



NC Department of Health and Human Services
**Guardianship: Transitioning
from Child Welfare to Adult
Services**

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OBJECTIVES

- By the end of this workshop, participants will be knowledgeable about:
- How to identify cases
- Critical time-lines-when to initiate the transition process
- The legal steps in adjudication of incompetence and appointment of a guardian
- Roles and responsibilities of Child Welfare and Adult Services
- Ethical decision making issues
- Identification and resolution of any conflicts of interest

**Case
Identification**

Case Identification

- Identification of cases begins upon entry into foster care.
- Within 30 days of entry into foster care system, youth receives an assessment of education, medical and mental/behavioral needs.
- A case plan is developed and referrals made based upon needs assessment.

Case Identification

- According to the NC DSS Family Services Manual “Youth ages 16 and older shall receive independent living services as indicated by their personal needs assessment, which the social worker shall complete. The plan for independent living services shall be documented on the Transitional Living Plan of the Out of Home Family Services Agreement (DSS-5240). If a youth will not be able to live independently due to profound developmental, physical, or mental disabilities, the basis for this determination must be documented, and a Transitional Living Plan is not required”

Case Identification

Permanency goals in case plan may help with identification:

- Reunification
- Adoption
- Guardianship to relative/caretaker
- Custody
- APPLA- Another Permanency Planned Living Arrangement

Case Identification

Questions/red flags to consider:

- Does the youth have a notable diagnosis of a physical or mental disability?
- Is the youth currently placed in a therapeutic foster care or a group home due to a physical or mental health need?
- Does the youth currently demonstrate an inability to make age-appropriate decisions related to such things as activities of daily living or education or housing planning?
- Does the youth receive Social Security Income (SSI) benefits?
- Is there a current mental health provider involved in the youth's plan of care?

Critical Timelines

Critical Timelines

- When youth turns 17, Child Welfare will explore if a guardianship referral is needed.
- Prior to 18th birthday (preferably 6 months to a year) Child Welfare submits a referral to Adult Services Liaison.
- Child Welfare and Adult Services will schedule a staffing to determine the need for a guardian
- If guardianship is determined, file the petition.

Guardianship Legal Steps

Guardianship

It's the Law



North Carolina General Statute 35A

Guardianship

Legal relationship between an individual (the guardian) who has been given the authority by the court to make decisions on behalf of another individual (the ward) who is no longer able to make and communicate responsible decisions on his or her own behalf.



**Legal Definitions
G.S. 35A 1101 & G.S. 35A 1202**

- **Guardian** - One who is legally responsible for the care and management of the person and/or property of an incompetent adult or a minor.
- **Guardian ad Litem** - (Adult Services) An attorney appointed by the court to represent the expressed wishes of the respondent
- **Guardian ad Litem advocate** (Child welfare) - volunteer appointed by the court to protect and promote the best interest of the child
- **Respondent** - a person who is alleged to be incompetent in an adjudication of incompetence proceeding.
- **Ward** - a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent.

**Legal Definitions
G.S. 35A 1101 & G.S. 35A 1202**

- **Incompetent Adult** - an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.
- **Incompetent child** - a minor who is at least 17 1/2 years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.
- **Jurisdiction** - The Clerk of Superior Court has original authority over adjudication of incompetence hearings and the appointment of a guardian.

**Legal Definitions
G.S. 35A 1101 & G.S. 35A 1202**

**Jurisdiction for the adjudication of incompetence hearing
35A-1103. Jurisdiction; venue.**

- (a) The clerk in each county shall have original jurisdiction over proceedings under this Subchapter.
- (b) Venue for proceedings under this Subchapter shall be in the county in which the respondent resides or is domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue shall be in the county where the respondent is present.

Legal Definitions

G.S. 35A 1101 & G.S. 35A 1202

Jurisdiction for the appointment of a guardian-venue

35A-1203. Jurisdiction; authority of clerk.

(a) Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the person, guardians of the estate, or general guardians for incompetent persons and of related proceedings brought or filed under this Subchapter. Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the estate for minors, for the appointment of guardians of the person or general guardians for minors who have no natural guardian, and of related proceedings brought or filed under this Subchapter

Legal Definitions

G.S. 35A 1101 & G.S. 35A 1202

- **Mental retardation** - means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- **Mental Illness** - an illness that so lessens the capacity of a person to use self-control, judgment, and discretion in the conduct of the person's affairs and social relations as to make it necessary or advisable for the person to be under treatment, care, supervision, guidance, or control. The term "mental illness" encompasses "mental disease", "mental disorder", "lunacy", "unsoundness of mind", and "insanity".

Legal Definitions

G.S. 35A 1101 & G.S. 35A 1202

- **Clerk** - means the Clerk of Superior Court
- **Corporation** - A company or group of people authorized by law to act as a single entity or legal personality, and having its own powers, duties, and liabilities.
- **Disinterested Public Agent Guardian (DPAG)** - The director or assistant directors of a county department of social services.

**Legal Steps to
Adjudication**

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Legal Steps

In accordance with G.S. 35A

The Clerk of Court has legal authority to declare incompetence.

The Clerk declares incompetence by three components:

- Cognitive
- Functional-ADL's & IADL's
- Status-Mental and Physical Capacity

Two of the three components must be met for the clerk to declare incompetence

One of the two components must be Status

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Legal Steps in Adjudication

- Complete Petition AOC-SP-200
- Complete Capacity Questionnaire AOC-SP-208
- File the Petition:
 - For an adult 18 and over the petition is filed where the respondent resides.
 - For a minor child in DSS custody the petition is filed in the county of the legal custodian.

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Legal Steps in Adjudication

- Hearing is scheduled
- Notification of all interested parties
- If needed, arrange for the GAL (Guardian ad Litem - Attorney) to have access to the minor
- Arrange for the minor to attend the hearing
- If DSS is the proposed guardian, make sure Adult Services receives notice of the hearing

Legal Steps

www.nccourts.org

Click forms

- AOC-SP-200 Petition for adjudication of incompetence
- AOC-SP-201 Notice of hearing
- AOC-SP-202 Order on petition for adjudication of incompetence
- AOC-SP-208 Capacity Questionnaire
- AOC-E-206 Order on application for appointment of guardian
- AOC-E-400 Oath/Affirmation

Roles and Responsibilities

Roles and Responsibilities

- **Adult Services in conjunction with Child Welfare develops and establishes a transition protocol for the agency**
 - Develop referral and assessment forms
 - Who will file petition and be responsible for all legal forms and documents
- **Adult Services and Child Welfare establishes specific timelines from referral process through the adjudication.**
- **Adult Services identifies a liaison who will receive all referrals, give guidance and consult about information needed, arrange staffing.**

Roles and Responsibilities

- **Child Welfare initiates the guardianship process.**
- **Child Welfare and Adult Services work collaboratively in making the determination of need.**
- **Child Welfare will prepare the case for transfer when the minor reaches 18.**
- **Child Welfare in collaboration with Adult Services should ensure the youth is fully connected to appropriate services beyond foster care.**

Ethical Considerations and Conflicts

Ethical Considerations

- Allowing minor disabled child to age out of foster care without a transitional plan.
- Do not confuse a minor's informational poverty (life experiences) with his/her capacity to make decisions
- When addressing the determination of need for a guardian, to what extent is the minor involved?
 - Autonomy vs Best interest
 - Did you explain to the minor why it was necessary to make that particular decision?
 - Maximize the minor's self reliance and independence

NC Foster Care 18 to 21 Program

108A-48. State Foster Care Benefits Program

- (a) The Department is authorized to establish a State Foster Care Benefits Program with appropriations by the General Assembly for the purpose of providing assistance to children who are placed in foster care facilities by county departments of social services in accordance with the rules and regulations of the Social Services Commission. Such appropriations, together with county contributions for this purpose, shall be expended to provide for the costs of keeping children in foster care facilities.
- (b) Repealed by Session Laws 2015-241, s. 12C.9(a).
- (c) The Department may continue to provide benefits pursuant to this section to an individual who has attained the age of 18 years and chosen to continue receiving foster care services until reaching 21 years of age if the individual is (i) completing secondary education or a program leading to an equivalent credential, (ii) enrolled in an institution that provides postsecondary or vocational education, (iii) participating in a program or activity designed to promote, or remove barriers to, employment, (iv) employed for at least 80 hours per month, or (v) incapable of completing the educational or employment requirements of this subsection due to a medical condition or disability.

NC Foster Care 18 to 21 Program – Contd.

108A-48. State Foster Care Benefits Program

- (d) With monthly supervision and oversight by the director of the county department of social services or a supervising agency, an individual receiving benefits pursuant to subsection (c) of this section may reside outside a foster care facility in a college or university dormitory or other semi-supervised housing arrangement approved by the director of the county department of social services and continue to receive benefits pursuant to this section. (1981, c. 275, s. 1; 2015-241, s. 12C.9(a).)

NC Foster Care 18 to 21 Program

Program Criteria & Guardianship Concerns:

- Young Adults must sign VPA(Voluntary Placement Agreement).
 - If under guardianship who signs?
- All young adults receiving Foster Care 18 to 21 services are eligible to receive monthly Foster Care Maintenance Payments and young adults are expected to budget at least a portion of their stipend.
- If under guardianship, wards(person under guardianship)do not manage their own money unless specified under limited guardianship.
- Young adults 18 years and older under guardianship would qualify for SSI payments. Would those payments effect program eligibility payments/stipend? Would the guardian be allowed to manage stipend under this program? and Who would be responsible for SSI application and compliance?

NC Foster Care 18 to 21 Program

Program Criteria & Guardianship Concerns:

- Initial Court Review must be held within 90 days of the date the young adult enters into a Voluntary Placement Agreement with the county agency and the court may schedule additional hearings to monitor placement and progress of the young adult.
 - What role would the Guardian have in those proceedings?
- Program/County Oversight and Responsibilities vs. Guardian Role and Responsibilities.
- Since this Program is under Child Welfare, Would the Child Welfare take the lead in all aspects of the Young Adult/Ward well-being?
- The Guardian upon appointment have legal role and responsibilities, would those responsibilities pose a conflict with program criteria/compliance?
- Young Adult can quit verbally or in writing.
- What role does the Guardian have in this decision as legal surrogate decision-maker?

Q & A



Thank you for attending!

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