

# Guardianship Alternatives Resources for Young Adults

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## Alternatives required unless unavailable

Modern day respect for individual rights dictates that we must allow each individual to make or participate to the extent possible in personal decisions. NM law on [guardianship](#) (NMSA 45-5-304(C)(3-4)) and [conservatorship](#) (NMSA 45-5-407(I)(3-4)) provides that guardianship and/or conservatorship can **ONLY** be utilized when lesser restrictive supports are not available.

Alternatives to guardianship, including supported decision making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.

[Person-centered planning](#) (PCP) is a process for selecting and organizing the services and supports that a person with a disability may need to live in the community. Most important, it is a process that is directed by the person who receives the support.

[Supported decision making](#) (SDM) is a good way to implement PCP, and should be considered as an alternative to guardianship and as a decision-making paradigm. SDM is a process by which a person selects advisors to support them in decision making. The decisions might involve finances, health care, or anything else. The person with a SDM uses trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions. The role of the supporter is to help the person understand the issue in consideration, as well as the options, risks, and benefits. A supporter may help the person make a choice and, as needed, help carry out that choice. The supported decision-making arrangement might be informal or it might be set out in a written agreement. Unless other agreements are created, such as powers of attorney, the supporters have no legal authority to consent for or act on behalf of the person. SDM is a means for increasing self-determination by encouraging and empowering people to make their own decisions about their lives to the maximum extent possible.

## Education and Transition Planning

- [Understanding My IEP](#)
- [Person Centered Planning: A Tool for Transition](#)
- [Resource Manual for High School Students](#)
- [Formal Education or Training Beyond High School](#)
- [Post-Graduation Options](#)

## Transition and Adulthood

- [Transition to Adulthood: A Health Care Guide for Youth and Families](#)
- [Sexuality and Disability: A Guide for Parents](#)

## Medical and Mental Healthcare

- **Telehealth and remote medical monitoring:** Arranging remote medical consultations can eliminate transportation challenges and encourage seeking medical advice and care. Remote medical monitoring is becoming increasingly common, with wearable consumer electronics devices monitoring routine health dimensions and offering emergency alert services and fall detectors.
- **Electronic medication management devices:** Electronic medication management devices are electronic units that dispense medication, preloaded into the device by a caregiver or medical professional, in the correct dosage on a predetermined date and time with an audible and visual alert to notify the older adult when medication needs to be taken.
- **Health care surrogate or proxy-** A surrogate decision-maker is authorized, by the [Uniform Health Care Decisions Act \(UHCDA\)](#), to make health care decisions on behalf of an individual. UHCDA governs how to designate a surrogate decision-maker if the individual has become incapacitated. An individual who is capable of designating a surrogate decision-maker may do so verbally or in writing.

## Financial Supports

- **Trusted person designations:** Many banks and financial institutions allow the account holder to designate a trusted person who the institution can contact if there is an issue with the account or suspected financial exploitation. The designation authorizes the institution to disclose account information to the trusted person and to confirm the account holder's contact information, health status, and the identity of anyone authorized to act on the account holder's behalf.
- **Account with read only access, shared statements/notices:** Banks and other financial institutions can set up "read only" access, allowing a trusted third party to verify that deposits are received in the correct amount and that bills being paid are correct and paid on time. It is also easy to set up a shared email address to receive electronic statements.
- **ABLE account:** An [ABLE account](#) is a savings and / or investment option for people with disabilities who qualify. It falls under Section 529A of the Internal Revenue Service tax code. The ABLE Act allows a person whose disability began before age 26\*, to save money in the ABLE account without affecting most federally funded benefits based on need. The money in the account may be used to pay for qualified disability expenses (QDEs). Any growth in the account from investments is not taxed and does not count as income if the funds are used for QDEs.
- **Debit/credit cards with agreed limits:** Debit and credit cards can be provided with agreed upon limits. Financial institutions may be willing to issue cards with set daily, weekly, or per-transaction limits, as well as limits on the stores and retailers at which the

cards can be used. Merchant codes identify the nature of a business, such as grocery stores, jewelry stores, general merchandise, or car repair services. Limiting the codes can reduce the risk of exploitation and misuse of funds.

- **True Link Prepaid Card:** The [True Link Visa Prepaid Card](#) and Spending Monitor provides financial solutions for people with complex needs, empowering them with more independence and helps the people who care for them manage and protect the spending while. A customizable Spending Monitor allows a care provider to set rules on where, when, and how the Visa card can be used. Real-time alerts and notifications keep care provider informed of spending habits and blocked transactions
- **Direct deposit and automated banking:** All Social Security benefits are paid by direct deposit. Most other income sources could be received by direct deposit as well. Direct deposit ensures that income is available when needed to pay bills, and it eliminates the need to remember to make deposits, the risk of lost or stolen checks, and the need for frequent trips to the bank. Nearly all reoccurring bills can be set up on automatic payment, including most utility bills, insurance payments, credit card bills, and rent or mortgage payments. Automatic payment, in conjunction with direct deposit, assures the bills are paid on time. Both direct deposit and automatic payment should have some monitoring or oversight like read only access or shared statements.
- **Joint bank accounts and authorized signers:** Joint accounts and authorized signers are ways to add an agent to a bank account to help manage finances. A joint account creates a presumption of ownership in the account assets and may create inheritance rights. The account might also be subject to attachment or garnishment if the joint owner becomes liable on a judgment. Therefore, joint accounts should be used with caution. Alternatively, the account holder can authorize someone to sign on the account without creating an ownership interest. Many business accounts are structured this way. Most banks have their own internal requirements and forms to allow the addition of an authorized signer.
- **Money management and bill pay services:** Money management and bill pay services provide one-on-one assistance with financial management. Once engaged, the service will receive all paper and electronic bills, review and pay the bills, balance the accounts, and maintain all financial records. Some services might assist with creating a budget, gathering and organizing tax documents, and filing insurance claims. These services might be available for free or at a low cost, possibly staffed by volunteers, or they might charge an hourly or monthly fee.
- **Representative payees:** A [Social Security representative payee](#) (rep payee) manages the benefits for a beneficiary who has been determined unable to manage money by Social Security. The rep payee program is specific to Social Security benefits, including Social Security Disability and Supplemental Security Income. VA pensions and some private pensions have separate payee systems. If Social Security has reason to believe a beneficiary is unable to manage benefits (usually based on a verification from a physician or evidence in a disability case of serious mental illness or substance abuse), it will place

the beneficiary's benefits in payee status. A beneficiary can also request a rep payee. The process is entirely administrative. All rep payees are volunteers except for narrowly defined non-profits who are allowed to receive a limited fee from the benefits. In some states, inpatient residential settings, such as nursing homes, are allowed by state law or regulation to serve as rep payee. Because Social Security does not recognize any other agents, guardians and agents under powers of attorney must apply to Social Security to be recognized as a rep payee.

- **Financial power of attorney:** A [power of attorney](#) (POA) for financial matters is a document authorizing an agent to transact business on behalf of the person granting the authority. The authority granted is as described in the document or what is allowed by state law. Increasingly, states have standardized forms for creating a POA that can be used for do-it-yourself planning. These are very powerful documents and should be created with great care.
- **Trusts:** Finances can also be managed through the creation of a [special needs trust](#), a legal entity able to hold property and assets that is managed by a fiduciary (the trustee) for the benefit of the beneficiary pursuant to the instructions in the trust documents. Trusts are typically established to control and manage assets while the person is alive and to provide for distribution of the estate after death.

**Other resources:**

[What You Need to Know About Being an Adult with Disabilities A HANDBOOK FOR SELF-ADVOCATES, PARENTS, GUARDIANS, AND THEIR LOVED ONES](#)

[Supported Decision-Making: Gabby's Story](#) (video)

[Understanding Supported Decision-Making](#) (video)

[When Do I Want Support worksheet](#)

[Supported Decision Making Brainstorming Guide](#)