

Family Guardianship

A non-professional or family guardian is a family member or another person who is able and willing to become the Protected Person's guardian. Guardianship is a legal process that may remove considerable rights from an individual. It should only be considered as a last resort, when there is no less-restrictive form of intervention available, such as a Power of Attorney or a decision maker designated under an Advance Directive.

Training & Education Resources

Family guardians are required to review a series of training videos from the New Mexico Courts' Adult Guardianship and Conservator Orientation Program, and obtain a certificate of completion (<https://adultguardianship.nmcourts.gov/informational-training-videos/>).

- Potential guardians must file the certificate of completion with the court clerk at least five calendar days prior to the hearing appointing a guardian.
- Existing guardians must also file a certificate of completion with the court clerk (for more information please contact the assigned judge).

Guardian Orientation video topics include:

- I. Guardianship Introduction & Orientation
- II. How to Complete the Guardian's Report
- III. Guide to Filing and Distributing Guardian and Conservator's Reports
- IV. Abuse and Neglect
- V. How to File a Grievance

Family guardians should also review the following:

- New Mexico Guardianship Association's Handbook for Guardians and Conservators (<https://www.nmguardianassoc.org/handbook>)
- National Guardianship Association Standards of Practice (<https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf>)



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Guardian Reports

All guardians (non-professional and professional) are required to submit the following report to the court, using Form 4-996 NMRA (<https://www.nmddpc.com/media/files/Form%204-996.%20Guardian's%20Report.pdf>).

Reports are to be filed with the clerk's office in the district court that appointed the guardian.

- ⇒ NM State Law requires copies of reports to be provided to the judge, protected person, and other parties entitled to the notice.
- ⇒ The purpose of the Guardian's Report is to give the court information about an adult for whom a guardian has been appointed.

Guardian Reporting Requirements

- 90-day reports are filed within 90 days of the guardian's appointment by the court.
 - Filed once, thereafter the report is filed annually.
- Annual reports are filed on or before the day of anniversary of the guardian's appointment by the court.
 - Filed every year within 30 days of the anniversary of your appointment as guardian.
- Final reports are filed upon the case transfer to a successor guardian, termination of guardianship, or upon the death of the Protected Person.
 - Form completed within 30 days of resignation or removal, termination of the guardianship, or upon the death of the Protected Person.



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Guardian Reporting

Guardians are required to submit an initial 90-day and annual report to the court, using Form 4-996 NMRA (<https://www.nmddpc.com/media/files/Form%204-996.%20Guardian's%20Report.pdf>).

Reports are required to be filed with the clerk's office in the district court that appointed the guardian:

- Keep records throughout the period of your appointment; this will help you in filling out the Guardian Report.
- The report must contain information about the Protected Person's mental and physical health, and important contracts, agreements, decisions made or agreed to on behalf of the Protected Person over the past year.
- The report must include an accounting of all income and expenditures.
- The accounting lists all financial information – to include all disbursements and income made or received from the Protected Person's funds, it should include a beginning and end balance.
- It is important to file your Guardian Report on time. Failure to file a report may result in serious consequences such as:
 - Paying a fine of \$25.00 for each day the report is late.
 - The judge may at any time send a letter or schedule a status hearing requiring an explanation as to why the report is late.

How to File a Guardian Report:

- Take two (2) copies of the Guardian Report to the court clerk.
 - The court clerk will endorse stamp both copies of your report with the date filed.
 - Maintain one (1) copy of your report with the endorsed stamp.
- It is your responsibility to distribute copies with the endorsed stamp to the following:
 - Judge assigned to the case;
 - Protected Person;
 - Conservator (if applicable); and
 - Other persons entitled to notice.
- The judge assigned to the guardianship case will review the report – he/she may follow-up or schedule a status hearing if there are any questions or concerns.



Family Guardianship

Guardian Duties & Responsibilities

It is the responsibility of all Guardians (non-professional and professional) to ensure that:

- I. Protected Persons are receiving the least restrictive standard of services, to the highest degree possible;
- II. Protected Persons are involved in individual planning, decision-making, implementation and evaluation of those services;
- III. All services provided are designed to enhance, promote and expand independence, self-sufficiency, self-esteem and quality of life of a Protected Person; and
- IV. Protected Persons retain all legal and civil rights, except those that have been expressly limited by the court order.

The Family Guardian is an advocate who supports the Protected Person with decision making, adhering to the scope of the guardianship court order. The guardianship court order may include but is not limited to:

- I. Ensuring that the Protected Person's legal and civil rights are retained;
- II. Ensuring the basic needs of the Protected Person are met;
- III. Monitoring the Protected Person's services for abuse, neglect, exploitation and/or fraud;
- IV. Residential Placement Decision Making;
- V. Healthcare or Medical Decision Making; and
- VI. Financial Decision Making.



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Protected Person's Civil Rights

A Protected Person for whom a guardian has been appointed retains all legal and civil rights except those that have been expressly limited by court order. These civil rights include, but are not limited to, the following:

- the right to be free from unlawful discrimination, including age, disability, ethnicity, gender, marital status, national origin, race, religion, and sexual orientation;
- the right to be treated humanely, with dignity and respect, and be protected against emotional or psychological abuse, physical abuse, sexual abuse, neglect and exploitation;
- the right to be served in the most integrated setting appropriate to Protected Person's needs;
- the right to practice the religion of their choice, or abstain from the practice of religion;
- the right to receive visitors and communicate with others;
- the right to privacy;
- the right to participate in the political process, including the right to vote in accordance with the New Mexico Constitution, which states that every person who is qualified to vote in elections in New Mexico may do so, except as restricted by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference;
- the right to voice grievances and complaints without interference, coercion or reprisal;
- the right to counsel and access to available advocacy services;
- the right to have access to the courts;
- the right to receive services to which they are entitled;
- the right to be restored to capacity at the earliest possible time;
- the right to have review of the need for restriction of rights;
- the right to have a qualified guardian;
- the right to remain as independent as possible;
- the right to determine their place of residency, or have their preference honored;
- the right to own, use, and control their property, or have their property managed prudently and have timely information about how their property is being managed;
- the right to consent to or refuse medical treatment, unless that authority has been granted to a guardian, or if a treatment guardian has been appointed to make mental health treatment decisions pursuant to the Mental Health and Developmental Disabilities Code (NMSA 1978, § 43-1-15);
- the right to seek or retain employment;
- the right to travel; and
- the right to notice and to attend all proceedings relating to their capacity.



Frequently Asked Questions

What is guardianship?

Guardianship is a legal process in which the court appoints the guardian for a person who is unable to make decisions regarding:

- Health Care
- Personal Care
- Finances
- Property
- Or may be subjected to abuse, neglect, exploitation, fraud

What is an alternative to guardianship?

Alternatives to guardianship (<https://www.nmddpc.com/alternatives-to-guardianship-new>)

include, but are not limited to the following:

- Supported Decision Making
- Surrogate Decision Maker for Healthcare
- Power of Attorney
- Representative Payee
- Special Needs Trust

How do I know what decisions I can make once I become a guardian?

Guardians can only make decisions that are specified in the court order.

What decisions can the Protected Person make once a guardian is appointed?

The Protected Person retains all legal and civil rights, except for what is specified in the court order.

What resources are available?

Disability Rights New Mexico

Website: www.drn timer.org

National Guardianship Association

Website: www.guardianship.org

New Mexico Guardianship Association

Website: www.nmguardianassoc.org

UNM Center for Development and Disability

Website: <https://hsc.unm.edu/cdd/>



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Frequently Asked Questions

What reports does a guardian need to submit to the court?

All guardians (non-professional and professional) are required to submit the following reports to the court, using Form 4-996 NMRA:

- 90-day report, filed within 90 days of the guardian's appointment by the court.
- Annual report, filed on or before the date of anniversary of the guardian's appointment by the court.
- Final report, filed upon the transfer to successor guardian, termination of guardianship, or upon the death of the Protected Person.

What happens if I do not submit the required court reports?

Failure to submit the required court reports may result in a fine of \$25.00 per day and/or termination of you as the Protected Person's guardian.

How do I terminate a guardianship?

A guardian's appointment may only be terminated by the court if it has been determined that the Protected Person has regained capacity – is now able to manage their personal affairs and no longer needs a guardian.

What do I do if the current guardian can no longer provide guardianship services?

If the guardian can no longer serve or perform their duties, the court must be petitioned to request a successor guardian.

What do I do if a Protected Person's guardian has passed away?

Notify the court immediately to request a successor guardian, informing the court of the guardian's death.

Do I need to inform the court when a Protected Person has passed away?

Yes upon the death of the Protected Person, all guardians must notify the court by completing the Final Guardian Report using Form 4-996 NMRA.



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Alternatives to Guardianship

Least restrictive alternatives to guardianship considers the needs of the individual and preserves their autonomy or independence. You are encouraged to research or to seek expert help on any of the following alternatives to guardianship:

Medical and Mental Healthcare

Advance Health Care Directives (AHCD)

AHCD (<https://hscethics.unm.edu/common/pdf/nm-advance-directives.pdf>) is a legal document focused on end-of-life medical treatment or life-sustaining health care decisions. An individual can leave instructions on these decisions or designate another person (family members, loved ones, etc.) to make the decisions on their behalf. The document requires witnesses and it is generally only effective when the individual is incapacitated.

Living Wills

A Living Will (<https://newmexico.networkofcare.org/mh/library/article.aspx?hwid=aa54776>) serves as a guideline to instruct the individual's family members and doctors about their end-of-life medical treatment as well as other medical decisions, such as pain management or organ donation.

Last Will and Testament (Will) – means a legal document that an individual prepares to communicate, upon death, his or her wishes concerning the distribution of personal and financial properties. Without a Will, State law will decide who inherits properties and manages the estate.

Surrogate Decision-Maker

A surrogate decision-maker is authorized, by the Uniform Health Care Decisions Act (UHCDCA), to make health care decisions on behalf of an individual. UHCDCA (<https://laws.nmonesource.com/w/nmos/Chapter-24-NMSA-1978-2001#!b/a7A>) governs how to designate a surrogate decision-maker if the individual has become incapacitated. An individual who is capable of designating a surrogate decision-maker may do so verbally or in writing.



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Alternatives to Guardianship

Medical and Mental Healthcare (continued)

Mental Health Treatment Guardianship

A Mental Health Treatment Guardian (<https://www.nmddpc.com/treatment-guardian>) is appointed by the court and is given authority to ONLY make substituted decisions regarding mental health treatment (including psychotropic medications) for individuals who are determined by the court to lack capacity to provide informed consent. Mental Health Treatment Guardianship appointments are not to exceed one year.

Money Management

Joint Checking Accounts

Joint checking accounts allow each owner shared access to withdraw/deposit funds and to close the account(s).

Bank Account Signatory

A bank account signatory is similar to joint accounts, however, this type of account requires all transactions to have at least two signatures.

Individuals Indian Money Accounts

A program with the Bureau of Indian Affairs (<https://www.bia.gov/bia/ois/dhs/individuals-indian-money-accounts>) that manages an interest-bearing account on behalf of an individual who has money or assets held in trust by the Federal government.

Joint Property Arrangements

A property ownership in which two people equally own, share rights, and obligations of the property.

Representative Payee

An individual or organization, designated by the Social Security Administration, who acts as the representative payee (<https://www.ssa.gov/payee/>) of Social Security Disability or Supplemental Security Income for an individual who is not fully capable of managing their own benefits.



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Alternatives to Guardianship

Money Management (continued)

Fiduciary

An individual or entity that has been designated by the Veterans Administration (VA) (<https://benefits.va.gov/fiduciary/>) to manage the beneficiary's VA pension or benefits, ensure timely payment of debts, and utilization of funds to pay for daily needs on behalf of the beneficiary.

ABLE Accounts

An investment account with ABLE New Mexico (<https://ablenewmexico.com/>) that is available to eligible individuals who have disabilities. ABLE accounts allow individuals to save and invest money without disqualifying them for public benefits such as Medicaid and Supplemental Security Income (SSI).

Special Needs Trust

A specific type of irrevocable trust that allows an individual who has disabilities to protect and use their assets without disqualifying them for Federal and State public assistance or benefits.

Trusts

A third-party (trustee) fiduciary arrangement that manages and transfers investments, property, and other assets to the beneficiary (individual).

Personal Care and Decision-Making

Natural Supports

Persons who are not paid to support the individual and may include: family members, friends, and co-workers.

Case Management

A coordination of services to meet the needs of the specific individual. Such services may include health care needs, educational needs, housing and food assistance, as well as other needs defined by the family, case manager, social worker or anyone else involved with the individual.



Alternatives to Guardianship

Personal Care and Decision-Making (continued)

Powers of Attorney

Powers of Attorney (<http://www.lopdnm.us/pdf/power%20of%20attorney.pdf>) are legal notarized documents identifying a person or entity to act as a designated decision maker (agent) for another individual (principal).

Depending on the document, the agent may be authorized by an individual to make medical or financial decisions. The principal must have capacity before the creation of a power of attorney, and the document can be revoked at any time.

Durable Power of Attorney – means a legal document where the principal appoints an agent to manage and protect their money, property, and business affairs if the principal becomes disabled or incapacitated.

Financial Power of Attorney – means a legal document in which a principal designates an agent to make financial decisions on their behalf.

Limited (Special) Power of Attorney – means a legal document that gives the agent the power to act on the principal's behalf for specific purposes. The agent's authority ends after their purpose has been completed or after a designated time period.

Medical Power of Attorney – means a legal document that gives an agent the power to communicate with the principal's health care providers and make health care decisions on behalf of the principal in the event that they become incapacitated.

Springing Power of Attorney – means a legal document that grants the agent the ability to manage the principal's money, property, and business affairs. This document will go into effect if an accident, similar event, or medical condition results in the principal becoming incapacitated.



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Guardianship & Decision-Making

National Guardianship Association (NGA) Standards of Practice
(<https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf>)

NGA Standard 7 – Standards for Decision-Making

The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.

- A. First, the guardian shall ask the person what he or she wants.
- B. Second, if the person has difficulty expression what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
- C. Third, only when the person, even with assistance, cannot express his or her goals and preferences, shall the guardian seek input from others familiar with the person to determine what the individual would have wanted.
- D. Finally, only when the person's goals and preferences cannot be ascertained, may the guardian make a decision in the person's best interest.



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Guardianship & Decision-Making

Guardians are encouraged to research or to seek expert help on any of the following decision-making models:

Decision-Making Models

1. Person Centered Planning

Person Centered Planning (<https://acl.gov/programs/consumer-control/person-centered-planning>) is a forum in which support systems who know the individual best can identify the needs and desires of the person and coordinate the delivery of services through a written plan so the individual can have the assistance that they need to live a safe, health, and happy life.

2. Informed Consent

A Protected Person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision (i.e., knowledge of risks involved, alternatives, etc.)

3. Shared Decision-Making

A type of decision making where the evidence and options are shared with the individual and the individual is supported in making informed choices.



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Guardianship & Decision-Making

Decision-Making Models (continued)

4. Supported Decision-Making

A series of relationships, practices, arrangements and agreements designed to assist individuals who have disabilities to make and communicate to others decisions about their life.

National Resource Center for Supported Decision-Making:

<http://www.supporteddecisionmaking.org/>

Supported Decision Making Brainstorming Guide:

<http://www.supporteddecisionmaking.org/node/388>

ACLU Tool: When Do I Want Support?:

<http://www.supporteddecisionmaking.org/node/449>

5. Substituted Judgement Decision-Making

The principle of decision-making that substitutes the decision the Protected Person would have made when the person had capacity has the guiding force in any surrogate decision the guardian makes.

6. Best Interest Decision-Making

The doctrine of best interest states that guardians should act in the best interest of the Protected Person, which includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Protected Person.



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Guardian Complaint Process

Complaints Filed with the New Mexico State Courts

- Complainants have the right to contact the assigned District Court Judge to address any concerns pertaining to guardianship.

Form 4-999.1. Grievance about guardian or conservator:

<https://www.nmddpc.com/media/files/Grievance%20Form%204-999.1.English.pdf>

Form 4-999.1. Reclamo sobre tutor o curador:

<https://www.nmddpc.com/media/files/Grievance%20Form%204-999.1.Spanish.pdf>

- For additional information please visit the following website: <https://adultguardianship.nmcourts.gov/grievance.aspx>

Complaint against a National Certified Guardian or National Master Guardian

- A written complaint may be filed with the Executive Director of the Center for Guardianship Certification (CGC).

Complaints Submitted to CGC via USPS:

Center for Guardianship Certification

Attn: Executive Director

P.O. Box 5704

Harrisburg, Pennsylvania 17110

- The complaint must provide evidence of a violation of the National Guardianship Association Ethical Principles or Standards of Practice.
- Or any change in status that affects the Guardian's eligibility to be certified as defined in the CGC Rules and Regulations.
- CGC does not accept complaints that are filed anonymously.
- For additional information please visit the following website:
 - <https://guardianshipcert.org/make-a-complaint>



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Guardianship Resources

- New Mexico State Courts
 - **Website:** <https://adultguardianship.nmcourts.gov/>
- New Mexico Guardianship Association (NMGA)
 - **Website:** www.nmguardianassoc.org
 - Note: The Handbook for Guardians and Conservators is available for download.
 - **Website:** <https://www.nmguardianassoc.org/handbook>
- New Mexico Office of Guardianship
 - Phone: 505-841-4519
 - **Website:** https://www.nmddpc.com/guardianship_program
- National Guardianship Association (NGA)
 - **Website:** www.guardianship.org
- Disability Rights New Mexico
 - **Website:** www.drn.org



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Office of Guardianship (OOG) Complaint Process

1) Protected Persons (PPs) and/or other concerned parties are required to first try to resolve the complaint(s) with the Guardian.

(a) OOG does not have jurisdiction over Guardians that do not contract with DDPC.

2) If the parties are unable to reach a resolution or agreement within thirty (30) calendar days, the complaining party may submit a complaint to OOG.

3) Complaints should include as much information as possible, including the following:

(a) Name of the PP and contact information;

(b) Name and contact information of the individual assisting the PP through the complaint process, if applicable;

(i) Relationship of the complaining party to the PP.

(c) Name of the Guardian Agency and/or Guardian Coordinator against who the complaint is being made;

(d) Name of the party who has attempted to resolve the complaint, if known;

(i) What actions have been taken to attempt to resolve the complaint?

(e) Details of the complaint including:

(i) The alleged wrongdoing;

(ii) The involved parties; and

(iii) When and where the wrongdoing occurred.



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Office of Guardianship (OOG) Complaint Process

OOG is available to provide support with the complaint process, for assistance please call (505) 841-4519.

- (a) An exception to the requirement that a complaint be made in writing shall be granted if a reasonable accommodation is necessary.

Complaints to OOG may be submitted in person, by mail, or fax.

- (a) The complaint form (<https://www.nmddpc.com/media/files/OOG%20Complaint%20Form.pdf>) is optional, you may attach additional pages and/or supporting documentation.

Complaints via fax submit to (505) 841-4455 or USPS:

DDPC/OOG
Attn: Program Manager
625 Silver Ave SW, Suite 100
Albuquerque, NM 87102

Complaint against the Office of Guardianship

- A written complaint may be submitted to the New Mexico Human Services Department (HSD)

Complaints Submitted to HSD via USPS:

Human Services Department
Attn: Office of the Secretary
P.O. Box 2348
Santa Fe, NM 87504

- A copy of the complaint may be submitted to the DDPC Executive Director, pursuant 9.4.21.15 NMAC (<http://164.64.110.134/parts/title09/09.004.0021.html>)



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Office of Guardianship (OOG) Complaint Process

Complaints Out of Jurisdiction

- 1) Upon receipt of a complaint that is out of jurisdiction, OOG shall:
 - (a) Notify the complainant via certified mail and/or e-mail with a return receipt request, to document the complaint closure.
- 2) Per NMSA 1978, § 28-16B-6(D) OOG “may refer complaints to other agencies for investigation or prosecution, as appropriate” including:
 - (a) The District Court Judge of allegations made against a non-OOG guardian or private guardianship case.

Reporting Abuse, Neglect, and Exploitation

- New Mexico Mandated Reporting Laws require anyone with knowledge of suspected abuse, neglect, and exploitation to report the incident to the appropriate authorities. Mandatory Reporting applies to all individuals and is not limited to teachers or health care professionals.
 - If you suspect an adult is being abused, neglected, or exploited, call Adult Protective Services Statewide Intake, toll-free at **866-654-3219** or **505-476-4912**.
 - The Division of Health Improvement (DHI) provides oversight for home and community-based Medicaid waiver programs and health facility licensing. DHI routinely conducts investigations into allegations of abuse, neglect, and exploitation (ANE) and complaints with health facilities, toll-free at **800-445-6242**.



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