

A child 14 years of age or older is presumed to have capacity to consent to mental health treatment, including medications, without the consent of his or her legal custodians. If a child 14 years of age or older is believed to lack capacity to consent to mental health treatment, then the child's legal custodian may make mental health treatment decisions for the child unless the child objects or challenges the determination that he or she lacks capacity. The challenge will prevail unless a petition for a Treatment Guardian is filed in a court and the court finds that the child is not capable of making his or her own mental health treatment decision and appoints a Treatment Guardian. The court will appointment the child's legal custodian as the child's Treatment Guardian unless the legal custodian is not readily available or the court finds that appointing the child's legal custodian is not in the child's best interests. The Treatment Guardian shall consult with the child and consider his or her expressed opinions regarding any proposed mental health treatment.

The hearing on the appointment of a Treatment Guardian will be held within 3 court days of the petition being filed with a court. The child will be represented by an attorney and has the right to be present, to present witnesses and to cross-examine opposing witnesses.

Are Treatment Guardians legally protected?

The Mental Health Code states that Treatment Guardian cannot be held liable in civil or criminal suits as long as they are acting in good faith.

This brochure is a publication of Disability Rights New Mexico. Development and reproduction of this brochure is one of many activities supported through a federal grant from the U.S. Department of Health and Human Services (#SMX359700B), pursuant to the provisions of the Protection and Advocacy for Individuals with Mental Illness Act. The views expressed in this brochure are those of Disability Rights New Mexico and do not necessarily reflect the views of the U.S. Department of Health and Human Services.

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DISABILITY RIGHTS NEW MEXICO

Rights of Individuals with Treatment Guardians

What is a Treatment Guardian?

A treatment guardian is a person appointed by a court to make mental health treatment decisions for an individual. A court must first find by clear and convincing evidence that the individual is not capable of making their own mental health treatment decisions or providing informed consent.

What is Informed Consent?

A treating professional has a duty to provide information about recommended treatment. The individual provides informed consent when he or she uses this information to weigh the risks and benefits of the proposed treatment, decide whether or not to accept or reject the treatment and communicate that decision to the treating professional.

What is the Procedure for Petitioning for a Treatment Guardian?

A "Petition for Appointment of Treatment Guardian" must be filed with a district court. A copy of the petition is served to the individual who is subject of the petition and their attorney. A hearing must be held within 3 court days. If the person has been involuntarily admitted to a treatment facility, the petition will be heard along with a petition for commitment within seven court days of admission. At the hearing, the individual has the right to be present, be represented by an attorney, present witnesses and to cross examine opposing witnesses. The court will determine by "clear and convincing" evidence whether the individual is capable of providing informed consent.

Who can petition the court for a Treatment Guardian?

Any mental health professional, Developmental Disabilities professional, physician or any interested person who believes the individual is incapable of informed consent can petition a court for the appointment of a Treatment Guardian.

How long can a Treatment Guardian be appointed?

Appointment by a court can be no longer than 1 year. If, at the end of the Treatment Guardian appointment, the Treatment Guardian believes the individual is still incapable of making their own mental health treatment decisions, the Treatment Guardian may petition the court for a reappointment or appointment of new a Treatment Guardian. The individual will be represented by an attorney at the hearing, has the right to be present and present evidence supporting the individual's ability to make their own mental health treatment decisions. If the court finds at the time of the hearing that the individual is incapable of informed consent, the Treatment Guardian appointment may be extended or a new Treatment Guardian appointed.

Who can be a Treatment Guardian?

The court will give priority to a court-appointed guardian then to an agent designated or nominated by the individual when he or she was capable of informed consent. An individual may request that their Treatment Guardian be a friend, family member or significant other.

What Does a Treatment Guardian Do?

A Treatment Guardian makes mental health treatment decisions on behalf of an individual who was found by the court to be incapable of making their own mental health treatment decisions. The Treatment Guardian must consult with the individual about any proposed mental health treatment, consider their expressed opinions and consider previous decisions made by the individual in similar circumstances when the individual was capable of informed consent. The Treatment Guardian shall also consult with mental health providers, the individual's attorney, interested friends, relatives, other agents or guardians when reasonably practical in making mental health treatment decisions for the individual. The Treatment Guardian will make decisions about accepting mental health treatment if it appears that the treatment is in the individual's best interest and is the least drastic means for accomplishing the treatment objective.

What kinds of treatment can a Treatment Guardian authorize?

A Treatment Guardian may consent to mental health treatment including psychotropic medication. The Treatment Guardian's power may be limited by the court order appointing the Treatment Guardian. A Treatment Guardian does not have the authority to make decisions about any other medical treatment, or any other matter.

Can a Treatment Guardian admit me to the hospital?

No. A Treatment Guardian can't admit an individual into the hospital or agree to extend a "voluntary admission" to a mental health treatment facility.

Can a facility administer emergency medications before a Treatment Guardian is appointed?

Emergency medications can be initiated by a licensed physician if it is necessary to protect an individual from serious harm which would occur while the Treatment Guardian is being sought. The treating physician must prepare and place a report in an individual's medical

record explaining the nature of the emergency and reason that no treatment less drastic than administration of psychotropic medication without an individual's consent would protect the individual from serious harm. Upon a sworn application from the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a Treatment Guardian is appointed if a petition for the appointment of a Treatment Guardian has been filed with the court. A hearing on the appointment of a Treatment Guardian is held within 3 court days after the petition has been filed.

Can a Treatment Guardian decision be appealed?

Yes. An individual who has a Treatment Guardian, physician or other professional must file an appeal with a court within 3 days of receiving notice of the Treatment Guardian's decision. The individual will be represented by an attorney at the hearing. The court may overrule the Treatment Guardian's decision if the court finds the decision to be against the best interests of the individual.

Can a Treatment Guardian be used outside of a mental health treatment facility?

Yes. The Treatment Guardian may make mental health treatment decisions in a community setting. Additionally, the Treatment Guardian may apply to the court for an "enforcement" order that authorizes the individual to be taken to an evaluation facility if the Treatment Guardian believes that the individual has been noncompliant with mental health treatment decision(s) made by the Treatment Guardian. This order may authorize a peace officer to take the individual into custody and transport the individual to an evaluation facility. This order may also authorize the facility to forcibly administer medications.

When can a Treatment Guardian appointment be terminated?

A petition to remove the Treatment Guardian can be filed in a court by the individual, treatment provider, family member, individual's attorney or another person once the individual has regained the ability to make their own mental health treatment decisions. If the court finds the individual capable of making their own mental health treatment decisions, it can terminate the Treatment Guardian's appointment and restore power to the individual to make their own mental health treatment decisions.

Can a Treatment Guardian be appointed for a child?

If the child is under the age of 14, the legal custodian's consent is required before mental health treatment, including administration of medications, is provided.