

## Script

### Video re: Mental Health Treatment Guardians

Part 1 – Introduction and Making Preparations in Advance

Part 2 – Understanding Mental Illness

Part 3 -- Which Type of Guardianship is Needed

Part 4 – Role of the Guardian and Treatment Guardian

Part 5 – Mental Health Facilities

## **PART 1 – INTRODUCTION AND MAKING PREPARATIONS IN ADVANCE**

Supporting individuals with Mental Health issues poses unique challenges in our society. The purpose of this video is to educate and provide guidance to individuals living with mental illness, to caregivers, and to the families and friends of loved ones. You are not alone in determining how best to help a person with a mental illness. This video is designed to encourage you to not be ashamed that you or your loved one has a mental illness and to guide you to take the needed steps to seek help. In general, our society is proactive in caring for a physical illness, but we are generally much more hesitant with treatment for a mental health illness which may be less obvious or masked. For example, if someone is doing well in their work or education, we often confuse the person's otherwise successful performance as not needing help with mental health issues. Please note this video is entirely focused on adults (age 18 and older).

What happens when you are incapable, either due to a mental illness or other condition, to make mental health or physical health decisions for yourself? What can a person do now to be sure that your wishes are honored when you are incapable of making mental health or physical health decisions for yourself? If we act when we have the capacity to create an Advance Directive, that action greatly reduces the likelihood of a complete stranger - a judge, a guardian or a mental health treatment guardian, making decisions for us, and we can avoid involvement by a court.

What is an advance psychiatric directive? It is a legal document that tells my doctor what treatment I want to improve my thinking and behavior when I do not have the ability to understand that I am ill or understand the purpose of the treatment that is recommended or I am unable to communicate what treatment I want or I cannot understand the risks and benefits of the treatment. My psychiatric advance directive tells the doctor whom I want to make mental health decisions for me if I cannot make them.

First, the laws are set up to encourage people to make their own decisions, and that right is taken away only if the person lacks the capacity to make those decisions, or under a very narrow set of circumstances when one's choices are not honored:

- the treatment requested is infeasible or unavailable. "Infeasible", for example, is when you request a specific type of treatment, but there are no resources to pay for it. An example of "unavailable" means that it is not offered at the facility or a nearby facility.

- the facility or provider is not licensed or authorized to provide the treatment required; or
- the treatment conflicts with other applicable law; for example, other laws concerned with your safety or someone else's safety may not allow your request to be honored.

The legal document that allows us to direct our own care is called an advance directive. There are two types

of advance directives: a Psychiatric Advance Directive, and a health care advance directive. The advance directive must be created while you have capacity to understand what you are signing. "Capacity" has a different meanings depending on circumstances based on specific laws, but it means you understand the reason why treatment may be necessary, and you understand the benefits, risks, and drawbacks of treatment, and alternatives to mental health treatment such as no treatment at all.

It doesn't take much to create a psychiatric advance directive to let your wishes known – and it does not require a lawyer. No one can force or threaten you to create a psychiatric advance directive. It is your choice. All you need is a pen, paper, and witness, or a computer, printer, pen and witness. Write Psychiatric Advance Directive at the top of the page. Below it, write the date. Now write, "I am willing to take this treatment if I cannot make decisions for myself and list them. Or, you can write: I want my sister to make mental health decisions for me. Write her name and phone number down. You can do both. Have someone who is eighteen years old or older who knows you watch you sign it, but it cannot be your health care provider or the person who will be making decisions for you. Then, that person writes, "I have known the signor since \_\_\_\_\_ and that she seems capable of making this legal document. Have the witness sign it and give her phone number. Now take the document to your doctor and ask that it be filed in your medical records. There is no need for a notary, although it may help. You need someone who knows you and can say that you have capacity to understand what you are signing.

The guardianship, advance directive, and mental health treatment guardian laws were created to protect our right of self-determination, and to protect the health and safety of a person when they lack the capacity to make decisions for their own well-being.

This video will help you to understand the law and to give you a framework for how to have your voice heard under all circumstances. There is a set of laws that govern psychiatric treatment and another set that governs physical treatment. The purpose of this video is to encourage you to make wise decisions for your future well-being, or guide your loved one as to what treatment you would want in the event your agent, mental health treatment guardian, or guardian must make decisions for you.

The best outcome is for everyone to create an advance directive for psychiatric and health decision-making while they have the capacity to create the document, before their lives are in crisis. It not only benefits them, but also their family since their expressed needs are known and the family knows they are following what their loved one would want them to do. An Advance Directive is only used when the adult cannot give "Informed Consent," and should not be used to force the adult when they can otherwise make their own decisions. You should be aware that the authority of other Surrogate Decision-Makers under the NM Health-Care Decisions Act does not include mental health treatment decisions – this is where a family member or someone who knows the patient's personal values can make other medical decisions for the adult.

It is quite important that there be encouragement, caregiving, support, and follow-up when the person does not voluntarily seek the help needed, or when they do not voluntarily continue their medication, treatment, and/or therapy. As a rare last resort, when all efforts at encouragement fail, there are options for when forcible efforts are required to get them assistance for their well-being. A key theme of this video is the importance of balancing the adult's rights to determine their own path of recovery, and the need to provide for their well-being and for the safety of others. We are all allowed to exercise bad judgment, but we are not allowed to endanger others or ourselves, whether we have a mental illness or not.

This video is presented in the following seven parts: this first part you are reviewing is the Introduction and regarding Making Preparations in Advance, and:

Part 2 – Understanding Mental Illness

Part 3 -- Which Type of Guardianship is Needed

Part 4 – Role of the Guardian and Treatment Guardian

Part 5 – Mental Health Facilities

In the event the individual you are assisting is already incapacitated and cannot make or communicate decisions for their own well-being, and an Advance Directive is not available, appointment by the Court of a Mental Health Treatment Guardian may be the only option available to get them assistance for their well-being. As with Advance Directives, this option should not be used as a tool of compliance to force the adult who can otherwise make their own treatment decisions but is non-compliant. The Court will have a hearing requiring “clear and convincing” evidence that the adult is not capable of making his own treatment decisions under §43-1-15. A Mental Health Treatment Guardian can be appointed for either outpatient or, more frequently, for inpatient care at a mental health facility. A mental health professional or developmental disabilities professional or physician must have evaluated the person living with the mental illness, and must testify in court.

Be aware that one cannot presume that the adult does not have capacity solely based on commitment for mental health treatment or while awaiting commitment. The Treatment Guardian may seek an Enforcement Order from the court for outpatient clients who refuse to comply with Treatment Guardian’s decisions, and the Order may authorize a Peace officer to take the person into custody for transport to an evaluation facility, and may authorize forcible administration of treatment.

When no one else is available, trained mental health Treatment Guardians are available from the National Alliance for Mental Illness (NAMI) of NM at (800) 953-6745, or from the Forensic Intervention Consortium of Dona Ana County (FIC-DAC) for the entire southern part of New Mexico at 575-523-8015.

In addition to the appointment by the Court of a Mental Health Treatment Guardian who makes decisions about treatment if the person’s need is only about mental health, the adult may also need a decision-maker related to other needs such as where he will live, benefits and services, financial, other medical treatment, and other matters. Please see Part 2 of this video on “Which Type of Guardianship is Needed” and the other two training video available from the NMDDPC Guardianship Program related to “Guardianship & Conservatorship” and “Alternatives to Guardianship”. You may review these other two videos from the website at [http://www.nmddpc.com/guardianship\\_program](http://www.nmddpc.com/guardianship_program), or request a DVD by calling Phone: 505-476-7372 or Toll Free: 888-779-6183.

Court appointed guardianship should be a last resort. Protecting the adult’s civil rights and self-determination requires everyone to first consider alternatives of the “Least Restrictive Means” available. There’s always a presumption of capacity which can only be overcome with clear and convincing evidence of incapacity, with “Incapacity” being a legal, not a medical determination. If guardianship is required, the preference is for a limited level of guardianship to meet the required decision-making rather than full/plenary guardianship.

New Mexico law, however, allows for administering medication on an emergency basis without the person’s consent, pending appointment of a Treatment Guardian, if the physician believes the administration of psychotropic medication is necessary to protect the client from serious harm. The physician must place in the client’s medical records an explanation of the emergency and why no less drastic treatment will protect the

client from serious harm. The court may issue an order permitting continuing psychotropic medication until a Treatment Guardian is appointed.

When the above options of Advance Directive, nor the appointment by the Court of a Mental Health Treatment Guardian are successful, a final option is “Commitment” by the Court which involves detaining and transporting a person for emergency mental health evaluation and care. This ultimate occurrence is only if the adult is, more likely than not in the near future, presenting a “likelihood of serious harm” to oneself, which includes grave passive neglect, or to others, and that “immediate detention is necessary to prevent such harm” (Reference Chapter 43 Commitment Procedures, Article 1).

In summary to this introductory section, we hope this video will help you understand available options and to seek assistance in supporting individuals coping with mental health issues. The next part of this video is intended to help with understanding mental illness.

## **PART 2 – UNDERSTANDING MENTAL ILLNESS**

Mental illness refers to a variety of mental health conditions. These are disorders of one’s mood, thinking, and behavior including depression and bipolar disorder, anxiety disorders, schizophrenia, eating disorders, and addictive behaviors.

Many of us have had mental health concerns, but a concern becomes a mental illness when signs and symptoms cause frequent distress and affect one’s ability to function. Such illnesses can make one miserable and cause problems in one’s daily life, in work, and in relationships. In most cases these symptoms can be managed with medication and counseling (psychotherapy).

### **SYMPTOMS OF MENTAL ILLNESS**

Symptoms and signs vary depending on the particular disorder and the circumstances. The emotions, thoughts and behavior are affected. Behavior disorders are physical activities reflecting distress from disturbed thoughts or feelings. One may demonstrate passivity, immobility, agitation, jealousy, fearfulness, anger, rage and so on. One episode of illness can present with several signs or symptoms:

- Feeling sad or down
- Fears or worries
- Extreme mood change, high or low
- Withdrawal from friends, family, or activities
- Major tiredness, low energy, sleeping problems
- Confused thinking or reduced ability to concentrate
- Excessive detachment from reality (delusions), excessive suspicions (paranoia)
- Hallucinations (inner voices often criticizing oneself)
- Inability to cope with daily problems, stresses, financial troubles
- Extreme feelings of guilt, blame
- Alcohol or drug abuse
- Big changes in eating habits
- Sex drive changes
- Excessive anger, hostility, violent outburst

- Suicidal thinking

In some types of mental illness such as bipolar disorder or schizophrenia, the sufferer is not able to recognize the extent of the problems. Family members, friends, or coworkers may be the first to do so.

#### SEEKING HELP

If these signs and symptoms occur, one should promptly see a physician or mental health provider. Most of these illnesses do not get better on their own, and untreated get worse over time. A significant number of clients may experience a persistent lack of recognition of one's illness known as anosognosia. This greatly complicates their control of their health.

#### SUICIDAL THOUGHTS

Particularly in the early stages of mental illness for some individuals, strongly compelling and troubling dark feelings, and thoughts of suicide or harming oneself or others can arise. The thoughts can be very persistent and controlling.

Immediate action to get help is needed.

- Call 911—first responders have great understanding of this common problem
- Call the Crisis Hotline for New Mexico at 1-855-662-7474 or 1-855-NMCRISIS
- Do not hide the feelings, contact a friend or loved one
- Contact a minister or spiritual leader or someone in one's faith community
- Contact a doctor or other health provider

These thoughts do not get better on their own. One must get immediate help for this emergency, and the help is readily available.

#### CAUSES

Disorders of the mind and brain are like other medical physical illness in that they are thought to arise from a variety of genetic and environmental factors.

##### **Inherited traits**

Mental illness is more common in people whose biological (blood) relatives also have a mental illness. Genes may increase one's risk of developing an illness, and one's life situation may trigger the actual mental illness event.

##### **Environmental exposures**

Exposures in the womb to viruses, toxins, alcohol or drugs can be linked to mental illness. Later in life, use or abuse of alcohol, legal or illegal drugs, or mind-altering substances can predispose to mental illness developing.

##### **Negative life experiences**

Life situations, loss of loved ones, financial problems, domestic violence and abuse, poor self-esteem, etc. can lead to distorted ways of thinking with guilt and self-blame. Again, a disorder of feelings, thoughts and behavior can arise.

## Brain chemistry

Biochemical changes in the brain are thought to affect mood and other aspects of mental health. Brain chemicals (neurotransmitters) or hormonal imbalances affect mental health. Inherited traits, life experiences, and biological factors can affect brain chemistry linked to mental illness.

## RISK FACTORS

The causal factors just mentioned predispose to mental illness along with other factors:

- Chronic physical medical conditions
- Brain damage from trauma
- Lack of friends, lack of healthy relationships
- Previous history of mental illness
- Childhood neglect and abuse

1 in 4 adults have a mental illness in a given year.

1 in 2 of all adults will have experienced a mental illness in their lifetime since childhood.

## COMPLICATIONS

Mental illness is a leading cause of **disability**.

- Reduced quality of life, less enjoyment, unhappiness
- Untreated can cause severe emotional, behavior, physical problems
- Legal and financial problems
- Family conflicts
- Relationship difficulties
- Social isolation
- Tobacco, alcohol, drug problems
- Missed work or school
- Poverty, homelessness
- Self harm and harm to others, including suicide and homicide
- Increased risk of motor vehicle accidents
- Weakened immune system—prone to infection
- Heart disease and other medical conditions

## GETTING MEDICAL HELP

If one is seeking help or is offered medical help for symptoms of mental illness, getting ready for the appointment is similar to a regular new appointment for medical care.

### What to do for the appointment?

Write down the symptoms that have been noticed.

Write key past history—traumas, current stresses, injuries. List medical history of other health conditions, medications, dietary supplements. One should take along a family member or friend who can help one recall important information and help to understand what is said at an evaluation.

### **A patient/client's questions for the visit:**

- What type of mental illness might this be?
- Why can't one get over this on one's own?
- How is this type of illness treated?
- Will counseling or psychotherapy help?
- Are there medications that might help?
- How long will treatment take? When will one be better?
- How can one help oneself?
- Are there materials to read that one can receive?
- Are there recommended websites?

### **The doctor's questions:**

There will be questions about one's mood, thoughts, and behavior.

- When did you first notice symptoms?
- How do symptoms affect one's daily activity?
- Has one had treatment for mental illness before and if so, when and what?
- What has one done to try to feel better or try to control the symptoms?
- What things make one feel worse?
- Have friends or family members commented on one's mood or behavior?
- Does one have biological (blood) relatives with a mental illness?
- What does one hope to gain from treatment? Goals?
- What are the medications one is taking now?
- Is there any alcohol use or abuse, any abuse of prescription or street drugs?

### **TESTS**

There will be a **physical exam** looking for physical problems that could cause the symptoms one has been having.

Lab tests such as thyroid or other hormones, abnormal blood chemistry or blood cell count side effects that could interfere with treatment are checked.

The psychological evaluation will again ask about symptoms, thoughts, feelings and behaviors. One may be asked to complete a written questionnaire on these topics.

### **WHICH MENTAL ILLNESS MIGHT ONE HAVE??**

To determine the correct diagnosis, several interviews, a trial course of medication, and some passage of time may be required.

### **MAIN CLASSES OF MENTAL ILLNESS**

**Mood disorders** affect how one feels emotionally such as sadness or happiness. Depression and bipolar disorders are included.

**Anxiety disorders** are feelings anticipating future danger or misfortune, also feeling very ill at ease. These include anxiety disorder, panic disorder, obsessive-compulsive disorder, phobias and post-traumatic stress disorder (PTSD).

**Psychotic disorders** cause detachment from reality (delusions), paranoia (extreme suspicions), and hallucinations (voices intruding into one's consciousness). Individuals with schizophrenia most commonly experience these, but bipolar disorder and depression can present these also.

**Substance related disorders** may include misuse of alcohol and legal and illegal drugs. The misuse is problematic in and of itself, but greatly complicates other mental illness in which this misuse is common.

**Personality disorders** involve a lasting pattern of emotional instability and unhealthy risky behaviors causing problems in one's life and relationships. These include borderline personality disorder and antisocial personality disorder.

Other conditions include disorders of impulse control, sleep and sexual functioning.

## TREATMENT

Modern physical or mental health care is commonly practiced in a **team model**. The team will seek to secure stable housing or shelter as a first step to treatment of mental illness.

The team will commonly be composed of a primary care provider, psychiatrist, psychotherapist, pharmacist, social worker or case manager, and family members, friends, loved ones. In regions with large remote rural populations, telemedicine links are showing promise in offering regular repeated access to behavioral health care and protecting anonymity of clients in small close communities.

## Medications

Psychiatric medications do **not cure** mental illness, but they often significantly improve symptoms. The medications can help other treatments such as psychotherapy be more effective. Many chronic medical illnesses are treated over extended time to promote gradual healing and recovery which is the goal in mental health treatment. The best treatment is determined by the situation and one's response to the medication.

### Commonly used classes of medications, not all-inclusive.

#### Antidepressant medications

Antidepressants are used to treat various types of depression and other conditions such as chronic pain. These medicines can help improve sadness, hopelessness, lack of energy, difficulty concentrating, lack of interest in activities. They are grouped by their brain chemistry effects.

#### Mood stabilizing medications

These medicines are used to treat bipolar disorder which has alternating episodes of depression and mania (grandiose ideas with highly impulsive, imprudent activity). Mood stabilizers plus antidepressants can be used to treat clinical depression.

#### Anti-anxiety medications



Anti-anxiety medications are used to treat generalized anxiety disorder, or panic disorder. These may also reduce agitation and insomnia. They are fast acting helping to relieve symptoms in 30-60minutes with a major drawback--potential drug dependency.

### **Antipsychotic medications**

Known also as neuroleptics, these medications are used to treat psychotic disorders such as schizophrenia and bipolar disorder. They can be combined with antidepressants to treat depression.

### PSYCHOTHERAPY

Psychotherapy is also called **“talk therapy”** or psychological counseling and is a process of treating mental illness by talking about one’s symptoms and related issues with a mental health provider. During psychotherapy one learns about one’s condition, moods, feelings, thoughts and behaviors. Insights and knowledge help one learn to cope and manage stress. There are many types of psychotherapy and can be one-on-one, group therapy, and may include family members for the benefit of all involved.

### BRAIN STIMULATION TREATMENTS

These treatments are used for depression and some other mental health disorders. They are reserved for situations in which medications and psychotherapy have not been sufficient. Electroconvulsive therapy (ECT), transcranial magnet stimulation, vagus nerve stimulation, and a currently experimental therapy, deep brain stimulation are used.

It is important that the risks and benefits be understood.

### HOSPITALIZATION AND RESIDENTIAL TREATMENT PROGRAMS

Mental illness can become so severe that one needs psychiatric hospitalization. This is recommended when one cannot care for oneself and is in immediate danger of harming oneself or someone else. This can be 24hour inpatient care, day hospitalization, or residential treatment with a supportive place to live. One can receive intensive out patient treatment from a specially trained team, such as ACT (Assertive Community Treatment team).

### SUBSTANCE ABUSE TREATMENT

Substance abuse commonly occurs along with mental illness. It often worsens mental illness and interferes with treatment and recovery. Specific treatment of substance abuse is crucial. Psychotherapy for insights, medication to ease withdrawal symptoms or cravings, inpatient treatment for withdrawal (detox) treatment, outpatient programs for monitoring sobriety, and support groups or 12 step programs such as Alcoholics Anonymous are in the array of treatment resources.

### PARTICIPATING ACTIVELY IN ONE’S OWN CARE

In consultation with the mental health treatment provider, one chooses the treatment plan and goals that best suit the client based on one’s preferences, symptoms, severity, and side effects. One must follow the plan faithfully and notify the provider of circumstances that interfere with taking one’s medications or keeping appointments. Staying physically active eases symptoms, and avoiding substance abuse is part of the agreed plan.

Sometimes a mental illness maybe so severe that a doctor along with a designated loved one, or a court appointed temporary **Mental Health Treatment Guardian** may need to guide one’s care. This status is in effect until one is well enough to fully participate in decision making. The courts oversee this care and protect the

client during such period(s) of dependency. For more information, please see Part 4 of this video, on the "Role of the Treatment Guardian."

## COPING AND SUPPORT

For those with mental illness, **cop**ing with life is especially challenging. Coping skills can improve through talking to one's doctor, therapist, family or friends. Including family or friends in the process helps them understand and learn more from the beginning of diagnosis and treatment. Keeping them informed of progress can be very encouraging for all parties involved. Good communication is better for the clients, providers, family and friends. These illnesses harm valuable relationships in ways that are hallmarks of the illnesses. Stigma is greatly aggravated by alienation and misunderstanding. Client/consumers can ease some tensions by permitting specifically limited information to be shared with family or loved ones. The client/patient rights of confidentiality are very closely followed in such communication.

### Support groups

One can connect with other individuals and their families in support groups for mental illness. The **National Alliance on Mental Illness (NAMI)** is one agency that can help such persons contact other clients and families who are knowledgeable and sympathetic to those suffering with mental illness.

[www.nami.org](http://www.nami.org)

1-800-950-6264

1-800-950-NAMI

## PREVENTION

The feelings and thoughts that marked the beginning of one's illness can recur and intrude repeatedly. One can learn to recognize "warning flags" in symptoms and follow a plan to ease the impact and avoid worsening illness. Sharing with others, addressing one's needs, controlling stress, recovering lost self-esteem, and developing more insight can build one's resilience or resistance to relapses.

One benefits from maintaining good general health with a health provider's guidance. Promptly reporting set backs before symptoms get bad is very beneficial. All these, good sleep, eating habits, and regular physical activity help heal and maintain a healthy mind and body.

Certainly, avoiding smoking and substance abuse and alcohol abuse have long term and immediate health benefits.

## CONCLUSION

Mental illness is an extremely common illness from which half us will suffer in a lifetime. Early recognition and prompt treatments are beneficial and more effective than delaying treatment. These are disorders of thoughts, feelings, and behaviors that in serious mental illness will not get better by themselves. These illnesses currently cannot be cured, but the symptoms can be managed by a mental health professional. The objectives are to control and reduce symptoms, promote recovered functional capacity, and inform clients and families of the nature of mental illness. Ideally the client will learn to control the symptoms and reduce relapses of illness.

### PART 3 – WHICH TYPE OF GUARDIANSHIP IS NEEDED

All adults are deemed under the law to have the right to make their own decisions. A guardian is a surrogate decision-maker appointed by the Court, when the individual has not previously designated someone to make decisions for them in the event they cannot make decisions for their own well-being. The reasons why guardianship would be necessary for adults include:

- Some individuals may have limited capacity to make or communicate decisions, where they need someone else to make certain decisions; and
- some may be susceptible to fraud or undue influence.

Only a court can legally have their right to make their own decisions taken away. Courts will remove only those rights that the proposed protected person is incapable of handling.

Which Type of Guardianship is Needed? There are basic differences in Guardianship, Conservatorship, and Mental Health Treatment Guardians:

- Guardianship for the person is called a “Guardian” and may also include responsibility for routine financial matters; and may be full or limited as needed. A Probate Guardian is assigned by the Court to make decisions on housing, services, non-mental health decisions, benefits and routine matters.
- Guardianship for the estate (property and assets) is called a “Conservator”.
- a guardian for mental health treatment is called a Mental Health Treatment Guardian.
- an individual may need all three, and they are processed under different state laws.

Priority is given to an agent designated or nominated previously by the client when they had capacity, or to family members vetted by the guardianship process for this responsibility.

Who should be selected as a Guardian? The court selects the best qualified person or entity to serve as the guardian, for the best interest of the incapacitated person, and for good cause shown. The first is priority is for an agent designated or nominated previously by the client when had capacity. This is followed by the spouse, adult child, parent, person nominated by will/other writing by a deceased parent, relative with whom has resided for 6 months prior to petition, a person nominated by the person who is caring or paying benefits for the incapacitated person, or any other person.

A possible guardian needs to be vetted for the best interest of the protected person. Sometimes they aren’t capable of making the decisions for the protected person, can’t be reached, have a conflict with the proposed protected person, or there may be other disqualifying reasons against someone being appointed as the guardian. Trained guardians and Mental Health Treatment Guardians may be paid by available resources, or as a last resort, paid from public funds from the state Guardianship Program. It is preferable, but not mandatory, that the guardian be appointed by the court in the judicial district where the client resides.

Guardians have a fiduciary responsibility with the protected person, which is a position of confidence, good faith, reliance, and trust – this is not a personal relationship. Professional guardians use “person-centered” principles to tailor decisions to the individual, which involves:

- ✓ protecting while advancing their dignity, respect, and independence
- ✓ allowing the person to explore, learn, grow, and experiment as do all individuals
- ✓ using “Substituted Judgment” to try to make the decision the person would make for themselves if capable, based on available knowledge of prior decisions, personal values, and Advance Directives.
- ✓ seeking guidance from the judge with extraordinary decisions
- ✓ acting at all times for the sole benefit and interest of the protected person

Mental Health Treatment Guardian or Probate Code Guardian, or both? Let's explore when each of these types of Guardians are appropriate.

**Treatment Guardians** provide informed consent only regarding mental health, psychiatric, treatment or medication, and does not extend to other physical health problems. Mental Health Treatment Guardians are appointed by a District Court under the Mental Health and Developmental Disabilities Code, and are appointed to maximum of one year. The Court specifies the length of time and is subject to renewal by the Court. This is for those who are temporarily unable to make their own decisions about mental health services. The Mental Health Code of New Mexico states that if a client is capable of giving "informed consent", then their consent must be obtained before performing extraordinary treatment or any other mental health treatment. When informed consent cannot be given, then the court will appoint a treatment guardian to make a decision for them.

A Treatment Guardian makes decisions regarding authorizing disclosure of confidential information such as mental health medical records when the client cannot provide informed consent regarding disclosure, and must take care not to disclose information prohibited under confidentiality laws.

For outpatient clients who refuse to comply with their Treatment Guardian's decision, the Treatment Guardian may seek an enforcement order from the court. This Order may authorize a Peace officer to take the person into custody for transport to an evaluation facility, and may authorize forcible administration of treatment.

**Probate Code guardians** are referred to as "guardian of the person" and make decisions, per the Court Order, including arranging and monitoring of:

- > placement/housing
- > services
- > medical decisions (other than mental health treatment/medication)
- > Benefits and routine financial matters, however, this guardian is not necessarily the "Representative Payee" for Social Security benefits, or the "Fiduciary" for Veterans benefits.

A Probate Code guardian can also make Mental Health Treatment decisions, but only if specified in the Court Order, or may also be appointed as a Mental Health Treatment Guardian. Likewise, a Treatment Guardian may also be appointed as full or limited guardian under the Uniform Probate Code.

There's also Guardianship for the estate, related to property and assets, which is called a "**Conservator**". A protected person may need all three types of guardians based on the decision making needed, income, property and assets, etc., and it may be the same person.

Petition by the mental health or developmental disabilities professional or physician, or any other interested person

There are some basic similarities but also differences in getting a mental health Treatment Guardian appointed versus a Probate Code guardian. The similarities include that an "interested person" may petition, although for Treatment Guardians it is generally done by a physician or mental health or developmental disabilities professional. Another similarity is that the client is represented by counsel for a Treatment

Guardian, and by a guardian ad litem (GAL) for a Probate Code guardian. A major difference is that a Treatment Guardianship is effective for a maximum of one year, but is renewable, where a Probate Code guardian may be temporary or permanent. Treatment Guardian hearings are held within 3 court days. The Treatment Guardian only has authority to make decisions related to mental health and may seek an Enforcement Order, and the Probate Code guardian makes decisions under the authority given in the Court Order which may be plenary/full or limited/specified. For Probate Code guardians the Court appoints a Court Visitor and a Qualified Health Care Professional.

As covered in Part 2 of this video, we encourage “Making Preparations in Advance” such as preparing Advance Directives and Powers of Attorney setting forth what they would want and not want, and who should make decisions for them in the event the individual is unable to make or communicate decisions for their own well-being.

In summary to this section of the video, the type of guardianship appointed by the Court depends on what types of decisions the protected person needs help with.

#### **PART 4 – ROLE OF THE GUARDIAN AND TREATMENT GUARDIAN**

The role of the guardian is generally that of a decision-maker and does not actually have physical “custody” of the protected person. The guardian’s focus is on the incapacitated person and follows the following in making decisions for their client:

- follows any Advance Directive, power of attorney, or other written material from when the person had capacity to make decisions
- makes decisions to consent or withhold consent regarding medical or other professional care, other services, placement, and other needs, and is ultimately responsible and accountable to the Court.
- follows known values of the incapacitated person – involves the protected person, family, friends, and seeks insight from all available sources
- makes decisions based on the “best interests” of the protected person when reasonably certain substantial harm will result by following the protected person’s wishes
- has the same rights as the protected person and is entitled to information and the same freedom of choice
- cannot consent to “voluntary commitment” regarding mental health treatment
- may decide on authorizing disclosure of confidential information such as medical records, and must take care not to disclose information prohibited under the confidentiality laws.

The guardian protects the protected person while advancing their dignity, respect, and self-determination based on well-reasoned and principled decisions, and has a duty to keep the client from being a danger to themselves and others, including from grave passive neglect. It is important to be sensitive to the cultural background of the client and to use an interpreter when needed. The guardian keeps their own record for each client, and must be able to explain decisions to the average normal person and to the Court. The guardian must not be pressured or be under any undue influence into agreeing to treatment or other matters, and particularly anything that is not within the scope of their duties in the Court Order. Again, this is a fiduciary relationship, acting in equity and in good conscience with a special trust and confidence, with decisions viewed from the protected person’s standpoint. The focus is on the incapacitated person, and not on

what is best for the guardian or for others. The guardian should refer to the Patient's Bill of Rights, advocates those rights for their client, and those rights also apply to the guardian as the decision-maker.

There must be no conflict of interest with the duty to act primarily for the benefit of the protected person. The guardian may seek direction from the Court as required, and reports significant matters and submits an Annual Report to the Court.

The role of the guardian includes many responsibilities such as:

- interviewing the client,
- entering a locked unit,
- appearing in Court,
- consulting with physicians,
- keeping records,
- making preparations for when the guardian may not be available,
- involvement in discharge planning,
- seeking Enforcement Orders from the Court for out-patient enforcement related to mental health services,
- and others as needed.

The guardian monitors the condition of the client, communicates with the doctors, nurses, social workers, case managers, and others, and should visit the client at least once a month in long term placement. If the client is non-compliant with treatment, after determining the client's reasons, the treatment guardian may petition the court for enforcement of treatment after the client has moved out of the hospital. The guardian may be contacted by telephone for decisions and other matters.

The guardian takes the place of the client, and is entitled to everything the client is, such as a copy of the whole written treatment plan, and to be invited to treatment conferences and be part of the decision making and approve or disapprove any treatment changes. The guardian is entitled to an explanation of the goals of treatment, the action, side effects, dangers, and expected benefits of each one. The guardian may ask for a second opinion, or even a third if the insurance company would allow it, must have all of the facts, and must not make assumptions unless they are educated assumptions. If the treatment team disagrees with the guardian's decision, it may be appealed to the court since the responsibility ultimately lies with the court and not solely on the guardian or with the physician. Guardians are a check and balance for citizens who are unable to make their own decisions. When a family member is appointed as the guardian, they are no longer just a family member, but one who now has a fiduciary responsibility for the client.

Anyone having concerns regarding the decisions or actions of a guardian, such as complaints or grievances against a guardian, either paid or a family member, may:

- first try to resolve the concerns directly
- report it to the Judge/Court who appointed the guardian, and/or to Adult Protective Services
- if they work for someone else - report it to their boss
- if they are a contractor with the state Guardianship Program, file a written complaint
- If paid through NAMI or FICDAC, start with them
- If they are Certified by the National Center for Guardianship Certification, file a complaint with them (Ph: 717-238-4689; [info@guardianshipcert.org](mailto:info@guardianshipcert.org); website: [http://www.guardianshipcert.org/make\\_a\\_complaint.cfm](http://www.guardianshipcert.org/make_a_complaint.cfm))

Guardians are an Appointee of the Court and are not generally liable as a guardian. For example, the guardian is not liable for acts of the incapacitated person solely, and is not liable within the authority in the Court Order, with caution not to perform outside Court Order. The guardian must use reasonable care and caution, taking reasonable steps, like a prudent person would, and in good faith. Good Samaritan laws protect individuals that assist a victim during a medical emergency, and medical personnel following normal procedures. But guardians bear liability for their own negligence.

This also applies to the Mental Health Treatment Guardians, where state law says “A person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.”

Please note that guardians and Treatment Guardians are decision-makers and responsible for arranging for services, but their success depends on the availability of services state-wide, such as assisted outpatient treatment, crisis triage centers, inpatient public beds, and so forth.

A guardian, Treatment Guardian, an agent or surrogate under the Uniform Health-Care Decisions Act or under the Mental Health Care Treatment Decisions Act, cannot consent to the admission of an individual to a mental health care facility. Instead, the guardian, agent or surrogate may present the person to a mental health facility only for evaluation for admission.

If you are not familiar with mental health treatment, most is provided by professionals and other service providers, and Treatment Guardians have access to all members of the treatment team as the client would. Most psychiatric hospitals today use the following professionals:

Psychiatrist	has ultimate responsibility for the patient’s care including diagnosis, and prescribes labs, medications, and therapies.
Ph.D. Psychologist	has a more diagnostic role which is reached by a series of psychological tests and specializes in individual and group therapy, and many are program directors.
Psychiatric Nurse	Is licensed to diagnose and treat health deficits or symptoms of a disease or disorder but not the disease itself, and makes a written client care plan within the first 24 hours. May not prescribe medication but dispenses that which is prepared by a pharmacist from a physician’s prescription. May do both individual and group therapy in a hospital setting, but not in the community.
Psychiatric Social Worker	Is also licensed to hold groups. Diagnosis the social, educational, financial, habilitation and self-care needs of the client and suggests therapeutic changes.
Expressive Therapists	Include Art Therapists, Dance Therapists, Recreational Therapists, Psychodrama Therapists, etc., licensed and highly trained, and assist the physician in making a diagnosis and in treatment.
Licensed Dietitian	Promotes health through teaching and individual dietetic choices.

Mental health workers	Assist the nurses and are responsible for the safety of the clients and the staff. May hold community or socialization groups and assist professionals with therapeutic groups.
Case managers	Monitor the needs of seriously disturbed patients in the community. They act as patient advocates and advisors. They typically work for the hospital or the outpatient clinic. They can hold community or socialization groups and assist professionals with therapeutic groups.

Appeals of decisions by a Treatment Guardian may be made by the client or by a physician or other professional within 3 days. The client must be represented by counsel, and the Court may overrule the Treatment Guardian’s decision if it is against the best interest of the client.

After a Treatment Guardian is appointed, the client may be compliant with psychiatric medication or treatment, and may regain competence to make treatment decisions. A client should only have a Treatment Guardian when they cannot make their own treatment decisions, and any person must petition the court for terminating the treatment guardianship if they “believe that the client has regained competence to make their own treatment decisions.”

When the Court appointment ends, the Treatment Guardian may petition the court for reappointment if the client is still incapable of making their own treatment decisions. Practically speaking, if the provider, facility, or the D.A. petitions for reappointment, the Court must hold another hearing, and may order reappointment if the client is incapable of providing informed consent.

**PART 5 – RESOURCES SECTION**

Thank you for taking the time to review these video training modules on Mental Health Guardianship. There is much to learn about mental health guardianship issues. There are a variety of resources state-wide to assist with additional questions.

**For more information, please contact:**  
**The State of New Mexico Office of Guardianship**  
 505-476-7337 or  
 Toll free at 1-888-779-6183  
[www.nmddpc.com/guardianship\\_program](http://www.nmddpc.com/guardianship_program)

**Another resource is the National Alliance for Mental Illness (NAMI) - New Mexico Chapter**  
 NAMI-NM, as a state-wide organization, has multiple offices to assist with your questions.

- NAMI-New Mexico (800) 953-6745  
 (505) 260-0154
- NAMI NATIONAL s(800)950-6264
- NAMI Santa Fe (505)466-1668
- NAMI Albuquerque (505)256-0288
- NAMI-Dona Ana County (575) 386-6890
- NAMI Westside (505) 990-2292



Additional resources may be found on the New Mexico Developmental Disabilities Planning Council website

Other resources include:

**The NM Crisis Hotline**

(855)662-7474

**NM Dept Veterans Services**

(505)827-6300

**NM Guardianship Association**

[www.guardianshipnm.org](http://www.guardianshipnm.org)

**National Guardianship Association**

[www.guardianship.org](http://www.guardianship.org)

**Disability Rights of New Mexico**

(800)432-4682

[www.drn timer.org](http://www.drn timer.org)

DRNM Albuquerque (505)256-3100

DRNM Las Cruces (575)541-1305

DRNM Las Vegas (505)425-5265

**DBSA Depression and Bipolar Support Alliance**

National

[www.dbsalliance.org](http://www.dbsalliance.org)

New Mexico, Albuquerque 505-514-6750

[www.dbsa4albq.org](http://www.dbsa4albq.org)

**Mental Health America**

Phone (703) 684-7722

Toll free (800) 969-6642

Mental Health Association

Mental Health Association of New Mexico

1 800 425 7030

[mhanewmexico@msn.com](mailto:mhanewmexico@msn.com)