


NEW MEXICO
**Developmental
Disabilities
Council**

Office of Guardianship Legislative Update

Legislative Health & Human Services Interim Committee

August 18, 2021

Alice Liu McCoy, DDC Executive Director

A soft-focus background image showing a pair of hands gently cradling a baby's head. The image is in grayscale and occupies the right two-thirds of the slide. On the left, there is a solid teal vertical bar containing white text.

HB 234 Office of Guardianship Update

- Least restrictive alternatives/options
- OOG Legal Director & structure
- Supported decision-making
- Volunteer court visitor program

PETITION

45-5-303(B)(4) NMSA

- any least restrictive alternative for meeting the alleged incapacitated person's alleged need that has been considered or implemented;
- if no least restrictive alternative has been considered or implemented, the reason it has not been considered or implemented; and
- the reason a least restrictive alternative instead of guardianship is insufficient to meet the alleged incapacitated person's alleged need

GUARDIAN AD LITEM'S DUTIES

45-5-303.1 NMSA

- identify and present all available less restrictive alternatives to guardianship**

GUARDIAN'S DUTIES

45-5-312(G)

- A guardian for a protected person shall seek and support the least restrictive option, consistent with the court's guardianship order of appointment, including developing adequate supports and requesting guardianship termination if less restrictive alternatives to guardianship are appropriate.**

Least Restrictive Alternatives

**HB 234

National Guardianship Association Standard 8 – Least Restrictive Alternative

- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the **personal and financial goals, needs, and preferences** of the person under guardianship while placing the least restrictions on their **freedom, rights, and ability to control their environment**.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the **independence and self-determination** of the person and maintaining the person's **dignity, protection, and safety**.
- III. The guardian shall make **individualized** decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
 - A. The guardian shall become **familiar with the available options** for residence, care, medical treatment, vocational training, and education.
 - B. The guardian shall strive to know the person's **goals and preferences**.
 - C. The guardian shall consider **assessments of the person's needs** as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

What does
“least
restrictive”
mean?

Office of Guardianship Structure

**HB 234

- Licensed attorney required to manage OOG**
- Intake, eligibility, evaluation & case assignment
- Information & referral regarding alternatives to guardianship**
- Legal team management & oversight
- Protected person, family & guardian support
 - Protected person welfare visits**
- Professional guardian contract compliance & oversight
 - Comprehensive service reviews**
- Complaints
 - Complete overhaul of complaint process

Supported Decision Making Task Force

Proposed members:

Individuals with disabilities (mental illness, I/DD, degenerative conditions) & families

Judges & court staff

Guardianship attorneys, guardians ad litem, court visitors

Disability Rights New Mexico

Family & professional guardians

Survey of SDM in other states

Proposed legislation, if needed

Implementation plan

Funding



Volunteer Court Visitor Program

- Focused recruitments efforts in schools with strong social work programs & rural reach:
 - New Mexico Highlands University
 - Eastern New Mexico University
 - New Mexico State University
- Expert instruction & hands-on training
- Creating a pipeline for high-quality professional guardians
- Collaborating with the judiciary to establish the court visitor pilot project

Questions?

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