

FACT SHEET

DDPC Office of Guardianship (of adults)

MISSION STATEMENT

To provide assistance and guardianships state-wide for persons (adults) meeting the criteria in the NM Probate Code for “incapacitated person” – this means:

- any person who demonstrates over time either partial or complete functional impairment by:
 - reason of mental illness, mental deficiency,
 - physical illness or disability,
 - chronic use of drugs, chronic intoxication or other cause,
- to the extent that the individual is unable to manage their personal affairs or is unable to manage estate or financial affairs or both.

To train and have Mental Health Treatment Guardians available to the courts for appointment state-wide.

MAJOR GOAL

To help “incapacitated persons” and help families by providing a statewide, publicly funded guardianship services program for guardians of “last resort” to incapacitated income and resource eligible adults.

BASIC BELIEFS

Guardianship should be:

- as a last resort;
- only as necessary to promote and to protect the well being of the person (and others);
- designed to encourage the development of maximum self-reliance and independence.
- monitored and have safeguards against wrongdoing;
- available for all “incapacitated persons.”

ROLE OF THE GUARDIAN

- the guardian takes the place of the individual’s own decision-making
- coordinates and monitors professional and other services needed
- the guardian’s authority is based on the court order - limited or plenary (full)
- individual rights removed from the protected person may vary:
 - determining residence; consenting to medical treatment; driver’s license; signing contracts
 - managing, buying, or selling property; owning or possessing a firearm or weapon;

- filing lawsuits; making end-of-life decisions; marrying.
- Guiding Principle: least intrusive/restrictive measures for most autonomy possible.

ABOUT THE OFFICE OF GUARDIANSHIP

Services within the Office of Guardianship:

- Our office contracts for “Corporate Guardians” to provide guardianships for those without family or anyone willing to serve as their guardian.
- Our office contracts for Legal services for guardianship court proceedings, including Petitioning Attorney, Guardian Ad Litem (GAL), and Court Visitor.
- Provide information, educational opportunities, training, and related services for improving guardianships state-wider.

PROGRAM DESCRIPTIONS

Services for “incapacitated persons”:

- Income and Resource Eligibility: the alleged incapacitated person must be financially eligible for institutional Medicaid (income does not exceed 225% of the federal poverty level, and countable resources cannot exceed \$2,000.00; Burial accounts up to \$1,540.00 are not included).

Services for Family members wanting to be the guardian:

- For legal services, where the proposed guardian is not a contracted service provider, the proposed guardian’s household gross income must not exceed 300% of the federal poverty level.

Adult Protective Services Referrals:

- Our office provides the contract corporate guardians for approximately 80 referrals each year from Adult Protective Services.

Re-evaluations for the Appropriate Level of Guardianship:

- Our office contracts with the UNM School of Medicine, Department of Psychiatry, to conduct re-evaluations of protected persons under guardianship to determine if the level of guardianship should be changed.

Mental Health Treatment Guardians:

- only have the authority to make substitute decisions for the client who is incapable of informed consent for mental health/psychiatric treatment or administering of psychotropic medications under the Mental Health Code Commitment Procedures statute. However, the same Treatment Guardian may also be appointed as a full or limited guardian under the Uniform Probate Code.
- are appointed for a specified length of time during which they may exercise their powers, up to a maximum period of one year.
- Generally any previously appointed or named/designated agent (decision-maker) should be given priority to serve as Treatment Guardian to avoid more than one agent. Likewise, Treatment Guardians may be considered for a full or limited guardian to be appointed under the Uniform Probate Code.

HIGHLIGHTS - Statistics

Number of “protected persons” under contract “Corporate” guardianship services at end of each Fiscal Year:

FY-05 = 429 FY-06 = 476 FY-07 = 512
FY-08 = 594 FY-09 = 676 (budgeted) FY-2010 = 882.5 (Budget request)

Legal Services (result in 39% “Corporate” or 61% Family guardians):

FY-05 = 141 FY-06 = 214 FY-07 = 141
FY-08 = 244 FY-09 = 288 (budgeted) FY-2010 = 300 (Budget request)

Mental Health Treatment Guardians: 436 in FY-08; 461 budgeted for FY-09

SPECIAL INITIATIVES

Guardianship Task Force – provided a Report with recommendations to the Legislature for systemic changes state-wide, including training, oversight, and monitoring.

Partnership with the NM Guardianship Association – developing a training video, material for website, community outreach activities, and a Spanish version of the NM Guardianship Handbook.

FUNDING

The Office of Guardianship is funded entirely by state general funds.

Contracting:

Corporate Guardianship Services are paid a fixed fee: \$3650/Yr. = \$304/mth.

[Last increase \$50/yr. in 2004]

Contract Legal Services are paid a fixed fee:

Petitioning Attorney = \$600, GAL = \$300, Court Visitor = \$150; Total = \$1050

[Average Open Market Cost \$3,000 - \$10,000]

Mental Health Treatment Guardian program contract with NAMI is paid a fixed fee: \$217/year per case (\$17 to NAMI for administration, and \$200 to the Treatment Guardian)

GUARDIANSHIP COUNCIL

The purpose of the Guardianship Council is to provide advisory counsel to the Office of Guardianship regarding the needs and rights of persons who are incapacitated or allegedly incapacitated. Membership is representative of the following:

1. Petitioning Attorneys, Guardians ad Litem and court appointed Visitors,
2. The Administrative Office of the Courts,
3. State contracted guardianship providers,
4. Other guardianship providers including volunteers and other non-contracted guardians,
5. Family members and peers,
6. Disability rights advocacy organizations,
7. Community based services.
8. Up to five members shall be members of the DDPC Council.

Interested state agencies include the Department of Health, the Children Youth and Families Department, the Department of Vocational Rehabilitation and the Aging and Long Term Services Department and provide a non-voting, participating member.

CONTACT INFORMATION

Website: <http://www.nmddpc.com> - just click on “Office of Guardianship” in the blue tool bar.

Phone: 505-476-7332 or 800-311-2229

Fax: 505-476-7322

Staff:

Frank Fajardo, Manager (Spanish speaking)

Rosalie Fragoso, Legal Counsel (Spanish speaking)

Joeann Montoya, Compliance Officer (Spanish speaking)

Linda Quintero-Dow, Compliance Officer

Vacant, Community & Social Services Specialist

FOR ADDITIONAL INFORMATION

- **Handbook for Guardians and Conservators** (rev. 2007) - a practical guide to NM law; see at Website: <http://www.nmgaresourcecenter.org/videos/>; Click on: "Publications and Resources", then click on: "New Mexico Guardianship Association Handbook".
- **National Guardianship Association** (NGA), Model of Ethics, and Standards of Practice; see at website: <http://www.guardianship.org/>; Click on: "Publications", then Click on "Model Code of Ethics for Guardians", and "Standards of Practice for Guardians"; Ph: 814-238-3126; E-mail: info@guardianship.org