



# SERVICE DESCRIPTIONS

## GUARDIANSHIP

For some individuals after brain injury have difficulty making good decisions for themselves. Some people may need assistance from someone else to assume their rights and make decisions about many aspects of their daily lives. This may be a family member, neighbor, friend, or someone appointed from a private or public agency. Guardianship is often people's first action taken when it really should be the last possible option. There are alternatives to explore before resorting to full guardianship as it can be challenging to be overturned or restored later down the line.

### What it is

A legally-enforceable arrangement in which the guardian has the legal right and duty to care for another (sometime referred to as the ward). When used appropriately, it should act as a supported decision-making arrangement with the individual. It may be full, limited, or interim guardianship:

- "Of the Person" to manage and make decisions about personal affairs.
- "Of the Estate" to manage only financial affairs and property of the ward.
- "Plenary" or "General" to manage both the personal needs and property of the ward.

### What it is not

- does not include case management or easier access to services.
- does not remove basic rights or legal right such as the right to vote or to marry.
- cannot force people to take medication, live in a particular facility, or speed up access to care.
- stealing or misusing the individual under guardianship's money.

### Process

Capacity or competency refers to the ability to make informed choices. The process of guardianship starts with a petition alleging "incompetence" followed by a hearing to present evidence/question witnesses. The court will make a decision and appoint a guardian if appropriate. If a court has declared you incompetent and you think your competency should be restored, you can ask the court to reconsider your case.



## Alternatives to Guardianship

When a person does not meet the criteria for "incompetency," but needs assistance with managing some aspects of living, less restrictive alternatives that can maintain the person safely in the community should be pursued. Alternatives to guardianship should be pursued before the beginning of guardianship of the person, of the estate, or both, including:

- **Social, Habilitation, Case Management and Advocacy Supports**
  - Circle of family, friends & advocates
- **Power of Attorney**
  - one person gives another person the legal authority to act on their behalf if unable
- **Durable Power of Attorney**
  - becomes effective when the person becomes incapacitated or declared mentally "incompetent"
- **Health Care Power of Attorney**
  - health care agent may be given the same power and authority as the individual to make medical decisions on their behalf
- **Advance Instruction for Mental Health (AIMHT)**
  - advanced instruction for mental health treatment allows an individual to give instructions and preferences regarding mental health treatment
- **Representative Payee for Social Security and other pensions/benefits**
  - a person selected to receive and manage benefits on person's behalf
- **Special Needs Trust**
  - administered by a trustee to manage the assets and income of the trust to help eligibility for government aid

### Supported Decision-Making

1. Think about the type of decisions you or the person you support need help making, and the type of help needed.
2. Talk to people who can help and discuss what type of help is needed and when.
3. When needed, the person and supporter get together so the person can get the help and make the decision.
4. You may want to create and share a written plan saying the people who will provide support, contact information, and when/how they will provide help.

## RESOURCES & REFERENCES

- National Resource Center for Supported Decision-Making:  
[www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)
- Rethinking Guardianship:  
[rethinkingguardianshipnc.org](http://rethinkingguardianshipnc.org)
- Disability Rights NC: [disabilityrightsnc.org](http://disabilityrightsnc.org)
- NC DHHS:  
[www.ncdhhs.gov/assistance/guardianship/guardianship-alternatives-to-guardianship](http://www.ncdhhs.gov/assistance/guardianship/guardianship-alternatives-to-guardianship)
- NC Courts: [www.nccourts.gov](http://www.nccourts.gov)
- NC Guardianship Association: [www.nc-guardian.org](http://www.nc-guardian.org)