



NEW MEXICO  
**Developmental Disabilities  
Planning Council**

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Attached is our Intake/Referral form you requested for in applying for our guardianship services.

The legal process takes about 4-6 months once we assign the case. In a few parts of the state it may take some extra time where we don't have attorneys already under contract (e.g. Hobbs).

If there's a family member who can be the guardian, for us to pay for the legal services our financial eligibility criteria for the person proposed as the guardian is 300% of Poverty (see attached), and we'll need their most recent tax return. If someone believes they qualify for our program, they should submit the attached Intake-Referral form.

We can also assign a professional "corporate" guardian on contract with our office as a last resort if there is no one else available.

The person needing guardianship must meet the financial eligibility for Institutional Medicaid.

If the person needing guardianship is under age 18, we accept applications for our services about 3 months prior to the 18<sup>th</sup> birthday since nothing can be filed with the court until the 18<sup>th</sup> birthday.

Note: if Adult Protective Services (APS) has been involved and they believe a guardian is needed, then there is no need to make a separate referral directly to our office - APS performs the legal services and they request a "corporate" guardian through our office. Where needed, we provide APS the proposed corporate guardian 6 months prior to the 18<sup>th</sup> birthday. Please feel free to contact our office if you do not know whether APS is seeking a guardianship.

Please also see on our website (<http://nmddpc.com>)

- click on "Video"
- the Uniform Probate Code is under "laws" in our website;
- If someone plans to pay themselves for the legal services and need our list of those who contract with our office, they should click on "Contractors" and look for Petitioning Attorneys, and Guardian ad Litem (GAL), and Court Visitors

For additional information on guardianship, please see:

- 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](mailto:info@guardianship.org)

- Handbook for Guardians and Conservators (rev. 2007) - a practical guide to NM law; see at Website: [www.guardianshipnm.org](http://www.guardianshipnm.org); Click on:

"Publications and Resources", then click on: "New Mexico Guardianship Association Handbook".

Thanks, and please let us know if we can provide any additional information.

## Information Regarding Guardianship of Adults

A guardianship proceeding is under Chapter 45 of the NM Uniform Probate Code (NMSA 1978), and it is the only way an adult in New Mexico can legally be determined to be incompetent and have their right to make their own decisions taken away. This legal process is utilized when a person can no longer make or communicate safe or sound decisions about his/her person and/or property, or has become susceptible to fraud or undue influence. Because establishing a guardianship may remove considerable rights from an individual (also called a "ward"), it should only be considered after alternatives to guardianship have proven ineffective or are unavailable.

Legal services for court proceedings including a Petitioning Attorney, a Guardian ad Litem (GAL), and a Court Visitor.

"Guardian ad litem" means a person appointed by the district court to represent and protect the interests of a minor or an incapacitated person in connection with litigation or any other court proceeding;

"Visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, social worker, developmental incapacity professional, physical and occupational therapist, an educator and a rehabilitation worker.

You may want to review the NM Uniform Probate Code (Chapter 45; Sections 45-5-101, 45-1-201, 45-5-301 thru 315); see at:

<http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-hit-h.htm&2.0>.

The following is general information regarding the role of the guardian of adults.

The guardian takes the place of the individual's own decision-making. A guardian may be a family member or friend, or a public or private entity appointed by the court. The professional guardian does not take the place of a family member, although the guardian may form an emotional bond with the incapacitated person. The 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 professional guardian will coordinate and monitor professional services needed by the incapacitated person - professional standards allow for a guardian to have up to 25-30 individuals (wards) for guardianships. The guardian is not required to have the individual live in their home, nor is legally obligated to provide from the guardian's own funds for the incapacitated person's place of abode, care, comfort, and maintenance.

The individual rights removed and due process rights may vary - in any type of guardianship the court may limit the guardian's authority. The guiding principle in all guardianship is that of least intrusive measures to assure as much autonomy as possible. The guardian's authority is defined by the court and the guardian may not operate outside that authority. The professional guardian is an advocate and acts on behalf of the incapacitated person only to the extent of the court order.

While in this summary we are providing information regarding the "guardian of the person", there is also the "guardianship of the Estate or Property" (also called conservator). Because establishing guardianship is a legal process that involves the removal of the individual's rights, considerable due process protection often exists when the guardianship is established. The following rights of the ward may be removed: Determining residence; Consenting to medical treatment; Making end-of-life decisions; Possessing a driver's license; Managing, buying, or selling property; Owning or possessing a firearm or weapon; Contracting or filing lawsuits; Marrying; Voting.

A good guardian will take into account the wishes and desires of the person (ward) when making decisions about residence, medical treatments, and end-of life decisions. Again, the 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 courts will remove only those rights that the proposed ward is incapable of handling. When the court appoints a guardian of the person, 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.
- Report to the court about the guardianship status at least annually.

Alternatives to guardianship may include:

- Representatives or substitute payees.
- Case/care management.
- Health care surrogacy.
- Trusts.
- Durable powers of attorney for property.
- Durable powers of attorney for health care.
- Living wills.
- Community advocacy systems.
- Joint checking accounts.
- Community agencies/services.

Funds that belong to the ward 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 estate guardian (conservator) acts on behalf of the incapacitated person only to the extent of the person's assets.

The goal of effective guardianship is to be able to restore the rights of the individual who, for whatever reason, has had some of them removed by a court after due process. It is true that in many instances once a guardianship has been initiated by a court, it is in place until the incapacitated person dies.

Please let us know if we can provide any additional information:

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