

SAMPLE FORMAT

Guardianship Protocol for Transitioning Minors in DSS Custody

_____ County

Purpose

(State why your agency has chosen to develop specific guidelines around this provision)

Example

The essential purpose of guardianship for an incompetent person is to replace the individual's authority to make decisions with the authority of a guardian when the individual does not have adequate capacity to make such decisions.

The purpose of this protocol is to establish guidelines to facilitate communication, cooperation and collaboration between Child Welfare and Adult Services in transitioning a plan of care for minors in DSS custody who have been diagnosed with mental disabilities or mental illness, lacks capacity to make his/her own decisions and will need a guardian when they reach age 18.

Overview

(State your agency's mission and mandate to provide for minors' in DSS custody that have aged out of foster care and may need a guardian; mission and mandate to provide for adults who are alleged to be incompetent)

Example:

Guardianship is an intrusive legal process which results in the removal of many and often all of the clients' legal rights. The process of removing or

limiting a person's right to make their own decision should not be taken lightly.

North Carolina General Statute 35A contains the exclusive procedures for the adjudication of incompetence and the appointment of a guardian.

In accordance to N.C.G.S. 35A-1101 An "Incompetent Adult is defined as... An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make and 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.

An incompetent adult who is not able to act effectively on his/her own has the right to a have a qualified responsible guardian.

Guardianship should be used as last resort when less intrusive alternatives are not appropriate or available.

When a disabled minor reaches the age of 18 his resources and eligibility for services will change significantly. If it is clear and evident a guardian is needed, a plan of action should be initiated prior to ager 18.

The Child Welfare worker and the Adult Services worker should work cohesively to develop a plan of care.

Requests for Guardianship Services

(State your procedure for handling requests)

Example:

When a Child Welfare worker contact the Adult Services Division for Guardianship assistance for a minor child diagnosed with mental disabilities or mental illness, lacks capacity to make his/her own decisions and will reach the age of 18 in six months to a year:

1. The Adult Services Liaison will complete the referral information and request thorough assessment and any other supportive documentation relevant to minor's capacity be forwarded to the Liaison.

2. The Adult services Liaison will explain upon receipt of assessment a staffing will be schedule within _____ days (*outline specific timelines that are realistic and manageable for your county*)
3. The staffing and determination of a need for a guardian will be conducted within _____ days from the receipt of the referral.
4. If Guardianship is needed the _____ (*your protocol should determine who will file the petition*) will file the petition within _____ days of the staffing.

The Adult Services Liaison is _____ (Title)
(*name*)
(*Protocol should identify the contact person for all referrals*)

Assessment and Plan Development

(*Information relevant for a determination of need for guardian and plan of action*)

1. The assessment will generally include meeting and conducting a capacity questionnaire with the minor.
2. The assessment will cover all functional areas including physical and mental health, social support, environment, activities of daily living and instrumental activities of daily living, financial support and resources.
3. The assessment should be thorough and specific in regard to the minor's capacity for decision making.
4. The assessment will determine what type of guardianship will benefit the individual. (ex: full or limited guardianship)
5. The assessment will determine what legal rights the individual should retain.
6. The assessment will determine who should be recommended to serve as guardian.
7. The plan should lay out the facts supporting the need for a guardian; focus on the individual's current ability to make responsible decisions about his/her personal welfare and to manage his/her financial affairs.

8. The plan should indicate there are no family or friends at this time willing or able to serve as guardian.
9. The plan should include what information the attorney will need to represent the case in court.
10. The plan should include facts to support the petition.

Procedure

Example:

1. The petition is filed in the county of the guardian of the legal custodian.
2. The (***worker filing the petition***) will include all interested parties including the proposed guardian (DSS).
3. Upon notification of hearing, the Child Welfare worker will arrange minors' access to the Guardian Ad Litem (GAL-Attorney) and arrange transportation.
4. The Adult Services worker will also be present at the hearing.
5. The (***worker filing the petition***) is responsible for all legal documents/notices relevant to the proceedings.

Post Adjudication

Example:

1. If the minor is adjudicated incompetent and DSS is appointed guardian, the Child Welfare worker will begin preparation for transfer upon the minor's 18th birthday.
2. The (***worker filing the petition***) will complete the qualification process.

3. The Child Welfare worker will develop plan with Adult Services worker to ensure transition is without gap in services. For example if applicable: notify Social Security that the individual (ward) is no longer minor child in DSS custody, but an incompetent adult with DSS as the guardian, placement provider, Medicaid and Mental health provider and any other service provider.
4. The Child Welfare worker and Adult Services worker will review needs as outlined in the assessment. For example, locate appropriate living arrangement, the potential need for Social Security application, Medicaid application, mental health services and any other resources available.
5. Child Welfare worker will notify the minor child of his/her change in status (ward) and possible placement change and change in services.
6. The (***worker filing the petition***) will complete all paperwork including legal documents (ex: letters of appointment, order of appointment).
7. The Child Welfare worker will prepare case for transfer to Adult Services upon the minor's 18th birthday.
8. Adult Services worker will ensure all of the ward's finances and resources are in place. (living arrangement should be arrange with Child Welfare to ensure safety and adequacy of care).
9. Adult Services worker will provide contact information to ward's service providers and family.

The purpose of this template is to provide a guide to Child Welfare and Adult Services to enter into a protocol/procedure that not only will provide guidance and direction to staff but will ensure the adequacy of care, comfort and safety of a ward who is unable to make his/her own decisions. The information in this document is BEST PRACTICE and to ensure a successful transition from Child Welfare to Adult Services.