

**A PROJECT OF THE
DISABILITIES LAW PROGRAM
COMMUNITY LEGAL AID SOCIETY, INC.**



Transition to Adulthood:

What you need to know as an individual with a disability.

Age of Majority Rights

for Delaware Transition-Age Youth and their Families



**MADE POSSIBLE WITH SUPPORT
FROM THE DELAWARE
DEVELOPMENTAL DISABILITIES
COUNCIL**



Introduction

The transition from childhood to adulthood can be both exciting and challenging. There are many things to keep in mind as you (or your child) approach adulthood. While it is never too late to plan for the future, we recommend that you start thinking about and preparing for the transition to adulthood early in the teenage years. As you get older, society expects more from you. Once you turn 18, you will have civic, financial and other responsibilities. Civic responsibilities include things like voting, registering to vote, registering for selective service, and participating in jury duty. While this guide does not cover every topic related to turning 18, it does offer insight into many of the common challenges.

This guide contains useful tips to help you advocate for yourself and also directs you to other resources that can give you additional assistance if you need it. Each individual's situation is unique and this guide is not intended to constitute legal advice on your specific circumstances.

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New Civic Duties

Identification: Proving Who You Are

Now that you are 18, you will have many new and exciting experiences with businesses, employers, and public agencies in the local, state, and federal government. Because these people may not have met you before, they may ask you to prove who you are. The two most common ways to prove your identity are to show either a Delaware driver's license or a Delaware state identification card. Without one of these official forms of identification, you may miss out on many valuable benefits or experience much more difficulty in accessing them. You can apply for either a Delaware driver's license (approximately \$25) or a Delaware state identification card (approximately \$20) at one of the Delaware Division of Motor Vehicles offices. More information on how to obtain either type of identification is provided below.

Obtaining a State Identification Card

If you are not going to be driving, you will still need to

get a Delaware state identification card. You can obtain this by bringing the required documents to your local Division of Motor Vehicles.

Locations and Hours; Documents to Bring¹:

http://www.dmv.de.gov/home/contact_info/index.shtml

Documents to bring if seeking a federally compliant ID: http://www.dmv.de.gov/services/driver_services/drivers_license/pdfs/Driver_License_ID_Checklist042414.pdf

Telephone Assistance: Georgetown 302.853.1000 or 1004; New Castle 302.326.5000 or 5005; Dover 302.744.2500 or 2506, Wilmington 302.434.3200 or 3204.

Cost as of Oct 2014: The fee for an identification card is \$20.00, and it expires 4 years from your next birthday

Selective Service (Males Only): By applying for a Delaware state identification card, you will automatically be agreeing to be registered with the Selective Service System.

Obtaining a Delaware Driver's License

If you plan on driving a car or other vehicle in Delaware, you will need to have a Delaware driver's license. Your driver's license will also serve as your official Delaware identification card. Getting a driver's license in Delaware is a multi-step process which is intended to ensure you know the laws of the road, and that you have had enough driving practice and training before you receive your license.

There are several excellent resources for learning how to drive and how to get a driver's license in Delaware:

- 1) *Driver Education Courses* - if you are a resident of Delaware, and enrolled in a Delaware public school or

¹ It is important to have original documents. See the link for more details.

nonpublic school, you are entitled to a free driver education course. Also, if you have an active Individual Education Program (IEP) you may be given special accommodations for the course, such as repeating the course for free, and you can take the course until you reach 21.² You should request an IEP team meeting to discuss this. If you don't have an IEP, you are not a student, you just want to retake the course, or you are over 21, you can enroll in the course for a fee at your local school district.

- 2) "*Delaware Driver Manual*" - a comprehensive guide that can help learn what you need to do in Delaware to get your driver's license. It is available at: <http://www.deldhub.com/pdf/Delaware%20Driver's%20manual.pdf>
- 3) Delaware Division of Motor Vehicles Website at: <http://www.dmv.de.gov/index.shtml>

Additional Information if You Have a Disability

When you apply for your license or permit, the Delaware Division of Motor Vehicles (DMV) will generally ask you to tell them if you have a medical condition that may interfere with your ability to safely operate a motor vehicle. You may also be required to give the DMV a signed report or certificate from your doctor that says that your medical condition will not prevent you from safely driving a car. This is explained in more detail on page 38 of the Delaware Driver Manual. Links to the forms for the physicians are included below. In addition, if you are a student and those with driver's permits who are identified as a person with a disability and require specialized evaluation, training or equipment to operate a motor vehicle, you will attend specialized training and be examined by the Division.³

Other helpful resources or links regarding driving with disabilities and driving schools that specialize in training drivers with disabilities include:

² See 14 Del. C. § 540.

³ See 21 Del C. 2710(b)(2); 21 Del C. 2713(d).

- **Delaware Disability Hub** at: <http://www.deldhub.com/transportation/>
 - ◊ Disability & Driving Fact Sheet: <http://www.deldhub.com/pdf/Disabilities%20and%20Driving%20Fact%20Sheets.pdf>
 - ◊ Selecting a vehicle: <http://www.deldhub.com/pdf/Adaptive%20Driving.pdf>
- Driving schools providing specialized services for people with disabilities:
 - ◊ Moss Rehab: <http://www.mossrehab.com/Special-Services/driving-school.html>
 - ◊ Mainline Health: <http://www.mainlinehealth.org/rehab/services/driver-rehab>
- **Documents to bring to apply for a learner's permit:** http://www.dmv.de.gov/home/contact_info/index.shtml ⁴
- **Documents to bring if seeking a federally compliant ID:** http://www.dmv.de.gov/services/driver_services/drivers_license/pdfs/Driver_License_ID_Checklist042414.pdf
- If you have questions you can contact **DMV Customer Service** at:

Customer Service e-mail:
DMVCustomerService@state.de.us

Telephone Assistance: Georgetown 302.853.1000 or 1004; New Castle 302.326.5000 or 5005; Dover 302.744.2500 or 2506, Wilmington 302.434.3200 or 3204.

Registering with the United States Selective Service System

The Selective Service System is a way to provide trained and untrained people to the Department of Defense in the event of a national emergency. **The law requires**

⁴ Note importance of having original documents - see link for more details.

men (but not women!), **including immigrants** (both those who are documented and those who are undocumented),⁵ **to register with Selective Service within 30 days of their 18th birthday. Even if you have a disability that would make you unable to serve in the military, you must still register with Selective Service**, except as explained below.

If you are male, you are only not required to register if you fall into a very narrow set of exceptions.

For example, if you have a physical or mental disability that causes you to be continuously confined to a residence, hospital, or institution, you **may** be exempt from registering. For a list of possible exceptions see: <http://www.sss.gov/PDFs/WhoMustRegisterChart.pdf>. **It is important to know that if you believe that you should be exempt from registering for the selective service because of disability, you must provide the Selective Service with documented evidence** that you are hospitalized, institutionalized, home-bound and unable to function outside the home, or that you are unable to comprehend the nature of your registration with the Selective Service. **The Selective Service – not you or your physician - then makes a determination as to whether or not you qualify for exemption from registration.**⁶ If you were previously exempt from registration and your status changes, such as you are released from the hospital or institution that previously caused you to be exempt, you must register with the Selective Service within 30 days.

You can also get an early start and send your registration once you are at least 17-years and 3-months old. It is important to know that late registrations are accepted, but only to age 26. If you have not registered within 30-days after your 18th birthday, you are technically in violation of the law and should register as soon as

⁵ "The Selective Service System has not now, or in the past, collected or shared any information which would indicate a man's immigration status, either documented or undocumented. The Selective Service System has no authority to collect such information." Source:

<https://www.sss.gov/default.htm>.

⁶ See <https://www.sss.gov/QA.HTM#quest32>

possible.

If you fail to register you can be fined up to \$250,000 and/or be sentenced to up to 5-yrs in jail. In addition, you may miss out on future benefits and job opportunities, and failing to register could impact your attaining U.S. citizenship (if you are not already a citizen). Registration is required to apply for federal employment, some job training programs, and federal student loans. It also is necessary in order to obtain a Delaware State job.⁷

There are several ways you can register:

- 1) Visit the U.S. Post Office to complete and submit the form, OR
- 2) Use the internet to complete and submit the form at: <https://www.sss.gov/RegVer/wfRegistration.aspx>⁸; OR
- 3) Mail the completed form (available at https://www.sss.gov/PDFs/Regform_copyINT.pdf) to:

Selective Service System
P.O. Box 94739
Palatine, IL 60094-4739

OR
- 4) If you are under 26, you will be automatically registered if you apply for a Delaware state identification card or driver's license via the Delaware Division of Motor Vehicles.

For more information about Selective Service see:

<https://www.sss.gov/Default.htm>.

Jury Duty

Courts conduct many trials by jury. A judge decides the law, and the jury determines the facts and applies the law to the facts. The jury is made up of ordinary people like you and is selected at random. Jurors are asked to

⁷ 29 Del. C. § 5941A.

⁸ But be sure to have your Social Security Number ready to enter.

come to court listen to a trial and to then participate in the decision process. You could be asked to serve on a Delaware jury or on a federal jury. It is an important civic duty that you should consider an honor and privilege. You will receive a small amount of money to serve on a jury and the law does not allow your employer to punish you for serving as a juror. Your employer does not need to pay you, so, if serving on a jury will present extraordinary difficulty for you (you can't afford to lose your pay) you can ask to be excused.

Notice of Jury Duty

If you are selected for jury duty, you will receive a letter in the mail telling you that you have been picked for jury duty. The letter is called a 'Summons for Jury Service'. You will need to fill out the 'Juror Qualification Questionnaire' which will be included with your letter, or in some courts you can complete it online, e.g.: http://courts.delaware.gov/superior/jury/jury_form.stm.

The 'Summons' is A Court Order You Cannot Ignore

Failing to reply or failing to show up in court for jury duty can result in an additional summons, fines, and even jail time. Therefore, it is very important to complete the questionnaire and submit your request to be excused, if applicable, by the deadlines in your summons. Unless you are excused from jury duty, you must show up at the court at the date and time required by the summons.

Excusal from jury duty or delaying the date of your jury service

If it would be very hard for you to serve on a jury, you can request that you be excused. **To be excused you must:**

- 1) **Still Complete the Summons Questionnaire** by the deadline in your summons letter, AND
- 2) Provide a written request, in advance, explaining why you are unable to go.
 - For example, if you cannot go due to your

disability, you need to explain that and give a specific reason as to why that is the case.

- You should include proof of a disability or other evidence to support your request.

Completed 'Questionnaires' and 'Requests to be Excused' from Jury Duty should be submitted according to the instructions in your summons. You should receive a response informing you whether or not your request to be excused has been approved. If you do not receive this response, you should call the Jury Services office for further direction. Be sure to appear for jury duty unless you have been instructed otherwise.

If you still have questions, please call the Jury Services number for the appropriate courthouse:

- New Castle County: 302.255.0824
- Kent County: 302.735.1900, Ext. 58021
- Sussex County: 302.855.7055
- Federal court: 800-377-3772 (toll free)

Or review the following website for state courts: <http://courts.delaware.gov/superior/Jury/>.

Registering to Vote and Voting

In Delaware, adult citizens have a right to vote in elections.⁹ This includes persons with disabilities, even those with guardians. Only a judge can remove the right of a person with a disability to vote based on a written order that clearly states that the person's mental disability prevents use of basic voting judgment.

You can register to vote as soon as you turn 18 (or before, if you will be 18 on the date of the next General Election) if you want to exercise this important right.¹⁰

You can register to vote:

- At any Department of Elections Office for your

⁹ With the exception of individuals convicted of certain felonies.

¹⁰ Note: you CAN vote in school board elections even if you are not a registered voter.

- county¹¹;
- At a mobile registration site;
 - By calling an Elections Office and having a registration form mailed to you;
 - At the Motor Vehicle Office or a Social Service Office; or
 - Online at: <https://ivote.de.gov/>

You can find more information in our Voting Rights Guide, available at: <http://transition.declasi.org/voting-rights/>.

Legal System Changes

Criminal charges will generally no longer be handled by Family Court

When you reach 18, you will be treated as an adult in the legal system. This means that for criminal behavior, you will generally go to the Justice of the Peace Court, Court of Common Pleas, or Superior Court, and NOT Family Court¹². Consequences for adult criminal behavior are more severe than for juvenile delinquency behavior. It will be very important to have a lawyer representing you if you go to court. If you have had previous interactions with the juvenile justice system, turning 18 is an excellent time to start fresh. You can take positive steps to comply with the law going forward and may also have an opportunity to clear your prior juvenile record.

Potential to Remove Juvenile Records from Your Background

If you have a juvenile delinquency record, once you turn 18, you might be able to apply for an expungement. It is

¹¹ Historically, Delaware has had a county board of election for each of the three counties. As of July 1, 2015, the three separate county boards will be made into one single state board of election. However, there will continue to be a Department of Elections office in each county. See HS 1 for HB 302 w/HA 1 (147th General Assembly, signed June 26, 2014).

¹² There are some exceptions to this rule. Certain types of cases may remain the jurisdiction of Family Court, such as: misdemeanor cases between family members, misdemeanor committed against children, selling alcohol to a child, and others. See 10 Del. C. § 922.

important to do this. When you apply for a job, the employer can do a criminal background check. Juvenile records will come up in this check. The procedures for juvenile criminal record expungement are further explained in our **Employment and Vocational Rights Guide**, available at: <http://transition.declasi.org/employment-and-vocational-rights/>.

Signing Contracts / Agreements

At 18, you will be held personally responsible for any contracts or other legal agreements which you approve, unless you have a guardian appointed by the Court of Chancery as an adult. This means that when you sign your name to paperwork agreeing to buy, rent, or pay for services, both you and the person or the business that you are dealing with have specific legal rights and responsibilities. You can go to court to enforce the agreement if the other person does not follow the agreement. However, it is important to know that if you do not keep your part of the bargain, that the other person or business can also take you to court. Some common agreements you may encounter are apartment leases, cellular phone plans, and even credit card applications and loans which will be discussed in the financial section of this guide. Failure to meet your part of the contract can cost you a lot of money in damages and penalties. So, it is very important that you read all contracts and agreements very closely, and that if you do not understand something to seek help prior to signing the paperwork. Also, do not sign a contract with blank spaces, unless you cross them out before signing and always keep a signed copy of the agreement for your records.

You should also know that oral agreements can still be legal contracts that can be enforced in court. Therefore, you should be careful before you enter an oral agreement, just like a written one. Of course, it can be harder to prove that they exist, or the terms of the contract. The best idea is to, whenever possible, have all contracts in writing.

Other: Liability, Marriage, Military Service, Wills & Inheritance

Liability - You can sue or be sued in your own name, and if you lose in court, you will be personally responsible to pay the money stated by the court.

Marriage – You can marry without the consent of your parents or Family Court.

Military Service – You can join the military without your parent’s consent.

Wills – You can make or revoke a will.

Inheritance – If someone dies and leaves you money or property, you can inherit it directly.

Financial Aspects

Working

As an employee, you will have certain rights and obligations. Although there are some exceptions, your employer must generally provide regular breaks, overtime pay, worker’s compensation insurance, and unemployment insurance. You should know that your job is not guaranteed, and you can be fired without being given a reason, unless your personnel manual or collective bargaining agreement grants you additional rights.¹³ However, in Delaware it is illegal for employers to discriminate against a person because the individual has a disability, or based on certain other characteristics like race or sexual orientation. For more information on employment and vocational rights for Delaware Transition-Age Youth and their Families please refer to the guide available at:

<http://transition.declasi.org/employment-and-vocational-rights/>

¹³ Delaware State employees may not be discharged or suspended for more than 30 days in a year period, except for cause, once they have completed the probationary period. 29 Del. C. § 5949.

Responsibility to Pay Taxes

Taxes are fees charged by local, state and federal governments and paid by individuals and businesses. This money is used to run government programs. Frequently, federal, state and local taxes are taken directly out of your paycheck before you get it. You do not have a choice regarding this. Be sure to review your pay stubs regularly to make sure that they are accurate. You may also have to pay additional taxes directly to the government.

The amount of tax that each person must pay depends on a number of things. Calculating the amount can be very complicated, and sometimes requires assistance from tax professionals. Fortunately, there are a number of free programs that can help you figure out whether or not you need to submit a tax return, and if so, they can also help you to complete the forms which must generally be submitted by April of each year.

The following organizations provide free Personal Income Tax filing assistance, or referral for assistance, to eligible Delaware taxpayers:

- **DCRAC**
601 N. Church Street, Wilmington, DE
20127 Office Circle, Georgetown, DE
1-302-298-3252 or
1-877-825-0750 x 102
<http://www.dcrac.org/>
- **My Free Taxes**
Provides free Federal and State tax filing for individuals or families with a combined income under \$60,000 in 2014: <http://www.myfreetaxesde.com/>
[Call 855-698-9435 if you are unable to file online.](http://www.myfreetaxesde.com/)
- **Nehemiah Gateway Community Development Corporation (NGCDC)**
Provides free Federal and State tax filing for individuals whose household income does not exceed \$52,000 with dependents (such as a spouse or

children) or \$35,000 with no dependents. This program also provides access to financial education and services for low-to-moderate income individuals and tax-filing services for small business owners with approximate gross receipts of \$85,000 or less. Find out more, including locations and dates at: <http://www.nehemiahgateway.org/>. 302-655-0803

If you have never submitted a tax return before, it can be hard to know what types of receipts you will need to submit. However, you will receive important documents from your employer (such as a W-2 form, which you should receive by January 31st), and your bank or other financial investment institutions (interest earned), that you will need to calculate and submit your taxes. Therefore, it is important to watch for these in the mail and to keep them for preparing your taxes. Your W-2 will also have important information regarding how much tax has already been taken out of your paychecks.

There are also some things that you may be able to deduct or get a credit for, on your tax forms, to reduce the amount of taxes you owe. Examples can include child care costs, donations to charities, work-related expenses, and more. You should keep receipts of these things with your taxes. You should consult with a tax professional if you are unsure whether you must report something on your taxes, if you are unsure if you can deduct or get a credit for something on your taxes, or you have any other questions or concerns about your taxes.

Delaware State Taxes, Important Things to Know:

- Delaware tax returns are due April 30 for the prior year.
- If you owe Delaware but do not have the funds to make payment on April 30th, it is still important to file the return and make future payment arrangements because there is a 5% monthly penalty if the return is not filed on time.
- If you do not have all of your return completed by the

deadline, you can request an extension using the Delaware extension form, DE1027, which will give you more time to file the original tax return without the 5% non-filing penalty.

- You can file access forms and file your return online.

Federal Taxes, Important Things to Know:

- You must submit a federal tax return if you meet specific income requirements. The filing deadline for federal taxes is April 15th
- Just because you must submit a tax return does not necessarily mean that you owe the government money. Sometimes submitting a tax return can result in a tax refund, payable to you.
- If you work and have low to moderate income, you may qualify for the **Earned Income Tax Credit (EITC)**, which reduces the amount of tax you owe and may also give you a refund.¹⁴ Find out more at <http://www.irs.gov/Individuals/EITC,-Earned-Income-Tax-Credit,-Questions-and-Answers> or by consulting a tax professional.
- Failing to submit a return can result in financial penalties so it is very important to submit the information required.
- As of 2014, if you are filing as an individual who has gross income (before taxes) of \$10,150 or more for the year, then it is likely that you must file a federal income tax return.
- You can find more information on Federal Income Tax documents and filing requirements at <http://www.irs.gov/>

Money Management / Budget Assistance

Financial Accounts

When deciding what type of bank account or credit card

¹⁴ However, an adult without a child cannot qualify for the EITC until the tax year in which he turns 25.

to open, first, you should ask about the types of accounts that are available. This will help you decide what type of account would be right for you. Ask about the services and interest rate, but it's also important to ask about the fees, if you would be required to keep a minimum balance, and the bank's overdraft program services. Of course you want to try to avoid having to pay fees as much as possible, so you can keep your hard earned money for yourself! You can download additional information on banking and credit cards at: <http://transition.declasi.org/age-of-majority/>.

Establishing Credit

It is very important to establish "good credit" and to have a good credit "score." Paying your bills on time and not spending more money than you make will help you to establish good credit. If you pay your bills on time, you will have a good credit rating. However, the more often you fail to pay, the more your credit score will suffer. A low credit score will make you pay a higher interest rate to borrow money. If your credit score is too low, it's possible that banks or other companies will not want to offer you a loan. Poor credit also makes it hard to rent an apartment and to buy a house or a car. A poor credit score may impact your ability to get certain jobs or professional licenses.

Credit Reports

A credit report includes information on where you live, how promptly you pay your bills, and whether you've been sued or have filed for bankruptcy. Companies keep track of how promptly you pay your bills and issue "credit reports". Other companies use these reports to decide whether they will let you buy items using credit. Also, the rating is used to determine how much interest you have to pay, and whether you will be approved for a loan (such as a car loan or a mortgage on a home) if you ever do need to borrow money.

Reviewing your credit report is a great way to help guard against identity theft. That's when someone uses your personal information — like your name, your Social

Security number, or your credit card number — to commit fraud. This negatively affects your credit when the thief does not pay the bills opened in your name. This affects your ability to get credit, insurance, or even a job.¹⁵ How to avoid identity theft will be discussed in more detail in the next section.

Under federal law, you have the right to one free credit report every 12 months from each of three major credit-reporting agencies. You can order your credit report in the following three ways:

- visit annualcreditreport.com, or
- call 1-877-322-8228, or
- complete the [Annual Credit Report Request Form](#) and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

However, be aware of “imposter” websites, as these may require the payment of fees that are hidden in the fine print. Only one website is authorized to fill orders for the free annual credit report you are entitled to under law — annualcreditreport.com.

Money Management Assistance

- The **Delaware Money Management Program** (phone: 1-800-223-9074) is cosponsored by the Division of Services for the Aging and Adults with Physical Disabilities and the AARP. This program offers money management service to help low-income adults with physical disabilities (and seniors) that have difficulty budgeting, paying routine bills and keeping track of financial matters.
- The **Delaware Money School** (DE Financial Literacy Initiative) has free classes on a variety of topics related to financial management. Call (800) 267-5002 or visit <http://www.dfli.org>
- **DCRAC – Borrow \$MART** program– free classes and counseling on credit and money management. Find out more at <http://www.dcrac.org/credit.html>

¹⁵ See <http://www.consumer.ftc.gov/articles/0155-free-credit-reports>.

- **Stand By Me** offers free one-on-one support to Delawareans who want to understand more about their money and make good financial decisions. Find out more at <http://standbymede.org/>

Identity Theft¹⁶

When someone steals your personal information and uses it without your permission, it is called identity theft. For example, someone might use your name and information to open a credit card with your name on it, and then uses that credit card to buy things. It's a serious crime that can really mess up your finances and credit— and can take time, money, and patience to fix.¹⁷

Protecting your personal information can help reduce your risk of identity theft. Protect your identity by:

- 1) **Knowing who you are about to share information with;**
- 2) **Asking questions before deciding to share your personal information; ASK:**
 - a. Why do they need it?
 - b. How it will be used?
 - c. How they will protect it?
 - d. What happens if you don't share the requested information?
- 3) **Being careful about sharing information online**
 - a. Do not overshare on social networking sites. If you post too much information about yourself, an identity thief can find information about your life, use it to answer 'challenge' questions on your accounts, and get access to your money and personal information.
 - b. When using the internet and social media sites. You should:

¹⁶ See <http://www.consumer.ftc.gov/articles/0272-how-keep-your-personal-information-secure>

¹⁷ See <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>

- Avoid posting your home address, phone number, or email address.
 - Use strong passwords and not share them
 - Not post your social security number or your full birth date.
 - Not label or tag full names when posting photos.
 - Not post anything online that reveals you are out of town – wait to post those vacation pictures until you are back home!
Someone could figure out where you live and realize there is an unoccupied home that is an easy target for a burglary.
- 4) **Keeping your paper documents & records secure** (lock them in a safe place, shred what you do not need, limit what you carry, and promptly remove mail from your mailbox).
- 5) **Keep your personal information secure online and on your phone, computer and other devices**
- a. Keep passwords private and use strong passwords
 - b. Use security software or encrypt your data (install anti-virus software, anti-spyware software, and a firewall and set your preferences to update these protections often).
 - c. Be Wary of public Wi-Fi.
 - d. Avoid Phishing Emails. Don't open files, click on links, or download programs sent by strangers. Opening a file from someone you don't know could expose your system to a computer virus or spyware that captures your passwords or

other information you type.

- e. Lock Up Your Laptop. Keep financial information on your laptop only when necessary. Don't use an automatic login feature that saves your user name and password, and always log off when you're finished, so if your laptop is lost or stolen, it will be harder for a thief to get at your personal information.
- f. Delete and wipe personal information from mobile phones and computers before disposing of them.

What If Someone Does Steal Your Identity?

If you do become a victim of identity theft, if you take action quickly, you can stop an identity thief from doing more damage. The Federal Trade Commission recommends you follow these three steps as soon as possible:

- 1) Place an Initial Fraud Alert – for more information see <http://www.consumer.ftc.gov/articles/0275-place-fraud-alert>
- 2) Order Your Credit Reports – for more information see: <http://www.consumer.ftc.gov/articles/0276-order-credit-reports>
- 3) Create an Identity Theft Report = for more information see: <http://www.consumer.ftc.gov/articles/0277-create-identity-theft-report>

If you are interested in learning even more about how to prevent identity theft, you can visit the Federal Trade Commission's Identity Theft Consumer Information Site: <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>

Free Phone Programs

Having a telephone will help you find jobs, access health care services, connect with family, call for help in an

emergency, and more. Because paying for a home or wireless phone can be expensive, the “Lifeline” government benefit program can provide you with discounts (\$9.25 per month in 2014) on your monthly telephone service if you meet the eligibility requirements. Frequently, the plans include a free telephone. If your income is at or below 135% of the federal poverty level or if you participate in certain assistance programs¹⁸, you will typically qualify.

The following links have more detail on the program and eligibility:

- <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers> and
- <http://www.lifelinesupport.org/lis/>.

However, note that only one “Lifeline” discount is available per household, and that a person cannot get the discount for both a wireless and a home phone at the same time. Contact information for participating companies can be found at:

<http://www.lifelinesupport.org/lis/companies/CompanyListing.aspx?state=DE&stateName=Delaware>.

Healthcare Coverage

Everyone needs health insurance. A new federal law, the Affordable Care Act, requires most people to have health insurance in 2015 or else pay a penalty tax.¹⁹ If you have health insurance from a job (or a family member’s job), you are considered covered and will not have to pay the fee that uninsured people must pay. If you have medical assistance, like Medicaid or Medicare, you are also considered covered and do not have to pay the penalty. For more information, visit

¹⁸ Such as Medicaid, food stamps/SNAP, SSI, Federal Public Housing Assistance (Section 8), Low-Income Home Energy Assistance Program, TANF, or the Free Lunch Program. Also, if you are part of a Head Start program or if you receive other state assistance you may qualify.

¹⁹ See 26 U. S. C. § 5000A.

Healthcare Coverage Cont.

<https://www.healthcare.gov/what-if-i-have-job-based-health-insurance/>.

If you do not have health insurance from your job, or from Medicare or Medicaid, you must purchase a policy (Under the new law, every health insurance plan will cover a core set of benefits called “essential health benefits.” Generous subsidies in the form of tax credits are available for many people to offset the costs of premiums and co-insurance. There is an open enrollment period every year when you can enroll or change plans. To learn more about buying health insurance under Affordable Care Act, visit

<https://www.healthcare.gov/what-is-the-health-insurance-marketplace/>.

For more information on the Affordable Care Act in general and what it means to you, call 1-800-318-2596 (TTY: 1-855-889-4325) or visit:

<http://www.delawareinsurance.gov/health-reform/ACA.shtml> or healthcare.gov.

It can take a while to get insurance in place, so it is very important to start thinking about where you will get your health insurance at least six-months before you turn 18. If you get sick and do not have health insurance you have to pay for the healthcare you obtain, which can be very costly. If you received medical assistance or disability benefits before you turned 18, your eligibility may change after you turn 18. In some cases, you may need to apply for these benefits again when you turn 18. It is a good idea to find out ahead of time whether your eligibility will automatically continue, whether your eligibility will be reviewed at age 18, and whether you will need to reapply for benefits as an adult.

Some young adults have private health insurance through their parents. You can remain insured on your parents’ private health insurance, if it is available and if it is cost effective for you, up until you are 26. If you work, your employer may also provide health insurance coverage as a benefit of your employment. However, every policy is different and you will have to do a careful review to see which option is best for you.

If your healthcare insurance is provided by your employer, there are certain protections under another federal law, the Employee Retirement Income Security Act (ERISA).²⁰ Under this law, health insurance companies are required to give you important information about covered plans. They also must have a fair process for handling benefit claims and appeals. For more information on your rights and responsibilities under ERISA, call 1-866-444-EBSA (3272) or visit www.dol.gov/ebsa.

The Delaware Insurance Commission is another important source of information about health insurance in Delaware. If you have questions about insurance or complaints about an insurance company or insurance agent, contact the Commissioner's Consumer Services division:

1-800-282-8611 toll-free in Delaware or (302) 674-7310

Email: consumer@state.de.us

Website: delawareinsurance.gov

Or review their "A Guide To Insurance and Health Care Programs For People with Disabilities," <http://delawareinsurance.gov/Guides/DisabilitiesGuide.pdf>.

The Delaware Insurance Commissioner also houses the Delaware Medicare Assistance Bureau. DMAB provides counseling and assistance on questions and problems related to Medicare, Medicaid, Medigap (Medicare supplemental insurance), Medicare Part D, long-term care insurance and other types of health insurance. There is no charge for the service. 800-336-9500.

For more information about insurance options in Delaware, see <http://www.choosehealthde.com/HealthInsurance>.

²⁰ Pub.L. 93-406, 88 Stat. 829, enacted September 2, 1974, codified in part at 29 U.S.C. ch. 18. For more about ERISA see: <http://www.dol.gov/dol/topic/health-plans/erisa.htm>

You can also get information about healthcare insurance, government benefits, and other social services programs at the **State Service Centers**. These centers offer a wide range of public and non-profit services to help with many health and human service needs. They offer assistance with emergency services, such as finding housing or paying utilities; individual and family services, which include help for children and elderly citizens; and community services. See: www.dhss.delaware.gov/dhss.dssc. You can call 211 to find out the contact information for the State Service Center in your area.

Benefits: Applying for benefits and appealing decisions

Delaware Division of Social Services (DSS) and Division of Medicaid and Medical Assistance (DMMA)

You can apply for certain benefits through the Division of Social Services which is a state agency. The "Delaware ASSIST" website - <https://assist.dhss.delaware.gov/> - acts as a one-stop shop to make it easy for you to find if you are eligible for lots of different programs, and to also apply. You can use Delaware Assist to apply for:

- Long Term Care Medicaid
- Health Care Coverage through Medicaid
- Food Supplement Program ("Food Stamps")
- Cash Assistance
- Child Care Assistance
- National School Lunch Program
- Low Income Home Energy Assistance Program
- Food Bank

You can also apply for benefits at your local DSS office.

- ⇒ You can call the DSS helpline at 211 to find your DSS office.
- ⇒ If you cannot apply on-line or by visiting the DSS office in-person, you can request that DSS assist you through the application and other processes via mail and telephone.

You should be aware that you have a right to file an application even if DSS staff tell you that they think you will be denied.

Appeals of Decisions about DSS and DMMA Benefits, including decisions by your Medicaid Managed Care Organization

If your application for Division of Social Services benefits is denied, you have a right to receive a written denial, and you also have a right to appeal that decision. If you are receiving benefits from the Division of Social Services and you find out that your benefits are being reduced, suspended, or terminated, you also have the right to appeal.

You have the right to appeal decisions about your medical assistance, including Medicaid. This includes decisions made by your Medicaid Managed Care Organization "MCO" (the private insurance company that manages your Medicaid – in 2015 the two MCOs in Delaware are United Healthcare and Highmark), or the Division of Medicaid and Medical Assistance. Examples of decisions you can appeal include: a decision to deny coverage for something, to decide not to cover as much of a service as your healthcare provider is requesting, or to reduce or terminate a service you already receiving. For example, if your doctor requests that you receive 16 hours of home health aide services and you are only approved for 8, you can appeal that decision. Or, if your doctor prescribes you a medical device and that device is not covered, you can appeal that decision.

Timing is very important for appeals. **Your appeal – called a request for a Fair Hearing - must be received by the DSS Fair Hearing Office within 90 days of the date on your notice.** Sometimes your MCO may offer you an "internal" or "informal" appeal. You may use this procedure to try to resolve your problem without a hearing; however, it is essential that you be sure that you allow yourself time to request a Fair Hearing before your 90 days (using the date on your original notice) are up. Legal assistance with your appeal may be available from Community Legal Aid Society, Inc. (contact information is on the last page of

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this guide). However, you should apply for legal assistance as soon as possible as it can take time for your case to be evaluated.

To request a Fair Hearing, you can complete and return the form that is typically on the last page of your notice, or, you can send a written request to:

Fair Hearing Office
1901 N. duPont Highway
P.O. Box 906, Lewis Bldg.
New Castle, DE 19720

Medicaid Programs for Persons with Disabilities

Medicaid Waiver Programs

In Delaware, we have two Medicaid waiver programs to assist people with higher level of care needs. One, the “**DD Waiver**” is operated by the Division of Developmental Disabilities Services (DDDS). DD Waiver services may include residential services (neighborhood homes – aka group homes, shared living providers, etc.), day habilitation, prevocational services, supported employment, nursing, and behavioral services. To be eligible for the DD Waiver you must be eligible for DDDS services (you must have a qualifying disability that begins before you turn 22. Some of the eligible diagnoses include autism, Asperger’s, intellectual disability, Prader Willi Syndrome, and brain injuries/neurological conditions that result in intellectual disability). You can contact **DDDS’s Applicant Services at (302) 744-9700 or Toll Free - 1-866-552-5758.**

Another waiver, called **Diamond State Health Plan - Plus (DSHP+)**, operated by the Division of Medicaid and Medical Assistance, is for individuals with disabilities who require a higher level of care, but can be served in the community, including family homes and apartments or assisted living facilities, with the correct services. Services can include home modifications, nursing services, attendant care services, cognitive services, day habilitation, home delivered meals (up to one a day) and more. To apply, individuals may contact the Division of Medicaid and Medical Assistance’s **Long Term Care Programs office at (302) 368-6610 (NCC) or (302)**

424-7172 (Kent and Sussex Counties).

Medicaid for Workers with Disabilities

Delaware also has a program called **Medicaid for Workers with Disabilities**. This program helps individuals with disabilities by allowing them to work without losing their Medicaid. To find out more or to apply, contact **(302) 857-5045 or 1-800-464-4357**.

Pathways to Employment

This is a new program for eligible people with disabilities ages 14-25. Through the Pathways to Employment program you can receive services such as:

- ⇒ Employment navigator
- ⇒ Career exploration and assessment
- ⇒ Supported employment (individual and small group)
- ⇒ Benefits counseling
- ⇒ Financial coaching
- ⇒ Non-medical transportation
- ⇒ Personal care (including a self-directed component)
- ⇒ Orientation, mobility, and assistive technology

Find out more at:

<http://dhss.delaware.gov/dhss/dsaapd/pathways.html>

PROMISE Program

This is a new program for eligible individuals with behavioral health needs. Through the PROMISE program you can receive services such as:

- ⇒ Care management
- ⇒ Individual employment supports & short-term small group supported employment
- ⇒ Financial coaching & benefits counseling
- ⇒ Peer support
- ⇒ Non-medical transportation
- ⇒ Community-Based residential supports (not assisted living)
- ⇒ Nursing
- ⇒ Community psychiatric support and treatment
- ⇒ Psychosocial rehabilitation
- ⇒ Respite

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- ⇒ Independent activities of daily living/chore
- ⇒ Personal care
- ⇒ Community Transition Services

Find out more at:

<http://dhss.delaware.gov/dhss/dsamh/promise.html>

You can appeal decisions by these Medicaid programs, including eligibility decisions and service authorizations, like you would a decision by DSS or a Medicaid MCO; see the discussion, above, in the section on **Appeals of Decisions about DSS Benefits**.

Social Security Administration (SSA) Benefits

The SSA handles benefits applications for the following disability related programs:

- Supplemental Security Income (SSI)
- Supplemental Security Disability Income (SSDI)
- Medicare

Introduction to SSA Programs

A brief description of each and instructions on how to apply are provided below:

- **Supplemental Security Income (SSI)**
 - ◇ The Supplemental Security Income (SSI) program pays benefits to individuals with disabilities (adults and children) who have limited income and resources.
 - ◇ Online application – not available
 - ◇ Office application - schedule an appointment with a local Social Security office to file an application by calling **1-800-772-1213** (TTY **1-800-325-0778**) or by contacting your local Social Security office. If you cannot go in person to apply you can call the same phone numbers to set up a telephone or mail based application.
- **Social Security Disability Insurance (SSDI)**
 - ◇ SSDI is a monthly payment for you (and

sometimes certain other family members) if you worked enough previously and paid Social Security taxes. It is available to people who are unable to work because of a medical condition that is expected to last at least 12 months or result in death.²¹

- ◇ Online application:
 - * Available at:
<https://secure.ssa.gov/iClaim/dib>
 - * Tips for applying:
 - ⇒ Make sure you meet the requirements to apply online for Disability – you can learn more at
<http://www.socialsecurity.gov/applyfordisability/>
 - ⇒ Gather the information you need to complete the application process which can take 1-2 hrs – you can find a checklist here:
<http://www.socialsecurity.gov/hlp/radr/10/ovw001-checklist.pdf>
- ◇ Office application - schedule an appointment with a local Social Security office to file an application by calling **1-800-772-1213** (TTY **1-800-325-0778**) or by contacting your local Social Security office. If you cannot go in person to apply you can call the same phone numbers to set up a telephone or mail based application.

- **Medicare**

- ◇ Medicare is a health insurance program. The program helps with the cost of health care, but it does not cover all medical expenses or the cost of most long-term care. You may buy a Medicare supplement policy (called Medigap)

²¹ The medical eligibility criteria for SSI and SSDI are the same.

from a private insurance company to cover some of the costs that Medicare does not. Some people can qualify for Medicaid in addition to Medicare, which would cover many of the costs not covered by Medicare. There are also some other government programs to help with some of the Medicare costs.

- ◇ People most commonly know that Medicare is health insurance for seniors over 65. However, it is also available to some people under 65:
 - * Once you have been receiving SSDI for two years – you will automatically become enrolled in Medicare.
 - * You are receiving SSDI for Lou Gehrig's Disease (amyotrophic lateral sclerosis)
 - * You have permanent kidney failure and you receive maintenance dialysis or a kidney transplant and meet additional requirements described on page 7 of this document:
<http://www.ssa.gov/pubs/EN-05-10043.pdf>
 - * You are the child or widow(er) age 50 or older, including a divorced widow(er), of someone who has worked long enough in a government job where Medicare taxes were paid and you meet the requirements of the Social Security disability program.
- ◇ You can apply for Medicare online at <http://www.ssa.gov/medicare/apply.html>
 - * Tips for applying:
 - ⇒ Make sure you meet the requirements to apply online – you can learn more at <http://www.socialsecurity.gov/medicare/apply.html#a0=0>

⇒ Gather the information you need to complete the application process which can take 10 – 30 minutes – you can find a checklist here:
<http://www.socialsecurity.gov/hlp/isba/10/isba-checklist.pdf>

- ◇ Office application - schedule an appointment with a local Social Security office to file an application by calling **1-800-772-1213** (TTY **1-800-325-0778**) or by contacting your local Social Security office. If you cannot go in person to apply you can call the same phone numbers to set up a telephone or mail based application.

Appealing SSI, SSDI & Medicare Decisions

SSI & SSDI

You have the right to appeal both SSI and SSDI decisions. See the link below for more information on the appeals process, or contact your local Social Security Office for more information on how to appeal a decision you disagree with:

<http://www.socialsecurity.gov/pubs/EN-05-10041.pdf>

Timing is very important for appeals. **Generally, your appeal must be received within 60 days of the date on your notice.** Legal assistance for your appeal may be available. However, you should apply for legal assistance as soon as possible as it can take time for your case to be evaluated.

Medicare

Learn how to appeal your Medicare Income-Related Premium: <http://www.socialsecurity.gov/pubs/EN-05-10125.pdf>

Information - on how to appeal coverage or payment decisions made by Medicare, your Medicare health plan, or your Medicare Prescription Drug Plan – can be found at <http://www.medicare.gov/claims-and-appeals/file-an-appeal/appeals.html>.

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Privacy

Privacy

At 18, information about your health, treatment, legal situation, education and other personal information generally cannot be shared with parents or others without your consent, unless you have a guardian appointed, have appointed someone to act on your behalf through a Power of Attorney, or designated someone as your healthcare surrogate,. There is a federal law called the Health Information Portability and Accountability Act (HIPAA)²² that protects the privacy of your health information. It also creates a right to request amendments to your medical record, should you disagree with something in your records.

Adult Guardianships

Adult Guardianships

Guardianship defined; different types of guardians

In Delaware, an adult is presumed to have the capacity and ability to make their own decisions. A guardian is a person appointed by Chancery Court who makes decisions for someone who cannot make decisions for himself. Parents are not guardians of their adult children unless the Chancery Court has appointed them as guardians after their child turns 18.

In Delaware, there are two different types of guardianships for adults with disabilities:

A **guardian of property** has the authority to make decisions involving financial or property matters. These guardians control property interests, including essentially anything that can be the subject of ownership. The court has the same powers over the estate as the individual with a disability did before the onset of the incapacity, except for the power to make a will. The court may limit which rights to allow the guardian to exercise. A guardian of the property may be able to do such things as invest or reinvest personal property, sell stocks, and pay taxes.

²² The rules implementing this law can be found at 45 CFR Part 160 and Subparts A and E of Part 164.

A **guardian of the person** can make decisions controlling the care of the individual with a disability. A guardianship of the person is one affecting personal interests, custody and care, such as where the individual with a disability lives, the ability to consent to services, education, medical treatment, and the release of confidential information. The court/guardian has the same control over the person with a disability under this type of guardianship as a parent would.

A separate guardian may be appointed as guardian of property and as guardian of the person, or one person may be appointed for both.

When guardians can be appointed

Adults with mental or physical disabilities can have guardians appointed if due to a mental or physical disability they cannot manage or care for themselves or their property, and as a result, are in danger of:

- suffering property loss; or
- being taken advantage of by someone else; or
- being abused by someone else; or
- substantially endangering their own health.

Selecting a Guardian

Often a family member or trusted friend will serve as a guardian. In the event that a petition is filed for an adult, and there is no particular guardian recommended or available, there are several options:

- **Office of the Public Guardian**– (302) 577-8990. The OPG is a statewide program which serves as guardian for adults when there is no one else willing or able to do so.
- **Private Organizations.** A number of private organizations will serve as guardians, or representative payees, or assist with the establishment of trusts and plans, for people who need assistance with money management or other care issues. These organizations include:
 - ◊ **Senior Partner, Inc.** (302) 764-7880;
 - ◊ **Life Solutions, Inc.** (302) 622- 8292;
 - ◊ **Supportive Care Services, Inc.** (302) 384-9795

**Legal Protections for the Person with a Disability:
Contesting or changing involuntary guardianships**

Protections provided by the court to the person with a disability

There are numerous protections provided by the Chancery Court to the person with a disability about whom a guardianship petition has been filed. These include:

- appointing an attorney for the person with a disability during the guardianship proceeding (free of cost to the person with a disability);
- notifying the individual of all proceedings;
- having the individual attend the hearings and proceedings so long as the evaluating doctor does not believe it is detrimental to the person with a disability's interests;
- allowing the individual, personally or through an attorney, to present evidence, and call and question witnesses at hearings;
- having a hearing and the right to appeal the court's decision to the Supreme Court.

The court will hold a hearing and listen to all of the evidence. It will only appoint a guardian if it finds that the person is "disabled" and meets the legal criteria discussed in the "When guardians can be appointed" section above.

Actions a Guardian Cannot Take, or Actions that Require Court Approval

A guardian cannot make a will, release claims, settle tort claims, or convey title to real property without court approval. Similarly, the guardian cannot consent to the involuntary sterilization of an individual with a disability. A guardian cannot involuntarily commit a person with a disability to an institution, without court approval. The guardian must file an annual update and medical status report every year.

Guardianship and the right to vote

Just because someone has a guardian, does not mean she

is ineligible to vote. The only time a person with a disability will be ineligible to vote is if there is a court order which specifically restricts the right to vote.

Contesting or changing involuntary guardianships

Guardianships typically last until the death of the person with the disability, or until the court terminates it upon request of any party. The court may terminate or make changes to a guardianship, or replace a guardian for any reason. However, the court cannot do so without someone filing a petition to review the guardianship. This can be done by filing an objection at the time that the guardianship is requested, or by filing a petition requesting that the court review an already existing guardianship. The court may then order a hearing where the party challenging the guardianship presents evidence, and it will make its decision based on the evidence.

ALTERNATIVES TO GUARDIANSHIP

There are a number of alternatives to guardianship. Because guardianship involves such a severe restraint on an individual's rights, it should only be considered after all other options have been shown to be ineffective or unavailable. Possible alternatives (each has advantages and disadvantages that should be discussed with an attorney) are discussed below.

Supported decision-making

As a general matter, supported decision-making occurs when an individual with cognitive challenges is the ultimate decision-maker but is provided support from one or more persons who explain issues to the individual and, where necessary, interpret the individual's words and behavior to determine his or her preferences. This is in contrast to having a surrogate or agent under a durable power of attorney make decisions on a person's behalf.

Representative or substitute payee for SSI/SSDI benefits

A representative or substitute payee is a person who manages public benefits such as Supplemental Security

Adult Guardianships Cont.

Alternatives to Guardianship

Income, or Social Security Disability Income for persons who are not fully capable of handling their own benefits. The representative payee does not act as a legal guardian, but is expected to assist the person with money management, along with providing protection from financial abuse and victimization. Of course it is important to choose a representative payee you trust to not take advantage of you, as they will have access to and control of your financial benefits. You want to choose a payee who knows you and wants to help you, and who sees you often and knows what you need. In most cases, your payee would be a close friend or family member. In other cases social service agencies or other organizations may serve as payees. The SSA has to approve your payee.

Using case/care management/community advocacy systems

There are a number of case management and community advocacy organizations that can help people with disabilities to obtain the support and services they need to remain independent. You can contact the Delaware Aging and Disability Resource Center to find out about different resources:

<http://dhss.delaware.gov/dhss/dsaapd/adrc.html> or 1-800-223-9074.

There are several state agencies that provide services to people with disabilities, which can help you to maintain independence in the community. Some of these agencies include:

- **Division of Substance Abuse and Mental Health Services** (<http://www.dhss.delaware.gov/dsamh/>). Services can include but are not limited to:
 - ◊ Mental health treatment, community counseling and support services.
 - ◊ Supported housing services that promote independent living and community integration.
 - ◊ Mobile Crisis intervention services.
 - ◊ Case management
- **Division of Developmental Disabilities Services** (<http://www.dhss.delaware.gov/ddds/>). Services can include but are not limited to:

- ◇ Family support services
- ◇ Day Habilitation / Transition Services
- ◇ Employment Services
- ◇ Residential Services
- ◇ Respite Services
- ◇ Case management

- **Division of Services for the Aging and Adults with Physical Disabilities**

(<http://dhss.delaware.gov/dhss/dsaapd/index.html>).

Services can include but are not limited to:

- ◇ Day Services / Treatment
- ◇ Assistive Devices
- ◇ Attendant Services
- ◇ Community Living
- ◇ Home Delivered Meals
- ◇ Home Modification
- ◇ Medical Transportation
- ◇ Personal Care Services
- ◇ Respite Care

- **Division of Vocational Rehabilitation**

(<http://dvr.delawareworks.com/>). Assists people with disabilities prepare for, get, & keep jobs. Services can include but are not limited to:

- ◇ Assessment
- ◇ Counseling and guidance
- ◇ Information and referral
- ◇ Physical/mental restoration services
- ◇ Rehabilitation technology
- ◇ Skill training
- ◇ Job placement assistance
- ◇ Interpreter services (may also be a responsibility of the university/school)
- ◇ Supported employment services
- ◇ Payment for tuition, books, tutors, transportation and other needs related to the pursuit of higher education

Establishing a health care surrogate (See 16 Del. C. §2507);

A health care surrogate can make health care decisions on your behalf. These decisions can include decisions to

treat, withdraw or withhold treatment of an adult. There are two ways to establish a health care surrogate. One allows a doctor to appoint a surrogate for an individual who is not competent, and the other allows individuals who are competent to designate someone as their healthcare surrogate in the event a surrogate is necessary.

When an individual lacks competence the person's doctor must determine that the person lacks capacity and that there is no guardian, Advanced Health Care Directive or similar authority that covers the decisions at issue. This must be confirmed in the patient's medical records. If the person with the disability is not competent to designate a healthcare surrogate, the law provides family members who can be permitted to act as a healthcare surrogate in a preferred order (1. spouse unless a divorce has been filed, 2. adult child, 3. parent, 4. adult sibling, and others)²³. An individual cannot be designated as a healthcare surrogate if there is a criminal or civil no-contact order between the person with a disability and the potential surrogate, or if the person with a disability has filed a Protection from Abuse order against the potential surrogate.

For individuals who ARE competent, the person with a disability may designate an individual to act as a healthcare surrogate by personally informing a supervising health-care provider with another person there to witness (who is not the surrogate). This must be confirmed in writing in the patient's medical record and signed by the witness. This allows a person with a disability to designate a trusted individual to make healthcare decisions in the event the person cannot do so for himself. It does not require a special document, attorney fees, or court!

Advance health care directive or "AHCD" (See 16 Del. C. §2501(a))

AHCDs are also known as "living wills" or "Power of attorney for health care." These documents are created so that an individual can authorize another person to make

²³ If none of the listed family members are able to take this role, there is a procedure by which another trusted adult can act as healthcare surrogate when the person with a disability is a patient in an acute care setting or is a client of the Department of Health and Social Services.

health care decisions on the individual's behalf, if the individual loses the ability to make those decisions in the future, when they are no longer able to make such a decision on their own.

Creating a trust

A trust is a formal legal relationship whereby money or property is held by one party for the benefit of another, the "beneficiary." The trustee holds that money and is legally obligated to only use that money for the benefit of the beneficiary. The trust will explain what the money can be used for and how much and how often money will be used to pay for housing, medical care, etc. Some trusts will require the trustee to spend the money in a way to maintain a person's current standard of living, while other trusts may be less or even more specific. Trusts have the benefit of allowing a person to live in the community, while ensuring trust funds will be used wisely. While this prevents the person from being taken advantage of, trusts can cost significant money to establish and to administer.

There are specially designed trusts that allow people with disabilities to continue to be eligible for many public benefits, despite the funds in the trust. These are often referred to as "special needs trusts." Individuals should consult a professional with expertise in special needs trusts if you are interested in establishing one.

NEW! ABLÉ Act Accounts

In 2014 the U.S. Congress passed the Achieving a Better Life Experience or ABLÉ Act. ABLÉ Act accounts allow individuals with disabilities that manifested before the age of 26 to create special financial accounts that will not be considered for programs such as SSI and Medicaid. Through an ABLÉ Act account, eligible individuals can save up to \$100,000 without risking their eligibility for these government benefits. States need to put regulations in place so that banks and financial institutions can offer these accounts.²⁴

²⁴ See <http://www.disabilityscoop.com/2014/12/22/obama-signs-able-act/19935/> and http://www.socialsecurity.gov/legislation/legis_bulletin_121714.html.

Durable Power of Attorney (See 12 Del. C. §49A-101 *et seq.*)

A Durable Power of Attorney is created when a person voluntarily authorizes, in writing, another individual (called an “agent”) to take action on the person’s behalf. A durable power of attorney is usually limited to legal and financial affairs. The “durability” term is important, because for a durable power of attorney, the power of the representative to act on the person’s behalf continues after the person is no longer capable of making decisions. Powers of attorney may be revoked in writing at any time by the person who granted it, provided the person is able to understand what they are doing at the time of revocation. The revocation must meet statutory requirements. You should make sure that whoever you choose to serve as your agent through a Power of Attorney is someone you trust and who knows and will respect your wishes. It is very important that the Power of Attorney meet all statutory requirements, including an agent certification, notarization, and witnesses.

Opening joint checking accounts

This is a relatively simple way to have someone you trust help you with your finances, but it is not without risk. By opening a joint checking account, the other person can manage your account, including deposits and withdrawals, without you needing to be involved. You should be certain you trust the other person on the account, because that person has access to all of the money in the account. You need to carefully consider not only the risk of fraud, but also whether having joint ownership of funds impacts either account owner’s eligibility for public benefits, including Medicaid and SSI.

**ADDITIONAL SOURCES FOR HELP
OR INFORMATION**

- **DeIAWARE DisABILITY Hub**
 ◇ Main site: www.deldhub.com

- ◇ It's My Life: <http://deldhub.com/its%20my%20life/>
- ◇ Legal: <http://deldhub.com/legal/>
- ◇ Transportation: <http://deldhub.com/transportation/>

- **Delaware Care Plan Inc.**- non-governmental non-profit entity that administers trust funds and provides care planning for individuals with disabilities, and provides advice and counsel to guardians. This program may be more financially accessible for families of moderate means as the Delaware Care Plan pools participant's resources for investment purposes; this allows them to have a much lower minimum amount in trust. Assets are not counted in determining eligibility for public programs. Contact (302) 633-4000 or visit them online at <http://www.delawarecareplan.org/>.
- **Register in Chancery (for guardianships)** – NCC- 255-0544, KC- 736-2242, SC- 856-5415. Offers a guide to the guardianship process and has forms and information available at: <http://courts.delaware.gov/chancery/guardianship/HandbookforGuardians.pdf>
- **Disabilities Law Program of Community Legal Aid Society, Inc.** - can offer advice, referral, and in some cases, direct assistance with establishing alternatives to guardianship, such as Powers of Attorney and Advanced Healthcare Directives. Please see our Guardianship and Alternatives Brochure for additional information, available at: <http://www.declasi.org/wp-content/uploads/2014/03/Guardianship-and-Alternatives-Brochure-March-2014.pdf>.
- **Private Attorneys.** The Disabilities Law Program of Community Legal Aid Society, Inc. maintains a list of private attorneys who handle guardianship and special needs trust cases for a fee.

Additional Sources

This guide has provided general information to help you learn about age of majority rights for individuals with disabilities in Delaware and is not intended to be legal advice. Remember that every person's situation will be different. For questions on your specific situation, you may apply for free legal assistance from Community Legal Aid Society, Inc. (CLASI).

You can learn more about transition, or provide us feedback, at transition.declasi.org

Visit us on the web at www.declasi.org or contact us at one of our three office locations:

CLASI Offices

New Castle County

100 West 10th Street, Suite 801
Wilmington, DE 19801
302-575-0660
302-575-0696 (TTY/TDD also)
302-575-0666 - Elder Law Program
302-575-0690 - Disabilities Law Program
FAX: 302-575-0840

Kent County

840 Walker Road
Dover, DE 19904
302-674-8500 (TTY/TDD also)
302-674-3684 - Elder Law Program
302-674-8503 - Disabilities Law Program
FAX: 302-674-8145

Sussex County

20151 Office Circle
Georgetown, DE
302-856-0038 (TTY/TDD also)
302-856-4112 - Elder Law Program
302-856-3742 - Disabilities Law Program
FAX: 302-856-6133

This guide is current as of January 2015