



# A Guide to Guardianship & Alternative Options

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, regardless of the nature of their disability and regardless of whether or not they still live with their family. Some families may want to consider guardianship as an option for their family.

## What is a Guardian?

A guardian is a person or agency appointed by a court to make personal decisions for an individual who is not capable of making some or any decisions independently.

Role of guardian?	Who can be a guardian?
<p>A guardian makes decisions about the care and treatment of another person.</p> <p>New Jersey law allows for <b>limited guardianship</b>. This means a guardian can make some decisions in some areas, but not all areas of an individual's life.</p> <p>A guardian may make decisions about property and assets of the person under guardianship, unless the property is in trust or consists of SSI Benefits.</p>	<ul style="list-style-type: none"> <li>• Person over 18</li> <li>• Parents</li> <li>• Close relative</li> <li>• Sibling over 18</li> <li>• Person with a close relationship to the individual</li> <li>• The court may appoint a public guardian (for persons over 60) or an attorney to serve as guardian.</li> </ul>

Where do I begin?	What should I read?	What is the process?	Alternatives to guardianship
<p>All guardianship appointments require a judgement rendered by a Superior Court Judge. <b>Families can pursue guardianship by:</b></p> <ul style="list-style-type: none"> <li>⇒ Representing themselves (pro se)</li> <li>⇒ Through an attorney</li> <li>⇒ With assistance of the Bureau of Guardianship Services (BGS)</li> </ul> <p><b>Pro se:</b> means "without a petitioning attorney". The proposed guardian represents himself or herself in court.</p> <p><b>Through an attorney:</b> Families can hire an attorney at their own expense to complete the entire process. <i>This is the only option if guardianship is to be of person and property.</i></p> <p><b>Assistance of Bureau of Guardianship Services (BGS):</b> This process is for guardianship of the person only. BGS is only able to assist individuals who are eligible to receive services funded by the Division of Developmental Disabilities.</p> <p><b>Note:</b> There are approximately 4000 requests currently pending with BGS</p>	<p><b>Pro Se:</b> forms and instructions can be found at: <a href="http://bit.ly/njproselselfhelpcenter">bit.ly/njproselselfhelpcenter</a></p> <p><b>Note:</b> The Pro Se packet states "DDD official will complete a form verifying that the individual is a current client of the Division of Developmental Disabilities (DDD) and is receiving services". However, DDD no longer offers such a letter. Disregard this section as it isn't needed to complete the document. The New Jersey Administrative Office of the Courts is in the process of amending this document to remove the above quoted language.</p> <p><b>Visit:</b></p> <ul style="list-style-type: none"> <li>• <b>Planned Lifetime Assistance Network of New Jersey (PLAN/NJ):</b> <a href="http://bit.ly/planNJ">bit.ly/planNJ</a></li> <li>• <b>Guardianship Association of New Jersey, Inc. (GANJI):</b> <a href="http://bit.ly/ganjiforms">bit.ly/ganjiforms</a></li> <li>• <b>Bureau of Guardianship Services (BGS):</b> FAQs, fact sheets, roles of a guardian, and family guides to the court process can be found at: <a href="http://bit.ly/1HGFUUB">http://bit.ly/1HGFUUB</a></li> </ul>	<ol style="list-style-type: none"> <li>1. <b>Identify a guardian or co-guardians</b></li> <li>2. <b>Complete a psychological or medical evaluation</b></li> <li>3. <b>Receive a court recommendation:</b> Based on the psychological evaluation, a recommendation is made as to whether legal guardianship is needed.</li> <li>4. <b>File paperwork with the court:</b> After getting forms signed and notarized they will get filed with the Superior Court in the individual's county of Residence.</li> <li>5. <b>Conduct a hearing (if necessary):</b> If the Public Advocate does not oppose appointing a guardian, the court reviews the paperwork and signs judgement.</li> <li>6. <b>Obtain a court judgement:</b> Once the court signs the judgement appointing a guardian, the individual and his/her family will receive a copy of it.</li> </ol> <p><b>Processing time varies</b></p>	<p><b>Conservatorship</b> is a voluntary, judicially supervised arrangement for people who need assistance, but who are capable of giving informed consent.</p> <p><b>Living wills and durable powers of Attorney</b> are documents where the guardian names a person to make decisions for him/her when the guardian is unable to do so. Ex: medical decisions.</p> <p><b>Person-centered Planning</b> involves a group of people, family and/or friends who focus on the individual and that individual's vision of what he/she would like to do in the future. It is an ongoing problem solving process.</p> <p><b>Supported decision-making</b> is a series of relationships, arrangements and agreements designed to assist an individual with a disability to make and communicate to others decisions about the individuals life.</p> <p><b>**Type all links exactly as seen including any capital and lowercase letters, and numbers.**</b></p>

# DEPARTMENT OF HUMAN SERVICES BUREAU OF GUARDIANSHIP SERVICES

## *Role of the Legally Appointed Guardian*

A guardian is a person or agency appointed by a court to make personal decisions for an individual who is not capable of making some or any decisions independently.

### **1. A personal guardian is responsible for:**

- encouraging the individual to participate with the guardian in the decision-making process, to the maximum extent of the individual's ability, in order to encourage the individual to act on his or her own behalf whenever he or she is able to do so
- encouraging the individual to develop or regain higher capacity to make decisions to the maximum extent possible in those areas in which he or she is in need of a guardian
- making decisions and giving consents on behalf of the individual, but only to the extent of the court order
- protecting the individual from harm
- looking out for the individual's interests
- safeguarding the individual's human and civil rights
- ensuring that the individual's physical, emotional and developmental needs ,including education and training, are met.
- acting consistently with a previously executed power of attorney for health care or advance directive
- helping the individual to obtain all available and appropriate benefits and supportive services
- visiting the individual not less than once every three months
- initiating legal action on the individual's behalf
- submitting reports to the court as specified by the court

**2. A personal guardian is NOT responsible for:**

- providing for the individual from his or her own funds
- any liability to another person for acts of the individual
- injury to the individual from the wrongful conduct of another person providing medical or other care
- taking the individual into the guardian's home to live

**3. What kinds of decisions might a guardian be expected to make?**

A guardian may be asked to give informed consent in matters such as:

- transfers or other major changes of program or treatment
- certain types of medical or dental procedures or for certain types of behavior modification plans
- right-to-privacy issues such as release of confidential records
- trips, vacations and overnight visits

**4. What preparation does a guardian need to make these decisions?**

The guardian should gather and review as much information as possible about the issue at hand before making a decision. The guardian should also involve the individual as much as possible in the decision making process by learning about his or her interests, preferences and choices. In addition, the guardian should participate in all important conferences regarding the individual's programs, particularly the annual meetings where his/her individual plan is developed and reviewed.

**5. Are there limitations on guardianship?**

**Yes.** A guardian cannot consent to shock treatment, psychosurgery, sterilization or medical, behavioral or pharmacological research. The guardian must petition the court for a guardian ad litem that can give specific consent for a particular request.

**6. What authority does a guardian have regarding the individual's programming?**

Program-related decisions are made by the Division's professional staff with input from the guardian. The guardian has the right and responsibility to be involved in developing and reviewing the individual's program plans and to either give or withhold consent for major program changes. A guardian also

may appeal a program decision and, if necessary, seek a hearing on the matter.

**7. If the Bureau of Guardianship Services is appointed guardian, does the individual's family remain involved?**

**Yes.** The Guardianship staff providing services to the individual maintains contact with families or other interested parties, keeping them informed and obtaining their input in decision making.

**8. How are changes in guardianship made?**

The court that initially appointed a guardian may be petitioned at any time to terminate or transfer guardianship. As part of the individual's annual plan, guardianship is reviewed each year. A court-appointed guardian may name a successor guardian in his/her will, subject to court approval after the guardian's death.

**9. Do all individuals with developmental disabilities need guardianship?**

**No.** Guardianship is necessary only for an individual who lacks the ability to make decisions in some or all areas. Many individuals are capable of making their own decisions, with appropriate support and advice, and do not need a guardian.

Revised 6/09



## DEPARTMENT OF HUMAN SERVICES

### Bureau of Guardianship Services

### **Family Guide to the Guardianship Court Process**

This document describes the guardianship process followed by The Bureau of Guardianship Services (BGS), which is responsible for processing and tracking guardianship actions for people served by the Division of Developmental Disabilities (DDD) who have been evaluated according to state law and determined to require a guardian. BGS is only able to serve individuals who have been determined by DDD, through its application process, to be eligible for its services.

If your family member has been determined to need a guardian, working through BGS is only one of several options you have for pursuing guardianship. Most of these options are described in the DDD BGS Fact sheet entitled Guardianship Frequently Asked Questions.

Many families elect to pursue guardianship privately, either through an attorney or pro se (without an attorney) because these options tend to move faster than the BGS process.

BGS is only able to process guardianship of the person. If your family member has property such as a trust or other large assets, you need to pursue guardianship of person and property through a private attorney. This must be done at your expense or that of the estate.

If a family chooses to have BGS facilitate the court action, the process occurs as follows:

### **Step 1: Identifying a proposed guardian or co-guardians**

BGS contacts the individual's family to determine if any family members are interested in becoming guardians. The law requires that the individual and his/her close relatives be notified of the court action. It is important that BGS receive names and addresses of any spouse, adult children, parents, stepparents, adult siblings and/or other interested relatives of the individual. You may consider having co-guardians appointed. This means more than one person may be appointed at the same time to act on behalf of the individual. The benefit of having two or more co-guardians appointed is the increased chance of a guardian being available to make decisions on the individual's behalf.

### **Step 2: Completing a psychological evaluation**

After identifying potential guardians, BGS makes a referral to a psychologist, who contacts the individual to schedule an evaluation. The purpose is to verify the need for a guardian and the type of guardianship required. New Jersey has two types of guardianship of the person, general and limited. Under general guardianship, the guardian makes decisions and gives consents related to all areas of a person's life. Limited guardianship applies only to certain areas specified by the court; these areas could include residential, vocational, legal, medical or educational issues.

### **Step 3: Receiving a court recommendation**

Based on the psychological evaluation, a recommendation is made as to whether legal guardianship is needed and, if so, whether it should be general or limited. BGS prepares the required paperwork, including a Certification and Acceptance of Guardianship forms, and sends it to the proposed guardian(s) for signature. The Acceptance of Guardianship form must be signed in the presence of a Notary. Most banks have a Notary available to customers; often this service is provided free of charge. It is important to sign and return all forms as soon as possible. If there is significant delay in returning the forms, the Bureau of Guardianship may be recommended to serve as guardian.

#### **Step 4: Filing paperwork with the court**

After receiving signed and notarized forms from the proposed guardian(s), BGS completes the court paperwork and files it with the Superior Court in the individual's county of residence. All interested parties (the individual, his/her proposed guardians and other family listed in the court documents) receive copies of the paperwork and the court date. The court will schedule the court date four to six months from the day the paperwork is filed.

The court then assigns the Department of the Public Advocate office to represent the individual in the court action. An investigator from this office contacts the person and schedules an interview, either directly or through the caregiver.

At least part of the interview must be conducted in private due to client-attorney confidentiality. The investigator also talks to the proposed guardian(s), either in person or by phone. The Public Advocate then writes a report for the court, either agreeing with or opposing the need for a legal guardian and the choice of proposed guardian(s), according to the individual's wishes.

#### **Step 5: Conducting a hearing (if necessary)**

If the Public Advocate does not oppose appointing a guardian, the court reviews the paperwork submitted and signs the judgment without a formal hearing. In this case, neither the individual with the developmental disability nor the proposed guardians need to appear in court.

If the Public Advocate opposes appointment of a guardian, the individual and proposed guardian(s) may have to attend a hearing, where a judge will listen to arguments before making a decision. A Deputy Attorney General will present the arguments in favor of guardianship. Often, a settlement is reached outside the court and a hearing is not needed. The Deputy Attorney General also may notify the parties involved that the hearing has been rescheduled. If you have questions about the need for a hearing, call the Deputy Attorney General listed in the correspondence you receive regarding the hearing.

## **Step 6: Obtaining a court judgment**

Once the court signs the Judgment appointing a guardian, the individual and his/her family receive a copy of it along with Letters of Guardianship. The Surrogate's Court may contact you to sign an additional document before sending the letters of guardianship. These are the official papers identifying the guardian(s) of the individual and whether the guardianship is general or limited. If limited guardianship is determined by the court, the areas of guardianship will be identified in the Judgment and Letters of Guardianship.



**Departamento de Servicios Humanos de New Jersey  
División de Discapacidades del Desarrollo**

***TUTELA (CUSTODIA)***

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**Un tutor (guardián) es la persona o agencia legalmente autorizada a actuar en nombre de un menor o de un adulto incapacitado para garantizar que se cumplan las necesidades de bienestar, seguridad y salud de dicha persona y que se protejan sus derechos. Entre los deberes de un tutor (guardián) se encuentran el tomar decisiones en nombre del individuo y prestar consentimiento informado respecto de ciertos asuntos. Sin embargo, el tutor (guardián) debe hacer que la persona participe en la toma de decisiones en la medida en que sus aptitudes lo permitan.**

**La División de Discapacidades del desarrollo (*Division of Developmental Disabilities*) está obligada a evaluar a todas las personas que reciben servicios para determinar si necesitan un tutor (guardián), ya sea al momento de ingresar al sistema de servicio, o antes de que cumplan los 18 años de edad, en caso de recibir servicios como menores. La decisión de que una persona necesita un tutor (guardián) debe basarse en una evaluación clínica de la capacidad del individuo para realizar elecciones y tomar decisiones, su capacidad para vivir independientemente y la comprensión de la tutela.**

**La tutela de un individuo puede considerarse únicamente cuando su necesidad sea clara y sólo en la medida en que sea requerido. La tutela limitada es adecuada para aquellas personas que sean capaces de tomar y expresar algunas, pero no todas, las decisiones. La tutela plena es adecuada para aquellas personas declaradas incapaces de tomar o expresar cualquier decisión.**

**Hay distintas opciones para procesar la tutela:**

- Un familiar u otro tercero interesado puede solicitar que se le nombre tutor (guardián) en forma particular, por cuenta suya. Ésta es la única opción cuando se pretende la tutela tanto de la persona como de los bienes. En algunos casos, la División puede subsidiar al integrante de la familia por lo menos por una parte de los costos.
- La División de Discapacidades del desarrollo puede facilitar la acción judicial sin cargo para los costos legales. Se podrá nombrar a un integrante de la familia o a otro tercero interesado tutor (guardián) únicamente de la persona, y no de sus bienes.
- Un integrante de la familia que no esté capacitado o no esté dispuesto a actuar como tutor (guardián) puede proponer que se nombre a otra persona.
- Un integrante de la familia que no esté capacitado o no esté dispuesto a actuar como tutor (guardián) puede aceptar que se nombre tutor (guardián) de la persona a la Oficina de Servicios de Tutela (*Bureau of Guardianship Services*) de la División.

Excepto que exista una acción iniciada en forma particular para solicitar la tutela, la Oficina de Tutela (*Bureau of Guardianship*) estará a cargo de preparar los documentos necesarios para solicitar al tribunal el nombramiento del tutor (guardián).

**La tutela únicamente de la persona, y no de sus bienes, no implica obligación financiera alguna para el tutor (guardián). La única función del tutor (guardián) relacionada con las cuestiones financieras es firmar solicitudes de beneficios y demás asignaciones para las cuales la persona incapaz puede calificar.**

**La autoridad de la Oficina de Servicios de Tutela de la División está limitada únicamente a la tutela de la persona, y no a sus bienes. Además, el persona de la Oficina de Servicios de Tutela (BGS) no puede prestar consentimiento para la realización de procedimientos tales como tratamientos de shock; psicocirugía; esterilización; o investigación médica, conductual o farmacológica como experimento. Dichas cuestiones pueden derivarse a un tribunal de jurisdicción competente para que se nombre un tutor (guardián) ad litem.**

**La Oficina de Servicios de Tutela puede brindar servicios de tutela a un menor en determinadas circunstancias.** Esto se aplica a las personas menores de 18 años que no tienen progenitores ni tutor (guardián) o cuyo tutor (guardián) legal ha otorgado un poder a BGS para que tome decisiones personales.

**La tutela no es permanente.** Como parte del proceso del Plan de Habilitación Individual anual para cada adulto al que se le ha asignado un tutor (guardián) o que reciba servicios de tutela, el personal deberá evaluar si la persona continúa necesitando un tutor (guardián). En caso de que la evaluación muestre que la tutela debe reducirse o extinguirse, el personal debe iniciar las acciones necesarias para extinguir o limitar la tutela.

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## **Bureau of Guardianship Services**

(Oficina de Servicios de Tutela)  
(División de Discapacidades del Desarrollo)

PO Box 726, Trenton, NJ 08625-0726

(609) 631-2213

### **Northern Regional Office**

153 Halsey St.

PO Box 47009, Newark, NJ 07102

(973) 648-4638

**Atiende a los Servicios Comunitarios de los condados de Bergen Essex, Hudson, Passaic, Somerset, Morris, Sussex, Union, y Warren; Centros del Desarrollo de North Jersey y Woodbridge y el Centro Regional Green Brook**

### **Central Regional Office**

PO Box 726, Trenton, NJ 08625-0726

(609) 631-2213

**Atiende a los Servicios Comunitarios de los condados de Ocean, Hunterdon, Mercer, Middlesex, y Monmouth Centros del Desarrollo de Hunterdon y New Lisbon**

### **Southern Regional Office**

860 N. Orchard Road

P.O. Box 1513

Vineland, NJ 08362-1513

(856) 690-5260

**Atiende a los Servicios Comunitarios de los condados de Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, y Salem Centros del Desarrollo de Vineland y Woodbine**

## **Programmed File Phases: Spanish**

Limited – *(Limitado)*

Phrases for Limited – *(Frases para limitado)*

Limited – Functional Deficits *(Déficit Funcional - Limitado)*

- All areas except legal matters and medical decisions requiring informed consent.
- *(Todas las áreas excepto los asuntos legales y las decisiones médicas que requieren consentimiento informado)*
  
- All areas except medical decisions requiring informed consent, legal matters, residential placement decisions and vocational decisions.
- *(Todas las áreas excepto las decisiones médica que requieren consentimiento informado, los asuntos legales, las decisiones sobre el lugar de alojamiento y las decisiones vocacionales)*

Letter Abilities: *(Aptitudes para carta.)*

- Legal matters requiring informed consent
- *(Asuntos legales que requieren consentimiento informado)*
  
- medical decisions requiring informed consent
- *(decisiones médicas que requieren consentimiento informado)*
  
- residential placement decisions
- *(decisiones sobre el lugar de residencia)*
  
- vocational decisions
- *(decisiones vocacionales.)*

## New Jersey Department of Human Services

### ***GUARDIANSHIP***

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A guardian is a person or agency that is legally authorized to act on behalf of a minor or an incapacitated adult to assure that the person's health, safety, and welfare needs are met and that his or her rights are protected. The duties of a guardian also include making decisions on behalf of the individual and giving informed consent in certain matters. However, the guardian is required to involve the person in decision-making to the extent that his or her abilities permit.

**The Division of Developmental Disabilities is required to evaluate all persons who receive services as to their need for a guardian**, either upon entry into the service system, or prior to their 18<sup>th</sup> birthday, if they are receiving services as minors. A decision that an individual needs a guardian is based on a sound clinical assessment of the individual's ability to make choices and decisions, capacity for independent living and understanding of guardianship.

**Guardianship may be considered for an individual only when it is clearly necessary and only to the extent that it is required.** Limited guardianship is appropriate for persons who have been found capable of making and expressing some, but not all, decisions. General guardianship is appropriate for persons who have been found incapable of making or expressing any decisions.

**There are several options for processing guardianship:**

- A relative or other interested party may choose to pursue appointment as guardian privately, at his or her own expense. This is the only option when guardianship of both person and property is sought.
- The Division of Developmental Disabilities can facilitate the court action at no charge for the legal costs. A family member or other interested party may be designated guardian of the person only, not of his or her property.
- A family member who is unable or unwilling to serve as guardian may propose another appointee.
- A family member who is unable or unwilling to serve as guardian may accept the appointment of the Division's Bureau of Guardianship Services as guardian of the person.

Unless there is a privately initiated action to apply for guardianship, the Bureau of Guardianship is responsible for preparing the documents necessary to petition the court for appointment of the guardian.

**Guardianship of the person only, and not of his or her property, involves no financial obligation for the guardian.** A guardian's only role related to financial matters is to sign applications for benefits or other entitlements for which the person with a disability may qualify.

**The Division's Bureau of Guardianship Services' authority is limited to guardianship of the person only, not of his or her property.** Also, the BGS staff may not consent to procedures such as shock treatment; psychosurgery; sterilization; or medical, behavioral or pharmacological research as experimentation. Those matters may be referred to a court of competent jurisdiction for the appointment of a guardian ad litem.

**The Bureau of Guardianship Services may provide guardianship services to a minor** under certain circumstances. This applies to a person under age 18 who is without parent or guardian or whose legal guardian has granted a power of attorney to BGS to make personal decisions.

**Guardianship is not permanent.** As part of the annual Individual Habilitation Plan process for each adult with a guardian or receiving guardianship services, staff shall review the individual's continuing need for guardianship. If an assessment supports termination or reduction of guardianship, staff must initiate necessary action to terminate or limit guardianship.

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## **Bureau of Guardianship Services**

PO Box 726,  
Trenton, NJ 08625-0726  
(609) 631-2213

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153 Halsey St.  
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**Serving** Bergen; Essex, Hudson, Passaic, Morris, Somerset, Sussex, Union, and Warren Counties of Community Services; North Jersey and Woodbridge Developmental Centers and Green Brook Regional Center

**Central Regional Office**  
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Trenton, NJ 08625-0726  
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## **DEPARTMENT OF HUMAN SERVICES BUREAU OF GUARDIANSHIP SERVICES**

### **Frequently Asked Questions**

**Q. What is a guardian?**

A. A guardian is a person or agency appointed by a court to act on behalf of an individual to assure provision for the health, safety and welfare of the individual and to protect his or her rights in accordance with the judgment of guardianship.

**Q. What does guardianship mean?**

A. Guardianship is the court appointment of a person or an agency to make personal decisions for an individual who is not capable of making decisions independently.

It is important to understand that guardianship removes an individual's fundamental right of self-determination. Therefore, it should only be a solution of last resort.

**Q. Do I have decision-making authority on behalf of my son or daughter when he or she turns 18 years old?**

A. No. Eighteen is the legal age of majority, and at that point, without an action by a court of law, parents' legal decision-making authority for their children ends. However, parents can continue to be involved in planning for their son or daughter. So, you may continue to attend planning meetings such as the IEP or IHP. You may still be involved in medical decisions, and you may be asked to give consent in a medical emergency as the next of kin.

**Q. Does everyone with a developmental disability need a guardian when they turn 18?**

A. No. This is a very individual question and would depend on individual circumstances. If your son or daughter still lives at home with you and has no serious chronic medical issues that involve frequent hospitalizations, there is no immediate need to pursue guardianship. However, if your son or daughter has legal issues that require an advocate to make sure he or she is represented, a guardian may be needed.

**Q. Is there more than one type of guardianship?**

A. Yes, there are two types of guardianship: guardianship of the person and guardianship of property. A guardian can be appointed guardian of the person, guardian of the property or guardian of the person and property. It is generally not necessary to be guardian of the property unless the individual has assets in his or her name.

The Bureau of Guardianship Services, which is located at the Department of Human Services, only assists individuals and families with guardianship of the person. If a family believes it needs to pursue guardianship of the property because a large amount of money or property is involved, they will need to seek advice from a private attorney.

In addition, guardianship of the person can be either General or Limited.

- General Guardianship is appropriate for people who have been found incapable of making or expressing any decisions. This is sometimes referred to as 'plenary' guardianship.
- Limited Guardianship is appropriate for people who have been found capable of making and expressing some, but not all, decisions. The law identifies six areas for Limited Guardianship: residential, educational, medical, legal, vocational and financial. Of the six areas, BGS does not pursue a limited guardianship of the person for financial matters.

**Q. Are there alternatives to guardianship?**

A. Yes. In New Jersey, an individual may appoint a Power of Attorney (POA) to make decisions on his or her behalf.

In order to appoint a POA, the individual with the disability must be able to understand on a basic level that he or she is appointing someone to make decisions on his or her behalf. In addition:

- A person must be able to give consent
- A POA can cover person and/or property
- A POA can be revoked and/or changed at any time, based on changing needs
- A POA is significantly less costly than guardianship
- It is best to work through an attorney to establish POA

For additional information about this option, please visit the website of the Guardianship Association of New Jersey (GANJI ) at <http://www.ganji.org>;

**Q. If I want to pursue guardianship for my family member, how do I begin?**

All guardianship appointments require a Judgment rendered by a Superior Court judge. Families can pursue guardianship in three different ways: by representing themselves (*pro se*); through an attorney; or with the assistance of the Bureau of Guardianship Services (BGS) at the Department of Human Services.

**Families can pursue guardianship *pro se*.** This is a great choice for families who can complete the process on their own, especially if the individual is not already under DDD Services.

1. Pro se means "without a petitioning attorney." The proposed guardian represents himself or herself in court.
2. The forms and instructions can be found at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) or by clicking here: <http://www.judiciary.state.nj.us/prose/10558.pdf>.
  - a. Click on "Represent myself in court.
  - b. Click on "How to file for guardianship of a developmentally disabled person."
  - c. This process eliminates the cost to hire an attorney to file the petition.
3. Remaining costs include court fees, guardianship assessments by a psychologist or physician, and the required court-appointed attorney to represent the individual.

**Families can hire an attorney,** at their own expense, to complete the entire process.

1. A relative or other interested party may choose to pursue appointment as guardian privately, at his or her own expense.
2. This is the only option if guardianship is to be of person and property.

**Families can request BGS** to process a guardianship petition.

1. There are approximately 4000 requests currently pending.
2. This process is for guardianship of the person only.
3. BGS is only able to assist individuals who receive services funded by the Division of Developmental Disabilities. Individuals must apply to DDD to receive an eligibility determination.



**Q. How will a judge know about my child's ability to make decisions?**

A. All applications for guardianship require an up-to-date assessment from a psychologist, psychiatrist or medical doctor licensed in the State of New Jersey. The purpose of this assessment is to verify the need for a guardian and if so, whether General or Limited guardianship is required. Under general guardianship, the guardian makes decisions and gives consents related to all areas of a person's life. Limited guardianship applies only to certain areas specified by the court; these areas could include residential, vocational, legal, medical and educational. Additionally, financial decision making will be assessed if seeking guardianship of property.

**Q. Who can be a guardian?**

A. The guardian can be a family member, another interested person, or the Bureau of Guardianship Services, Department of Human Services.

**Q. Can more than one person be appointed as guardian?**

A. Yes. When more than one person is appointed as a guardian, it is called co-guardianship. Co-guardians:

- have equal decision-making authority
- must be involved together in all decisions or consents needed for the individual
- should be limited to a reasonable number, generally three or less, to make sure decisions can be made on a timely basis
- must, like any single guardian, be appointed by the Superior Court, which is also the only entity that can modify or change the guardianship order.

**Q. After a guardian or co-guardians have been appointed, can additional guardians be added later?**

A. Yes. However, adding additional guardians requires going back to the court and requesting the change. In order to do this, the guardian or family would need to seek advice from an attorney. Given limited resources, the Bureau of Guardianship Services cannot process this type of request.

**Q. If a guardian is appointed, can a successor guardian be named in the guardian's will?**

A. Yes. However, this is not automatic just because it is in the will. Once the guardian dies, the request for appointment of a successor guardian must still be processed through the court.

**Q. What happens if the person named in the will does not want to serve as guardian?**

A. If the person named in the guardian's will does not want to succeed in that role, it will be necessary to find another person or agency that is willing to act as guardian. For this reason, it is important for guardians to be sure individuals named in their wills to be successor guardians continue to be willing to assume that role.

**Q. What happens if an appointed guardian passes away or is otherwise unable to continue as guardian?**

A. At that point, a substitute or successor guardian must be sought. This request will have to be petitioned through the court. If the Bureau of Guardianship Services pursues this option, an assessment for a continued need for a guardian will be completed. The next of kin will be asked if he or she wishes to become substitute guardian.

**Q. How long does it take to complete the guardianship process through the Bureau of Guardianship Services?**

A. BGS maintains a waiting list of individuals who have requested assistance with guardianship. Currently, there are approximately 4,000 individuals on that list. The actual waiting list time is unavailable, but it is safe to say that it can be measured in years. Once an individual is reached and BGS begins working with him or her, the process takes approximately 8-12 months to complete. This includes receipt of the court Judgment.

**Q. What is the process for pursuing guardianship?**

1. Identify a proposed guardian or co-guardians
2. Complete a psychological evaluation
3. Receive a court recommendation
4. File paperwork with the court
5. Conduct a hearing (if necessary)
6. Obtain a court judgment

**Q. If I pursue guardianship privately, can I receive any assistance from the Division of Developmental Disabilities?**

- Individuals who reside in a residential setting funded by DDD are required to contribute financially to the cost of their care; this is known as "Contribution to Care." When the family of such an individual pursues guardianship, the amount of the individual's Contribution to Care may be

reduced by up to \$2,000, on a one-time basis, and applied to costs associated with pursuing a guardianship application with the court.



*Supports  
Program  
Policies and  
Procedures Manual:*

***A Quick Guide  
for Families***

Developed by  
**The New Jersey Department of Human Services  
Division of Developmental Disabilities**

In collaboration with  
**Regional Family Support Planning Councils**

Produced by DHS Office of Publications 1/2017

## Introduction

The **Supports Program** was developed by the New Jersey Department of Human Services' Division of Developmental Disabilities (DDD), which provides public funding for certain services that assist eligible New Jersey adults with intellectual and developmental disabilities, age 21 and older, to live as independently as possible.

### What is the Purpose of this Guide?

This guide summarizes the information in DDD's **Supports Program Policies and Procedures Manual** – the rules that govern Supports Program eligibility and process – in a comprehensive, yet uncomplicated format for families.

This guide is based on the information contained in DDD's Supports Program Policies and Procedures Manual. It is not intended to, nor does it replace the Supports Program Policies and Procedures Manual. The complete policy manual is available on the DDD website:

<http://tinyurl.com/supportsprogrammanual>

The Supports Program Policies and Procedures Manual is the final and definitive source for all policies and procedures related to DDD's Supports Program.

For questions, please contact:  
**DDD.SuppProgHelpdesk@dhs.state.nj.us**  
**800.832.9173**

Or visit:  
**NJ Division of Developmental Disabilities**  
**[www.nj.gov/humanservices/ddd](http://www.nj.gov/humanservices/ddd)**

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