

North Carolina Council on Developmental Disabilities



NCCDD
North Carolina Council on
Developmental Disabilities



FYI: Family & Young Adult Issues

*A Guide for Parents of Young Adults
with Developmental Disabilities*

www.nccdd.org

Introduction



This booklet is designed to help families understand what happens when an individual with an intellectual disability turns 18.* It includes sections on rights and responsibilities, guardianship and other alternatives, terminology and resources.

The information in this booklet is based on this state's guardianship law (found in Chapter 35A of the North Carolina General Statutes online at http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_35A.html), other state and federal laws, and the commonly accepted interpretations of these laws. While there are web links listed throughout this booklet, organizations' phone numbers and mailing addresses are listed at the end in the "Resources" section.

* This booklet will refer to the individual as "he," but the information applies to both young men and women.



Rights and Responsibilities

When an individual turns 18, by law he is considered an adult. As such, he is granted certain rights and responsibilities.

Applying for **Supplemental Security Income (SSI)**, registering to vote, registering for

Selective Service

(males only) and considering health insurance coverage for a young adult are all actions related to these rights and responsibilities.

Is my teen eligible for SSI?

To qualify for SSI, an individual must have a physical or mental (e.g. intellectual) disability that can be medically diagnosable for a continuous period of 12 months or more. During this time, he must be incapable of engaging in **Substantial Gainful Activity (SGA)**. The individual must also have limited resources. This means that, with some exceptions, the individual may not have more than one house, one car and \$2,000 in assets.

Applying for SSI can be done in several ways. To start, a person must complete an interview with a Social Security agent. This can be done at a local Social Security Administration (SSA) office, by phone at (800) 772-1213 or online at

www.ssa.gov. It typically takes three to five

months for a decision to be made regarding an individual's eligibility. Once a decision is made, you may provide a bank account number to the local SSA office so that your child can receive his SSI through direct deposit. If your teen moves, the local SSA office must be notified of the address change within 30 days. For further information, please see the

Social Security Administration web site at www.ssa.gov.

Can he vote?

The right to vote is one of the most valued and basic rights of adult citizens in the U.S. As such, it is freely offered to all citizens once they reach 18 years of age, regardless of race, gender or disability. Voter registration has been made widely accessible to adults through many avenues and is highly encouraged, particularly among

Tip: Make sure that the psychological examination on file at school is a current one. That way, SSA can use these results instead of asking for a new testing to be done. This may reduce the length of the application process and save you and your family valuable time.

Rights and Responsibilities



people with disabilities. An individual may register to vote despite any physical disability, no matter how severe. Moreover, individuals adjudicated incompetent may be able to exercise voting rights in North Carolina.[∞]

The voter registration process is simple and can be done at a variety of locations. The application for voter registration can be found in most state offices and in military recruitment offices. Registration outreach programs can be found online at www.eac.gov under “Register To Vote.” The voter registration form takes approximately 10 minutes to fill out and the only necessary information is a valid I.D.[†] and address, birth date and Social Security number. For a person to participate in an election, the registration form

must be completed 25 days prior to the election date. Once the registration form is complete, a voter registration card will be mailed to the individual, who must then present it to the poll worker on election day. When an individual moves to a new voting district, he must re-register.

Does my child need to register for Selective Service?

Yes. While registering to vote and applying for SSI benefits are both optional, registering for Selective Service is required for all male U.S. citizens and male aliens living in the U.S. who are age 18 through 25. A person must register

“A person must register within a period of 30 days before to 30 days after his 18th birthday.”

within a period of 30 days before to 30 days after his 18th birthday. People with disabilities are not exempt from this. While men with disabilities may be excused from military service, they must still register with the Selective Service.

[∞] North Carolina has no constitutional provision disenfranchising persons under guardianship and does not include mental capacity as a criterion for eligibility to vote. However, there is no statutory guarantee that a person’s right

to vote is retained after an adjudication of incompetency in North Carolina.

[†] An I.D. can be obtained from any driver’s license office with proof of residency, age, identity and Social Security number.

Rights and Responsibilities

The registration process for Selective Service is simple and can be done either at a local Selective Service office or online at www.sss.gov. Similar to the voter registration, the only information needed to register for Selective Service is one's name, address, phone number, date of birth and Social Security number. Once registered, it is important to notify Selective Service of any change of address. This can be done online at <https://www.sss.gov/regver/address.asp> by completing a change of address form (SSS Form 2) at the post office, or by calling (847) 688-6888.

What about health insurance?

If you'd like for your child to stay on the family insurance plan, when he turns 17, contact your provider. Tell the provider about the individual's disability. The provider may request some documentation; however, this should be no more than a doctor's written diagnosis or a letter of guardianship. Most insurance plans allow an individual with a disability to remain on a family plan as long as the individual is an unmarried member of the family.

Medicaid may be another option for health coverage. Applications for Medicaid may be completed at the county Department of Social Services (DSS) office. A list of offices can be found at www.ncdhhs.gov/divisions/dss.



Tip: Once registered, your son can avoid calls from recruiters if he contacts the school and asks that his name not be released.

Guardianship and Other Alternatives

At age 18, individuals are granted the rights and responsibilities of adulthood under state and federal law, with the assumption that these individuals are capable of managing the rights and responsibilities of adulthood. Many times, with the proper supports and services, guardianship is unnecessary. Less intrusive alternatives can and do work and promote self-determination.

In instances where a person is unable to assume responsibility for himself, even with supports, other arrangements must be made. Guardianship is one option. Because valuable personal rights are taken away when a guardian is appointed, guardianship should be chosen only as a last resort.

Guardianship involves legal proceedings in which the court declares an adult incompetent. Once a person has been declared **incompetent**, the court appoints someone else to make decisions for him regarding his well-being.**

How does a family decide if guardianship is right for an individual?

It is advisable to begin thinking about guardianship or other options before your child turns 18. In North Carolina, a **petition** can be filed with the **Clerk of Superior Court** for an **adjudication** of incompetence and appointment of a guardian when an individual is 17 1/2 years old; however, a year prior to one's 18th birthday is the ideal time to start thinking about guardianship or other options. For many parents, the issue of guardianship may be raised by transition planning within the schools. Schools are sometimes hesitant to get involved in the guardianship process because they do not want to be perceived as choosing sides. They are, however, required by law to notify parents that their legal, decision-making rights regarding a child's education will end on his 18th birthday. The guardianship process can be initiated by contacting one of the agencies and organizations at the end of this handbook.

Are there resources to help families make decisions about guardianship?

The Guardianship Capacity Questionnaire is a tool that can help families assess whether a person would benefit from guardianship. The

** The appointed guardian is most commonly an individual's parent, relative or close acquaintance.

Guardianship and Other Alternatives

questionnaire uses a set of questions to assist in deciding what level of guardianship, if any, is the best fit for a son or daughter. Answering these questions can help families decide whether to petition for a relative to be declared incompetent. The questionnaire can also be useful to others involved in the guardianship proceeding. The questionnaire can be found online at <http://www.disabilityrightsn.org/guardianship>.

Is there more than one type of guardianship?

There are four main types of guardianship in North Carolina: general guardianship, guardianship of the person, guardianship of the estate and limited guardianship. It is important to recognize that certain legal responsibilities come with guardianship, which may differ from those of a parent.

What does a guardian do?

The responsibilities of the guardian(s) will depend on the type(s) of guardianship selected. The bulleted items below are common responsibilities of guardians.



More Information

To find out more about the responsibilities for each type of guardianship, visit www.nc-guardian.org.

- ▶ Ensuring that the young adult has the skills, education, employment and services that he needs
- ▶ Assisting with planning for the teen's living arrangements
- ▶ Taking reasonable care of the young adult's personal property
- ▶ Taking any legal action needed on behalf of the teen
- ▶ Giving consent or approval needed for medical, legal or psychological services
- ▶ Filing an annual report of financial transactions with the Clerk of Court∞

∞ This is a responsibility of the general guardian or the guardian of the estate

Guardianship and Other Alternatives



Tip: It is important to ensure that a teen’s services and supports are provided in a manner that promotes inclusion in the activities of everyday life. The personal preferences and desires of a young person should be given the highest regard. A teen should be provided any formal or informal supports necessary to assist him in exercising his rights. It’s important to allow a teen with disabilities to make mistakes – just like anyone else.

Are these the only options?

No. Although guardianship provides one means of ensuring your family member’s needs are met, there are important alternatives, ranging from informal supports to joint bank accounts. Information on these alternatives can be found at <http://www.arcnc.org/> under “Services” in the section titled LIFEguardianship. These alternatives to guardianship include power of attorney; durable power of attorney; health care power of attorney; declaration regarding natural death (DNR or Living Will); advance instruction for mental health (AIMHT); a variety of services and supports, including case management, advocacy and creating a “circle of friends”; representative payee for Social Security and other benefits; and creation of a trust.

What else should families think about?

The N.C. Guardianship Association suggests some additional areas to consider when deciding whether to petition the court for guardianship. These can be found online at <https://www.nc-guardian.org/about-guardianship>.

Where does your family begin?

Once a family decides to petition for guardianship, there are specific steps to take. First, file a Petition for Adjudication of Incompetence (<http://www.nccourts.org/Forms/Documents/707.pdf>) and an Application for Appointment of a Guardian (<http://www.nccourts.org/Forms/Documents/384.pdf>) with the Clerk of Superior

∞ This is a responsibility of the general guardian or the guardian of the estate.

Guardianship and Other Alternatives

Court in the county where the teen lives. Those and other necessary forms are located on the CLA website (<http://www.disabilityrightsn.org/guardianship>) and the AOC website (www.nccourts.org). Any information that may be helpful in determining the individual's abilities and limitations should be submitted with the petition.

What happens next?

Usually, the court will appoint a **guardian ad litem attorney** who will visit the individual as soon as possible. This attorney's role is to act in the best interest of your child. More responsibilities of the guardian ad litem attorney are detailed online at http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_35A/GS_35A-1107.html.

The clerk will issue a written notice of the date, time and place for the guardianship hearing within five days of the petition being filed. Once the notice is issued, the sheriff's office will serve copies of the petition and the initial notice of hearing on the individual and his attorney.



Tip: When you take the petition to the clerk's office, it may be helpful to ask what other information needs to be included. If there is not a recent psychological or **multidisciplinary evaluation** for the individual, you should file a **motion** for one when submitting the petition. You can also request the evaluation from his school at an Individualized Education Plan (IEP) meeting.

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Tip: You may ask the sheriff's office to come to your child's home to serve incompetency papers. You may also ask that the officer wear plain clothes, rather than a uniform. The sheriff is not required to honor the request, but may choose to do so, especially if you explain your concerns.

What happens in the incompetency hearing?

The Clerk of Superior Court will serve as judge at the incompetency hearing, unless your family member or his attorney requests a trial by jury. Both you and your young adult will be able to present testimony, to **subpoena** witnesses, to examine and cross-examine witnesses, and to present any other evidence that has to do with the family member's competency. For more information about incompetency hearings, please visit http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_35A/GS_35A-1112.html.

*“My son Andrew was taken to the sheriff's office by the guardian ad litem attorney, where a fully uniformed officer started to read him the incompetency papers. Andrew only knows that police officers read people their rights when they are being arrested. He put his hands behind his back and his face went pale. **He thought he was being arrested!**”*

- Rosemary Bernauer



Guardianship and Other Alternatives

When is the guardian appointed?

The hearing to appoint a guardian for your son or daughter may be held immediately following the adjudication of incompetence or at a later time. If there is a difference of opinion about who the guardian should be, the clerk makes the decision. Once a person has been appointed guardian, that person will receive a written order of appointment from the clerk. This order will explain whether the appointed individual will be a guardian of the estate, a guardian of the person, a general guardian or a limited guardian. It will also specify the guardian's powers and duties. The individual's rights and privileges will be outlined in the order as well. More information regarding guardianship following the appointment can be found at http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_35A/Article_8.html. You may also review the "Resources" section for phone numbers and mailing addresses of helpful organizations.



Tip: Even with a guardian, a young adult should participate as fully as possible in all decisions that affect him. In addition, guardianship should be reviewed periodically and a decision made as to whether an individual's rights need to be partially or fully restored.

Terminology



Following are some important legal terms. The terms come from a variety of resources, including Legal Aid of North Carolina, the NC Department of Public Instruction, the NC Department of Health and Human Services, NC Cooperative Extension and NC General Statute 35A and are defined in relationship to guardianship law within North Carolina.

Applicant – person who files the petition

Counsel – an attorney

Guardian Ad Litem Attorney – an attorney appointed by the courts to represent the respondent's or ward's best interests if he does not already have an attorney (For purposes of guardianship, a guardian ad litem must be an attorney.) The attorney represents the

individual until the petition is dismissed or until a guardian is appointed.

Incompetent Adult – an adult who does not have sufficient capacity, as determined by the clerk, to make or communicate important decisions concerning his person, family or property

Incompetent Child – a minor who is at least 17 1/2 years old and who, other than by reason of age, does not have sufficient capacity to make or communicate important decisions concerning his person, family or property

Indigent – needy; in this context, unable to pay for legal representation and other costs of a legal proceeding

Motion – a document filed with the court seeking to obtain a ruling or order from the court that is favorable to the party filing a motion

Terminology

Multidisciplinary Evaluation– an evaluation that contains current medical, psychological and social work evaluations

Petition– a formal written application requesting a court to take a specific action

Respondent– the person who responds in a legal case; in a guardianship proceeding, a person who is alleged (believed) to be incompetent

Selective Service– part of the Military Selective Service Act in which all males, age 18, who are U.S. citizens and residents are required to register for military service; in the event of a draft, these individuals may be called into military service

SGA– To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA and is not eligible for benefits from the Social Security Administration.

SSI and SSDI – Supplemental Security Income (SSI) provides cash assistance to individuals who have limited income and resources and are either age 65 or older, are blind or who have a disability. SSI is a financial "needs-based" program, in contrast to Social Security Disability Insurance (SSDI). SSDI is an insurance program with benefits dependent on previous payments into the system.

Subpoena – a written legal order requiring appearance in court to give testimony

The Clerk – for the purposes of this document, the Clerk of Superior Court

The Courts – for the purposes of this document, the Superior Court

Ward – a person who has been adjudicated (found by the court) to be incompetent, or an adult or minor for whom a guardian has been appointed



Resources



There are numerous sources of information relevant to the issues discussed in this booklet.

Administrative Office of the Courts

P. O. Box 2448
Raleigh, NC 27602-2448
(919) 890-1000
www.nccourts.org

The Arc of North Carolina

343 E Six Forks Rd, Suite 320
Raleigh, NC 27609
(800) 662-8706
www.arcnc.org

Association of Self-Advocates of North Carolina (ASANC)

7650 Pangea Lane, #300
Raleigh, NC 27616
(919) 449-7969
www.asa-nc.org

Legal Aid of North Carolina

224 S. Dawson St., Raleigh, NC 27601
Toll-Free Helpline: 1-866-219-LANC
www.legalaidnc.org



Disability Rights NC

3724 National Drive, Suite 100
Raleigh, NC 27612
(919) 856-2195
Toll-Free: 1-877-235-4210
www.disabilityrightsn.org

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820 South Boylan Avenue
Raleigh, NC 27603
(800) 357-6916
www.nccdd.org

**North Carolina General Statute Chapter
35A**

[http://www.ncleg.net/gascripts/statutes/
StatutesTOC.pl?Chapter=0035A](http://www.ncleg.net/gascripts/statutes/StatutesTOC.pl?Chapter=0035A)

North Carolina Guardianship Association

P.O. Box 17673
Raleigh, NC 27619
(919) 740-9416
www.nc-guardian.org

**Project STIR: Steps Toward Independence and
Responsibility**

Center for Development and Learning,
University of North Carolina at Chapel Hill,
CB# 7255
Chapel Hill, NC 27599-7255
(919) 966-5171
www.cidd.unc.edu/services/default.aspx?id=74

**Selective Service System
Data Management Center**

PO Box 94638
Palatine, IL 60094-4638
(847) 688-6888
www.sss.gov

Social Security Administration

Office of Public Inquiries
1100 West High Rise
6401 Security Blvd.
Baltimore, MD 21235
1-800-772-1213
www.ssa.gov

**United States Election
Assistance Commission**

1335 East West Highway,
Suite 4300
Silver Spring, MD 20910
(301) 563-3919
www.eac.gov

If you liked this handbook, have suggestions or need more copies in English or Spanish, drop us a line at info@nccdd.org.

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