions on the person's behalf. It is very difficult for an individual to revoke a payee's status once appointed.

For more information, visit: <http://www.ssa.gov/payee/>.

The Veterans Administration can appoint a VA Fiduciary upon a determination that a VA beneficiary is unable to manage his or her VA benefits. Generally, family members or friends serve as fiduciaries for beneficiaries, but when friends and family are not able to serve, VA looks for qualified individuals or organizations to serve. The VA fiduciary has authority only over VA benefits.

For more information visit: Fiduciary, U.S. Department of Veterans Affairs at <http://benefits.va.gov/fiduciary/>.

## ABLE Accounts

Allows eligible individuals with disabilities to save money in a tax-exempt account that may be used for qualified disability expenses. While saving in an Able Account, the person maintains their eligibility for federal public benefits.

For more information visit: <https://silc.idaho.gov/able-accounts/>.

## Dual Signature Bank Accounts or Joint Bank Accounts

A dual signature account requires 2 signatures for each check drawn on the account.

A joint bank account is a bank account shared by two or more individuals. Any individual who is a member of the joint account can make withdraws and deposits.

See your local bank for more information.

## Trusts, including Special Needs or Miller Trusts

If a person has, or will receive, resources in excess of the Social Security and Medicaid limits, a Special Needs Trust can preserve the person's eligibility for these benefits. The trustee will manage and control the distribution of the trust funds.

A Miller or Income trust is used if a person has income in excess of the Medicaid eligibility limits and the person meets a certain level of care need. The person's

access to the funds in the trust is limited to pay Medicaid for the person's share of the cost of the Medicaid services.

For more information contact a Trust or Estate attorney:  
<https://isb.idaho.gov/lawyer-referral-service/>.

### Adult Protection Services or a Protection Order

If a person with a disability is being abused, neglected or exploited, Adult Protection Services can investigate and if necessary, help remove the person from any danger. Further, a person can seek a protection order from a court to keep an individual who may be harmful away from the person with a disability.

For more information about Adult Protection Services visit:  
<https://aging.idaho.gov/protection/index.html>.

### Assistive technology, service animals, & community supports

Making the living environment of a person with a disability safe can be accomplished through the use of the following services: alarms in the home, safety devices, adult day care or treatment centers, community centers, home visitors, service or companion animals, meal and grocery delivery, transportation, and personal care assistance.

For more information in available community supports or assistive technology visit: <https://lincidaho.org/>; <http://www.idlife.org/>; <http://dacnw.org/>;  
<https://idahoat.org/>.

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## Everyday Living Tasks and Responsibilities<sup>1</sup>

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Supportive and trusted individuals (e.g., family, friend)	<ul style="list-style-type: none"><li>• Support and assist with explaining potential benefits and risks when making decisions with regard to money management, cooking, hygiene, health care, safety, relationships, and everyday living issues.</li></ul>
In-home care services (e.g., nurse, therapist, dietician)	<ul style="list-style-type: none"><li>• Assist with support to ensure that medications are taken as prescribed and that other medical related needs are addressed (e.g., diabetes monitoring, catheter use).</li><li>• Assist with everyday responsibilities (e.g., grooming, shopping, meals, cleaning, transportation).</li><li>• Provide therapy in home (e.g., physical, occupational, speech therapy).</li></ul>
Case management services	<ul style="list-style-type: none"><li>• Coordinate services across agencies with the aim of ensuring that the individual with a disability remains as self-sufficient as possible.</li><li>• Services may be provided by the [Idaho Department of Health and Welfare], community mental health, or other organizations (e.g., vocational rehabilitation, advocacy organizations).</li></ul>
Free or reduced price meals, food, and prescription delivery from community agency services	<ul style="list-style-type: none"><li>• Deliver free or reduced price meals to individuals who are unable to cook or have difficulty with cooking.</li><li>• Deliver prescription medications by mail or by delivery directly to their home.</li></ul>
Free or reduced price transportation services	<ul style="list-style-type: none"><li>• Taxi vouchers, van services, and mass transportation services could be coordinated to help meet appointment needs of an individual when mobility and safety are concerns.</li></ul>
Daily call services	<ul style="list-style-type: none"><li>• Comparable to a neighbor checking in on a daily basis, some agencies have volunteers make daily calls to individuals to make sure that all is well.</li></ul>
Utility companies (e.g., gas/electric providers, phone)	<ul style="list-style-type: none"><li>• Establish an arrangement to notify a third party if an individual does not pay a utility bill on time.</li></ul>
Home visit services	<ul style="list-style-type: none"><li>• Volunteers make home visits to provide social contact when there is concern of limited or questionable networks.</li><li>• Volunteers observe how the person is fairing and obtain help if needed.</li></ul>
Medical release forms	<ul style="list-style-type: none"><li>• Medical release forms authorize the extent to which private medical records can be shared and with whom.</li><li>• Release forms do not allow others to consent on behalf of the individual for actual health or medical care and the authorization can be revoked at any time.</li></ul>
Living will/Healthcare directive and surrogate decision-makers	<ul style="list-style-type: none"><li>• Specify the type of medical treatment an individual wishes (or does not wish) to receive when the person is unable to communicate that information.</li></ul>

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<sup>1</sup> Dorothy Squatrito Millar, *Guardianship Alternatives: Their Use Affirms Self-Determination of Individuals with Intellectual Disabilities*, EDUC. & TRAINING AUTISM & DEV. DISABILITIES, Sept. 2013, at 291–305; Saginaw Valley St. U.

- In situations when a directive is not in place, and the individual with a disability is not able to provide informed consent for medical treatment, a surrogate decision maker may be appointed to make decisions.

(Durable) power of attorney (DPA)

- A DPA, which can be revoked anytime, allows an individual to authorize another to assist with areas specified in a document (e.g., participate in IEP meetings and negotiate services, apply for and coordinate services from community agencies, challenge and appeal any denials or changes of benefits, how to manage money).

- Not all DPAs are recognized by all parties, therefore it is essential that organizations be contacted to determine if there are specific forms they will honor.

Technology – ‘Apps’

- Technology devices that have become available (e.g., smart phones, tablets) should be explored to determine how they can assist an individual with becoming and remaining independent.

- Applications (‘Apps’) may enable an individual to have recipes created to meet their needs (e.g., use picture and verbal instructions), timers to remind when to take medication, reminders to turn off the stove and lock the door, and budget money.

- The possibilities of how technology can aid an individual with an intellectual disability to be autonomous are endless.

### *Managing Money and Consumer Awareness<sup>2</sup>*

Credit union and banking services	<p>Provide services for individuals that may need assistance</p> <ul style="list-style-type: none"> <li>● with money management. Brief descriptions of some options are provided in the table below.</li> </ul>
● Direct deposit and payments	<ul style="list-style-type: none"> <li>● An individual’s regular income, or government benefits (e.g., SSI), could directly be deposited into an account.</li> <li>● Saves on unnecessary trips and removes the concern of a check being lost or stolen.</li> </ul>
● Ceiling limits	<ul style="list-style-type: none"> <li>● Refers to an account from which an individual can withdraw funds up to a specified limit (over the amount would make the transaction void).</li> </ul>
● Pour-over accounts	<ul style="list-style-type: none"> <li>● Refers to a separate account that has funds automatically transferred to the questioned account to maintain limited amounts of money;</li> </ul>
● Joint accounts and Cosigner Prepaid cards	<ul style="list-style-type: none"> <li>● Refer to an account where at least two people have access to the monies either to make a deposit or withdrawal. A cosigner account requires that at least two people, collectively, must sign documents in order to authorize withdrawals.</li> </ul>
Credit and debit cards	<ul style="list-style-type: none"> <li>● Refers to reloadable cards that can be used as a money management tool to help individuals adhere to a budget.</li> </ul>

<sup>2</sup> *Id.*

- When used with caution, credit and debit cards are also possible alternatives and if used properly can help an individual manage money.

Representative payee

- A person or entity (a representative payee) is appointed by an agency administering funds (e.g., Social Security or Veterans Administration) to assume the financial responsibilities of another.
- The payee at a minimum is expected to maintain records and report all expenditures to the funding agency that were made on behalf of the individual with a disability.
- Expenditures are to be used for basic needs including food, clothing, medical care, a place to live.

Special needs individual trusts

- Permits a person (the grantor) to have another, or an institution (a trustee), manage the property (e.g., home) and money (e.g., life insurance, cash) for the benefit of another person (a beneficiary).
- When properly written, it is a document that may ensure that the individual with a disability would not own the contents of a trust, and that monies designated in the trust would not jeopardize eligibility of federal programs (e.g., Medicaid, SSI -Supplemental security income).
- Trust monies are to supplement, and not supplant governmental benefits.

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Special needs pooled trust

- With this type of trust, which is often managed by advocacy groups, assets of an individual who has a disability are placed into a sub-account arranged within a larger trust program.
  - With the pooling of several sub-accounts, there is a potential increase in the principal for investment purposes.
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