

What Happens When My Child Turns 18?

Ever since their birth or adoption, you have been taking your children to medical appointments, consulting with professionals on their behalf, advocating for appropriate educational supports, managing their monies or teaching them to do so responsibly, and generally helping your children find their own way in society. Now that your child's 18th birthday is about to arrive, is there anything you should be doing?

In New Hampshire, individuals who reach the age of 18 years are deemed to be adults, and thus parents, without written authorization, no longer have the legal authority to speak with their children's doctors about medical treatment or to work with the school system on their behalf. Your child might be very high functioning, and thus able to manage most things independently; or, your child might need assistance with virtually all decisions that must be made in the future. Depending upon where your child falls on this continuum, you may need to consider filing for guardianship in order to continue assisting your child with daily decision making.

There are two basic types of guardianship: (a) guardianship over the estate; and (b) guardianship over the person. Guardianship over the estate appoints an individual to handle all assets of, and financial decisions relating to, the proposed ward (i.e., your child). In contrast, guardianship over the person encompasses the broad range of other life decisions, including education and health care. The individual filing for guardianship (the "petitioner") over a child who has reached the age of 18 must elect whether the guardianship should be temporary or enduring, and must assert specific factual allegations relating to the proposed ward's alleged incapacity to engage in specific activities or decision making. In New Hampshire, all guardianship petitions are filed in probate court, generally in the county in which the proposed ward resides.

In order to grant a petition for guardianship, the probate court must find that the proposed ward is "incapacitated." "Incapacity" is considered a "legal, not a medical, disability ... measured by functional limitations," and specifically is defined as follows:

"Incapacity ... shall be construed to mean or refer to any person who has suffered, is suffering or is likely to suffer substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care or safety or an inability to manage his or her property or financial affairs. Inability to provide for personal needs or to manage property shall be evidenced by acts or occurrences, or statements which strongly indicate imminent acts or occurrences. All evidence of inability must have occurred within 6 months prior to the filing of the petition and at least one incidence of such behavior must have occurred within 20 days of the filing of the petition for guardianship. Isolated instances of simple negligence or improvidence, lack of resources or any act, occurrence or statement if that act, occurrence or statement is the product of an informed judgment shall not constitute evidence of inability to provide for personal needs or to manage property."

In addition to making a finding of incapacity, the probate court must find that guardianship is the “least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the proposed ward.”

If guardianship is granted over the person, the guardian must file an annual “report” with the probate court detailing changes in the ward’s medical condition, listing all hospitalizations and surgeries and explaining any past or proposed changes in the ward’s place of residence. If guardianship is granted over the estate, the guardian must file an annual accounting, documenting all income and expenses, and, in some instances, request the court’s permission before acting with respect to certain assets.

If a child has the capacity to make decisions but otherwise would benefit from a parent’s continued assistance after age 18, a less restrictive alternative may be for the child to sign HIPAA releases to grant the parent access to confidential health care information, as well as power of attorney documents that are limited in scope so the parent may continue to assist the child, as needed, with educational and financial matters.



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