

December 4, 2010

### **Part Three: Adult Guardianship of Disabled Children in New Mexico - After Appointment**

Upon appointment, a guardian is charged with the same duties, power and rights in respect to the incapacitated person that a parent would have with a minor child. Differences include the fact that a guardian is not required to provide financially for the protected person, nor is a guardian held liable to third parties for acts committed by the protected person, unless the guardian was careless or negligent in some way.

The guardian is required to file an acceptance of appointment with the court and provide the court with letters of guardianship that will be witnessed by the judge. The guardian then sends these letters to those who require notice of the guardianship appointment, including doctors, dentists, and other care providers.

The guardian must also file an initial report along with an inventory of the protected person's assets with the court within 90 days of appointment. This report outlines the protected person's current living arrangements, their healthcare providers, their personal, educational and occupational activities, and provides opportunity to list concerns, unmet needs, as well as other information that will keep the court informed of the protected person's status.

Additionally, the guardian must file a yearly report with the court within 30 days of the anniversary date of the appointment. If this report is not filed in a timely manner, the guardian could be charged \$5.00 each day that the report is late. An extension could be requested and granted, but the requirement will not be waived under any circumstances.

This annual report is similar to the initial report in format. It insures that adult in need of protection is, in fact, being protected and that any changes in the level of incapacitation are addressed. It could be that the adult has an increase in ability that was not present before the appointment of guardianship. If full guardianship is in place, the court may move to limit the appointment based on new information. Otherwise, the guardianship will continue as mandated in the original court order.

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The intent of the New Mexico laws surrounding guardianship is to encourage as much independence and self-sufficiency of the protected person as possible. Whenever feasible, input from the protected person should be sought in order to make decisions that remain in their best interest. Guardianship is not to be used to exert undue influence or reap financial benefit.

Some of the responsibilities of a guardian may include insuring that the protected person has adequate housing, clothing and food. Other responsibilities may include making health-care decisions, as well as providing educational, recreational and occupational activities. The guardian may be required to provide for personal care, such as bathing, dressing or giving medications, depending on the person's level of incapacitation. The guardian does not have to provide the care themselves, but they do need to insure that the care is provided if needed.

At any time, the protected adult or other person interested in the welfare of the protected adult has the right to petition the court for a change in guardianship and even termination of a guardianship appointment. The protected person has the right to have their concerns both heard and addressed. Ultimately, the court has the final decision in changing or terminating a guardianship appointment, and they rely on the same processes used in the initial petition for guardianship.

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