



Guardianship

September 16, 2024



Partners Health Plan (PHP) is a non-profit organization and operates the nation's only fully integrated duals (Medicare/Medicaid) plan for people with Intellectual and Developmental Disabilities (IDD).

PHP Benefits Include:

- **\$200 every month** that can be used for items at the pharmacy, groceries, and for home delivered meals and utilities.
- **Free transportation** to and from medical and other important appointments.
- **Expedited Self-Direction** process and approvals.



The PHP Vision:

PHP, as a trusted partner and advocate for people with developmental disabilities and their families, strives to help our members achieve their life goals, improve their personal health and fully participate in their communities of choice.

What is Guardianship?



Guardianship is a legal arrangement where a court appoints a person or organization to make decisions for another person who is unable to make all or only certain decisions for themselves.

Resource:

<https://ww2.nycourts.gov/guardianship>

WHY MIGHT A GUARDIAN BE NEEDED?

A guardianship may be needed over a child if there is no parent available to care for a child, or for an adult if they are unable to make decisions for themselves.

There are many reasons a person may be unable to make decisions for themselves (ie. child, intellectually or developmentally disabled adult, or legally determined to be incapacitated).

Rights and Responsibilities With Guardianship

- Determine and monitor residence
- Consent and monitor medical treatment
- Make end-of-life decisions
- Consent and release of confidential information (HIPAA)
- Act as a representative payee
- Manage income and assets
- Signing contracts and/or other legal documents
- Maximize independence in a least restrictive manner

**Note: Although the above are things that the guardian can make decisions on, they should also take into account and include what the person's thoughts are and what they would like before the guardian makes the final decision

**Even with guardianship, people still have the right to refuse.



What to consider prior to applying for Guardianship

- In New York State, when a person turns 18 years old, they are assumed to be legally able to make decisions for themselves. If there are concerns about the well-being of a child, or of an intellectually or developmentally disabled person who is 18 or over (or about to turn 18), those seeking guardianship (petitioner) should carefully consider the needs of the person believed to need a guardian and seek guardianship solely based on those needs.
- The petitioner should also explore alternatives to guardianship that may address any presenting concerns while also allowing the person to make decisions themselves, when possible. There are several alternatives to guardianship that may work better than a court ordered guardianship.

Alternatives to Guardianship

Representative Payee

Requires approval from the SSA dept. – manages Social Security Benefits. Being a representative or being Power of Attorney does not provide the same legal authorization oversight of SS benefits. Representative payees must spend the benefits according to the beneficiaries' needs and are expected to account for the money spent and report and changes to the SSA dept.

Health Care Proxy – HCPOA

An appointment HCPOA will be authorized to make health-related decisions. The proxy outlines the consent a person has provided to give the agent (person they chose to be their HCPOA) privileges in the event of an unfortunate medical condition. The HCPOA will become active when the person can no longer make health-related decisions on their own.

Trusts – Supplemental Needs Trusts

Created for a person with disabilities to provide financial support without losing their eligibility for governmental benefits. Trusts include a trustee that will assist in making decisions on how the money in the trust is monitored and used in the best interest of the person.

Power of Attorney (POA)

Provides legal authorization to make decisions about the person's property, finances, and investments.

Living Wills

A written legal document that spells out medical treatments a person would and would not want to be used to keep them alive, as well as adding the person's preferences for other medical decisions (ie. organ donation, etc.).

Supported Decision Making (SDM)

SDM allows individuals with disabilities to make choices about their own lives with support from a team of people they choose. It allows the person to make their own decisions. Supported decision making promotes self-determination, control, and autonomy. It fosters independence.

Guardianship - Article 17A



Article 17-A Guardianship

What is an Article 17-A Guardian?

An Article 17-A guardian is someone who is appointed by a Surrogate Court judge to help protect the interests of an intellectually or developmentally disabled adult and make decisions for them, when they are unable to do so for themselves.

The person asking the court to appoint a 17-A guardian (the petitioner) is typically a parent, guardian, or a close family member.

The petitioner can also identify stand-by guardians.

Where does one file a 17-A Guardianship petition?

In New York State, Article 17-A Guardianship cases are heard in the county's Surrogate Court where the person resides (not the petitioner).

NOTE: *An Article 17-A guardianship is the most restrictive type of guardianship in the State of New York. It covers most decisions typically made by a parent for a child. For this reason, before pursuing an Article 17-A guardianship, families should explore whether other less restrictive options listed previously that may help protect the intellectually or developmentally disabled adult while still allowing them to continue making certain decisions.*

Article 17-A Guardianship, continued

To start a 17-A guardianship case, the petitioner (a parent or any interested person who is 18 years old or older), including an authorized corporation, must go to the Surrogate Court located in the county where the intellectually or developmentally disabled person resides.

- **File the following legal forms:**
 - **Article 17-A Guardianship petition**
 - **Combined Oath and Designation or Combined Corporate Consent and Designation**
 - **Affidavit of the proposed guardian**
 - **Affidavit (certification) of Examining Physician or Licensed Psychologist and/or the Affirmation (certification) of Examining Physician**
 - **Waiver of Process Renunciation Consent to Appointment of Guardian**
 - **Consent, Oath and Designation**
 - **Affidavit of Mailing of Notice of Petition**
 - **17-A Guardianship Citation**

For more information:

<https://www.nycourts.gov/courthelp/guardianship/17A.shtml>

Article 81 Guardianship

- Article 81 is the General Guardianship Statute in NYS
- It does not depend upon a person's diagnosis, but their functional limitations
- It is filed in the Supreme or County Court.
- The appointment must be necessary to provide personal needs and to manage the property and or financial affairs of the person.
- The person must agree to the appointment of an Article 81 Guardian or must be found to lack capacity.

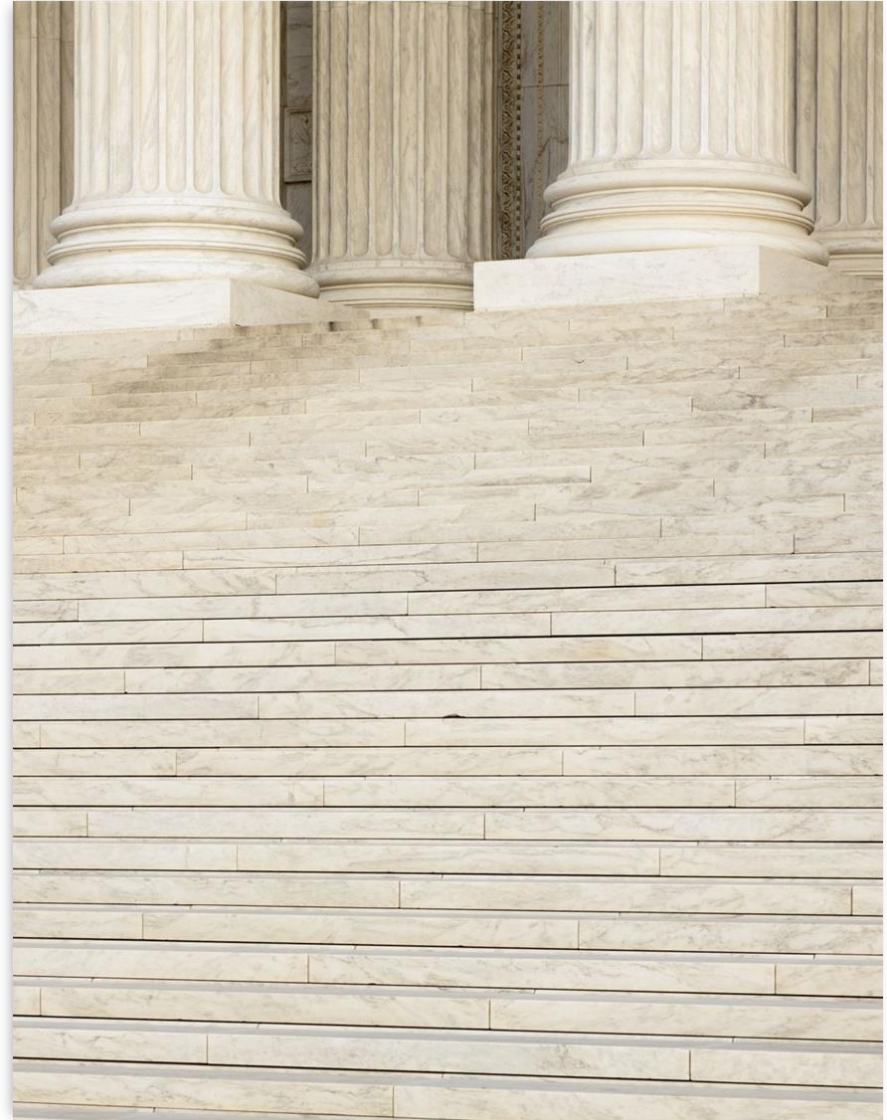


A person lacks capacity when he or she is likely to suffer harm because:

1. They are unable to provide for personal needs and property management
2. They cannot adequately understand and appreciate the nature and consequences of such inability.

Who Can Be an Article 81 Guardian

- Someone 18 years or older, a corporation, or a public agency, including a local department of social services.
- A person who is appointed according to the term of Article 81 by the Supreme Court
- A person who acts on behalf of an incapacitated person in providing for personal needs and or property management.



Who can petition the court to be an Article 81 Guardian?

- The person alleged to be incapacitated (consent to guardianship)
- A presumptive distribute of the person alleged to be incapacitated
- An executor or administrator of an estate when the alleged incapacitated is or may be the beneficiary of that estate.
- A trustee of a trust
- The person with who the person alleged to be incapacitated resides
- A person concerned with the welfare for the person alleged to be incapacitated and may include a corporation or a public agency
- The CEO of designee of the CEO of a facility in which the AIP resides.

Powers of the Guardian – Article 81

Powers are specifically set forth based upon individual capabilities and needs

Tailored to the needs of the individual

The Term of the Guardian can be for a set period in time or indefinite.

Modification of Guardian's Authority

*Applies to both Article 17-A and Article 81
Guardianships*

- If the person's circumstances change, the guardian must go back to court and seek to expand or eliminate powers.

The person named as Standby Guardian has **60 days** after the occurrence of the triggering event to go to Court (usually the Family Court in the county in which the child lives) to file a petition for custody of the child. For instance, the Standby Guardian would have 60 days after the parent is deported to go to Family Court.

Termination of Guardianship

Applies to both Article 17-A and Article 81 Guardianships

- The court appointing the guardian shall discharge where the person who was incapacitated becomes able to exercise some or all the powers necessary to provide for personal needs or property management.

DIFFERENCES BETWEEN ARTICLE 17-A & ARTICLE 81 GUARDIANSHIP

Article 17-A Guardianship

- Provide a means for parents of disabled children to continue to make decision once their child has reached adulthood (18 yrs. old)
- Almost purely diagnosis driven
- Provides to range/details of authorized power limitations -- Plenary (Full) Guardianship
- Low cost to file; No attorney needed

Article 81 Guardianship

- Directed towards adults who have lost or have diminished capacity.
- Not based on diagnosis; rather based on and tailored to the person's needs in regard to decision making.
- Provides the guardian no more power than is necessary under the circumstances and aims to preserve autonomy to the greatest degree possible.
- More costly than a 17-A petition; Attorney is beneficial to navigate through the petition and process.



Thank you for joining us!

Stay tuned for invitations to upcoming Support Broker trainings.

October 23: Supported Decision Making

November 20: Whole Person Care

Visit our website for more information about Self-Direction with Partners Health Plan, and for other helpful resources for Support Brokers and Fiscal Intermediaries:

[Self Direction with PHP - Partners Health Plan \(phpcares.org\)](http://phpcares.org)

