New Mexico
Developmental Disabilities Planning Council
(NMDDPC)

http://nmddpc.com/home

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The Developmental Disabilities Assistance and Bill of Rights Act of 2000
PUBLIC LAW 106-402—

October 30, 2000

To improve service systems for individuals with developmental disabilities
The Developmental Disabilities Assistance and Bill of Rights Act of 2000

3 Major Programs:

Developmental Disabilities Planning Councils

University Centers for Excellence
(Centers for Development & Disability)

Protection & Advocacy System
(Disability Rights New Mexico)
Federal DD Definition

- is attributable to a mental or physical impairment or combination of mental and physical impairments;

- is manifested before the individual attains age 22;

- is likely to continue indefinitely; and
Federal DD Definition

results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;
(ii) receptive and expressive language;
(iii) learning;
(iv) mobility;
(v) self-direction;
(vi) capacity for independent living; and
(vii) economic self-sufficiency; and

reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and are individually planned and coordinated...
What are DD Councils?

Established by Federal and State law

- Federal law: PL 106-402
  Developmental Disabilities Assistance and Bill of Rights Act (Reauthorized in 2000)

- State Statutes:
  Chapter 28 Article 16A 4-5
Mission Statement

The New Mexico Developmental Disabilities Planning Council will engage in

*advocacy, capacity building, and systemic change*
What Do DD Councils Do?

- Speak out on issues affecting people with developmental disabilities.

- Advise and provide information to the Governor, legislature, State agencies, and service providers about the needs of people with developmental disabilities/families.

- Develop a Five-Year plan that guides Council activities based on Federal Areas of Emphasis

- Based on Plan, fund a variety of small grant projects to increase understanding/capacity to improve quality of life of persons with DD
The New Mexico Developmental Disabilities Planning Council has Four Program Units

- **Unit 1:** Developmental Disabilities Planning Council
  - 505-476-7324

- **Unit 2:** Brain Injury Advisory Council (BIAC)
  - 505-476-7328

- **Unit 3:** Office of Guardianship
  - 505-476-7332

- **Unit 4:** Information Center for New Mexicans with Disabilities/BabyNet
  - 1-800-552-8195

- **Unit 4:** Center for Self-Advocacy
  - 505-341-0036
www.nmbiac.com
505.476.7328
The New Mexico Brain Injury Advisory Council has a twofold mission....

**First**, we advocate for the development of a *statewide system of comprehensive, community based resources.*

**Second**, we promote *prevention* and increased *public awareness* to decrease the incidence of preventable brain injuries.
OFFICE OF GUARDIANSHIP

Frank Fajardo, Manager
Elena Moreno, Attorney
Chris Rowland, Compliance Officer
Denise Tierney, Compliance Officer
Cecilia Salazar, Community & Social Service Spec.
Ph: 505-476-7332 or 800-311-2229
http://www.nmddpc.com/office-of-guardianship
OUR SERVICES state-wide

- Contract Professional “corporate” Guardians – as a last resort
- Legal Services for Court appointed family and corporate guardianships
  - Petitioning Attorneys
  - Guardian ad Litem (GAL)
  - Court Visitors
- Mental Health Treatment Guardians
- Information, training, and education
Eligibility for our services for the person in need of guardianship

- must be 18 or older (we accept referrals 3 months before 18th birthday).
- financial eligibility: be eligible for Institutional Medicaid + legal resident
Eligibility for our services to become a family guardian

- Household income of the person who wants to be a guardian must be less than 300% of poverty.
- Includes legal services for guardianship court proceedings.
Reason for referral to our services

- Person’s health or safety is at risk,
- due to protected person’s limited ability and capacity to care for him/herself.
Examples of Who We Serve

- Elderly/Seniors (dementia, Alzheimer’s)
- Developmentally Disabled - over age 18
- Traumatic Brain Injury (TBI)
- Veterans
- Recipients of Medicaid Waiver (DD Waiver; D&E Waiver, etc.)
- Adults with mental illness (Mental Health Treatment Guardians)
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.
Mental Health Treatment Guardians

- This is separate from the regular guardian appointed under the Probate Code (temporary vs. permanent).
- Mental Health Treatment Guardians are appointed by a District Court under the Mental Health and Developmental Disabilities Code.
- for those who are temporarily unable to make their own decisions about mental health services.
- a regular guardian may also be appointed as a Mental Health Treatment Guardians.
Mental Health Treatment Guardians

- Role is limited by our Mental Health Code to making decisions that affect the mind, the emotions or the behavior of a client and does not extend to other physical health problems.
- Primary decision-making is only consent for psychiatric treatment and medication.
- Does not require commitment to be appointed a Treatment Guardian.
Informed Consent

- **Competent** - patient is mentally and physically capable of making own decisions (giving informed consent) re: treatment or medication.

- **Informed** – patient understands the:
  - nature of the treatment or medication;
  - benefits, risks, and drawbacks;
  - availability of alternative treatment (including no treatment) and the risks and benefits thereof.

- **Voluntary** – patient freely decides whether the risks are worth the benefits, and expresses an opinion.
“Best Interests” of the client

- relief of suffering;
- restoration of functioning;
- quality of life;
- opportunity for future satisfaction;
- possibility of future regaining of self-determination.

Versus “wishes” and “desires”
Guardianship of Adults
Uniform Probate Code (45-5-301 thru 315)

☐ should be a last resort;
☐ only as necessary to promote and protect the well being of the person (and others);
☐ designed to encourage development of maximum self-reliance and independence
Required by the Uniform Probate Code

- Alternatives to Guardianship
- Least Restrictive Means
- Preference for limited level of guardianship (rather than full/plenary guardianship).
- Rely heavily on Qualified Health Care Professional and Court Visitor.
Guardianship of Adults
Uniform Probate Code (45-5-301 thru 315)

☐ should be a last resort;
☐ only as necessary to promote and protect the well being of the person (and others);
☐ designed to encourage development of maximum self-reliance and independence
Guardianship removes considerable rights - only consider after alternatives have proven ineffective or 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
- Surrogate Decision-maker:
  - you may designate any individual to act as surrogate by personally informing the health-care provider.
  - If none designated – then the following in descending order:
    - 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.
“incapacitated person”

The main criteria in the Probate Code is that the person meet the definition of “incapacitated person”:

- 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
"inability to manage his personal care"

- means the “inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future;”

Ref: 45-5-101 (G)
Guardianship versus 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.
"least restrictive form of intervention"

- means that the “guardianship or conservatorship imposed on the incapacitated person or minor ward represents only those limitations necessary to provide the needed care and rehabilitative services, and that the incapacitated person or minor ward shall enjoy the greatest amount of personal freedom and civil liberties;”

Ref: 45-5-101 (J)
Guardian ad Litem (GAL)

Guardian ad Litem (GAL) is appointed by the Court to:

1. interview in person the alleged incapacitated person prior to the hearing;
2. Present the alleged incapacitated person’s declared position to the court;
3. Interview the qualified health care professional, the visitor and the proposed guardian;
4. Review both the medical report submitted by the qualified health care professional and the report by the visitor; and
5. Obtain independent medical or psychological assessments, or both, if necessary.

The duties of the GAL terminate upon appointment of the guardian.

Ref: 45-5-303.1
Qualified Health Care Professional’s Report

The report shall:

- “describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the respondent's intellectual, developmental and social functioning; and”

- “contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.”

Ref: 45-5-303 (D)
Court Visitor

Appointed by the Court to evaluate the needs of the person alleged to be incapacitated and report to the court:

✓ personal care that can manage without supervision or assistance;
✓ personal care that could manage with the supervision or assistance of support services and benefits;
✓ personal care that the person is unable to manage without the supervision of a guardian.
Testamentary Guardianship - successor guardian

Parent or Spouse of incapacitated person:

- May appoint a guardian by Will or other writing - must first be a legally appointed guardian of the adult (protected person);
- Notice of intention;
- The guardian files acceptance with court;
- May be terminated by filing objection

Ref: Uniform Probate Code 45-5-301
Mental Health Treatment Guardian Program

OG contractors:
• NAMI of NM (800) 953-6745 for referrals
• Letticia Garcia (505) 425-8175 for training
For additional information, please see:

- Video and Handbook for Guardians and Conservators - practical guide to NM law; at: http://www.nmgaresourcecenter.org
- 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
Trends for Continuing Needs for Guardianship

- Projected growth in the general population
- Aging population (Dimentia & Alzheimer’s)
- Veterans
- Brain Injuries
- Homeless population
- Students with Disabilities (Age 18-21)
Question & Answer