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Part 1: Adult Guardianship of Disabled Children in New Mexico - An Overview

Parents of children with specific developmental disabilities, including Downs Syndrome, Cerebral Palsy and Autism Spectrum Disorder face many challenges when raising their children to adulthood. Unfortunately, these challenges do not disappear once the child turns eighteen, which is the age New Mexico recognizes persons as adults with decision-making ability. Questions surrounding medical care and physical needs often cannot be properly addressed or resolved by an adult with a developmental disability.

Appointment as an adult guardian can be an option for parents and caregivers who will continue assisting these adults with decision making and care. Guardianship is obtained through the court to protect and promote the well being of an adult who is in need of such protection. A guardian will typically make decisions concerning where the protected adult will live, what kind of medical care they will need, and what kind of therapy or job training might enhance their situation.

Adult guardianship has serious implications and should only be undertaken as a last resort, because the adult in need of protection will be deemed incapacitated if guardianship is granted. In addition, the appointment of a guardian removes significant rights from an individual. Even so, the protected adult still retains their legal, civil and basic human rights, including the right to; receive personal mail, vote, practice religion of choice, marriage, manage personal spending of allowance, representation by an attorney, create a will or trust, and petition the court to reassign or end guardianship.

However, even these rights can be limited if the protected person does not have the mental capacity to understand or perform them. They also have the right to live free from abuse, exploitation and neglect in any form. These of course may not be forfeited under any circumstances.

In New Mexico, the adult guardianship process provides legal safeguards to those who are alleged to be incapacitated persons; consequently, guardianship will not be granted without significant supporting data. In deciding an adult guardianship case, the courts follow the guiding principle of "least restrictive alternative". This means that alternatives to guardianship should be explored, and guardianship should only be sought as a last remaining option.

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Ultimately, New Mexico statutes require that guardianship encourage as much independence of the protected adult as possible.

After completing the guardianship process as outlined by statute, the court will decide if the alleged incapacitated person requires guardianship. If not, the petitioner's request for guardianship will be denied and the proceedings will be dismissed. If it is discovered that the protected person can perform some decision making and care for themselves, the court may limit the guardianship, designating these limitations within the order of appointment. If the protected person is found to be in need of full guardianship, the petitioner will be given final authority to act for the protected person.

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