

Guardianship Alternatives for Adults with Disabilities

New Mexico

What is guardianship?

Guardianship is the legal relationship that is created when the court appoints a guardian for an adult, 18 years or older, who has a disability and is not able to make or communicate safe decisions about their own health and where they live.

A person may be determined to be “incapacitated,” or in need of a guardian, because of developmental disability, dementia, brain injury, mental illness, chronic substance abuse or other disabilities. Once appointed by the court, the guardian makes all decisions related to healthcare and placement for the “protected individual,” which means the person who has the guardian.

What are less restrictive alternatives to guardianship?

There are many alternatives to full, or plenary, guardianship that may meet a person’s needs for support and help with decision-making. These alternatives are less restrictive than full guardianship.

In **limited guardianship**, the guardian’s role is limited to the powers specifically outlined by the court, which are less extensive than in full guardianship. This allows the individual to retain some legal rights and to make some decisions themselves.

Treatment guardianship is temporary, limited guardianship for 30 days to one year, for a person with a psychiatric diagnosis who is not able to make decisions about their health as they enter into treatment care.

An **emergency temporary guardian** may be appointed for up to 60 days when a person is not able to communicate what they need for a short time, as in the case of emergency medical care.

A **conservator** may be appointed to manage a person’s estate if they are not able to do so, but are able to manage their own healthcare and housing decisions.

A **representative payee** may be appointed by the Social Security Administration if someone needs help managing their Social Security benefits, but can manage other needs on their own.

If a person is able to manage everything except their bank account, someone else may become a **joint account holder** in order to help manage that bank account.

Medical power of attorney and **financial power of attorney** can be put in place in case a person who is able to make medical and financial decisions becomes incapacitated.

Someone can choose a **surrogate healthcare decision-maker**, and allow the surrogate to access their medical files for a specific provider. The surrogate can then make healthcare decisions for the individual only if the individual becomes incapacitated.

Remember:

- Full, or plenary, guardianship severely limits the rights of an individual, and is only considered as a last resort.
- One or more alternatives to full guardianship may meet the particular needs of some individuals.
- For more information about guardianship, visit the Information Network website under Informational Tip Sheets.



NM Developmental Disabilities Planning Council (NMDDPC) Guardianship Program
505-841-4519
nmddpc.com

The Arc of NM
1-800-358-6493
arcnm.org

Disability Rights NM (DRNM)
1-800-432-4682
drnm.org

NM Guardianship Association
info@nmguardianassoc.org
nmguardianassoc.org

National Guardianship Association
1-877-326-5992
guardianship.org

Questions?

Call the CDD Information Network
1-800-552-8195
or visit our website at

<https://goto.unm.edu/x8gmt> Informational Tip Sheets:

<https://goto.unm.edu/>