



A Division of the New York Legal Assistance Group

LegalHealth
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This is general information, not legal advice. Patients should consult an attorney for specific guidance.

Adult Guardianship

Adult guardianship is the process by which a person who lacks mental capacity is declared incompetent by the court, and appointed a guardian to make legal and medical decisions on their behalf. There are two types of adult guardianships in New York State, discussed below:

Article 17A

- ◆ Used when the incapacitated person has an intellectual disability that existed before his/her 22nd birthday. Enables the parent or caregiver to make medical and other decisions for his/her child after the child reaches the age of legal majority (18).
- ◆ Medical documentation needed prior to filing Article 17A guardianship:
 - **Two (2) Physician Affidavits.** A medical affidavit can be completed by the primary care physician, and a second medical affidavit must be completed by a psychiatrist, neurologist, or physician with a specialty treating people with intellectual disabilities.
 - **Psychosocial Evaluation**
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- ◆ [YAI](#) and [AHRC](#) can complete the second Physician Affidavit, Psychological Evaluation, and Psychosocial Evaluation. Patients should ask for all three when they make the appointment.
- ◆ Stand-by guardian is recommended in the event the first guardian is no longer able to care for the intellectually disabled adult.
- ◆ Article 17A petitions are filed in Surrogates Court.
 - Cases generally take about 6 months from the time of filing to complete a 17A Guardianship.
 - Patients should be referred any time after the patient's 17th birthday and there is no upper age limit to seek Article 17A guardianship.

Article 81

- ◆ Used for people who did not become incompetent until after their 22nd birthday, for example, following a diagnosis of Alzheimer's disease, dementia, severe brain trauma or other psychiatric disorders.
- ◆ Article 81 Petitions are filed in New York Supreme Court. The Petitioner must show by clear and convincing evidence that the patient is likely to suffer harm unless a guardian is appointed.
- ◆ Article 81 guardianships may limit the guardian's powers to only those necessary to prevent harm to the incapacitated person, preserving as much autonomy as possible.
- ◆ Once appointed, guardians are required to take a certification class and file annual reports with the court.
- ◆ Unfortunately, NYLAG is not able to assist with Article 81 Guardianships, but can provide referrals to private attorneys.

Before pursuing guardianship, families should consider less restrictive alternatives, such as power of attorneys or health care proxies. Guardianships should only be used to protect individuals lacking legal capacity.

More questions? Refer patients for an appointment with a LegalHealth attorney

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