

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL -- Fourth Year, 2014

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' AND
THE NAVAJO NATION COUNCIL; APPROVING AND ENACTING THE NAVAJO ADULT
GUARDIANSHIP ACT OF 2014 AND AMENDING 9 N.N.C. § 801 ET SEQ.

BE IT ENACTED:

Section One. Enacting the Navajo Adult Guardianship Act of 2014

The Navajo Nation hereby approves and enacts the *Navajo Adult Guardianship Act of 2014*, and accordingly amends 9 N.N.C. § 801 et seq. as follows:

Chapter 9. Guardians of Minors

§ 801. Petition for appointment

Any person may petition to the Courts of the Navajo Nation for the appointment of a guardian of the person or estate of any minor ~~or insane Navajo or other Navajo mentally incompetent to manage his property.~~

§ 802. Investigation of petition

The petition for the appointment of a guardian must be referred by the Court to a Navajo Service social worker for investigation, study and report back to the Court.

§ 803. Appointment

If, after a hearing upon a petition for the appointment of a guardian, it appears to the Court that the person minor is incapable of taking care of himself and ~~managing his property~~, the Court must appoint a guardian of his/her person and estate, a copy of which must be filed at the Agency.

§ 804. Responsibility

The guardian appointed by the Court has the care and custody of the person of his/her ward, and the care and management of his/her estate until such guardian is legally discharged.

§ 805. Faithful execution of duties; bond

The guardian must meet all requirements as may be described by the court for the faithful execution of his/her duties, including furnishing bond, if deemed necessary by the court.

Navajo Adult Guardianship Act of 2014

Subchapter 1. General Provisions

§ 810. Short Title

This Act must be known as the Navajo Adult Guardianship Act of 2014.

§ 811. Purpose and Findings

- A. There is a high regard for individual liberty on the Navajo Nation, as reflected in the expression, "T'aabi bohlniih" roughly translated as "It is up to the individual." This bitsé siléí requires that individuals with disabilities be allowed a maximum degree of independence and be included as much as possible in decision-making about important aspects of their life, such as where they will live, their health care or their finances, and who may speak or act on their behalf.
- B. Due to a disability or illness, an individual's ability to think and plan, nitsáhakees, nahat'á, may become interrupted and the individual may need assistance in daily activities and decision making. If an individual's thought process, Diné k'éhgo nitsáhákees, is interrupted and they need help, a balance must be found between providing assistance and respecting the individual's autonomy. It must not be forgotten that in Diné teachings, a human being is more than their limitation. As human beings, individuals with disabilities have hopes and dreams to live a life of fulfillment into old age. sa'ah naaghéí bik'eh hózhóón niidíi.
- C. Diné place a great emphasis on the responsibilities to one another under k'é, and the importance of meeting those responsibilities. The fulfillment of k'é provides an

opportunity for a blessing of self-awareness and compassion and requires preparation in the Hózhóji consistent with the commitment and fulfillment of a sacred duty.

§ 812. Definitions

The following definitions are applicable to this subchapter:

A. "Adult" means a person or individual over the age of eighteen (18) years old.

B. "Caregiver" means:

1. A person who is required by Navajo statutory or common law to provide care, services or resources; or

2. A person who has undertaken to provide care, services or resources.

C. "Court" means the Courts of the Navajo Nation.

D. "Court Appointed Representative" means a person who is selected by an adult individual and appointed by the Court to assist the individual or speak or act on his/her behalf without any determination of incapacity necessary if other entities question the individual's capacity.

E. ~~Diné k'éhgo nitsáhákees means the Diné thought process, which is the circle of nitsáhakees (thinking), nahat'á (planning), iiná (doing) and sihasin (the result) and part of the Navajo Concept of Holistic Wellness, sa'ah naaghéi bik'eh hózhóón niidíi.~~

F. E. "Evaluation" means a professional assessment of an individual seeking a court appointed representative or for whom a guardianship is sought, consisting of the following:

1. The individual's ability to receive and evaluate information effectively or communicate decisions, including consideration of necessary accommodations and supports;

2. The impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his/her physical health or safety, or to manage his/her financial resources; and

3. The services necessary to provide for the individual;

G. F. "Family" includes parents, spouse, children, grandchildren, grandparents, in-laws, siblings, aunts, uncles, nieces, nephews, first, second, and third cousins, or as defined by Navajo custom.

H. G. "Good Faith" means a honest belief or purpose and the lack of intent to hurt, injure, exploit or defraud.

I. H. "Guardian" means a person appointed by the Court having the duty and authority to make decisions on the care and control of an incapacitated person or his/her property or assets and ensure that the person is not abused or neglected. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem. Any person being considered as a guardian is subject to a background check. Those convicted of felony neglect, abuse, sexual crimes, financial exploitation, or drug or alcohol-related crimes must not be appointed. ~~Any person who has been convicted of a felony must not be appointed as a guardian for any incapacitated or partially incapacitated person regardless of any preference or priority.~~

J. I. "Incapacity" means the extent which the current functional ability of an adult individual to sufficiently understand, make, communicate, and act, *Diné k'éhgo nitsáhákees*, is interrupted as a result of mental illness, cognitive impairment, physical illness, disability or chronic use of drugs (legal or illegal) or alcohol. Incapacity may vary in degree and duration or as determined by the Court.

K. J. "Incapacitated Person" means an adult individual whom the Court has determined is unable to sufficiently understand, make, communicate and act on decisions, ~~*Diné k'éhgo nitsáhákees*~~, as a result of mental illness, physical illness, disability or chronic use of drugs (legal or illegal) or alcohol and to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate supports and accommodations.

L. K. "Institution" means any facility or setting in which paid caregivers serve more than three (3) paying clients.

M. L. "Least Restrictive Alternative" is that environment that is most like the incapacitated person's home setting and that is capable of supporting the individual's physical, mental and emotional health.

N. M. "Legal Advocate" means a member of the Navajo Nation Bar Association or other individual authorized to practice before the Navajo Courts.

O. N. "Legal Representative" includes a court appointed representative, representative payee or a guardian acting for a respondent in the Navajo Nation or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

P. O. "Letters" includes letters of court appointed representative and guardianship.

Q. P. "Parent" includes a biological or adoptive parent, or where legal paternity has been established and whose parental rights have not been terminated.

R. Q. "Partially Incapacitated Person" means an adult individual whose thought process *Diné k'éhgo nitsáhákees*, is interrupted and the Court has determined that without assistance of a Limited Guardian the individual is unable to:

a. Meet the essential requirements for his/her physical health or safety; or

b. Manage all of his/her financial resources or to engage in all of the activities necessary for the effective management of his/her financial resources.

A finding that an individual is a Partially Incapacitated Person must not constitute a finding of legal incompetence. A Partially Incapacitated Person must be legally competent in all areas other than the area or areas specified by the Court. Such Person must retain all legal rights and abilities other than those expressly limited or curtailed by the Court.

S. R. "Person" means an individual, ~~corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.~~

T. S. "Protected Person" means an adult individual for whom a court appointed representative has been appointed or other order has been made.

U. T. "Respondent" means an adult individual for whom the appointment of a guardian or protective order is sought.

V. U. "Ward" means an adult individual for whom a guardian has been appointed.

§ 813. Temporary Delegation of Power by Guardian

A guardian of an incapacitated person, by power of attorney, may delegate to another person, for a period not exceeding six (6) months, any power regarding care, custody, or property of the ward, except the power to consent to marriage or adoption.

§ 814. Subject Matter Jurisdiction

This Act applies to and the Court has jurisdiction over proceedings arising under this Act for enrolled members of the Navajo Nation or those eligible for enrollment.

§ 815. Referral to Peacemaker Program

~~With the agreement of all parties, t~~The Court may refer any matter under this Chapter to the Peacemaker Program, unless it makes a determination that a referral to the Peacemaker Program is infeasible, inappropriate or futile. Prior to a referral, the Court should verify that the adult who is subject to a guardianship proceeding understands the Peacemaker Program and its role. Upon referral, the Peacemaker Program will attempt to resolve conflicts between the parties involved using traditional methods and in accordance with Peacemaker Program rules.

§ 816. Comity and Recognition of Orders from Other Jurisdictions

A. Any order issued pursuant to this Act must be effective throughout the Navajo Nation.

B. A Navajo Nation Court must issue an order recognizing a foreign order and according it comity if the following findings are made:

1. The foreign court had jurisdiction over the parties and subject matter;

2. Due process was provided to all interested persons participating in the foreign court proceedings; and

3. The foreign court proceeding did not violate the public policies, customs, or common law of the Navajo Nation.

C. Once recognized, an order must be enforced as if it were an order of a Court of the Navajo Nation.

§ 817. Applicable Rules

Except as otherwise provided in this Act, the Navajo Rules of Civil Procedure govern proceedings under this Act.

§ 818. Letters of Office

A. A court appointed representative or guardian must be authorized to fulfill their appointed role upon the Court's issuance of the appropriate letter of office following fulfillment of the conditions below.

B. Upon the court appointed representative's filing of an acceptance of office, the Court must issue appropriate letters of a court appointed representative.

C. Upon the guardian's filing of an acceptance of office, the Court must issue appropriate letters of guardianship. Letters of guardianship must indicate whether the guardian appointed by the court was nominated by the respondent, a parent, or the spouse.

D. Any limitation on the powers of a court appointed representative or a guardian must be endorsed on the letter of office.

§ 819. Acceptance of Appointment

A. An acceptance of appointment by a court appointed representative or guardian must be in writing and include recognition of the commitment and fulfillment of the sacred duty under *Hózhóji*.

B. By accepting appointment, a court appointed representative or guardian submits personally to the jurisdiction of the Court in any proceeding relating to the representation or guardianship.

§ 820. Termination or Reappointment

A. The appointment of a court appointed representative or guardian terminates upon the death, resignation, or removal of the representative or guardian or upon the termination of the court appointed representation or guardianship. A resignation of a court appointed representative or guardian is effective when approved by the Court. Termination of the appointment of a court appointed representative or guardian does not affect the liability for previous acts or the obligation to account for money and other assets of the ward or protected person.

B. A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a court appointed representative or guardian on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A petition for removal may include a request for appointment of a successor court appointed representative or guardian.

C. A court appointed representative or guardian may petition for permission to resign. A petition for permission to resign may include a request for appointment of a successor court appointed representative or guardian.

D. Except as otherwise ordered by the Court for good cause, before terminating a guardianship, the Court must follow the same procedures to safeguard the rights of the ward or protected person that apply to the original petition.

Subchapter 2. Court Appointed Representative**§ 821. Appointment and Status of Court Appointed Representative**

A. Any adult individual who may be perceived as an incapacitated person or who is named as a respondent in a guardianship proceeding, may request the Court to appoint a court appointed representative to assist the individual, and to speak or act on the person's behalf on specific issues, without the necessity of determining whether the individual is legally incapacitated. Court appointed representation is in effect until the individual requests the Court to void the order or name a replacement.

B. A court appointed representative is not similar to a guardian in that the representative does not substitute his/her decision or judgment in place of the protected person's as long as the protected person is able to make and communicate choices and decisions.

§ 822. Petition

A. The petition for a court appointed representative must include an affirmation of the following:

1. The petitioner's name, age, principal residence, current mailing address and physical location.

2. The name and address of the petitioner's caregivers and family, including all of the following;

a. Spouse, or if the petitioner has none, an adult with whom the petitioner has resided for more than six months before the filing of the petition;

b. Adult children or, if the petitioner has none, the petitioner's parents and adult brothers and sisters, of if the petitioner has none, at least one and not more than three of the adults nearest in kinship to the petitioner who can be found with reasonably diligent efforts; and

c. The name and address of any person presently assisting the petitioner.

3. The name and address of any legal representative of the petitioner.

4. The name and address of the person nominated by the petitioner to be recognized as the court appointed representative.

5. The reason why the court appointed representative is necessary.

6. The issues on which the court appointed representative will have the authority to assist the petitioner or to speak for the petitioner.

7. A general statement of the petitioner's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

8. The affirmation of the anticipated court appointed representative that he/she is willing to act on the petitioner's behalf as designated in the petition.

§ 823. Appointment of Counsel and Guardian Ad Litem

A. If prior to a hearing on a petition for a court appointed representative or if at any point in the course of a proceeding, the petitioner is not represented by counsel, the Court may appoint a legal advocate as provided in this section.

B. The Court may also at any time subsequent to the filing of the petition appoint a Guardian Ad Litem to assist the Court in making a determination on any issues regarding the petition.

C. If a legal advocate is appointed, the Court must hold a hearing on a petition as soon as possible. The Court may delay the hearing on a petition only for the period of time necessary for the legal advocate to prepare the case for hearing but in no case less than thirty (30) days after such appointment.

D. A legal advocate appointed pursuant to this section must contact the petitioner promptly after receiving notification of his/her appointment. A legal advocate appointed pursuant to the provision of this section may be compensated by order of the Court if the petitioner has sufficient resources.

§ 824. Confidentiality of Records

The written report of a Guardian Ad Litem and any professional evaluation are confidential and must be sealed upon filing, but are available to the Court, the petitioner for the purposes of this proceeding, and other persons for such purposes as the Court may order for good cause.

§ 825. Notice

In a proceeding to establish a court appointed representative, a copy of the petition and notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this

subsection may preclude the appointment of a court appointed representative or the making of a protective order.

§ 826. Presence and Rights at Hearing

A. Unless excused by the Court for good cause, the petitioner and the anticipated court appointed representative must attend the hearing. The Court may request the petitioner to present evidence to establish the necessity of appointing a court appointed representative. When the Court requires the presentation of such evidence, the petitioner and the court appointed representative must have the right to subpoena witnesses and documents; examine witnesses, including any court-appointed evaluator, and otherwise participate in the hearing. The hearing may be held in a location convenient to the petitioner and may be closed upon the request of the petitioner and a showing of good cause.

B. Any person may request permission to participate in the proceeding. The Court may grant the request, with or without hearing, upon determining that the best interest of the petitioner will be served. The Court may attach appropriate conditions to the participation.

§ 827. Findings; Order of Appointment

A. The Court may:

1. Appoint a court appointed representative for a petitioner if it finds by preponderance of the evidence that:

a. The petitioner may be perceived as an incapacitated person; and

b. The petitioner's identified needs cannot be met by less restrictive means including use of a durable power of attorney or appropriate technological assistance; and

c. The Court finds that the appointment of the petitioner's selected court appointed representative is in the petitioner's best interest.

2. Deny the petition, if the Court finds the requested court appointed representative has a conflict of interest with the petitioner, or otherwise cannot adequately protect the interest of the petitioner.

3. With appropriate findings, enter any other appropriate order or dismiss the proceeding.

B. The Court, whenever feasible, must grant to a court appointed representative only those powers requested by the petitioner, necessitated by the petitioner's limitations and demonstrated needs, and make appointive and other orders that will encourage the development of the petitioner's maximum self-reliance and independence.

C. Based on the Court's finding, the Court may determine if a review hearing is necessary to consider any future change in circumstances of the petitioner. Regardless of the Court's findings regarding a review, any person interested in the welfare of petitioner may at any time request a review of the court appointed representative order and supporting findings.

D. Within fourteen (14) days after an appointment, a court appointed representative must send or deliver to the petitioner and to all other persons given notice of the hearing on the petition a copy of the appointment of court appointed representative, together with a notice of the right to request termination or modification.

§ 828. Duties and Powers of Court Appointed Representative

A. Within the limitations imposed by the court order, a court appointed representative must perform diligently and in good faith, and speak and act on behalf of the protected person regarding the protected person's support, care, education, health, and welfare. A court appointed representative must exercise authority only as necessitated by the other's perceptions of the protected person's assumed incapacity and will clarify for others the protected person's decisions and choices. The court appointed representative must consider the expressed desires and personal values of the protected person to the extent known and may consult with other family members and caregivers to the extent appropriate and possible in respect, harmony and balance as required by k'é. The court-appointed representative at all times must act in the

protected person's best interest and exercise reasonable care, diligence and prudence.

B. To the extent necessary, a court appointed representative must:

1. Become or remain personally acquainted with the petitioner and maintain sufficient contact with the petitioner to know of the petitioner's decisions, choices and preferences;

2. Assure that the petitioner has a domicile in the least restrictive, most normal setting consistent with the requirements for his/her health or safety;

3. Take reasonable care of the petitioner's personal effects and bring protective proceedings if necessary to protect the property of the petitioner;

4. Treat family members and caregivers with respect and consult with them as appropriate and possible;

5. Expend money of the petitioner for the petitioner's current needs for support, care, education, health, and welfare;

6. Conserve any excess money of the petitioner for the petitioner's future needs, but if a conservator had been appointed for the estate of the petitioner, the court appointed representative must pay the money to the conservator, at least quarterly, to be conserved for the petitioner's future needs. The court appointed representative and the conservator must work together to address the petitioner's need and to conserve the petitioner's resources; and

7. Inform the Court of any change in the protected person's custodial dwelling or address.

§ 829. Rights and Immunities of Court Appointed Representative; Limitations

A. At the Court's discretion, a court appointed representative may be ordered to receive reasonable compensation for services as a court appointed representative and to reimbursement for room, board, and clothing provided to the petitioner.

B. A court appointed representative is not liable to a third person for acts of the petitioner solely by reason of the relationship. A court appointed representative who exercises reasonable care in conveying the petitioner's choice of a third person providing medical or other care, treatment, or service for the petitioner is not liable for injury to the petitioner resulting from the wrongful conduct of the third party.

C. A court appointed representative, without authorization of the court, may not revoke a power of attorney for health care of which the petitioner is the principal. If a power of attorney for health care is in effect, absent an order of the Court to the contrary, a health-care decision of the agent takes precedence over that of a court appointed representative.

D. A court appointed representative may not initiate the commitment of a petitioner to an institution.

Subchapter 3. Guardianship of Incapacitated Person

§ 830. Appointment and Status of Guardian

A. A person becomes a guardian of an incapacitated person upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

B. The procedures for guardianship set forth in this section must also apply to guardianship of adult individuals under the Navajo Nation Health Care Commitment Act.

§ 831. Filing a Petition

A. Any person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual, who must be the respondent in the petition.

B. The petition must set forth the petitioner's name, residence, current mailing address and physical location, relationship to the respondent, and interest in the appointment, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

1. The respondent's name, age, principal residence, current mailing address and physical location, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
2. The name and address of the respondent's caregivers and family, including all of the following:
 - a. Spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - b. Adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one and not more than three of the adults nearest in kinship to the respondent who can be found with reasonably diligent efforts; and
 - c. The name and address of any person presently responsible for or having custody of the respondent.
3. The name and address of any legal representative of the respondent, including a court appointed representative;
4. The name and address of any person nominated as guardian by the respondent;
5. The name and address of any proposed guardian other than the guardian nominated by the respondent and the reason why the proposed guardian should be selected;
6. The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
7. If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
8. A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

§ 832. Appointment of Counsel and Guardian ad Litem

A. If prior to a hearing on a petition alleging the respondent is incapacitated or if at any point in the course of a proceeding, the respondent is not represented by counsel, the Court must appoint a legal advocate as provided in this section.

B. The Court may also at any time subsequent to the filing of the petition appoint a Guardian Ad Litem to assist the Court in making a determination on any issues regarding the petition.

C. If a legal advocate is appointed, the Court must delay the hearing on a petition only for the period of time necessary for the legal advocate to prepare the case for hearing but in no event less than thirty (30) days after such appointment.

D. A legal advocate appointed pursuant to this section must contact the respondent promptly after receiving notification of his/her appointment. A legal advocate appointed pursuant to the provision of this section may be compensated by order of the Court if either the petitioner or respondent has sufficient resources.

§ 833. Professional Evaluation

A. After the filing of the petition, the Court may, on its own motion or at the request of any party to the proceeding, order a professional evaluation of the respondent. The Court must order the evaluation if the respondent so demands. If possible the petitioner and respondent must consult and agree on who must conduct the evaluation. If such an agreement is reached, the Court must include the agreed upon evaluator in the order.

B. The evaluation report must include, but not be limited to:

1. A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;

2. A description of the mental, emotional and physical condition of the respondent, his/her ability to function in the ordinary activities of daily life and, if appropriate, the respondent's educational background, adaptive behavior and social skills.

3. A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

4. The date of any assessment or examination upon which the report is based.

§ 834. Confidentiality of Records

The written report of a Guardian Ad Litem and any professional evaluation are confidential and must be sealed upon filing, but are available to the Court, the respondent for any purpose, the petitioner for the purposes of this proceeding, and other persons for such purposes as the Court may order for good cause.

§ 835. Notice

A. A copy of the petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. Failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

B. In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection ~~does not~~ shall preclude the appointment of a guardian. ~~or the making of a protective order.~~

C. If any order is sought after a guardian is appointed, any notice of hearing on the order together with a copy of the motion, must be given to the respondent, the guardian, and any other person the court directs.

D. A guardian must give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the Court directs. The notice must be delivered or sent within fourteen (14) days after the filing of the report.

§ 836. Presence and Rights at Hearing

A. Unless excused by the Court for good cause, the proposed guardian must attend the hearing. The respondent must attend and participate in the hearing, unless excused by the Court for good cause and represented by counsel. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed evaluator, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

B. Any person may request permission to participate in the proceeding. The Court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The Court may attach appropriate conditions to the participation.

§ 837. Emergency Guardian

A. If the Court finds that compliance with the procedures of this article will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the Court, on petition by a person interested in the respondents' welfare, may appoint an emergency guardian whose authority may not exceed sixty (60) days and who may exercise only the powers specified in the order, which should be limited to those necessary to address the substantial harm. Immediately upon receipt of the petition for an emergency guardianship, the Court must appoint a legal advocate to represent the respondent in the proceeding. Except as otherwise provided in subsection (B), reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

B. An emergency guardian may be appointed without notice to the respondent and the respondent's legal advocate only if the court finds from affidavit or testimony that the respondent will be substantially harmed if the emergency guardian is not appointed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment within forty-eight (48) hours after the appointment. The Court must hold a

hearing on the appropriateness of the appointment within five (5) days after the appointment.

C. Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

D. The Court may remove an emergency guardian at any time. An emergency guardian must make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian.

§ 838. Priority of Appointment of the Guardian

A. Subject to subsection (C), the Court in appointing a guardian must consider persons otherwise qualified in the following order of priority;

1. A person, other than a temporary or emergency guardian, currently acting for the respondent;
2. A person nominated as guardian by the respondent, including the respondent's court appointed representative or most recent selection of an agent made in a properly executed durable power of attorney or a durable power of attorney for health care; and
3. A family member chosen by family concurrence;
4. A non-family member chosen by family concurrence;
- ~~3.~~ 5. A caregiver or family member of the respondent.

B. With respect to persons having equal priority, the Court must select the one it considers best qualified. In determining the best qualified person, the Court may consider any background information showing criminal charges, allegations of domestic violence, abuse or neglect of another, or other relevant information. The Court, acting in the best interest of the respondent, may decline with specific findings to appoint a person having priority and appoint a person having a lower priority or no priority.

C. An owner, operator, or employee of an institution or program at which the respondent is receiving care may not be appointed as guardian.

§ 839. Findings; Order of Appointment

A. The Court may:

1. Convert the proceedings to a Court Appointed Representative matter and appoint a Court Appointed Representative as agreed to by the parties;

2. Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

a. The respondent is an incapacitated person; and

b. The respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.

c. The respondent's family has no well-founded objection based on the respondent's best interests.

3. With appropriate findings, enter any other appropriate order or dismiss the proceeding.

B. The Court, whenever feasible, must grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

C. Based on the court's finding, the Court may determine when a review hearing is necessary to consider any change in circumstances of the ward or the guardian. Regardless of the court's findings regarding a review, any person given notice of the hearing may at any time request a review of the guardianship order and supporting findings.

D. Within fourteen (14) days after an appointment, a guardian must send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

§ 840. Temporary Substitute Guardian

A. After being notified by a pleading consistent with the Navajo Rules of Civil Procedure, if the Court finds that a guardian is not effectively performing his/her duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six (6) months. Prior to the appointment of the temporary substitute guardian, the Court must attempt to ascertain the ward's position, either through written affidavit or testimony, on whether such an appointment is necessary. Except as otherwise ordered by the Court, a temporary substitute guardian so appointed has the powers set forth in the order of appointment of the guardian he/she is replacing. The authority of any unlimited or limited guardian previously appointed by the Court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian, the Court, within five (5) days after the appointment, must inform the ward or guardian of the substitution.

B. The Court may remove a temporary substitute guardian at any time. A temporary substitute guardian must make any report the Court requires. In other respects, the provisions of this Act concerning guardians apply to a temporary substitute guardian.

§ 841. Duties and Responsibilities of Guardian

A. Except as otherwise limited by the Court, a guardian must perform diligently and in good faith, and make decisions regarding the ward's support, care, education, health, and welfare. A guardian must exercise authority only as necessitated by the ward's limitations and, to the extent possible, must encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian in making decisions, must consider the expressed desires and personal values of the ward to the extent known to the guardian and must consult with other family members and caregivers to the extent appropriate and possible in respect, harmony and balance as required by k'é. A guardian at all times must act in the ward's best interest and exercise reasonable care, diligence, and prudence.

B. A guardian must:

1. Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

2. Assure that the ward has a domicile in the least restrictive, most normal setting consistent with the requirements for his/her health or safety;

3. Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

4. Expend money of the ward for the ward's current needs for support, care, education, health, and welfare. These funds may be those received on the ward's behalf, but should be supplemented when necessary by the guardian's funds or those of other caregivers;

5. Treat family members and caregivers with respect and consult with them as appropriate and possible;

6. Conserve any excess money of the ward for the ward's future needs; ~~but~~

7. If a conservator had been appointed for the estate of the ward, the guardian must pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs. The guardian and the conservator must work together to address the ward's need and to conserve the ward's resources;

8. Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and

9. Inform the court of any change in the ward's custodial dwelling or address

C. The above list in subsection (B) is not exhaustive. The duties and responsibilities of the guardian must be interpreted consistent with *Diné bi beenahaz'áanii*.

§ 842. Powers of Guardian

A. Except as otherwise limited by the court, a guardian is charged with the custody of the ward, and must look to the support, health and education of the ward. Except as provided, the guardian may establish the ward's domicile at any place within the exterior boundaries of the Navajo Nation, but not elsewhere, without permission of the Court and any change of domicile must be reported to the court.

B. As appropriate, the guardian may delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

§ 843. Rights and Immunities of Guardian; Limitations

A. At the Court's discretion, a guardian may receive reasonable compensation for services as guardian and a guardian may receive reimbursement for room, board, and clothing provided to the ward.

B. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third party.

C. A guardian, without authorization of the Court, may not revoke a health care directive of which the ward is the principal. If a health care directive is in effect, absent an order of the Court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

D. A guardian may have the freedom of choice between a home-based living environment, a community group home environment, or an institution/facility care environment (according to the U.S. Supreme Court Olmstead decision in 1999 in which all three are acceptable)". ~~not initiate the commitment of a ward to an institution except in accordance with the Navajo Nation Health Commitment Code.~~

§ 844. Guardianship Plans; Reports; Monitoring of Guardianship

A. If not filed with the petition or submitted to the Court at the time of the hearing, within ten (10) days after his/her appointment the guardian must file with the Court, for its approval, a proposed plan for the care and treatment of the ward and must submit subsequent or modified plans as required by this

Act. The Court may approve a plan acceptable to the Court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B. The proposed guardianship plan and any subsequent guardianship plan for the care and treatment of the ward must state:

1. The services which are necessary to meet the essential requirements for the physical health or safety of the ward taking into account the contents and recommendations of any evaluations or reports made with respect to the ward;

2. The means for obtaining those services;

3. Account for the ward's money and other assets in the guardian's possession or subject to the guardian's control and provide any information available on the money or other assets not in the guardian's control.

4. The manner in which the guardian, the ward, the family, and the conservator will exercise and share decision-making authority.

5. Such other services necessary to assist in fulfilling the needs of the ward, the terms of the most recent order applying to the guardian and the duties of the guardian.

C. The Court may appoint a Guardian Ad Litem or other individual to review a report, interview the ward or guardian, and make any other investigation the court directs.

D. The court must establish a system for monitoring guardianships, including the filing and review of annual reports. At a minimum, the guardian must file with the Court an annual report for the first three years following the imposition of the guardianship. After the third year, the Court may order periodic reviews as necessary or upon the request of any interested person.

§ 845. Severability

Should any provision of this Act be determined invalid by the Courts of the Navajo Nation, those provisions of the Act which are not determined invalid must remain the law of the Navajo Nation.

Section Two. Monitoring of the Court Appointed Representative and Guardianship Process

On an annual basis, a Navajo based organization concerned with the rights of people with disabilities shall have access to non-confidential information from the Navajo Judiciary and Navajo Divisions to assess the process for appointing Court Appointed Representatives and Guardians as defined in this Code. The information shall be provided within thirty days of receiving a written request. Four years after the passage of this Code, the organization receiving the requested information will report to the Navajo Nation Council on the Code's effectiveness.

Section Two Three. Effective Date

The amendments enacted herein must be effective pursuant to 2 N.N.C. §221(B).

Section Three Four. Codification

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code must be codified by the Office of Legislative Counsel. The Office of Legislative Counsel must incorporate such amended provisions in the next codification of the Navajo Nation Code.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 favor and 0 opposed, this 30th day of May 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

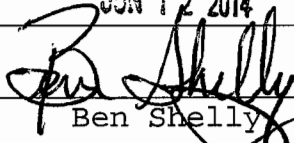
6-9-14

Date

Motion: Honorable Elmer P. Begay
Second: Honorable Jonathan Nez

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of JUN 12 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation