

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS)
PART 647 ERRDS, DEVELOPMENTAL DISABILITIES PLANNING COUNCIL

1.18.647.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives.
[1.18.647.1 NMAC - N, 12/20/2010]

1.18.647.2 SCOPE: developmental disabilities planning council
[1.18.647.2 NMAC - N, 12/20/2010]

1.18.647.3 STATUTORY AUTHORITY: Section 14-3-1 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.
[1.18.647.3 NMAC - N, 12/20/2010]

1.18.647.4 DURATION: Permanent
[1.18.647.4 NMAC - N, 12/20/2010]

1.18.647.5 EFFECTIVE DATE: December 20, 2010 unless a later date is cited at the end of the section.
[1.18.647.5 NMAC - N, 12/20/2010]

1.18.647.6 OBJECTIVE: To establish a records retention schedule for the orderly management and retirement of records necessary for carrying out the Public Records Act per Section 14-3-6 NMSA 1978.
[1.18.647.6 NMAC - N, 12/20/2010]

1.18.647.7 DEFINITIONS:

- A. "Administrator"** means the state records administrator (Section 14-3-2 NMSA 1978).
- B. "Agency"** means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).
- C. "Archives"** means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records.
- D. "Audit"** means periodic examination of an organization to determine whether appropriate procedures and practices are followed.
- E. "Disposition"** means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).
- F. "Guardianship"** means the appointment, by a court, of a person or entity to assume decision making responsibility and to handle the affairs of an individual the court has found to be "incapacitated" as defined in the Probate Code.
- G. "Incapacitated individual"** means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that the person is unable to manage the person's personal affairs or the person is unable to manage the person's estate or financial affairs or both.
- H. "Indigent"** means a person so poor and needy that he or she cannot provide the necessities of life (i.e., medical care, food, clothing, decent shelter, etc.) for himself or herself.
- I. "Microphotography"** means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.
- J. "Non-record"** means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

K. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

L. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

M. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

N. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

O. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes. [1.18.647.7 NMAC - N, 12/20/2010]

1.18.647.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" stands for code of federal regulations.

B. "ERRDS" stands for executive records retention and disposition schedule.

C. "NMSA" stands for New Mexico statutes annotated.

D. "SSN" stands for social security number.

E. "US" stands for United States.

F. "USC" stands for United States code.

[1.18.647.8 NMAC - N, 12/20/2010]

1.18.647.9 INSTRUCTIONS:

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are two types of records retention and disposition schedules created by the state records center and archives. General schedules that list records common to all agencies and executive schedules which are specific to an agency. Each record series will be represented in the format listed below.

(1) **Program** - describes the function of the records

(2) **Maintenance system** - describes how an agency files (organizes) records

(3) **Description** - describes the purpose and content of a record

(4) **Retention** - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS, General Administrative Records Retention and Disposition Schedule, 1.15.2 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.6 NMAC, and for officers personnel records, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.7 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for each file but all materials in a file may be confidential. Refer to note. Where portions of file may be confidential, refer to legal counsel for agency.

I. Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. All records, papers or documents may be photographed, microfilmed, digitized, scanned imaging, microfilm or computer output microfilm systems shall be approved by the state records administrator prior to the destruction of source documents (Section 14-1-5, 14-1-6 NMSA 1978) Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Section 14-3-17 NMSA 1978)

K. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in both general and executive records retention and disposition schedules.
[1.18.647.9 NMAC - N, 12/20/2010]

1.18.647.10 - 1.18.647.19 [RESERVED]

1.18.647.20 FAMILY MEMBER GUARDIANSHIP FILES:

A. Program: office of guardianship

B. Maintenance system: chronological by federal fiscal year, then numerical by unique identification number

C. Description: records concerning the legal assignment of guardianship of an incapacitated adult to a family member for care. Portions of this record are input to the *office of guardianship ward management system*, 1.18.647.26 NMAC. File may include eligibility application (i.e., name, address, social security number, medical history, etc.), intake financial supporting documentation (i.e., tax return, medicaid eligibility status, etc.), court filing copies, court order of assignment copy, correspondence, etc.

D. Retention: 10 years from close of the federal fiscal year in which guardianship is assigned

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to Section 27-7-29 NMSA 1978 Confidentiality of records; penalty, 5 USC Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., medical information) and Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 104th Congress (i.e., health information).

[1.18.647.20 NMAC - N, 12/20/2010]

1.18.647.21 CONTRACTED GUARDIANSHIP FILES:

A. Program: office of guardianship

B. Maintenance system: chronological by federal fiscal year, then numerical by unique identification number

C. Description: records concerning the legal assignment of guardianship of an incapacitated adult to an approved guardian contractor through the office of guardianship. Portions of this record are input to the *office of guardianship ward management system*, 1.18.647.26 NMAC. Files may include eligibility application (i.e., name, address, social security number, medical history, etc.) intake financial supporting documentation (i.e., tax return, medicaid eligibility status, etc.), court filing copies, court order of assignment copies, contract copy periodic evaluations, care assessments, complaint and resolution copies, correspondence, etc.

D. Retention: three years from the close of the federal fiscal year in which assignment is terminated

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to Section 27-7-29 NMSA 1978 Confidentiality of records; penalty, 5 USC Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., medical information) and Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 104th Congress (i.e., health information).

[1.18.647.21 NMAC - N, 12/20/2010]

1.18.647.22 COMPLAINT AND RESOLUTION FILES:

A. Program: office of guardianship

B. Maintenance system: chronological by year, then numerical by unique identification number

C. Description: records documenting complaints filed against either a court appointed contracted guardian or an incapacitated adult. Portions of this record are input to the *office of guardianship ward management system*, 1.18.647.26 NMAC. File may include complaint letter, visitation report, resolution report, correspondence, etc.

D. Retention: five years from date complaint resolved

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to Section 27-7-29 NMSA 1978 Confidentiality of records; penalty, 5 USC Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., medical information), and Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 104th Congress (i.e., health information).
[1.18.647.22 NMAC - N, 12/20/2010]

1.18.647.23 - 1.18.647.25 [RESERVED]

1.18.647.26 OFFICE OF GUARDIANSHIP WARD MANAGEMENT SYSTEM:

A. Program: office of guardianship
B. Maintenance system: numerical by primary key
C. Description: database maintains information concerning the assignment of guardianship to eligible participants and their corresponding guardians. Data may include participant information (i.e., name, address, SSN, medical history, financial eligibility status, etc.), guardian information (i.e., name, address, certification status, etc.), court date, disposition status, complaint data, etc.

D. Retention:
(1) **Family member guardianship data:** 10 years from close of the federal fiscal year in which guardianship is assigned
(2) **Contracted guardianship data:** three years from the close of the federal fiscal year in which assignment is terminated
(3) **Complaint and resolution data:** five years from date complaint resolved

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to Section 27-7-29 NMSA 1978 Confidentiality of records; penalty, 5 USC Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., medical information), and Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 104th Congress (i.e., health information)

F. Input: records used as input to the *office of guardianship ward management system* are filed in the *family member guardianship files*, 1.18.647.20 NMAC, *contracted guardianship files*, 1.18.647.21 NMAC and the *complaint and resolution files*, 1.18.647.22 NMAC.

G. Output: because the *office of guardianship ward management system* is a data-based system, ad hoc and regularly scheduled forms and reports may be generated upon request or demand. When produced these reports are forwarded to the requesting entity.
[1.18.647.26 NMAC - N, 12/20/2010]

HISTORY OF 1.18.647 NMAC: [RESERVED]