

Guardianship 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 a developmental disability, dementia, brain injury, mental illness, chronic substance abuse or other disabilities.

If someone is concerned that a person they know or care for may need a guardian, they may petition through the court for a guardian to be appointed. Once appointed by the court, the guardian becomes responsible for all decisions related to healthcare and housing for the “protected individual,” which means the person who has a guardian.

When is full guardianship appropriate?

Full, or plenary, guardianship severely limits the rights of an individual, and should be considered only as a last resort after alternatives have been explored. Guardianship may be appropriate for someone who is not able to make or communicate safe decisions about their health and housing, and no alternatives to guardianship will keep them safe.

How is a guardian appointed?

A specific series of legal steps is followed when seeking guardianship. This process can take several months, and may be started when the individual is 17½ years old.

- The person seeking guardianship for an individual hires an attorney, who submits a petition for guardianship to the court.
- The court appoints a “Guardian Ad Litem” (GAL) to represent the interests of the individual who may need guardianship, and to do an assessment of what that individual wants and needs.
- The court assigns a court visitor and a qualified health professional to carry out formal assessments of the individual’s needs.
- All findings are submitted to a judge, and the judge determines whether a guardian will be appointed, and if so, who that will be. It may be the person who originally petitioned to be the guardian, or it may be someone else the judge decides is in the protected individual’s best interest.

What are the costs?

The legal costs of obtaining guardianship can be approximately \$6,000. The NM Developmental Disabilities Planning Council (NMDDPC) has limited funding to help cover these costs for incapacitated individuals and proposed guardians who meet financial eligibility requirements. There may be a waitlist for this funding.

Remember:

- Guardianship is the most restrictive measure with regards to a person’s ability to manage their own affairs, and is considered only when no alternatives will meet the needs of the individual.
- Petitioning for a guardian follows a specific legal process, and a guardian is always court-appointed.
- For information about alternatives to 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
oc.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
www.cdd.unm.edu/infonet

Informational Tip Sheets:

www.cdd.unm.edu/info/net/tip-sheets.html