

## WHAT ARE THE ALTERNATIVES?

A guardianship and conservatorship may be avoided by implementing an alternative type of surrogate decision making. Because such alternatives entail the signing of legal documents, they should be considered and implemented only by a legally competent adult.

Generally, no one has the right to make health care decisions or financial decisions for you unless there is a document granting them decision-making power.

In addition to signed legal documents, the *Uniform Health Care Decisions Act* (UHCDA) sets forth procedures for medical decision making in emergency medical situations. If you have not already designated a decision maker, the UHCDA allows certain persons to make decisions for you if you cannot make them yourself.\* The UHCDA is usually used in times of medical emergency and should not be relied upon as a guardianship alternative.

The following alternatives and resources are merely a general summary. If you need additional assistance, you should consult an attorney regarding your specific situation.

*\* The UHCDA is not effective to designate a decision maker for mental health treatment decisions. If you become unable to make mental health treatment decisions on your own and you do not want a court to intervene, you must designate someone in advance.*

### ■ Free Alternatives Video:

Get your free copy of the *Alternatives to Guardianship* video from the Office of Guardianship:

**(888) 779-6183**

[www.nmddpc.com/office-of-guardianship](http://www.nmddpc.com/office-of-guardianship)

## WHY SHOULD YOU THINK ABOUT ALTERNATIVES TO GUARDIANSHIP AND CONSERVATORSHIP?

### 1. ENSURE YOUR WISHES ARE MET

Independence, respect and the right to control one's own affairs are values important to most people. With careful planning, your preferences are more likely to be followed in the event of your incapacity.

### 2. AVOID CONFLICT AND COSTS

Guardianship and conservatorship proceedings can involve substantial legal and other fees, especially when family members disagree about who should be the guardian or conservator or how decisions should be made on behalf of the incapacitated person.

### 3. REDUCE WAIT TIME FOR ASSISTANCE

For individuals with limited resources, proper planning can avoid waiting lists to receive assistance in a publicly-funded guardianship proceeding.

*This brochure was prepared by the New Mexico Guardianship Association as a public service. It is intended for informational purposes only and is not intended to provide legal advice. If you have questions about a specific legal problem, you should consult a qualified attorney.*



For more information, please contact:

New Mexico Developmental Disabilities  
Planning Council, Office of Guardianship  
(505) 476-7332 or (888) 779-6183  
[www.nmddpc.com/office-of-guardianship](http://www.nmddpc.com/office-of-guardianship)

Additional Resources:

New Mexico Guardianship Association  
[www.guardianshipnm.org](http://www.guardianshipnm.org)  
[www.nmgaresourcecenter.org](http://www.nmgaresourcecenter.org)

National Guardianship Association  
[www.guardianship.org](http://www.guardianship.org)



# GUARDIANSHIP WHAT ARE YOUR ALTERNATIVES?

You have a legal right to make your own health care and financial decisions, but if you become incapacitated someone else will need to make those decisions for you.

LEARN WHAT YOU CAN DO NOW

**888.779.6183**



## WHAT IF ...

### YOU COULD NO LONGER CARE FOR YOURSELF?

What will happen if you are unable to make health care or financial decisions for yourself? The time to plan for this possibility is now. By making your preferences known in advance, you can ensure your wishes will be followed and help your family avoid disagreements over the handling of your finances, personal needs and health care. Without proper planning, your family may be forced to seek the appointment of a guardian or conservator to make decisions for you if you become unable to make them.

## WHAT IS GUARDIANSHIP AND CONSERVATORSHIP?

A person or organization appointed by a court to make health care decisions for another person is known as a *guardian*; a person or organization appointed to make financial decisions for another is known as a *conservator*. Guardians and conservators are appointed when a court determines that a person is mentally disabled or incapacitated and cannot make his or her own decisions. Guardianship and conservatorship are two forms of *Surrogate Decision Making*.



# ALTERNATIVES TO GUARDIANSHIP AND CONSERVATORSHIP

*By naming a Surrogate Decision Maker and implementing one or more of these alternatives, you may avoid a court-imposed guardianship or conservatorship if you are unable to make health care or financial decisions on your own.*

## ALTERNATIVES TO GUARDIANSHIP

Signing an *Advance Health Care Directive* is an important step that may help avoid a court-imposed guardianship. Often referred to as a power of attorney for health care, an *Advanced Health Care Directive* grants another person (*agent*) authority to make health care decisions for you. It can take effect immediately or when you become unable to make your own treatment decisions.

In this arrangement, you choose who will make health care decisions for you, when that person's authority becomes effective, how medical decisions will be made (including end-of-life decisions) and what instructions should be given to your physician. The *Advance Health Care Directive* may be drafted to allow your agent access to your private medical records and the ability to speak with your doctors in order to make informed health care decisions on your behalf.

## ALTERNATIVES TO CONSERVATORSHIP

There are a number of possible alternatives to conservatorship, the first of which is a *Power of Attorney*. The purpose of a *Power of Attorney* is to appoint someone else (*your agent*) to make financial decisions and transact business for you. It becomes effective upon signing unless otherwise provided. To be an effective

alternative, your *Power of Attorney* should be written so that it is "*durable*," meaning your agent's authority continues after you become incapacitated. Under New Mexico law, a *Power of Attorney* is durable unless otherwise stated.

A second alternative is a *Representative Payee Arrangement*. Some agencies, such as the *Social Security Administration* and the *Veterans Administration*, will allow a person to receive financial benefits for you if you are unable to manage those benefits. The person who receives these benefits is a *Fiduciary* or a *Representative Payee* and is required to keep records of how the money is spent and to use that money solely for your benefit.



Establishing a *trust* is a third alternative which can be created by signing a written document called a *Trust Agreement*. When you create a trust, you are the *grantor*, and the person or organization managing the trust property is called the *Trustee*. A person may be the trustee of his or her own trust, and the *Trust Agreement* may provide for the appointment of another trustee when the grantor becomes incapacitated. Trusts may serve a wide variety of purposes, such as paying bills, managing investments and managing real estate.