

Legal Transition: Adult Guardianship

When your son or daughter turns 18, the law assumes that he/she is able to make decisions for him/herself including medical decisions, legal decisions, and personal decisions. If this is not the case, action needs to be taken to decide who will make these decisions.

Guardianship is one option to designate a person to make decisions on his/her behalf.

- For a person to have a guardian appointed, they must be disabled due to mental deterioration, physical incapacity, mental illness, or developmental disability AND be incapable of making or communicating decisions about his/her life, health, or finances.
- To apply for guardianship, documentation from the patient's physician or other health professional is needed indicating that the patient is not capable of functioning independently and making independent decisions.
- Guardianship is determined by a court and requires a court order to name someone a guardian. It is difficult to revoke guardianship once established.
- Anyone can become a guardian as long as they are 18 or older, are competent, do not have a felony charge, and the court approves them as a guardian to act in the best interests of an individual. Guardians do not have to be related to the individual, but need to be significantly involved in their ward's care and act in the best interest of the individual.

Types of Guardianship:

Limited Guardianship

(Guardianship of the Person vs. Guardianship of the Estate)

- Guardianship of the Person – the appointed guardian makes decisions about housing, daily living needs, medical or rehabilitative care, educational or vocational needs of the ward.
- Guardianship of the Estate – the appointed guardian makes decisions for the management, investment and disbursement of finances, including properties and income of the ward

Plenary Guardianship

- Appointed guardian All important decisions regarding the individual's care and finances.

See right-hand column for details about other types of guardianship

Definitions:

Limited guardianship:

The individual with disabilities can make some but not all decisions. The types of decisions that the guardian makes are strictly defined in the guardianship.

Plenary guardianship:

All important decisions regarding the individual's care and finances are made by the guardian.

Temporary guardianship:

Used in an emergency to establish a guardian quickly, does not last more than 60 days.

Short Term guardianship:

An individual may be appointed by the legal guardian, without court approval, to act as the guardian for a short period of time.

Stand-by guardianship

A specific person is named to act as guardian in case the legal guardian dies or can no longer act as the guardian. Must be appointed and approved by the court.