Guardianship FAQs

Imagine if you were no longer able to have a say in all your child's care and services. What if a physician or nurse wouldn't talk to you about your child's health care? What if you couldn't go to meetings about your child's educational services? What if you couldn't make financial decisions about your child?

That and more could happen at age 18 if you don't become your child's guardian.

That's why it's important to learn about guardianship—and start preparing early!

Q: What is guardianship?

A: In Florida, if an adult can no longer make their own decisions due to an illness or disability, a special legal process called a **guardianship** can take place. This allows an individual (guardian) to make legal, financial, and health decisions for an incapacitated person.

Q: What is a guardian?

A: A **guardian** is someone (or something, like a company) a judge chooses to make decisions for a person who can't make their own. This person is officially called a **ward.** The guardian acts on behalf of the ward, whether it's making personal choices for them or managing their money and belongings.

Q: Who determines whether my child is incapacitated and how is that defined?

A: In the legal world, an **incapacitated person** is someone a court has officially decided can't handle their own affairs. This might mean they're unable to manage their money and belongings, or they can't make decisions about their own health and safety. You might also hear this person called a **ward.**

Q: Why would I need to become a Guardian to my own child?

A: Everyone is presumed to have capacity upon their 18th birthday. This means your child is presumed to be able to make their own medical, legal, social, and monetary decisions. As a result, even as the parent, you no longer have the legal authority to make these decisions for them. Without legal authority to make decisions, medical providers, banks, and any other service providers can refuse to allow you to make decisions on their behalf.

Q: What happens if I don't become a Guardian to my own child?

A: Once your child turns 18, if you are not your child's guardian, you may not be able to make—or even be involved in--important decisions for your child. Since your child's abilities, the type of decision, and other laws and processes for decisionmaking will have an effect, there may be different impacts in different situations. But without a guardianship, you increase the risk that decision making about your child's health and wellbeing does not include you. You also increase the risk that decisions made may not be what you believe is best for your child.

Q: What are some examples of what could happen if I don't become my child's Guardian?

- You may not be able to be in IEP meetings.

- Healthcare providers may not share medical information with you.
- Your child may make his or her own health care choices.
- You may not be able to manage your child's finances.
- Your child could get to decide where to live.
- Someone else could petition to become your child's guardian.
- Your child may not receive services that require your child's signature or consent.

Q: When can I file for adult guardianship for my child who is under 18?

A: While each local court handles filing timeframes a little differently, most will let you file for a guardianship before your child's 18th birthday so that it can be effective when he or she becomes an adult legally. For example, this might be as early as age 17 ½, or just before the child's 18th birthday. Your attorney will know more about when your local court will accept and process filings for a child who is not yet 18, so it's best to talk to your attorney.

Q: Can anyone file a Petition for Incapacity?

A: To begin a guardianship case, the person asking for it (called the **petitioner)** must be an adult (18 or older). They need to explain to the court why they believe someone can no longer make their own decisions.

Q: Who may serve as a guardian?

A: In Florida, almost any adult resident can be a guardian, whether they're a family member or not. However, there are some important exceptions:

- **No Felonies:** If someone has been convicted of a felony, they can't be a guardian.
- **Capable of Duties:** A guardian must be able to handle the responsibilities that come with the role. If they're not up to the task, the court won't appoint them.
- **No Conflicts of Interest:** The court will also make sure there's no conflict of interest. This means the guardian's personal interests shouldn't clash with the best interests of the person they're caring for.

Q: What does a guardian do?

A: There are two main types of guardians, and each have different responsibilities

A **guardian of the property** is in charge of managing the incapacitated person's (the **ward's)** money and belongings. Their duties include:

- **Listing everything:** They need to make a detailed list of all the ward's assets and property.
- **Smart investing:** They're expected to invest the ward's money carefully.
- **Using funds for care:** They must use the ward's money to support them.
- **Reporting to the court:** They have to file detailed reports with the court every year to show how they've managed the ward's finances.

- **Getting court approval:** For certain financial decisions, they'll need to get permission from the court first.

A guardian of the property may also exercise certain property rights on the ward's behalf. These include:

- **Entering into contracts:** They can enter into contracts for the ward, such as applying for Social Security benefits or enrolling the ward in a day program.
- **Suing and defending:** They can retain an attorney to bring a lawsuit if the ward is injured or in an accident.
- **Managing property:** They can open a bank account for the ward or create a Special Needs Trust if the ward receives an inheritance that could jeopardize their government benefits.

A **guardian of the person** makes decisions about the ward's personal care and well-being. This can include:

- **Medical and personal care:** Making choices about their healthcare and daily needs.
- **Where they live:** Deciding on the best place for the ward to live.
- **Creating a care plan:** They also need to put together a detailed plan for the ward's care, along with a report from a doctor.

Q: Who monitors the guardian?

A: Guardians have important responsibilities, and there are several requirements they must meet:

- **Legal Representation:** Guardians always have a lawyer representing them.
- **Required Training:** Guardians have to complete a training program approved by the court to ensure they understand their duties.
- **Court Oversight:** The court clerk reviews all the annual reports submitted by both the guardian of the person and the guardian of the property. These reports are then presented to the judge for approval. This helps ensure everything is being handled correctly.
- **Accountability:** If a guardian fails to do their job properly, the court can remove them from their role.

Q: Can a Guardianship end?

A: Yes, a guardianship doesn't have to last forever. If a person who was deemed incapacitated (the **ward)** gets better and regains their ability to make decisions, a request can be made to the court to give them back their rights.

When this happens, the court will have the ward medically re-evaluated. Based on that re-evaluation, the court can decide to give back some or even all of the ward's legal rights.

Q: Do I have to reapply to be a Guardian?

A: No, once you are appointed you are considered the guardian until the guardianship ends or you resign.

Q: How long does this process take?

A: Once a request to determine if someone is incapacitated (called a **petition to determine incapacity)** is filed with the court, things move fairly quickly:

- **Lawyer and Evaluation Team Appointed:** Within 5 days, the court appoints a lawyer to represent the person whose capacity is being questioned. At the same time, the court also appoints a special "examining committee" to evaluate that person.
- **Reports Submitted:** This examining committee has 15 days to complete their evaluations and send their reports to the court.
- **Hearing Scheduled:** The court will schedule the hearing.

Keep in mind that while these are the general timelines, special circumstances can sometimes make the process take a bit longer or shorter.

Q: Are there costs associated with guardianship?

A: Starting a guardianship involves some costs, and it's helpful to understand who usually pays for what:

- **Initial Filing Fees:** When someone first asks the court to determine if a person is incapacitated (the **petitioner),** they'll typically pay a fee to file the necessary paperwork.
- **Court-Appointed Professionals:** There will also be costs for the lawyer the court appoints to represent the person whose capacity is being questioned, as well as fees for the "examining committee" that evaluates them.
- **Guardian's Attorney Fees:** Guardians are required to have their own attorney, so you can expect legal fees for that representation as well.

Q: Who pays the cost of a Guardianship?

A: It depends!

- **Court-Appointed Professionals:**
    - **From the Ward's Assets:** If the incapacitated person (the **ward)** has money or property, these costs can often be paid from those assets.
    - **State Assistance:** If the ward doesn't have enough money to cover these fees (meaning they are "indigent"), the state might waive these costs.
- **Filing Fees and Guardian's Attorney Fees:** NICA covers filing fees and the cost of the guardian's attorney. Details are in the Benefit Handbook.

Q: How do I find an attorney?

A: Your NICA case manager can share names of attorneys who have provided services to NICA participants in the past or you can research board certified elder law attorneys on the Florida Bar

Referral Service website at: https://www.floridabar.org/directories/find-mbr/ or you can call 800-342-8011.

Q: Where do I find more detailed information?

A: Always contact your local elder law attorney to discuss, but the Florida Bar website is an excellent starting resource: https://www.floridabar.org/public/consumer/pamphlet030/