

Everything You Wanted to Know About Guardianship of Adults

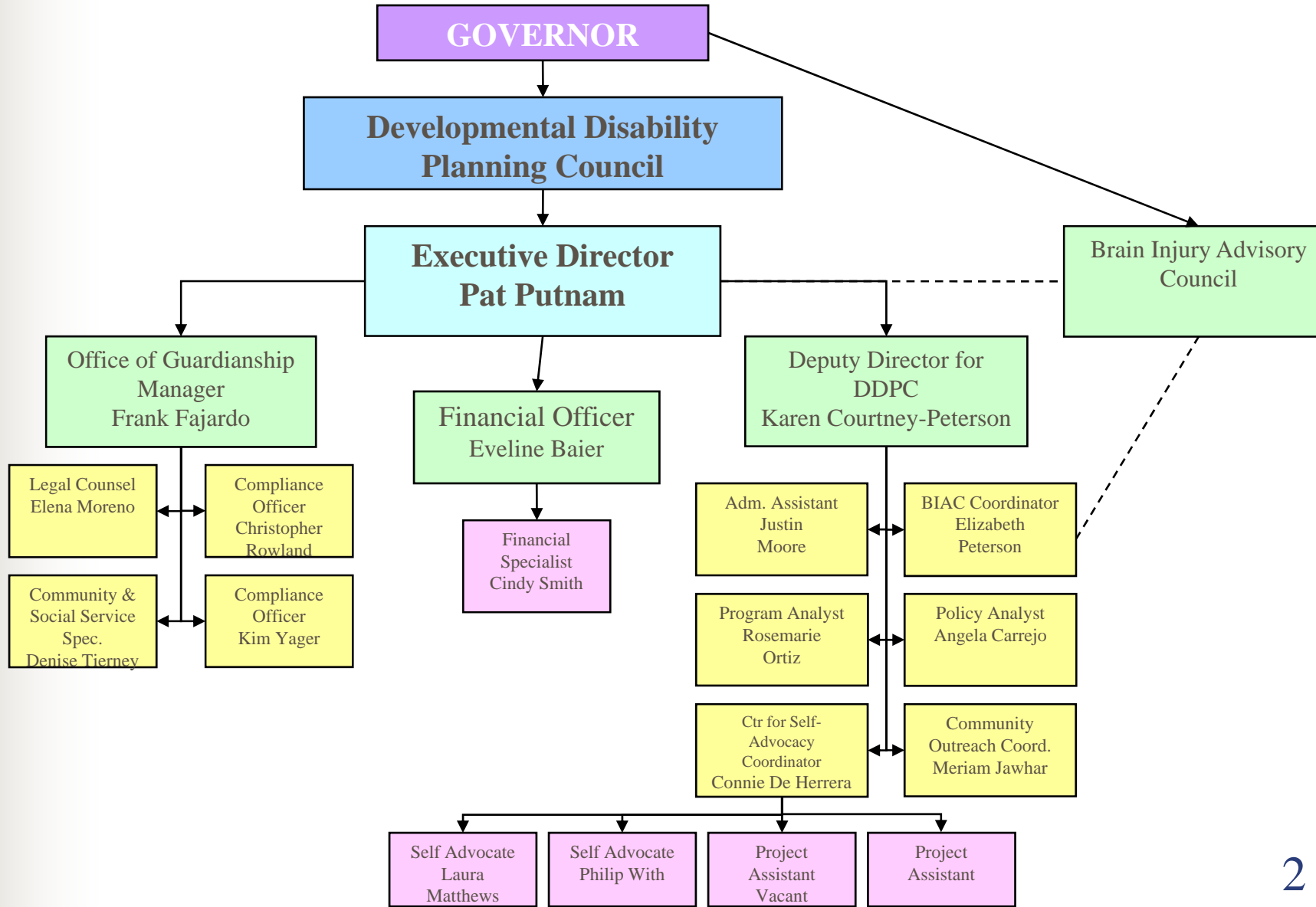


Office of Guardianship

NM Developmental Disabilities Planning Council

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

Developmental Disability Planning Council Organizational Chart





NMDDPC

Five Programs

- **Developmental Disabilities Planning Council**
505-476-7332
- **Center for Self-Advocacy**
505-341-0036
- **Information Center**
1-800-552-8195
- **Brain Injury Advisory Council (BIAC)**
505-476-7328
- **Office of Guardianship**
505-476-7332



Center for Self-Advocacy

- - a place where individuals with disabilities can meet, organize work, and train others on how to improve the quality of life for people with developmental disabilities
- - currently over 40 advocates and 20 various training modules developed

Information Center for New Mexicans With Disabilities



Information and Referral
Toll Free
1-800-552-8195

Office of Guardianship



Office of Guardianship
NM Developmental Disabilities Planning Council
Ph: 505-476-7332 or 800-311-2229
Hablamos Español (also speak Spanish)



Guardianship of Adults:

- **should be 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.**

NMSA § 45-5-301.1



What is guardianship and why is it necessary?

The main criteria in the Probate Code is that the person meet the definition of “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 he is unable to manage his personal affairs or he is unable to manage estate or financial affairs or both**



Why is guardianship necessary?

- All adults are deemed under the law to have the right to make their own decisions.
- Some individuals may need someone else to manage their personal or financial affairs; e.g. some may be susceptible to fraud or undue influence.
- Only a court can legally have their right to make their own decisions taken away.
- Guardianship may be full or limited as needed.
- courts will remove only those rights that the proposed protected person is incapable of handling.



Guardianship and Conservatorship

- Guardianship for the person is called a “Guardian”;
- Guardianship for the estate (property and assets) is called a “Conservator”.
- “Guardian” for the person may also include routine financial matters.
- May need both based on income, property and assets.



Don't Panic if there's no legal guardianship (yet)

- **start now by being informed;**
- **make a decision, and begin the process;**
- **contact our office - financial eligibility??**
- **find other resources if necessary;**
- **life will most likely continue as before pending the guardianship process.**
- **options are available for emergencies.**



Guardianship removes considerable rights - only consider this after alternatives have proven ineffective or are unavailable.

■ Alternatives while capable include:

- Power of Attorney

- “Durable” means it’s still good once person is incapacitated. “Springing” means only good once person is incapacitated.
- can be broad or specific
- must be notarized, and best if prepared by an attorney working for the person.

■ Representative Payee

■ informal arrangements with family members



Continued -Alternatives while capable include:

- **Advance Directives, e.g. Advance Health Care Directive for health care matters**
- **Surrogate Decision-maker:**
 - **you may designate any individual to act as surrogate by personally informing the health-care provider.**
 - **the following in descending order of priority:**
 - **spouse, unless pending petition for divorce, etc.**
 - **an individual in a long-term relationship of indefinite duration similar to the commitment of a spouse, and the individual and the patient consider themselves to be responsible for each other's well-being;**
 - **Adult child, parent, adult brother/sister, grandparent;**
 - **an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values.**



Parent or Spouse of incapacitated person

- **May appoint a guardian by Will or other writing;**
- **Notice of intention;**
- **The guardian files acceptance with court;**
- **May be terminated by filing objection**

Reference: Uniform Probate Code 45-5-301



Who can be a guardian appointed by the court

- a family member or friend, or
- a public or private entity.
- professional guardian:
 - does not take the place of a family member, but may form emotional bond with the protected person;
 - coordinates and monitors professional services needed by the incapacitated person, such as selecting a caretaker, in-home care, and other services.
 - not required to have the individual live in their home
 - not obligated to provide from the guardian's own funds for the incapacitated person's housing, care, comfort, etc.



What types of decisions does a person and guardian make?

- **The guardian takes the place of the individual's own decision-making.**
- **The guardian's authority is based on the court order - limited or plenary (full).**
- **Guiding Principle: least intrusive/restrictive measures for most autonomy possible.**
- **individual rights removed 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.**



Don't be Afraid of the Court Process

- **You should consider this legal process to be a “service” provided by the court;**
- **The entire process may take several months;**
- **Process involves:**
 - **Petitioning Attorney**
 - **Guardian ad Litem (GAL)**
 - **Court Visitor**
 - **Health Care Professional**
- **Judge issues a court order removing only those rights that the protected person is incapable of handling.**



Guardian's responsibilities to the person and to the State of NM.

- **A good guardian will take into account the wishes and desires of the person when making decisions about residence, medical treatments, and end-of life decisions.**
- **professional guardian will coordinate and monitor professional services needed by the incapacitated person, such as selecting a caretaker, in-home care, and other services.**
- **the guardian may have the following responsibilities:**
 - **Determine and monitor residence.**
 - **Consent to and monitor medical treatment.**
 - **Consent and monitor non-medical services such as education and counseling.**
 - **Consent and release of confidential information.**
 - **Make end-of-life decisions.**
 - **Act as representative payee.**
 - **Maximize independence in least restrictive manner.**



Guardian's responsibilities to the person and to the State of NM.

- Report to the court about the guardianship status at least annually.
- Following the courts instructions;
- Become more informed, take training, and ask for help.
- Funds that belong to the protected person remain the property of that person, and do not become property of the guardian. All funds are accounted for and kept separate from the guardian's personal funds.
- The goal of effective guardianship is to be able to restore the rights of the individual.
- in many instances once a guardianship has been initiated by a court, it is in place until the incapacitated person dies.



For additional information, please see:

- **Handbook for Guardians and Conservators (rev. 2007) - a practical guide to NM law; see at Website: www.guardianshipnm.org; 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**



OFFICE OF GUARDIANSHIP

Eligibility for our services for the person in need of guardianship:

- **must be 18 or older (we accept referrals before 18th birthday).**
- **financial eligibility: be eligible for Institutional Medicaid**
(individual income must be at or below 225% of the HHS Poverty Guidelines and countable resources less than \$2,000.00).

NMAC 9.4.21.8



OFFICE OF GUARDIANSHIP

Eligibility for our services to be a family guardian:

- **The primary criteria for eligibility is that the household income of the person who wants to be a guardian must be less than 300% of the HHS Poverty Guidelines.**
- **Includes legal services for guardianship court proceedings: Petitioning Attorney, Guardian Ad Litem (GAL), and Court Visitor.**

NMAC 9.4.21.8



OFFICE OF GUARDIANSHIP

Eligibility to be a “corporate” guardian with our office:

- contract with our office to provide guardianship services to our clients;
- meet professional standards;
- serve those who have no one to be their guardian.

NMSA 1978, § 28-16B-3(B)(2003)



OFFICE OF GUARDIANSHIP

Examples of People Served:

(for Adults who are Income/Resource Eligible)

- **Veterans**
- **Recipients of Medicaid Waiver (DD Waiver; D&E Waiver, etc.)**
- **Brain Injury**
- **Individuals who are developmentally disabled transitioning from High School**



OFFICE OF GUARDIANSHIP

- **Elderly / Seniors**
- **Adults “alleged to be incapacitated” that are not receiving any other services**
- **Those in need of a replacement guardian for various reasons (e.g. terminal illness of current guardian)**
- **Adults with mental illness (Treatment Guardians)**



OFFICE OF GUARDIANSHIP STAFF AND CONTACT INFO:

Frank Fajardo, Guardianship Manager

Elena Moreno, Attorney

Chris Rowland, Compliance Officer

Kim Yager, Compliance Officer

**Denise Tierney, Community & Social Services
Specialist**

Cecilia Salazar, Executive Secretary

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

Question & Answer



Everything You Wanted to Know About Guardianship of
Adults

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