

MENTAL HEALTH CARE ADVANCE DIRECTIVES

N.J.S. 26:2H-102, NJ Advance Directives for Mental Healthcare Act, affords a patient the opportunity to specify preferences for mental health services.

GUARDIANSHIP

Guardianship is a legal relationship in which one person is authorized to make decisions on behalf of another person. The Court determines a person's abilities and incapacities and considers the person's need for appointment of a Guardian.

CONSIDERING GUARDIANSHIP

At age 18, each person is presumed to have capacity and able to assume the legal responsibilities of self-determination. For adults who may be incapable of making decisions in their own best interests, a petitioner seeks to have the vulnerable person declared incapacitated in a court of law. The Court appoints a Guardian (limited or general) if the person is judged to be incapacitated.

GUARDIANSHIP STATUTES

N.J.S. 3B:12-19 applies to all persons who may need Guardianship (limited or general) and may involve Guardianship of person and/or property.

REVERSAL OF GUARDIANSHIP

The ward has the right to challenge the Guardian in a Court of Law, usually with legal representation. The Court determines if the ward may change the guardian, be restored to limited capacity, or reverse the Guardianship.

BENEFITS AND ESTATE MATTERS

Consult an attorney and a licensed financial advisor or CPA for estate planning and for Special Needs Trust information to protect benefits.



GANJI

NAMI-NJ

The Mission of the Guardianship Association of New Jersey, Inc., is to be a resource for guardians and advocates including families, professionals, and concerned individuals who are involved in the lives of persons needing assistance. The organization provides education and a referral network and promotes ethical standards of practice.

www.ganji.org

Toll Free: 1-877-GUARDNJ
973-927-5714

The Mission of the National Alliance of Mental Illness, New Jersey, is to improve the lives of individuals and families who are affected by mental illness. NAMI New Jersey provides education, support, and systems advocacy to empower families and persons with mental illness. Affiliate self-help and grassroots advocacy groups located in each county offer emotional support, information, and advice about treatment and community resources.

www.naminj.org

732-940-0991
Fax: 732-940-0355
E-mail: info@naminj.org

Each Education Institute publication treats an aspect of Guardianship. Other issues may apply to individual cases. Users are advised to consult an attorney if legal action is contemplated.



**EDUCATION INSTITUTE
Pamphlet Series**

3

GUARDIANSHIP AND SURROGATE DECISION MAKING

**for Persons with
Mental Illness**

**Helpful Hints for
Families
Caregivers
Case Managers**

The Guardianship Association of New Jersey, Inc.
(GANJI)
Affiliate, National Guardianship Association

National Alliance of Mental Illness of NJ

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SURROGATE DECISION MAKING

NON-JUDICIAL

The following documents do not need to be ordered by a Judge. If a person can understand what he or she is signing, these documents may prevent the necessity of Court action for Guardianship.

DURABLE POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make financial and legal decisions as well as to access records.

MEDICAL POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make medical decisions and to access records.

ADVANCE DIRECTIVES (informally “living will”; usually in the same document as the Medical Power of Attorney) states the medical/mental health treatments a person would accept or refuse if or when unable to communicate choice.

JUDICIAL

The following authority must be ordered by a Judge.

CONSERVATOR is a person appointed by a Court to manage the financial responsibilities of a person who requires assistance, is not mentally incapacitated, and consents to the Conservatorship.

LIMITED GUARDIANSHIP recognizes that a person may need assistance in only some areas. The Guardian’s limitations are specified in the Court Order.

GENERAL GUARDIANSHIP applies to a person who cannot make decisions. The Guardian is authorized to make legal, financial, personal, and medical decisions for the person deemed by the Judge to have a mental incapacity.

INITIATING GUARDIANSHIP

PRO SE FILING

Pro Se filings are “do-it-yourself” filings. Documents are available from www.judiciary.state.nj.us/prose/10558.pdf. SCARC Guardianship Services, Inc. provides assistance with *Pro Se* filings in six Northern NJ counties.

Costs: Court fees, assessments, court appointed attorney; sliding scale may apply

ADULT PROTECTIVE SERVICES (APS)

Persons who are vulnerable to exploitation or self-neglect may be referred anonymously to county APS offices. Social workers will make an assessment and may recommend an examination by a health professional to determine the need for Guardianship.

LICENSED ELDER AND DISABILITY LAW ATTORNEY

Attorneys who specialize in Elder and Disabilities Law are familiar with matters relating to Guardianship and estate planning. In all Guardianship proceedings, the Court will appoint an attorney to represent the alleged incapacitated person.

Costs: Legal fees vary depending upon services, complexity, and issues such as financial planning. There is a Court fee for filing. Medical and psychological assessments usually incur fees. The Court may order fees for the attorney representing the alleged incapacitated person.

VOLUNTEER LAWYERS FOR JUSTICE (VLJ)

THE COMMUNITY HEALTH LAW PROJECT (CHLP)

VLJ assists the petitioner to obtain guardianship of an alleged incapacitated person.

CHLP works for the client on matters such as: POA, MPOA, Will, Medical or Mental Health Advance Directives, and reversal of Guardianship.

Costs: No cost or sliding scale

RESOURCES

PRIVATE AND PUBLIC GUARDIANSHIP SERVICES

SCARC Guardianship Services, Inc.
973-383-7442 ssheerin@scarc.org

Plan New Jersey
908-575-8300 www.plannj.org

Volunteer Guardians One-on-One
908-284-9100 www.volunteerguardianship.org

NJ Office of the Public Guardian (OPG)
609-530-8810 www.state.nj.us/health

PROFESSIONAL ORGANIZATIONS & PUBLIC AGENCIES

NJ Bar Association, Elder and Disability Law Section
732-249-5000 www.njsba.com

NJ Community Health Law Project
973-275-1175 www.chlp.org

Volunteer Lawyers for Justice (VLJ)
973-645-1955 www.volunteerlawyersnj.org

NAMI / NJ
732-940-0991 www.naminj.org

NJ Psychological Association (NJPA)
973-243-9800 www.Psychologynj.org

County Surrogate’s Court
for guidelines and procedures for court filings
NJ Protection and Advocacy
1-800-922-7233 www.njpanda.org

NJ Department Mental Health Services
609-292-3717 www.state.nj.us/humanservices

NJ Department of Military and Veterans Affairs
1-800-624-050 (see County Veterans Affairs Offices)

COURT PROCEDURES

ASSESSMENTS are prepared by a physician and/or a NJ licensed clinical psychologist to address decision-making abilities of the alleged incapacitated person.

JUDGMENT states the Court’s decisions about capacity and need for guardianship protections.

ANNUAL REPORT TO THE COURT is prepared by the Guardian summarizing the ward’s status. See www.njcourtsonline.com “Legal Forms.”

STANDARDS OF PRACTICE are guiding principles that govern Guardianship procedures: self-determination, least restrictive alternative, substitute judgment, best interest. See websites for GANJI and the National Guardianship Association www.guardianship.org.