

Guardianship & Alternatives

At 18 years old, all individuals, including those with intellectual and developmental disabilities, reach the legal age of majority. This means that parents can no longer make decisions legally on behalf of their children. Therefore, it is important that parents who desire to be their children's guardians apply for guardianship as soon as their children turn or approach 18 years old.

Before pursuing legal guardianship for your child, explore alternative options to guardianship that may empower your child to make their own decisions interdependently and with support.

What is a guardian?

A guardian is a person who is 18 years or older or agency appointed by court to make personal decisions for an individual who is incapable of making some or all decisions independently. Based on guardianship policies of your state, as a guardian you will be able to make some decisions in specific areas but not all areas of an individual's life.

Who can become a guardian?

A guardian can be a family member, another interested person, or The Bureau of Guardianship Services, Department of Human Services. The guardian must be 18 years of age or older.

What are the duties and responsibilities of a guardian?

- Listening to the person with disabilities and ensuring that his/her preferences are being met as long as it does not cause harm
- Ensuring that the protected person is receiving appropriate medical care, proper education and that his/her overall health and welfare is protected
- Coordinating medical and services appointments and being aware of the medical and other needs of the person with disabilities
- Making sure that appropriate activities and socialization opportunities are provided for the person with disabilities to the extent that the person has the ability to enjoy them

You can learn more about the role of a guardian on this packet provided by the NJ Courts [here](#).

What are the alternatives to guardianship?

If possible, families should aim to preserve their child's or loved one's own autonomy, making guardianship a last resort solution. There are alternative options to guardianship that preserve an individual's fundamental right to self-determination, such as:

- Supported Decision-Making (SDM): A circle of professionals and family members support and assist the individual with the disability to make decisions. SDM can be achieved informally or formally, where the involved parties sign an agreement. SDM is a viable alternative for younger or older individuals who have full decision-making capacity

but may wish to plan in advance of possible future incapacity or may already be facing decline.

- Revocable power of attorney (POA): A revocable POA is a person that is appointed authority to handle the financial and personal affairs of the individual with the disability in the event that the individual becomes temporarily or permanently incapacitated. The powers of this POA are revokable at any time, except when the individual is for any reason deemed incompetent.
- People with IDD and their families can also talk to a special needs attorney about creating an authorization form that would allow their parents to access other records, as they wish. You can find private and protection and advocacy lawyers in the [Center for Future Planning's Resource Directory](#).

“One of the concepts I think is important to understand at the front end of this – We all understand what self-determination is, right? The right to make our own decisions, to participate in our own decision-making. But the concept of dignity of risk, which is one that is fairly well-known in the disability community, and certainly among disability service providers, is the ability of a person, not only to make their own decisions, but to enjoy the successes and enjoy the failures of those decisions...Enjoying successes, but enduring failures is a part of life for everybody, and there's no reason that that shouldn't be the case for a person simply because they have a disability diagnosis.” - Tara Anne Pleat, Special Needs Attorney

What are the costs of the services?

New Jersey law does not provide for compensation to a guardian of a person only. Guardian of a person only refers to representing only the person with disabilities, not his/her properties. For a guardian of a person and estate, approval for compensation should be addressed in the initial Judgment or via subsequent application to the court. Unless the court approves payment to the guardian, the guardian is not entitled to take such payment from the guardianship estate.

Timeline & Check-List

Although each state creates its own rules for guardianship, there are some general rules:

- To become someone's guardian, you must go to court.
- A judge will decide whether the person can make their own decisions or requires a guardian.
- The judge will decide who the guardian will be and what decisions the guardian will make.

Below is a general timeline of the guardianship application process.

1. Identify a guardian or co-guardians for an individual.
2. Complete a psychological or medical evaluation within a month of the application of the individual.
3. Receive a court recommendation.
 - a. Based on the psychological or medical evaluation a recommendation is made as to whether legal guardianship is needed.

4. File paperwork with the court.
 - a. After getting forms signed and notarized they will get filled with the Superior Court in the individual's county of residence.
5. Conduct a hearing if necessary.
 - a. If the public advocate does not oppose appointing a guardian, the court reviews the paperwork and signs Judgment.
6. Obtain a court judgment.
 - a. Once the court signs the Judgment appointing the guardian, the individual and their family will receive a copy of it.

Processing time of this timeline can vary based on individual circumstances.

How do you begin the guardianship process?

In order to be assigned as a guardian for an individual, you will need to be appointed by a Superior Court Judge, as that individual's guardian.

Families can pursue guardianship by:

- Representing themselves (pro se)
 - Pro se means representing yourself without an attorney.
 - More information about this option can be found on the NJ Courts website [here](#).
- Through an attorney
 - You have the right to hire an attorney at your own expense for the entire process. This is the only option if you are looking to be granted guardianship of person and property.
- With assistance of the Bureau of Guardianship Services (BGS)
 - This process is only to be granted guardianship for a person. BGS is only able to assist individuals who are eligible to receive services from DDD and if no one else is available to be appointed as that individual's guardian.

Some more information can be found in these links below to further prepare you for the guardianship process and options:

- [Guardianship Go Bag](#)
- [Future Planning Webinars](#)
- [Planned Lifetime Assistance Network of NJ](#)
- [Bureau of Guardianship Services \(BGS\)](#)

Cost for Application Process

A flat fee is charged to the Community Health Law Project (CHLP) for representation in uncontested guardianship proceedings. Fee information can be requested for other services. Any portion of the fees remaining at the end of the case will be returned to the client. Clients will be solely responsible for paying any fees required by court appointed attorneys, medical and other experts, or other potential costs.

For more information for residents of Essex, Passaic, Hudson, and Union counties please refer to this document [here](#).

For residents of other counties please contact Erika Kerber at ekerber@chlp.org or Susan Eisenhower at seisenhauer@chlp.org or call 973-275-1175 for more information.

Myths About Guardianship

1. *Parents are automatically the guardian of their adult children with disabilities.*
 - All guardianships require going to court and getting a court order, no matter what a person's disability is or how it affects them.
2. *Individuals who have been appointed guardian over a minor child with a disability remain that person's guardian when the child becomes an adult.*
 - Guardianship over children and guardianship over adults both require going to court and getting a court order. However, they are different processes with different requirements and different court orders. Guardianship over a minor child ends when the child becomes an adult.
3. *Parents need guardianship once their child becomes an adult to access their child's school, medical, legal, and other records.*
 - An adult with IDD can sign a release of information or other authorization form allowing their parent to access some or all of their educational, medical, and other records. Many schools have a form that students can request. Nearly all medical providers have a form that patients can sign allowing other individuals, including their parents or other support people, to talk to their medical providers and access some or all their medical records.
4. *Parents need guardianship once their child becomes an adult to attend IEP and other meetings related to their child's services.*
 - Parent's rights under the Individuals with Disabilities Education Act (IDEA) transfer to students when they become adults. However, parents must still receive all the same notices that the student is now required to receive. Therefore, parents will still receive an invitation to all their child's school meetings and written notice anytime the school wants to change or refuses to change their child's services. These notices ensure parents will know about meetings and can attend meetings, with their child's permission. Parents will also know about any changes to their child's services, so they can talk to their child and support their child in discussing any concerns or taking steps to disagree with the school's actions.
 - Parents also do not need guardianship to attend medical appointments or other meetings with their adult child. Any person can allow anyone to attend their medical appointments or other meetings, including their parents or other support person.

How are individuals with disabilities protected?

The legal guardian is responsible for providing periodic reports to the court regarding the guardianship. The frequency of reports depends on the appointing judge's order, but most guardians are required to report every 12 months.

Documents included in these periodic reports include:

- Report of Well Being: must include an attached statement of the incapacitated person's condition and functional level from a professional (physician, psychologist, clinician, etc.) who has evaluated the protected person within the reporting period
- Report of Guardian Cover Page: general information form

[NJ Judiciary Guardianship Monitoring Program](#) (GMP) is a court program that exists state-wide to support guardians while they handle affairs and ensure the individual is protected. The GMP team includes judiciary staff and court volunteers. The roles of GMP team include:

- Review guardianship case information, including inventories and certain periodic reports submitted by guardians.
- Safeguard individuals with disabilities from potential abuse, neglect, and exploitation by court-appointed guardians.
- Refer cases concerning potential abuse, neglect, and exploitation to appropriate court leaders for additional review and follow up as needed. Follow up may include a referral to a Superior Court, Chancery Division, or Probate Part Judge when necessary.

Important Contacts & Resources

- Contact The Arc of NJ for further assistance: futureplanning@thearc.org.
 - Online form to get connected with The Arc:
<https://futureplanning.thearc.org/pages/inquiry-form>
- Duties and Responsibilities of Guardians outlined by NJ Court:
https://www.njcourts.gov/courts/assets/guardianship/Guardianship_Person_web.pdf?c=kFY
- Guide to Guardianship Reporting Form by NJ Court:
https://www.thearcfamilyinstitute.org/file_download/inline/476f8921-3d83-4354-8ee7-4bf692bbe26d