

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; ENACTING THE UNIFORM  
GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS  
ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Uniform Guardianship, Conservatorship and Other  
Protective Arrangements Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the  
Uniform Guardianship, Conservatorship and Other Protective  
Arrangements Act:

A. "adult" means an individual at least eighteen  
years of age or an emancipated individual under eighteen years

underscored material = new  
[bracketed material] = delete

1 of age;

2 B. "adult subject to conservatorship" means an  
3 adult for whom a conservator has been appointed under the  
4 Uniform Guardianship, Conservatorship and Other Protective  
5 Arrangements Act;

6 C. "adult subject to guardianship" means an adult  
7 for whom a guardian has been appointed under the Uniform  
8 Guardianship, Conservatorship and Other Protective Arrangements  
9 Act;

10 D. "claim" includes a claim against an individual  
11 or conservatorship estate, whether arising in contract, tort or  
12 otherwise;

13 E. "conservator":

14 (1) means a person appointed by a court to  
15 make decisions with respect to the property or financial  
16 affairs of an individual subject to conservatorship; and

17 (2) includes a co-conservator;

18 F. "conservatorship estate" means the property  
19 subject to conservatorship under the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act;

21 G. "full conservatorship" means a conservatorship  
22 that grants the conservator all powers available to a  
23 conservator under the Uniform Guardianship, Conservatorship and  
24 Other Protective Arrangements Act;

25 H. "full guardianship" means a guardianship that

1 grants the guardian all powers available to a guardian under  
2 the Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act;

4 I. "guardian":

5 (1) means a person appointed by the court to  
6 make decisions with respect to the personal affairs of an  
7 individual;

8 (2) includes a co-guardian; and

9 (3) does not include a guardian ad litem;

10 J. "guardian ad litem" means a person appointed to  
11 inform the court about, and to represent, the needs and best  
12 interest of an individual;

13 K. "individual subject to conservatorship" means an  
14 adult or minor for whom a conservator has been appointed under  
15 the Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act;

17 L. "individual subject to guardianship" means an  
18 adult or minor for whom a guardian has been appointed under the  
19 Uniform Guardianship, Conservatorship and Other Protective  
20 Arrangements Act;

21 M. "less restrictive alternative":

22 (1) means an approach to meeting an  
23 individual's needs that restricts fewer rights of the  
24 individual than would the appointment of a guardian or  
25 conservator; and

underscoring material = new  
~~[bracketed material] = delete~~

1 (2) includes supported decision making,  
2 appropriate technological assistance, appointment of a  
3 representative payee and appointment of an agent by the  
4 individual, including appointment under a power of attorney for  
5 health care or power of attorney for finances;

6 N. "letters of office" means a record issued by a  
7 court certifying a guardian's or conservator's authority to  
8 act;

9 O. "limited conservatorship" means a  
10 conservatorship that grants the conservator less than all  
11 powers available to a conservator under the Uniform  
12 Guardianship, Conservatorship and Other Protective Arrangements  
13 Act, grants powers over only certain property or otherwise  
14 restricts the powers of the conservator;

15 P. "limited guardianship" means a guardianship that  
16 grants the guardian less than all powers available to a  
17 guardian under the Uniform Guardianship, Conservatorship and  
18 Other Protective Arrangements Act or otherwise restricts the  
19 powers of the guardian;

20 Q. "long-term care facility" means a nursing home  
21 licensed by the department of health to provide intermediate or  
22 skilled nursing care;

23 R. "mental health treatment facility" means an  
24 institution, facility or agency licensed, certified or  
25 otherwise authorized or permitted by law to provide mental

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 health treatment in the ordinary course of business;

2 S. "minor" means an unemancipated individual under  
3 eighteen years of age;

4 T. "minor subject to conservatorship" means a minor  
5 for whom a conservator has been appointed under the Uniform  
6 Guardianship, Conservatorship and Other Protective Arrangements  
7 Act;

8 U. "minor subject to guardianship" means a minor  
9 for whom a guardian has been appointed under the Uniform  
10 Guardianship, Conservatorship and Other Protective Arrangements  
11 Act;

12 V. "parent" does not include an individual whose  
13 parental rights have been terminated;

14 W. "person" means an individual; estate; business  
15 or nonprofit entity; public corporation; government;  
16 governmental subdivision, agency or instrumentality; or other  
17 legal entity;

18 X. "power of attorney for finances" includes a  
19 power of attorney signed under the Uniform Power of Attorney  
20 Act;

21 Y. "power of attorney for health care" includes:

22 (1) a record signed under the Uniform Health-  
23 Care Decisions Act; and

24 (2) a record signed under the Mental Health  
25 Care Treatment Decisions Act;

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1           Z. "property" includes tangible and intangible  
2 property;

3           AA. "protective arrangement instead of  
4 conservatorship" means a court order entered under Section 503  
5 of the Uniform Guardianship, Conservatorship and Other  
6 Protective Arrangements Act;

7           BB. "protective arrangement instead of  
8 guardianship" means a court order entered under Section 502 of  
9 the Uniform Guardianship, Conservatorship and Other Protective  
10 Arrangements Act;

11           CC. "protective arrangement under Article 5" means  
12 a court order entered under Section 502 or 503 of the Uniform  
13 Guardianship, Conservatorship and Other Protective Arrangements  
14 Act;

15           DD. "record", used as a noun, means information  
16 that is inscribed on a tangible medium or that is stored in an  
17 electronic or other medium and is retrievable in perceivable  
18 form;

19           EE. "respondent" means an individual for whom  
20 appointment of a guardian or conservator or a protective  
21 arrangement instead of guardianship or conservatorship is  
22 sought;

23           FF. "sign" means, with present intent to  
24 authenticate or adopt a record:

25           (1) to execute or adopt a tangible symbol; or

.208901.3

underscored material = new  
[bracketed material] = delete

1 (2) to attach to or logically associate with  
2 the record an electronic symbol, sound or process;

3 GG. "standby guardian" means a person appointed by  
4 the court under Section 207 of the Uniform Guardianship,  
5 Conservatorship and Other Protective Arrangements Act;

6 HH. "state":

7 (1) means a state of the United States, the  
8 District of Columbia, Puerto Rico, the United States Virgin  
9 Islands or any territory or insular possession subject to the  
10 jurisdiction of the United States; and

11 (2) includes an Indian tribe, nation, pueblo  
12 or band located within the United States and recognized by  
13 federal law or formally acknowledged by a state of the United  
14 States; and

15 II. "supported decision making" means assistance:

16 (1) from one or more persons of an  
17 individual's choosing;

18 (2) in understanding the nature and  
19 consequences of potential personal and financial decisions;

20 (3) that enables the individual to make the  
21 decisions; and

22 (4) in communicating a decision once made when  
23 consistent with the individual's wishes.

24 SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF  
25 LAW AND EQUITY APPLICABLE.--Unless displaced by a particular

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 provision of the Uniform Guardianship, Conservatorship and  
2 Other Protective Arrangements Act, the principles of law and  
3 equity supplement that act's provisions.

4 SECTION 104. [NEW MATERIAL] SUBJECT-MATTER  
5 JURISDICTION.--

6 A. Except to the extent jurisdiction is precluded  
7 by the Uniform Child-Custody Jurisdiction and Enforcement Act,  
8 the district court has jurisdiction over a guardianship for a  
9 minor domiciled or present in New Mexico. The court has  
10 jurisdiction over a conservatorship or protective arrangement  
11 instead of conservatorship for a minor domiciled or having  
12 property in New Mexico.

13 B. The district court has jurisdiction over a  
14 guardianship, conservatorship or protective arrangement under  
15 Article 5 of the Uniform Guardianship, Conservatorship and  
16 Other Protective Arrangements Act for an adult as provided in  
17 the Uniform Adult Guardianship and Protective Proceedings  
18 Jurisdiction Act.

19 C. After notice is given in a proceeding for a  
20 guardianship, conservatorship or protective arrangement under  
21 Article 5 of the Uniform Guardianship, Conservatorship and  
22 Other Protective Arrangements Act and until termination of the  
23 proceeding, the court in which the petition is filed has:

- 24 (1) exclusive jurisdiction to determine the  
25 need for the guardianship, conservatorship or protective



underscored material = new  
[bracketed material] = delete

1 arrangement;

2 (2) exclusive jurisdiction to determine how  
3 property of the respondent must be managed, expended or  
4 distributed to or for the use of the respondent, an individual  
5 who is dependent in fact on the respondent or another claimant;

6 (3) nonexclusive jurisdiction to determine the  
7 validity of a claim against the respondent or property of the  
8 respondent or a question of title concerning the property; and

9 (4) if a guardian or conservator is appointed,  
10 exclusive jurisdiction over issues related to administration of  
11 the guardianship or conservatorship.

12 D. A court that appoints a guardian or conservator,  
13 or authorizes a protective arrangement under Article 5 of the  
14 Uniform Guardianship, Conservatorship and Other Protective  
15 Arrangements Act, has exclusive and continuing jurisdiction  
16 over the proceeding until the court terminates the proceeding  
17 or the appointment or protective arrangement expires by its  
18 terms.

19 SECTION 105. [NEW MATERIAL] TRANSFER OF PROCEEDING.--

20 A. This section does not apply to a guardianship or  
21 conservatorship for an adult that is subject to the transfer  
22 provisions of Article 3 of the Uniform Adult Guardianship and  
23 Protective Proceedings Jurisdiction Act.

24 B. After appointment of a guardian or conservator,  
25 the court that made the appointment may transfer the proceeding

underscoring material = new  
~~[bracketed material] = delete~~

1 to a court in another county in New Mexico or another state if  
2 transfer is in the best interest of the individual subject to  
3 the guardianship or conservatorship.

4 C. If a proceeding for a guardianship or  
5 conservatorship is pending in another state or a foreign  
6 country and a petition for guardianship or conservatorship for  
7 the same individual is filed in a court in New Mexico, the  
8 court shall notify the court in the other state or foreign  
9 country and, after consultation with that court, assume or  
10 decline jurisdiction, whichever is in the best interest of the  
11 respondent.

12 D. A guardian or conservator appointed in another  
13 state or country may petition the court for appointment as a  
14 guardian or conservator in New Mexico for the same individual  
15 if jurisdiction in New Mexico is or will be established. The  
16 appointment may be made on proof of appointment in the other  
17 state or foreign country and presentation of a certified copy  
18 of the part of the court record in the other state or country  
19 specified by the court in New Mexico.

20 E. Notice of hearing on a petition under Subsection  
21 D of this section, together with a copy of the petition, shall  
22 be given to the respondent, if the respondent is at least  
23 twelve years of age at the time of the hearing, and to the  
24 persons that would be entitled to notice if the procedures for  
25 appointment of a guardian or conservator under the Uniform

underscored material = new  
[bracketed material] = delete

1 Guardianship, Conservatorship and Other Protective Arrangements  
2 Act were applicable. The court shall make the appointment  
3 unless it determines the appointment would not be in the best  
4 interest of the respondent.

5 F. Not later than fourteen days after appointment  
6 under Subsection E of this section, the guardian or conservator  
7 shall give a copy of the order of appointment to the individual  
8 subject to guardianship or conservatorship, if the individual  
9 is at least twelve years of age, and to all persons given  
10 notice of the hearing on the petition.

11 SECTION 106. [NEW MATERIAL] VENUE.--

12 A. Venue for a guardianship proceeding for a minor  
13 is in:

14 (1) the county in which the minor resides or  
15 is present at the time the proceeding commences; or

16 (2) the county in which another proceeding  
17 concerning the custody or parental rights of the minor is  
18 pending.

19 B. Venue for a guardianship proceeding or  
20 protective arrangement instead of guardianship for an adult is  
21 in:

22 (1) the county in which the respondent  
23 resides;

24 (2) if the respondent has been admitted to an  
25 institution by court order, the county in which the court is

underscored material = new  
[bracketed material] = delete

1 located; or

2 (3) if the proceeding is for appointment of an  
3 emergency guardian for an adult, the county in which the  
4 respondent is present.

5 C. Venue for a conservatorship proceeding or  
6 protective arrangement instead of conservatorship is in:

7 (1) the county in which the respondent  
8 resides, whether or not a guardian has been appointed in  
9 another county or other jurisdiction; or

10 (2) if the respondent does not reside in New  
11 Mexico, in any county in which property of the respondent is  
12 located.

13 D. If proceedings under the Uniform Guardianship,  
14 Conservatorship and Other Protective Arrangements Act are  
15 brought in more than one county, the court of the county in  
16 which the first proceeding is brought has the exclusive right  
17 to proceed unless the court determines venue is properly in  
18 another court or the interest of justice otherwise requires  
19 transfer of the proceeding.

20 SECTION 107. [NEW MATERIAL] PRACTICE IN COURT.--

21 A. Except as otherwise provided in the Uniform  
22 Guardianship, Conservatorship and Other Protective Arrangements  
23 Act or the Uniform Probate Code, the New Mexico Rules of  
24 Evidence, Rules of Civil Procedure for the District Courts and  
25 Rules of Appellate Procedure govern a proceeding under the

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 Uniform Guardianship, Conservatorship and Other Protective  
2 Arrangements Act and appellate review of the proceeding.

3 B. If proceedings for a guardianship,  
4 conservatorship or protective arrangement under Article 5 of  
5 the Uniform Guardianship, Conservatorship and Other Protective  
6 Arrangements Act for the same individual are commenced or  
7 pending in the same court, the proceedings may be consolidated.

8 C. A respondent may demand a jury trial in a  
9 proceeding under the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act on the issue of whether a  
11 basis exists for appointment of a guardian or conservator.

12 SECTION 108. [NEW MATERIAL] LETTERS OF OFFICE.--

13 A. The court shall issue letters of office to a  
14 guardian on filing by the guardian of an acceptance of  
15 appointment.

16 B. The court shall issue letters of office to a  
17 conservator on filing by the conservator of an acceptance of  
18 appointment and filing of any required bond or compliance with  
19 any other asset-protection arrangement required by the court.

20 C. Limitations on the powers of a guardian or  
21 conservator or on the property subject to conservatorship shall  
22 be stated on the letters of office.

23 D. The court at any time may limit the powers  
24 conferred on a guardian or conservator. The court shall issue  
25 new letters of office to reflect the limitation. The court

.208901.3

underscored material = new  
[bracketed material] = delete

1 shall give notice of the limitation to the guardian or  
2 conservator, individual subject to guardianship or  
3 conservatorship, each parent of a minor subject to guardianship  
4 or conservatorship and any other person the court determines.

5 SECTION 109. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF  
6 APPOINTMENT.--On acceptance of appointment, a guardian or  
7 conservator submits to personal jurisdiction of the court in  
8 New Mexico in any proceeding relating to the guardianship or  
9 conservatorship.

10 SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-  
11 CONSERVATOR.--

12 A. The court at any time may appoint a co-guardian  
13 or co-conservator to serve immediately or when a designated  
14 event occurs.

15 B. A co-guardian or co-conservator appointed to  
16 serve immediately may act when that co-guardian or  
17 co-conservator complies with Section 108 of the Uniform  
18 Guardianship, Conservatorship and Other Protective Arrangements  
19 Act.

20 C. A co-guardian or co-conservator appointed to  
21 serve when a designated event occurs may act when:

22 (1) the event occurs; and

23 (2) that co-guardian or co-conservator  
24 complies with Section 108 of the Uniform Guardianship,  
25 Conservatorship and Other Protective Arrangements Act.

.208901.3

underscored material = new  
[bracketed material] = delete

1 D. Unless an order of appointment under Subsection  
2 A of this section or subsequent order states otherwise,  
3 co-guardians or co-conservators shall make decisions jointly.

4 SECTION 111. [NEW MATERIAL] JUDICIAL APPOINTMENT OF  
5 SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.--

6 A. The court at any time may appoint a successor  
7 guardian or successor conservator to serve immediately or when  
8 a designated event occurs.

9 B. A person entitled under Section 202 or 302 of  
10 the Uniform Guardianship, Conservatorship and Other Protective  
11 Arrangements Act to petition the court to appoint a guardian  
12 may petition the court to appoint a successor guardian. A  
13 person entitled under Section 402 of that act to petition the  
14 court to appoint a conservator may petition the court to  
15 appoint a successor conservator.

16 C. A successor guardian or successor conservator  
17 appointed to serve when a designated event occurs may act as  
18 guardian or conservator when:

- 19 (1) the event occurs; and
  - 20 (2) the successor complies with Section 108 of
- 21 the Uniform Guardianship, Conservatorship and Other Protective  
22 Arrangements Act.

23 D. A successor guardian or successor conservator  
24 has the predecessor's powers unless otherwise provided by the  
25 court.

underscored material = new  
[bracketed material] = delete

1           SECTION 112. [NEW MATERIAL] EFFECT OF DEATH, REMOVAL OR  
2 RESIGNATION OF GUARDIAN OR CONSERVATOR.--

3           A. Appointment of a guardian or conservator  
4 terminates on the death or removal of the guardian or  
5 conservator or when the court under Subsection B of this  
6 section approves a resignation of the guardian or conservator.

7           B. To resign, a guardian or conservator shall  
8 petition the court. The petition may include a request that  
9 the court appoint a successor. Resignation of a guardian or  
10 conservator is effective on the date the resignation is  
11 approved by the court.

12           C. Death, removal or resignation of a guardian or  
13 conservator does not affect liability for a previous act or the  
14 obligation to account for:

- 15                   (1) an action taken on behalf of the
- 16 individual subject to guardianship or conservatorship; or
- 17                   (2) the individual's funds or other property.

18           SECTION 113. [NEW MATERIAL] NOTICE OF HEARING  
19 GENERALLY.--

20           A. Except as otherwise provided in Sections 203,  
21 207, 303, 403 and 505 of the Uniform Guardianship,  
22 Conservatorship and Other Protective Arrangements Act, if  
23 notice of a hearing under that act is required, the movant  
24 shall give notice of the date, time and place of the hearing to  
25 the person to be notified unless otherwise ordered by the court

.208901.3



underscored material = new  
[bracketed material] = delete

1 for good cause. Except as otherwise provided in that act,  
2 notice shall be given as provided in Section 45-1-401 NMSA 1978  
3 at least fourteen days before the hearing.

4 B. Proof of notice of a hearing under the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act shall be made before or at the hearing and filed in the  
7 proceeding.

8 C. Notice of a hearing under the Uniform  
9 Guardianship, Conservatorship and Other Protective Arrangements  
10 Act shall be in at least sixteen-point font, in plain language  
11 and, to the extent feasible, in a language in which the person  
12 to be notified is proficient.

13 SECTION 114. [NEW MATERIAL] WAIVER OF NOTICE.--

14 A. Except as otherwise provided in Subsection B of  
15 this section, a person may waive notice under the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act in a record signed by the person or person's attorney and  
18 filed in the proceeding.

19 B. A respondent, individual subject to  
20 guardianship, individual subject to conservatorship or  
21 individual subject to a protective arrangement under Article 5  
22 of the Uniform Guardianship, Conservatorship and Other  
23 Protective Arrangements Act shall not waive notice under that  
24 act.

25 SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 at any time may appoint a guardian ad litem for an individual  
2 if the court determines the individual's interest otherwise  
3 would not be adequately represented. If no conflict of  
4 interest exists, a guardian ad litem may be appointed to  
5 represent multiple individuals or interests. The guardian ad  
6 litem shall not be the same individual as the attorney  
7 representing the respondent. The court shall state the duties  
8 of the guardian ad litem and the reasons for the appointment.

9 SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--

10 A. A person may file with the court a request for  
11 notice under the Uniform Guardianship, Conservatorship and  
12 Other Protective Arrangements Act if the person is:

- 13 (1) not otherwise entitled to notice; and  
14 (2) interested in the welfare of a respondent,  
15 individual subject to guardianship or conservatorship or  
16 individual subject to a protective arrangement under Article 5  
17 of that act.

18 B. A request under Subsection A of this section  
19 shall include a statement showing the interest of the person  
20 making the request and the address of the person or an attorney  
21 for the person to whom notice is to be given.

22 C. If the court approves a request under Subsection  
23 A of this section, the court shall give notice of the approval  
24 to the guardian or conservator, if one has been appointed, or  
25 the respondent if no guardian or conservator has been

.208901.3

underscored material = new  
[bracketed material] = delete

1 appointed.

2 SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR  
3 CRIMINAL HISTORY.--

4 A. Before accepting appointment as a guardian or  
5 conservator, a person shall disclose to the court whether the  
6 person:

7 (1) is or has been a debtor in a bankruptcy,  
8 insolvency or receivership proceeding; or

9 (2) has been convicted of:

10 (a) a felony;

11 (b) a crime involving dishonesty,  
12 neglect, violence or the use of physical force; or

13 (c) another crime relevant to the  
14 functions the individual would assume as guardian or  
15 conservator.

16 B. A guardian or conservator that engages or  
17 anticipates engaging an agent the guardian or conservator knows  
18 has been convicted of a felony, a crime involving dishonesty,  
19 neglect, violence or the use of physical force or another crime  
20 relevant to the functions the agent is being engaged to perform  
21 promptly shall disclose that knowledge to the court.

22 C. If a conservator engages or anticipates engaging  
23 an agent to manage finances of the individual subject to  
24 conservatorship and knows the agent is or has been a debtor in  
25 a bankruptcy, insolvency or receivership proceeding, the

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 conservator promptly shall disclose that knowledge to the  
2 court.

3 SECTION 118. [NEW MATERIAL] MULTIPLE NOMINATIONS.--If a  
4 respondent or other person makes more than one nomination of a  
5 guardian or conservator, the latest in time governs.

6 SECTION 119. [NEW MATERIAL] COMPENSATION AND EXPENSES--IN  
7 GENERAL.--

8 A. Unless otherwise compensated or reimbursed, an  
9 attorney for a respondent in a proceeding under the Uniform  
10 Guardianship, Conservatorship and Other Protective Arrangements  
11 Act is entitled to reasonable compensation for services and  
12 reimbursement of reasonable expenses from the property of the  
13 respondent.

14 B. Unless otherwise compensated or reimbursed, an  
15 attorney or other person whose services resulted in an order  
16 beneficial to an individual subject to guardianship or  
17 conservatorship or for whom a protective arrangement under  
18 Article 5 of the Uniform Guardianship, Conservatorship and  
19 Other Protective Arrangements Act was ordered is entitled to  
20 reasonable compensation for services and reimbursement of  
21 reasonable expenses from the property of the individual.

22 C. The court shall approve compensation and  
23 expenses payable under this section before payment. Approval  
24 is not required before a service is provided or an expense is  
25 incurred.

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1           D. If the court dismisses a petition under the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act and determines the petition was filed in bad  
4 faith, the court may assess the cost of any court-ordered  
5 professional evaluation or visitor against the petitioner.

6           SECTION 120. [NEW MATERIAL] COMPENSATION OF GUARDIAN OR  
7 CONSERVATOR.--

8           A. Subject to court approval, a guardian is  
9 entitled to reasonable compensation for services as guardian  
10 and to reimbursement for room, board, clothing and other  
11 appropriate expenses advanced for the benefit of the individual  
12 subject to guardianship. If a conservator, other than the  
13 guardian or a person affiliated with the guardian, is appointed  
14 for the individual, reasonable compensation and reimbursement  
15 to the guardian may be approved and paid by the conservator  
16 without court approval.

17           B. Subject to court approval, a conservator is  
18 entitled to reasonable compensation for services and  
19 reimbursement for appropriate expenses from the property of the  
20 individual subject to conservatorship.

21           C. In determining reasonable compensation for a  
22 guardian or conservator, the court, or a conservator in  
23 determining reasonable compensation for a guardian as provided  
24 in Subsection A of this section, shall consider:

25                   (1) the necessity and quality of the services

1 provided;

2 (2) the experience, training, professional  
3 standing and skills of the guardian or conservator;

4 (3) the difficulty of the services performed,  
5 including the degree of skill and care required;

6 (4) the conditions and circumstances under  
7 which a service was performed, including whether the service  
8 was provided outside regular business hours or under dangerous  
9 or extraordinary conditions;

10 (5) the effect of the services on the  
11 individual subject to guardianship or conservatorship;

12 (6) the extent to which the services provided  
13 were or were not consistent with the guardian's plan under  
14 Section 316 of the Uniform Guardianship, Conservatorship and  
15 Other Protective Arrangements Act or conservator's plan under  
16 Section 419 of that act; and

17 (7) the fees customarily paid to a person that  
18 performs a like service in the community.

19 D. A guardian or conservator need not use personal  
20 funds of the guardian or conservator for the expenses of the  
21 individual subject to guardianship or conservatorship.

22 E. If an individual subject to guardianship or  
23 conservatorship seeks to modify or terminate the guardianship  
24 or conservatorship or remove the guardian or conservator, the  
25 court may order compensation to the guardian or conservator for

.208901.3

underscored material = new  
[bracketed material] = delete

1 time spent opposing modification, termination or removal only  
2 to the extent the court determines the opposition was  
3 reasonably necessary to protect the interest of the individual  
4 subject to guardianship or conservatorship.

5 SECTION 121. [NEW MATERIAL] LIABILITY OF GUARDIAN OR  
6 CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR  
7 CONSERVATORSHIP.--A guardian or conservator is not personally  
8 liable to another person solely because of the guardianship or  
9 conservatorship for an act or omission of the individual  
10 subject to guardianship or conservatorship.

11 SECTION 122. [NEW MATERIAL] PETITION AFTER APPOINTMENT  
12 FOR INSTRUCTION OR RATIFICATION.--

13 A. A guardian or conservator may petition the court  
14 for instruction concerning fiduciary responsibility or  
15 ratification of a particular act related to the guardianship or  
16 conservatorship.

17 B. On notice and hearing on a petition under  
18 Subsection A of this section, the court may give an instruction  
19 and issue an order.

20 SECTION 123. [NEW MATERIAL] THIRD-PARTY ACCEPTANCE OF  
21 AUTHORITY OF GUARDIAN OR CONSERVATOR.--

22 A. A person shall not recognize the authority of a  
23 guardian or conservator to act on behalf of an individual  
24 subject to guardianship or conservatorship if:

25 (1) the person has actual knowledge or a

1 reasonable belief that the letters of office of the guardian or  
2 conservator are invalid or the conservator or guardian is  
3 exceeding or improperly exercising authority granted by the  
4 court; or

5 (2) the person has actual knowledge that the  
6 individual subject to guardianship or conservatorship is  
7 subject to physical or financial abuse, neglect, exploitation  
8 or abandonment by the guardian or conservator or a person  
9 acting for or with the guardian or conservator.

10 B. A person may refuse to recognize the authority  
11 of a guardian or conservator to act on behalf of an individual  
12 subject to guardianship or conservatorship if:

13 (1) the guardian's or conservator's proposed  
14 action would be inconsistent with the Uniform Guardianship,  
15 Conservatorship and Other Protective Arrangements Act; or

16 (2) the person makes, or has actual knowledge  
17 that another person has made, a report to the children, youth  
18 and families department or the aging and long-term services  
19 department stating a good-faith belief that the individual  
20 subject to guardianship or conservatorship is subject to  
21 physical or financial abuse, neglect, exploitation or  
22 abandonment by the guardian or conservator or a person acting  
23 for or with the guardian or conservator.

24 C. A person that refuses to accept the authority of  
25 a guardian or conservator in accordance with Subsection B of

.208901.3



underscored material = new  
[bracketed material] = delete

1 this section may report the refusal and the reason for refusal  
2 to the court. The court on receiving the report shall consider  
3 whether removal of the guardian or conservator or other action  
4 is appropriate.

5 D. A guardian or conservator may petition the court  
6 to require a third party to accept a decision made by the  
7 guardian or conservator on behalf of the individual subject to  
8 guardianship or conservatorship.

9 SECTION 124. [NEW MATERIAL] USE OF AGENT BY GUARDIAN OR  
10 CONSERVATOR.--

11 A. Except as otherwise provided in Subsection C of  
12 this section, a guardian or conservator may delegate a power to  
13 an agent that a prudent guardian or conservator of comparable  
14 skills could delegate prudently under the circumstances if the  
15 delegation is consistent with the guardian's or conservator's  
16 fiduciary duties and the guardian's plan under Section 316 of  
17 the Uniform Guardianship, Conservatorship and Other Protective  
18 Arrangements Act or the conservator's plan under Section 419 of  
19 that act.

20 B. In delegating a power under Subsection A of this  
21 section, the guardian or conservator shall exercise reasonable  
22 care, skill and caution in:

- 23 (1) selecting the agent;  
24 (2) establishing the scope and terms of the  
25 agent's work in accordance with the guardian's plan under

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 Section 316 of the Uniform Guardianship, Conservatorship and  
2 Other Protective Arrangements Act or conservator's plan under  
3 Section 419 of that act;

4 (3) monitoring the agent's performance and  
5 compliance with the delegation; and

6 (4) redressing an act or omission of the agent  
7 that would constitute a breach of the guardian's or  
8 conservator's duties if done by the guardian or conservator.

9 C. A guardian or conservator shall not delegate all  
10 powers to an agent.

11 D. In performing a power delegated under this  
12 section, an agent shall:

13 (1) exercise reasonable care to comply with  
14 the terms of the delegation and use reasonable care in the  
15 performance of the power; and

16 (2) if the guardian or conservator has  
17 delegated to the agent the power to make a decision on behalf  
18 of the individual subject to guardianship or conservatorship,  
19 use the same decision-making standard the guardian or  
20 conservator would be required to use.

21 E. By accepting a delegation of a power under  
22 Subsection A of this section from a guardian or conservator, an  
23 agent submits to the personal jurisdiction of the courts of New  
24 Mexico in an action involving the agent's performance as agent.

25 F. A guardian or conservator that delegates and

underscoring material = new  
~~[bracketed material] = delete~~

1 monitors a power in compliance with this section is not liable  
2 for the decision, act or omission of the agent.

3 SECTION 125. [NEW MATERIAL] TEMPORARY SUBSTITUTE GUARDIAN  
4 OR CONSERVATOR.--

5 A. The court may appoint a temporary substitute  
6 guardian for an individual subject to guardianship for a period  
7 not exceeding six months if:

8 (1) a proceeding to remove a guardian for the  
9 individual is pending; or

10 (2) the court finds a guardian is not  
11 effectively performing the guardian's duties and the welfare of  
12 the individual requires immediate action.

13 B. The court may appoint a temporary substitute  
14 conservator for an individual subject to conservatorship for a  
15 period not exceeding six months if:

16 (1) a proceeding to remove a conservator for  
17 the individual is pending; or

18 (2) the court finds that a conservator for the  
19 individual is not effectively performing the conservator's  
20 duties and the welfare of the individual or the conservatorship  
21 estate requires immediate action.

22 C. Except as otherwise ordered by the court, a  
23 temporary substitute guardian or temporary substitute  
24 conservator appointed under this section has the powers stated  
25 in the order of appointment of the guardian or conservator.

underscored material = new  
[bracketed material] = delete

1 The authority of the existing guardian or conservator is  
2 suspended for as long as the temporary substitute guardian or  
3 conservator has authority.

4 D. The court shall give notice of appointment of a  
5 temporary substitute guardian or temporary substitute  
6 conservator, not later than five days after the appointment,  
7 to:

8 (1) the individual subject to guardianship or  
9 conservatorship;

10 (2) the affected guardian or conservator; and

11 (3) in the case of a minor, each parent of the  
12 minor and any person currently having care or custody of the  
13 minor.

14 E. The court may remove a temporary substitute  
15 guardian or temporary substitute conservator at any time. The  
16 temporary substitute guardian or temporary substitute  
17 conservator shall make any report the court requires.

18 SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER--  
19 EFFECT.--

20 A. If a guardian has been appointed in another  
21 state for an individual and a petition for guardianship for the  
22 individual is not pending in New Mexico, the guardian appointed  
23 in the other state, after giving notice to the appointing  
24 court, may register the guardianship order in New Mexico by  
25 filing as a foreign judgment, in a court of an appropriate

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 county of New Mexico, certified copies of the order and letters  
2 of office.

3 B. If a conservator has been appointed in another  
4 state for an individual and a petition for conservatorship for  
5 the individual is not pending in New Mexico, the conservator  
6 appointed for the individual in the other state, after giving  
7 notice to the appointing court, may register the  
8 conservatorship in New Mexico by filing as a foreign judgment,  
9 in a court of a county in which property belonging to the  
10 individual subject to conservatorship is located, certified  
11 copies of the order of conservatorship, letters of office and  
12 any bond or other asset-protection arrangement required by the  
13 court.

14 C. On registration under this section of a  
15 guardianship or conservatorship order from another state, the  
16 guardian or conservator may exercise in New Mexico all powers  
17 authorized in the order except as prohibited by the Uniform  
18 Guardianship, Conservatorship and Other Protective Arrangements  
19 Act or other law of New Mexico. If the guardian or conservator  
20 is not a resident of New Mexico, the guardian or conservator  
21 may maintain an action or proceeding in New Mexico subject to  
22 any condition imposed by New Mexico on an action or proceeding  
23 by a nonresident party.

24 D. The court may grant any relief available under  
25 the Uniform Guardianship, Conservatorship and Other Protective

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 Arrangements Act or other law of New Mexico to enforce an order  
2 registered under this section.

3 SECTION 127. [NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR  
4 CONSERVATOR.--

5 A. An individual who is subject to guardianship or  
6 conservatorship, or a person interested in the welfare of an  
7 individual subject to guardianship or conservatorship, that  
8 reasonably believes the guardian or conservator is breaching  
9 the guardian's or conservator's fiduciary duty or otherwise  
10 acting in a manner inconsistent with the Uniform Guardianship,  
11 Conservatorship and Other Protective Arrangements Act may file  
12 a grievance in a record with the court.

13 B. Subject to Subsection C of this section, after  
14 receiving a grievance under Subsection A of this section, the  
15 court:

16 (1) shall review the grievance and, if  
17 necessary to determine the appropriate response, court records  
18 related to the guardianship or conservatorship;

19 (2) shall schedule a hearing if the individual  
20 subject to guardianship or conservatorship is an adult and the  
21 grievance supports a reasonable belief that:

22 (a) removal of the guardian and  
23 appointment of a successor may be appropriate under Section 318  
24 of the Uniform Guardianship, Conservatorship and Other  
25 Protective Arrangements Act;

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 (b) termination or modification of the  
2 guardianship may be appropriate under Section 319 of the  
3 Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act;

5 (c) removal of the conservator and  
6 appointment of a successor may be appropriate under Section 430  
7 of the Uniform Guardianship, Conservatorship and Other  
8 Protective Arrangements Act; or

9 (d) termination or modification of the  
10 conservatorship may be appropriate under Section 431 of the  
11 Uniform Guardianship, Conservatorship and Other Protective  
12 Arrangements Act; and

13 (3) may take any action supported by the  
14 evidence, including:

15 (a) ordering the guardian or conservator  
16 to provide the court a report, accounting, inventory, updated  
17 plan or other information;

18 (b) appointing a guardian ad litem;

19 (c) appointing an attorney for the  
20 individual subject to guardianship or conservatorship; or

21 (d) holding a hearing.

22 C. The court may decline to act under Subsection B  
23 of this section if a similar grievance was filed within the six  
24 months preceding the filing of the current grievance and the  
25 court followed the procedures of that subsection in considering

.208901.3

underscored material = new  
[bracketed material] = delete

1 the earlier grievance.

2 SECTION 128. [NEW MATERIAL] DELEGATION BY PARENT.--Unless  
3 otherwise provided by law, a parent of a minor, by a power of  
4 attorney, may delegate to another person for a period not  
5 exceeding six months any of the parent's powers regarding care,  
6 custody or property of the minor, other than power to consent  
7 to marriage or adoption.

8 ARTICLE 2

9 GUARDIANSHIP OF MINOR

10 SECTION 201. [NEW MATERIAL] BASIS FOR APPOINTMENT OF  
11 GUARDIAN FOR MINOR.--

12 A. A person becomes a guardian for a minor only on  
13 appointment by the court.

14 B. The court may appoint a guardian for a minor who  
15 does not have a guardian if the court finds the appointment is  
16 in the minor's best interest and:

17 (1) each parent of the minor, after being  
18 fully informed of the nature and consequences of guardianship,  
19 consents;

20 (2) all parental rights have been terminated;  
21 or

22 (3) there is clear and convincing evidence  
23 that no parent of the minor is willing or able to exercise the  
24 powers the court is granting the guardian.

25 SECTION 202. [NEW MATERIAL] PETITION FOR APPOINTMENT OF



underscoring material = new  
~~[bracketed material] = delete~~

1 GUARDIAN FOR MINOR.--

2 A. A person interested in the welfare of a minor,  
3 including the minor, may petition for appointment of a guardian  
4 for the minor.

5 B. A petition under Subsection A of this section  
6 shall state the petitioner's name, principal residence, current  
7 street address, if different, relationship to the minor,  
8 interest in the appointment, the name and address of any  
9 attorney representing the petitioner and, to the extent known,  
10 the following:

11 (1) the minor's name, age, principal  
12 residence, current street address, if different, and, if  
13 different, address of the dwelling in which it is proposed the  
14 minor will reside if the appointment is made;

15 (2) the name and current street address of the  
16 minor's parents;

17 (3) the name and address, if known, of each  
18 person that had primary care or custody of the minor for at  
19 least sixty days during the two years immediately before the  
20 filing of the petition or for at least seven hundred thirty  
21 days during the five years immediately before the filing of the  
22 petition;

23 (4) the name and address of any attorney for  
24 the minor and any attorney for each parent of the minor;

25 (5) the reason guardianship is sought and

.208901.3

underscored material = new  
[bracketed material] = delete

1 would be in the best interest of the minor;

2 (6) the name and address of any proposed  
3 guardian and the reason the proposed guardian should be  
4 selected;

5 (7) if the minor has property other than  
6 personal effects, a general statement of the minor's property  
7 with an estimate of its value;

8 (8) whether the minor needs an interpreter,  
9 translator or other form of support to communicate effectively  
10 with the court or understand court proceedings;

11 (9) whether any parent of the minor needs an  
12 interpreter, translator or other form of support to communicate  
13 effectively with the court or understand court proceedings; and

14 (10) whether any other proceeding concerning  
15 the care or custody of the minor is pending in any court in New  
16 Mexico or another jurisdiction.

17 SECTION 203. [NEW MATERIAL] NOTICE OF HEARING FOR  
18 APPOINTMENT OF GUARDIAN FOR MINOR.--

19 A. If a petition is filed under Section 202 of the  
20 Uniform Guardianship, Conservatorship and Other Protective  
21 Arrangements Act, the court shall schedule a hearing and the  
22 petitioner shall:

23 (1) serve notice of the date, time and place  
24 of the hearing, together with a copy of the petition,  
25 personally on each of the following that is not the petitioner:

.208901.3

1 (a) the minor, if the minor will be  
2 twelve years of age or older at the time of the hearing;

3 (b) each parent of the minor or, if  
4 there is none, the adult nearest in kinship who can be found  
5 with reasonable diligence;

6 (c) any adult with whom the minor  
7 resides;

8 (d) each person that had primary care or  
9 custody of the minor for at least sixty days during the two  
10 years immediately before the filing of the petition or for at  
11 least seven hundred thirty days during the five years  
12 immediately before the filing of the petition; and

13 (e) any other person the court  
14 determines should receive personal service of notice; and

15 (2) give notice under Section 113 of the  
16 Uniform Guardianship, Conservatorship and Other Protective  
17 Arrangements Act of the date, time and place of the hearing,  
18 together with a copy of the petition, to:

19 (a) any person nominated as guardian by  
20 the minor, if the minor is twelve years of age or older;

21 (b) any nominee of a parent;

22 (c) each grandparent and adult sibling  
23 of the minor;

24 (d) any guardian or conservator acting  
25 for the minor in any jurisdiction; and

underscoring material = new  
~~[bracketed material] = delete~~

1 (e) any other person the court  
2 determines.

3 B. Notice required by Subsection A of this section  
4 shall include a statement of the right to request appointment  
5 of an attorney for the minor or object to appointment of a  
6 guardian and a description of the nature, purpose and  
7 consequences of appointment of a guardian.

8 C. The court shall not grant a petition for  
9 guardianship of a minor if notice substantially complying with  
10 Paragraph (1) of Subsection A of this section is not served on:

11 (1) the minor, if the minor is twelve years of  
12 age or older; and

13 (2) each parent of the minor, unless the court  
14 finds by clear and convincing evidence that the parent cannot  
15 with due diligence be located and served or the parent waived,  
16 in a record, the right to notice.

17 D. If a petitioner is unable to serve notice under  
18 Paragraph (1) of Subsection A of this section on a parent of a  
19 minor or alleges that the parent waived, in a record, the right  
20 to notice under this section, the court shall appoint a visitor  
21 who shall:

22 (1) interview the petitioner and the minor;

23 (2) if the petitioner alleges the parent  
24 cannot be located, ascertain whether the parent cannot be  
25 located with due diligence; and

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (3) investigate any other matter relating to  
2 the petition the court directs.

3 SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR  
4 PARENT.--

5 A. The court shall appoint an attorney to represent  
6 a minor who is the subject of a proceeding under Section 202 of  
7 the Uniform Guardianship, Conservatorship and Other Protective  
8 Arrangements Act if:

9 (1) requested by the minor and the minor is  
10 twelve years of age or older;

11 (2) recommended by a guardian ad litem; or

12 (3) the court determines the minor needs  
13 representation.

14 B. An attorney appointed under Subsection A of this  
15 section shall:

16 (1) make a reasonable effort to ascertain the  
17 minor's wishes;

18 (2) advocate for the minor's wishes to the  
19 extent reasonably ascertainable; and

20 (3) if the minor's wishes are not reasonably  
21 ascertainable, advocate for the minor's best interest.

22 C. A minor who is the subject of a proceeding under  
23 Section 202 of the Uniform Guardianship, Conservatorship and  
24 Other Protective Arrangements Act may retain an attorney to  
25 represent the minor in the proceeding.

underscored material = new  
[bracketed material] = delete

1 D. A parent of a minor who is the subject of a  
2 proceeding under Section 202 of the Uniform Guardianship,  
3 Conservatorship and Other Protective Arrangements Act may  
4 retain an attorney to represent the parent in the proceeding.

5 SECTION 205. [NEW MATERIAL] ATTENDANCE AND PARTICIPATION  
6 AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

7 A. The court shall require a minor who is the  
8 subject of a hearing under Section 203 of the Uniform  
9 Guardianship, Conservatorship and Other Protective Arrangements  
10 Act to attend the hearing and allow the minor to participate in  
11 the hearing unless the court determines, by clear and  
12 convincing evidence presented at the hearing or a separate  
13 hearing, that:

14 (1) the minor consistently and repeatedly  
15 refused to attend the hearing after being fully informed of the  
16 right to attend and, if the minor is twelve years of age or  
17 older, the potential consequences of failing to do so;

18 (2) there is no practicable way for the minor  
19 to attend the hearing;

20 (3) the minor lacks the ability or maturity to  
21 participate meaningfully in the hearing; or

22 (4) attendance would be harmful to the minor.

23 B. Unless excused by the court for good cause, the  
24 person proposed to be appointed as guardian for a minor shall  
25 attend a hearing under Section 203 of the Uniform Guardianship,

underscored material = new  
[bracketed material] = delete

1 Conservatorship and Other Protective Arrangements Act.

2 C. Each parent of a minor who is the subject of a  
3 hearing under Section 203 of the Uniform Guardianship,  
4 Conservatorship and Other Protective Arrangements Act has the  
5 right to attend the hearing.

6 D. A person may request permission to participate  
7 in a hearing under Section 203 of the Uniform Guardianship,  
8 Conservatorship and Other Protective Arrangements Act. The  
9 court may grant the request, with or without hearing, on  
10 determining that it is in the best interest of the minor who is  
11 the subject of the hearing. The court may impose appropriate  
12 conditions on the person's participation.

13 SECTION 206. [NEW MATERIAL] ORDER OF APPOINTMENT--  
14 PRIORITY OF NOMINEE--LIMITED GUARDIANSHIP FOR MINOR.--

15 A. After a hearing under Section 203 of the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act, the court may appoint a guardian for a minor, if  
18 appointment is proper under Section 201 of that act, dismiss  
19 the proceeding or take other appropriate action consistent with  
20 that act or other law of New Mexico.

21 B. In appointing a guardian under Subsection A of  
22 this section:

23 (1) the court shall appoint a person nominated  
24 as guardian by a parent of the minor in a will or other record  
25 unless the court finds the appointment is contrary to the best

underscoring material = new  
~~[bracketed material] = delete~~

1 interest of the minor;

2 (2) if multiple parents have nominated  
3 different persons to serve as guardian, the court shall appoint  
4 the nominee whose appointment is in the best interest of the  
5 minor, unless the court finds that appointment of none of the  
6 nominees is in the best interest of the minor; and

7 (3) if a guardian is not appointed under  
8 Paragraph (1) or (2) of this subsection, the court shall  
9 appoint the person nominated by the minor if the minor is  
10 twelve years of age or older unless the court finds that  
11 appointment is contrary to the best interest of the minor. In  
12 that case, the court shall appoint as guardian a person whose  
13 appointment is in the best interest of the minor.

14 C. In the interest of maintaining or encouraging  
15 involvement by a minor's parent in the minor's life, developing  
16 self-reliance of the minor or for other good cause, the court,  
17 at the time of appointment of a guardian for the minor or  
18 later, on its own or on motion of the minor or other interested  
19 person, may create a limited guardianship by limiting the  
20 powers otherwise granted by this article to the guardian.  
21 Following the same procedure, the court may grant additional  
22 powers or withdraw powers previously granted.

23 D. The court, as part of an order appointing a  
24 guardian for a minor, shall state rights retained by any parent  
25 of the minor, which may include contact or visitation with the

.208901.3



underscored material = new  
[bracketed material] = delete

1 minor, decision making regarding the minor's health care,  
2 education or other matter or access to a record regarding the  
3 minor.

4 E. An order granting a guardianship for a minor  
5 shall state that each parent of the minor is entitled to notice  
6 that:

7 (1) the guardian has delegated custody of the  
8 minor subject to guardianship;

9 (2) the court has modified or limited the  
10 powers of the guardian; or

11 (3) the court has removed the guardian.

12 F. An order granting a guardianship for a minor  
13 shall identify any person in addition to a parent of the minor  
14 that is entitled to notice of the events listed in Subsection E  
15 of this section.

16 SECTION 207. [NEW MATERIAL] STANDBY GUARDIAN FOR MINOR.--

17 A. A standby guardian appointed under this section  
18 may act as guardian, with all duties and powers of a guardian  
19 under Sections 209 and 210 of the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act, when no  
21 parent of the minor is willing or able to exercise the duties  
22 and powers granted to the guardian.

23 B. A parent of a minor, in a signed record, may  
24 nominate a person to be appointed by the court as standby  
25 guardian for the minor. The parent, in a signed record, may

.208901.3

1 state desired limitations on the powers to be granted the  
2 standby guardian. The parent, in a signed record, may revoke  
3 or amend the nomination at any time before the court appoints a  
4 standby guardian.

5 C. The court may appoint a standby guardian for a  
6 minor on:

7 (1) petition by a parent of the minor or a  
8 person nominated under Subsection B of this section; and

9 (2) finding that no parent of the minor likely  
10 will be able or willing to care for or make decisions with  
11 respect to the minor not later than two years after the  
12 appointment.

13 D. A petition under Paragraph (1) of Subsection C  
14 of this section shall include the same information required  
15 under Section 202 of the Uniform Guardianship, Conservatorship  
16 and Other Protective Arrangements Act for the appointment of a  
17 guardian for a minor.

18 E. On filing a petition under Paragraph (1) of  
19 Subsection C of this section, the petitioner shall:

20 (1) serve a copy of the petition personally  
21 on:

22 (a) the minor, if the minor is twelve  
23 years of age or older, and the minor's attorney, if any;

24 (b) each parent of the minor;

25 (c) the person nominated as standby

1 guardian; and

2 (d) any other person the court

3 determines; and

4 (2) include with the copy of the petition  
5 served under Paragraph (1) of this subsection a statement of  
6 the right to request appointment of an attorney for the minor  
7 or to object to appointment of the standby guardian and a  
8 description of the nature, purpose and consequences of  
9 appointment of a standby guardian.

10 F. A person entitled to notice under Subsection E  
11 of this section, not later than sixty days after service of the  
12 petition and statement, may object to appointment of the  
13 standby guardian by filing an objection with the court and  
14 giving notice of the objection to each other person entitled to  
15 notice under Subsection E of this section.

16 G. If an objection is filed under Subsection F of  
17 this section, the court shall hold a hearing to determine  
18 whether a standby guardian should be appointed and, if so, the  
19 person that should be appointed. If no objection is filed, the  
20 court may make the appointment.

21 H. The court shall not grant a petition for a  
22 standby guardian of the minor if notice substantially complying  
23 with Subsection E of this section is not served on:

24 (1) the minor, if the minor is twelve years of  
25 age or older; and

1                   (2) each parent of the minor, unless the court  
2 finds by clear and convincing evidence that the parent, in a  
3 record, waived the right to notice or cannot be located and  
4 served with due diligence.

5                   I. If a petitioner is unable to serve notice under  
6 Subsection E of this section on a parent of the minor or  
7 alleges that a parent of the minor waived the right to notice  
8 under this section, the court shall appoint a visitor who  
9 shall:

10                   (1) interview the petitioner and the minor;

11                   (2) if the petitioner alleges the parent  
12 cannot be located and served, ascertain whether the parent  
13 cannot be located with due diligence; and

14                   (3) investigate any other matter relating to  
15 the petition the court directs.

16                   J. If the court finds under Subsection C of this  
17 section that a standby guardian should be appointed:

18                   (1) the court shall appoint the person  
19 nominated under Subsection B of this section unless the court  
20 finds the appointment is contrary to the best interest of the  
21 minor; and

22                   (2) if the parents have nominated different  
23 persons to serve as standby guardian, the court shall appoint  
24 the nominee whose appointment is in the best interest of the  
25 minor, unless the court finds that appointment of none of the

underscored material = new  
~~[bracketed material] = delete~~

1 nominee is in the best interest of the minor.

2 K. An order appointing a standby guardian under  
3 this section shall state that each parent of the minor is  
4 entitled to notice, and identify any other person entitled to  
5 notice, if:

6 (1) the standby guardian assumes the duties  
7 and powers of the guardian;

8 (2) the guardian delegates custody of the  
9 minor;

10 (3) the court modifies or limits the powers of  
11 the guardian; or

12 (4) the court removes the guardian.

13 L. Before assuming the duties and powers of a  
14 guardian, a standby guardian shall file with the court an  
15 acceptance of appointment as guardian and give notice of the  
16 acceptance to:

17 (1) each parent of the minor, unless the  
18 parent, in a record, waived the right to notice or cannot be  
19 located and served with due diligence;

20 (2) the minor, if the minor is twelve years of  
21 age or older; and

22 (3) any person, other than the parent, having  
23 care or custody of the minor.

24 M. A person that receives notice under Subsection L  
25 of this section or any other person interested in the welfare

.208901.3

underscored material = new  
[bracketed material] = delete

1 of the minor may file with the court an objection to the  
2 standby guardian's assumption of duties and powers of a  
3 guardian. The court shall hold a hearing if the objection  
4 supports a reasonable belief that the conditions for assumption  
5 of duties and powers have not been satisfied.

6 SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR  
7 MINOR.--

8 A. On its own, or on petition by a person  
9 interested in a minor's welfare, the court may appoint an  
10 emergency guardian for the minor if the court finds:

11 (1) appointment of an emergency guardian is  
12 likely to prevent substantial harm to the minor's health,  
13 safety or welfare; and

14 (2) no other person appears to have authority  
15 and willingness to act in the circumstances.

16 B. The duration of authority of an emergency  
17 guardian for a minor shall not exceed sixty days and the  
18 emergency guardian may exercise only the powers specified in  
19 the order of appointment. The emergency guardian's authority  
20 may be extended once for not more than sixty days if the court  
21 finds that the conditions for appointment of an emergency  
22 guardian in Subsection A of this section continue.

23 C. Except as otherwise provided in Subsection D of  
24 this section, reasonable notice of the date, time and place of  
25 a hearing on a petition for appointment of an emergency

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 guardian for a minor shall be given to:

2 (1) the minor, if the minor is twelve years of  
3 age or older;

4 (2) any attorney appointed under Section 204  
5 of the Uniform Guardianship, Conservatorship and Other  
6 Protective Arrangements Act;

7 (3) each parent of the minor;

8 (4) any person, other than a parent, having  
9 care or custody of the minor; and

10 (5) any other person the court determines.

11 D. The court may appoint an emergency guardian for  
12 a minor without notice under Subsection C of this section and a  
13 hearing only if the court finds from an affidavit or testimony  
14 that the minor's health, safety or welfare will be  
15 substantially harmed before a hearing with notice on the  
16 appointment can be held. If the court appoints an emergency  
17 guardian without notice to an unrepresented minor or the  
18 attorney for a represented minor, notice of the appointment  
19 shall be given not later than forty-eight hours after the  
20 appointment to the individuals listed in Subsection C of this  
21 section. Not later than five days after the appointment, the  
22 court shall hold a hearing on the appropriateness of the  
23 appointment.

24 E. Appointment of an emergency guardian under this  
25 section, with or without notice, is not a determination that a

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 basis exists for appointment of a guardian under Section 201 of  
2 the Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act.

4 F. The court may remove an emergency guardian  
5 appointed under this section at any time. The emergency  
6 guardian shall make any report the court requires.

7 SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR  
8 MINOR.--

9 A. A guardian for a minor is a fiduciary. Except  
10 as otherwise limited by the court, a guardian for a minor has  
11 the duties and responsibilities of a parent regarding the  
12 minor's support, care, education, health, safety and welfare.  
13 A guardian shall act in the minor's best interest and exercise  
14 reasonable care, diligence and prudence.

15 B. A guardian for a minor shall:

16 (1) be personally acquainted with the minor  
17 and maintain sufficient contact with the minor to know the  
18 minor's abilities, limitations, needs, opportunities and  
19 physical and mental health;

20 (2) take reasonable care of the minor's  
21 personal effects and bring a proceeding for a conservatorship  
22 or protective arrangement instead of conservatorship if  
23 necessary to protect other property of the minor;

24 (3) expend funds of the minor that have been  
25 received by the guardian for the minor's current needs for

.208901.3



underscored material = new  
[bracketed material] = delete

1 support, care, education, health, safety and welfare;

2 (4) conserve any funds of the minor not  
3 expended under Paragraph (3) of this subsection for the minor's  
4 future needs, but if a conservator is appointed for the minor,  
5 pay the funds at least quarterly to the conservator to be  
6 conserved for the minor's future needs;

7 (5) report the condition of the minor and  
8 account for funds and other property of the minor in the  
9 guardian's possession or subject to the guardian's control, as  
10 required by court rule or ordered by the court on application  
11 of a person interested in the minor's welfare;

12 (6) inform the court of any change in the  
13 minor's dwelling or address; and

14 (7) in determining what is in the minor's best  
15 interest, take into account the minor's preferences to the  
16 extent actually known or reasonably ascertainable by the  
17 guardian.

18 SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR  
19 MINOR.--

20 A. Except as otherwise limited by court order, a  
21 guardian of a minor has the powers a parent otherwise would  
22 have regarding the minor's support, care, education, health,  
23 safety and welfare.

24 B. Except as otherwise limited by court order, a  
25 guardian for a minor may:

.208901.3

1                   (1) apply for and receive funds and benefits  
2 otherwise payable for the support of the minor to the minor's  
3 parent, guardian or custodian under a statutory system of  
4 benefits or insurance or any private contract, devise, trust,  
5 conservatorship or custodianship;

6                   (2) unless inconsistent with a court order  
7 entitled to recognition in New Mexico, take custody of the  
8 minor and establish the minor's place of dwelling and, on  
9 authorization of the court, establish or move the minor's  
10 dwelling outside New Mexico;

11                   (3) if the minor is not subject to  
12 conservatorship, commence a proceeding, including an  
13 administrative proceeding, or take other appropriate action to  
14 compel a person to support the minor or make a payment for the  
15 benefit of the minor;

16                   (4) consent to health or other care, treatment  
17 or service for the minor; or

18                   (5) to the extent reasonable, delegate to the  
19 minor responsibility for a decision affecting the minor's  
20 well-being.

21                   C. The court may authorize a guardian for a minor  
22 to consent to the adoption of the minor if the minor does not  
23 have a parent.

24                   D. A guardian for a minor may consent to the  
25 marriage of the minor.

underscoring material = new  
[bracketed material] = delete

1           SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR  
2 MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--

3           A. Guardianship under the Uniform Guardianship,  
4 Conservatorship and Other Protective Arrangements Act for a  
5 minor terminates:

6                   (1) on the minor's death, adoption,  
7 emancipation or attainment of majority; or

8                   (2) when the court finds that the standard in  
9 Section 201 of the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act for appointment of a guardian  
11 is not satisfied, unless the court finds that:

12                           (a) termination of the guardianship  
13 would be harmful to the minor; and

14                           (b) the minor's interest in the  
15 continuation of the guardianship outweighs the interest of any  
16 parent of the minor in restoration of the parent's right to  
17 make decisions for the minor.

18           B. A minor subject to guardianship or a person  
19 interested in the welfare of the minor may petition the court  
20 to terminate the guardianship, modify the guardianship, remove  
21 the guardian and appoint a successor guardian, or remove a  
22 standby guardian and appoint a different standby guardian.

23           C. A petitioner under Subsection B of this section  
24 shall give notice of the hearing on the petition to the minor,  
25 if the minor is twelve years of age or older and is not the

underscored material = new  
[bracketed material] = delete

1 petitioner, the guardian, each parent of the minor and any  
2 other person the court determines.

3 D. The court shall follow the priorities in  
4 Subsection B of Section 206 of the Uniform Guardianship,  
5 Conservatorship and Other Protective Arrangements Act when  
6 selecting a successor guardian for a minor.

7 E. Not later than thirty days after appointment of  
8 a successor guardian for a minor, the court shall give notice  
9 of the appointment to the minor subject to guardianship, if the  
10 minor is twelve years of age or older, each parent of the minor  
11 and any other person the court determines.

12 F. When terminating a guardianship for a minor  
13 under this section, the court may issue an order providing for  
14 transitional arrangements that will assist the minor with a  
15 transition of custody and is in the best interest of the minor.

16 G. A guardian for a minor that is removed shall  
17 cooperate with a successor guardian to facilitate transition of  
18 the guardian's responsibilities and protect the best interest  
19 of the minor.

20 ARTICLE 3

21 GUARDIANSHIP OF ADULT

22 SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF  
23 GUARDIAN FOR ADULT.--

24 A. On petition and after notice and hearing, the  
25 court may:

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (1) appoint a guardian for an adult if the  
2 court finds by clear and convincing evidence that:

3 (a) the respondent lacks the ability to  
4 meet essential requirements for physical health, safety or  
5 self-care because the respondent is unable to receive and  
6 evaluate information or make or communicate decisions, even  
7 with appropriate supportive services, technological assistance  
8 or supported decision making; and

9 (b) the respondent's identified needs  
10 cannot be met by a protective arrangement instead of  
11 guardianship or other less restrictive alternative; or

12 (2) with appropriate findings, treat the  
13 petition as one for a conservatorship under Article 4 of the  
14 Uniform Guardianship, Conservatorship and Other Protective  
15 Arrangements Act or protective arrangement under Article 5 of  
16 that act, issue any appropriate order or dismiss the  
17 proceeding.

18 B. The court shall grant a guardian appointed under  
19 Subsection A of this section only those powers necessitated by  
20 the demonstrated needs and limitations of the respondent and  
21 issue orders that will encourage development of the  
22 respondent's maximum self-determination and independence. The  
23 court shall not establish a full guardianship if a limited  
24 guardianship, protective arrangement instead of guardianship or  
25 other less restrictive alternatives would meet the needs of the

.208901.3

underscored material = new  
[bracketed material] = delete

1 respondent.

2 SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF  
3 GUARDIAN FOR ADULT.--

4 A. A person interested in an adult's welfare,  
5 including the adult for whom the order is sought, may petition  
6 for appointment of a guardian for the adult.

7 B. A petition under Subsection A of this section  
8 shall state the petitioner's name, principal residence, current  
9 street address, if different, relationship to the respondent,  
10 interest in the appointment, the name and address of any  
11 attorney representing the petitioner and, to the extent known,  
12 the following:

13 (1) the respondent's name, age, principal  
14 residence, current street address, if different, and, if  
15 different, address of the dwelling in which it is proposed the  
16 respondent will reside if the petition is granted;

17 (2) the name and address of the respondent's:  
18 (a) spouse or, if the respondent has  
19 none, an adult with whom the respondent has shared household  
20 responsibilities for more than six months in the twelve-month  
21 period immediately before the filing of the petition;

22 (b) adult children or, if none, each  
23 parent and adult sibling of the respondent or, if none, at  
24 least one adult nearest in kinship to the respondent who can be  
25 found with reasonable diligence; and

.208901.3

1 (c) adult stepchildren whom the  
2 respondent actively parented during the stepchildren's minor  
3 years and with whom the respondent had an ongoing relationship  
4 in the two-year period immediately before the filing of the  
5 petition;

6 (3) the name and current address of each of  
7 the following, if applicable:

8 (a) a person responsible for care of the  
9 respondent;

10 (b) any attorney currently representing  
11 the respondent;

12 (c) any representative payee appointed  
13 by the federal social security administration for the  
14 respondent;

15 (d) a guardian or conservator acting for  
16 the respondent in New Mexico or in another jurisdiction;

17 (e) a trustee or custodian of a trust or  
18 custodianship of which the respondent is a beneficiary;

19 (f) any fiduciary for the respondent  
20 appointed by the federal department of veterans affairs;

21 (g) an agent designated under a power of  
22 attorney for health care in which the respondent is identified  
23 as the principal;

24 (h) an agent designated under a power of  
25 attorney for finances in which the respondent is identified as

1 the principal;

2 (i) a person nominated as guardian by  
3 the respondent;

4 (j) a person nominated as guardian by  
5 the respondent's parent or spouse in a will or other signed  
6 record;

7 (k) a proposed guardian and the reason  
8 the proposed guardian should be selected; and

9 (l) a person known to have routinely  
10 assisted the respondent with decision making during the six  
11 months immediately before the filing of the petition;

12 (4) the reason a guardianship is necessary,  
13 including a brief description of:

14 (a) the nature and extent of the  
15 respondent's alleged need;

16 (b) any protective arrangement instead  
17 of guardianship or other less restrictive alternatives for  
18 meeting the respondent's alleged need that have been considered  
19 or implemented;

20 (c) if no protective arrangement instead  
21 of guardianship or other less restrictive alternatives have  
22 been considered or implemented, the reason they have not been  
23 considered or implemented; and

24 (d) the reason a protective arrangement  
25 instead of guardianship or other less restrictive alternative



underscored material = new  
[bracketed material] = delete

1 is insufficient to meet the respondent's alleged need;

2 (5) whether the petitioner seeks a limited  
3 guardianship or full guardianship;

4 (6) if the petitioner seeks a full  
5 guardianship, the reason a limited guardianship or protective  
6 arrangement instead of guardianship is not appropriate;

7 (7) if a limited guardianship is requested,  
8 the powers to be granted to the guardian;

9 (8) the name and current address, if known, of  
10 any person with whom the petitioner seeks to limit the  
11 respondent's contact;

12 (9) if the respondent has property other than  
13 personal effects, a general statement of the respondent's  
14 property, with an estimate of its value, including any  
15 insurance or pension, and the source and amount of other  
16 anticipated income or receipts; and

17 (10) whether the respondent needs an  
18 interpreter, translator or other form of support to communicate  
19 effectively with the court or understand court proceedings.

20 SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR  
21 APPOINTMENT OF GUARDIAN FOR ADULT.--

22 A. On filing of a petition under Section 302 of the  
23 Uniform Guardianship, Conservatorship and Other Protective  
24 Arrangements Act for appointment of a guardian for an adult,  
25 the court shall set a date, time and place for hearing the

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 petition.

2 B. A copy of a petition under Section 302 of the  
3 Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act and notice of a hearing on the petition shall  
5 be served personally on the respondent. The notice shall  
6 inform the respondent of the respondent's rights at the  
7 hearing, including the right to an attorney and to attend the  
8 hearing. The notice shall include a description of the nature,  
9 purpose and consequences of granting the petition. The court  
10 shall not grant the petition if notice substantially complying  
11 with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 302  
13 of the Uniform Guardianship, Conservatorship and Other  
14 Protective Arrangements Act, the notice required under  
15 Subsection B of this section shall be given to the persons  
16 required to be listed in the petition under Paragraphs (1)  
17 through (3) of Subsection B of Section 302 of that act and any  
18 other person interested in the respondent's welfare the court  
19 determines. Failure to give notice under this subsection does  
20 not preclude the court from appointing a guardian.

21 D. After the appointment of a guardian, notice of a  
22 hearing on a petition for an order under this article together  
23 with a copy of the petition shall be given to:

- 24 (1) the adult subject to guardianship;
- 25 (2) the guardian; and

underscored material = new  
[bracketed material] = delete

1 (3) any other person the court determines.

2 SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
3 VISITOR.--

4 A. On receipt of a petition under Section 302 of  
5 the Uniform Guardianship, Conservatorship and Other Protective  
6 Arrangements Act for appointment of a guardian for an adult,  
7 the court shall appoint a visitor. The visitor shall be an  
8 individual with training or experience in the type of  
9 abilities, limitations and needs alleged in the petition.

10 B. A visitor appointed under Subsection A of this  
11 section shall interview the respondent in person and, in a  
12 manner the respondent is best able to understand:

13 (1) explain to the respondent the substance of  
14 the petition, the nature, purpose and effect of the proceeding,  
15 the respondent's rights at the hearing on the petition and the  
16 general powers and duties of a guardian;

17 (2) determine the respondent's views about the  
18 appointment sought by the petitioner, including views about a  
19 proposed guardian, the guardian's proposed powers and duties  
20 and the scope and duration of the proposed guardianship;

21 (3) inform the respondent of the respondent's  
22 right to employ and consult with an attorney at the  
23 respondent's expense and the right to request a court-appointed  
24 attorney; and

25 (4) inform the respondent that all costs and

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 expenses of the proceeding, including respondent's attorney's  
2 fees, may be paid from the respondent's assets.

3 C. The visitor appointed under Subsection A of this  
4 section shall:

5 (1) interview the petitioner and proposed  
6 guardian, if any;

7 (2) visit the respondent's present dwelling  
8 and any dwelling in which it is reasonably believed the  
9 respondent will live if the appointment is made;

10 (3) obtain information from any physician or  
11 other person known to have treated, advised or assessed the  
12 respondent's relevant physical or mental condition; and

13 (4) investigate the allegations in the  
14 petition and any other matter relating to the petition the  
15 court directs.

16 D. A visitor appointed under Subsection A of this  
17 section promptly shall file a report in a record with the court  
18 that includes:

19 (1) a summary of self-care and independent-  
20 living tasks the respondent can manage without assistance or  
21 with existing supports, could manage with the assistance of  
22 appropriate supportive services, technological assistance or  
23 supported decision making and cannot manage;

24 (2) a recommendation regarding the  
25 appropriateness of guardianship, including whether a protective

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 arrangement instead of guardianship or other less restrictive  
2 alternative for meeting the respondent's needs is available  
3 and:

4 (a) if a guardianship is recommended,  
5 whether it should be full or limited; and

6 (b) if a limited guardianship is  
7 recommended, the powers to be granted to the guardian;

8 (3) a statement of the qualifications of the  
9 proposed guardian and whether the respondent approves or  
10 disapproves of the proposed guardian;

11 (4) a statement whether the proposed dwelling  
12 meets the respondent's needs and whether the respondent has  
13 expressed a preference as to residence;

14 (5) a recommendation whether a professional  
15 evaluation under Section 306 of the Uniform Guardianship,  
16 Conservatorship and Other Protective Arrangements Act is  
17 necessary;

18 (6) a statement whether the respondent is able  
19 to attend a hearing at the location court proceedings typically  
20 are held;

21 (7) a statement whether the respondent is able  
22 to participate in a hearing and that identifies any technology  
23 or other form of support that would enhance the respondent's  
24 ability to participate; and

25 (8) any other matter the court directs.

.208901.3

underscored material = new  
[bracketed material] = delete

1           SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
2 ATTORNEY FOR ADULT.--

3           A. Unless the respondent in a proceeding for  
4 appointment of a guardian for an adult is represented by an  
5 attorney, the court shall appoint an attorney to represent the  
6 respondent, regardless of the respondent's ability to pay.

7           B. An attorney representing the respondent in a  
8 proceeding for appointment of a guardian for an adult shall:

9                   (1) make reasonable efforts to ascertain the  
10 respondent's wishes;

11                   (2) advocate for the respondent's wishes to  
12 the extent reasonably ascertainable; and

13                   (3) if the respondent's wishes are not  
14 reasonably ascertainable, advocate for the result that is the  
15 least restrictive in type, duration and scope, consistent with  
16 the respondent's interests.

17           SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

18           A. At or before a hearing on a petition for a  
19 guardianship for an adult, the court shall order a professional  
20 evaluation of the respondent:

21                   (1) if the respondent requests the evaluation;  
22 or

23                   (2) in other cases, unless the court finds  
24 that it has sufficient information to determine the  
25 respondent's needs and abilities without the evaluation.

underscored material = new  
[bracketed material] = delete

1           B. If the court orders an evaluation under  
2 Subsection A of this section, the respondent shall be examined  
3 by a licensed physician, psychologist, social worker or other  
4 individual appointed by the court who is qualified to evaluate  
5 the respondent's alleged cognitive and functional abilities and  
6 limitations and will not be advantaged or disadvantaged by a  
7 decision to grant the petition or otherwise have a conflict of  
8 interest. The individual conducting the evaluation promptly  
9 shall file report in a record with the court. Unless otherwise  
10 directed by the court, the report shall contain:

11                   (1) a description of the nature, type and  
12 extent of the respondent's cognitive and functional abilities  
13 and limitations;

14                   (2) an evaluation of the respondent's mental  
15 and physical condition and, if appropriate, educational  
16 potential, adaptive behavior and social skills;

17                   (3) a prognosis for improvement and  
18 recommendation for the appropriate treatment, support or  
19 habilitation plan; and

20                   (4) the date of the examination on which the  
21 report is based.

22           C. The respondent may decline to participate in an  
23 evaluation ordered under Subsection A of this section.

24           SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
25 HEARING.--

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1           A. Except as otherwise provided in Subsection B of  
2 this section, a hearing under Section 303 of the Uniform  
3 Guardianship, Conservatorship and Other Protective Arrangements  
4 Act shall not proceed unless the respondent attends the  
5 hearing. If it is not reasonably feasible for the respondent  
6 to attend a hearing at the location court proceedings typically  
7 are held, the court shall make reasonable efforts to hold the  
8 hearing at an alternative location convenient to the respondent  
9 or allow the respondent to attend the hearing using real-time  
10 audio-visual technology.

11           B. A hearing under Section 303 of the Uniform  
12 Guardianship, Conservatorship and Other Protective Arrangements  
13 Act may proceed without the respondent in attendance if the  
14 court finds by clear and convincing evidence that:

15                   (1) the respondent consistently and repeatedly  
16 has refused to attend the hearing after having been fully  
17 informed of the right to attend and the potential consequences  
18 of failing to do so; or

19                   (2) there is no practicable way for the  
20 respondent to attend and participate in the hearing even with  
21 appropriate supportive services and technological assistance.

22           C. The respondent may be assisted in a hearing  
23 under Section 303 of the Uniform Guardianship, Conservatorship  
24 and Other Protective Arrangements Act by a person or persons of  
25 the respondent's choosing, assistive technology or an

.208901.3



1 interpreter or translator or a combination of these supports.  
2 If assistance would facilitate the respondent's participation  
3 in the hearing, but is not otherwise available to the  
4 respondent, the court shall make reasonable efforts to provide  
5 it.

6 D. The respondent has a right to choose an attorney  
7 to represent the respondent at a hearing under Section 303 of  
8 the Uniform Guardianship, Conservatorship and Other Protective  
9 Arrangements Act.

10 E. At a hearing held under Section 303 of the  
11 Uniform Guardianship, Conservatorship and Other Protective  
12 Arrangements Act, the respondent may:

13 (1) present evidence and subpoena witnesses  
14 and documents;

15 (2) examine witnesses, including any court-  
16 appointed evaluator and the visitor; and

17 (3) otherwise participate in the hearing.

18 F. Unless excused by the court for good cause, a  
19 proposed guardian shall attend a hearing under Section 303 of  
20 the Uniform Guardianship, Conservatorship and Other Protective  
21 Arrangements Act.

22 G. A hearing under Section 303 of the Uniform  
23 Guardianship, Conservatorship and Other Protective Arrangements  
24 Act shall be closed on request of the respondent and a showing  
25 of good cause.

underscored material = new  
[bracketed material] = delete

1           H. Any person may request to participate in a  
2 hearing under Section 303 of the Uniform Guardianship,  
3 Conservatorship and Other Protective Arrangements Act. The  
4 court may grant the request, with or without a hearing, on  
5 determining that the best interest of the respondent will be  
6 served. The court may impose appropriate conditions on the  
7 person's participation.

8           SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

9           A. The existence of a proceeding for or the  
10 existence of a guardianship for an adult is a matter of public  
11 record unless the court seals the record after:

12                   (1) the respondent or individual subject to  
13 guardianship requests the record be sealed; and

14                   (2) either:

15                           (a) the petition for guardianship is  
16 dismissed; or

17                           (b) the guardianship is terminated.

18           B. An adult subject to a proceeding for a  
19 guardianship, whether or not a guardian is appointed, an  
20 attorney designated by the adult and a person entitled to  
21 notice under Subsection E of Section 310 of the Uniform  
22 Guardianship, Conservatorship and Other Protective Arrangements  
23 Act or a subsequent order are entitled to access court records  
24 of the proceeding and resulting guardianship, including the  
25 guardian's plan under Section 316 of that act and report under

underscored material = new  
[bracketed material] = delete

1 Section 317 of that act. A person not otherwise entitled to  
2 access court records under this subsection for good cause may  
3 petition the court for access to court records of the  
4 guardianship, including the guardian's report and plan. The  
5 court shall grant access if access is in the best interest of  
6 the respondent or adult subject to guardianship or furthers the  
7 public interest and does not endanger the welfare or financial  
8 interests of the adult.

9 C. A report under Section 304 of the Uniform  
10 Guardianship, Conservatorship and Other Protective Arrangements  
11 Act of a visitor or a professional evaluation under Section 306  
12 of that act is confidential and shall be sealed on filing, but  
13 is available to:

- 14 (1) the court;
- 15 (2) the individual who is the subject of the  
16 report or evaluation, without limitation as to use;
- 17 (3) the petitioner, visitor and petitioner's  
18 and respondent's attorneys, for purposes of the proceeding;
- 19 (4) unless the court orders otherwise, an  
20 agent appointed under a power of attorney for health care or  
21 power of attorney for finances in which the respondent is the  
22 principal; and
- 23 (5) any other person if it is in the public  
24 interest or for a purpose the court orders for good cause.

25 SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN OF

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 ADULT--ORDER OF PRIORITY.--

2 A. Except as otherwise provided in Subsection C of  
3 this section, the court in appointing a guardian for an adult  
4 shall consider persons qualified to be guardian in the  
5 following order of priority:

6 (1) a guardian, other than a temporary or  
7 emergency guardian, currently acting for the respondent in  
8 another jurisdiction;

9 (2) a person nominated as guardian by the  
10 respondent, including the respondent's most recent nomination  
11 made in a power of attorney;

12 (3) an agent appointed by the respondent under  
13 a power of attorney for health care;

14 (4) a spouse of the respondent; and

15 (5) a family member or other individual who  
16 has shown special care and concern for the respondent.

17 B. If two or more persons have equal priority under  
18 Subsection A of this section, the court shall select as  
19 guardian the person the court considers best qualified. In  
20 determining the best qualified person, the court shall consider  
21 the person's relationship with the respondent, the person's  
22 skills, the expressed wishes of the respondent, the extent to  
23 which the person and the respondent have similar values and  
24 preferences and the likelihood the person will be able to  
25 perform the duties of a guardian successfully.

.208901.3

underscored material = new  
[bracketed material] = delete

1 C. The court, acting in the best interest of the  
2 respondent, may decline to appoint as guardian a person having  
3 priority under Subsection A of this section and appoint a  
4 person having a lower priority or no priority.

5 D. A person that provides paid services to the  
6 respondent, or an individual who is employed by a person that  
7 provides paid services to the respondent or is the spouse,  
8 domestic partner, parent or child of an individual who provides  
9 or is employed to provide paid services to the respondent,  
10 shall not be appointed as guardian unless:

11 (1) the individual is related to the  
12 respondent by blood, marriage or adoption; or

13 (2) the court finds by clear and convincing  
14 evidence that the person is the best qualified person available  
15 for appointment and the appointment is in the best interest of  
16 the respondent.

17 E. An owner, operator or employee of a long-term  
18 care facility at which the respondent is receiving care shall  
19 not be appointed as guardian unless the owner, operator or  
20 employee is related to the respondent by blood, marriage or  
21 adoption.

22 SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF  
23 GUARDIAN.--

24 A. A court order appointing a guardian for an adult  
25 shall:

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (1) include a specific finding that clear and  
2 convincing evidence established that the identified needs of  
3 the respondent cannot be met by a protective arrangement  
4 instead of guardianship or other less restrictive alternative,  
5 including use of appropriate supportive services, technological  
6 assistance or supported decision making;

7 (2) include a specific finding that clear and  
8 convincing evidence established that the respondent was given  
9 proper notice of the hearing on the petition;

10 (3) state whether the adult subject to  
11 guardianship retains the right to vote and, if the adult does  
12 not retain the right to vote, include findings that support  
13 removing that right; and

14 (4) state whether the adult subject to  
15 guardianship retains the right to marry and, if the adult does  
16 not retain the right to marry, include findings that support  
17 removing that right.

18 B. An adult subject to guardianship retains the  
19 right to vote unless the order under Subsection A of this  
20 section includes the statement required by Paragraph (3) of  
21 Subsection A of this section. An adult subject to guardianship  
22 retains the right to marry unless the order under Subsection A  
23 of this section includes the findings required by Paragraph (4)  
24 of Subsection A of this section.

25 C. A court order establishing a full guardianship

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 for an adult shall state the basis for granting a full  
2 guardianship and include specific findings that support the  
3 conclusion that a limited guardianship would not meet the  
4 functional needs of the adult subject to guardianship.

5 D. A court order establishing a limited  
6 guardianship for an adult shall state the specific powers  
7 granted to the guardian.

8 E. The court, as part of an order establishing a  
9 guardianship for an adult, shall identify any person that  
10 subsequently is entitled to:

11 (1) notice of the rights of the adult under  
12 Subsection B of Section 311 of the Uniform Guardianship,  
13 Conservatorship and Other Protective Arrangements Act;

14 (2) notice of a change in the primary dwelling  
15 of the adult;

16 (3) notice that the guardian has delegated:

17 (a) the power to manage the care of the  
18 adult;

19 (b) the power to make decisions about  
20 where the adult lives;

21 (c) the power to make major medical  
22 decisions on behalf of the adult;

23 (d) a power that requires court approval  
24 under Section 315 of the Uniform Guardianship, Conservatorship  
25 and Other Protective Arrangements Act; or

.208901.3

underscored material = new  
[bracketed material] = delete

- 1 (e) substantially all powers of the
- 2 guardian;
- 3 (4) notice that the guardian will be
- 4 unavailable to visit the adult for more than two months or
- 5 unavailable to perform the guardian's duties for more than one
- 6 month;
- 7 (5) a copy of the guardian's plan under
- 8 Section 316 of the Uniform Guardianship, Conservatorship and
- 9 Other Protective Arrangements Act and the guardian's report
- 10 under Section 317 of that act;
- 11 (6) access to court records relating to the
- 12 guardianship;
- 13 (7) notice of the death or significant change
- 14 in the condition of the adult;
- 15 (8) notice that the court has limited or
- 16 modified the powers of the guardian; and
- 17 (9) notice of the removal of the guardian.

18 F. A spouse and adult children of an adult subject  
19 to guardianship are entitled to notice under Subsection E of  
20 this section unless the court determines notice would be  
21 contrary to the preferences or prior directions of the adult  
22 subject to guardianship or not in the best interest of the  
23 adult.

24 SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF  
25 APPOINTMENT--RIGHTS.--

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1           A. A guardian appointed under Section 309 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act shall give the adult subject to guardianship  
4 and all other persons given notice under Section 303 of that  
5 act a copy of the order of appointment, together with notice of  
6 the right to request termination or modification. The order  
7 and notice shall be given not later than fourteen days after  
8 the appointment.

9           B. Not later than thirty days after appointment of  
10 a guardian under Section 309 of the Uniform Guardianship,  
11 Conservatorship and Other Protective Arrangements Act, the  
12 court shall give to the adult subject to guardianship, the  
13 guardian and any other person entitled to notice under  
14 Subsection E of Section 310 of that act or a subsequent order a  
15 statement of the rights of the adult subject to guardianship  
16 and procedures to seek relief if the adult is denied those  
17 rights. The statement shall be in at least sixteen-point font,  
18 in plain language and, to the extent feasible, in a language in  
19 which the adult subject to guardianship is proficient. The  
20 statement shall notify the adult subject to guardianship of the  
21 right to:

22                   (1) seek termination or modification of the  
23 guardianship, or removal of the guardian and choose an attorney  
24 to represent the adult in these matters;

25                   (2) be involved in decisions affecting the

underscoring material = new  
~~[bracketed material] = delete~~

1 adult, including decisions about the adult's care, dwelling,  
2 activities or social interactions, to the extent reasonably  
3 feasible;

4 (3) be involved in health care decision making  
5 to the extent reasonably feasible and supported in  
6 understanding the risks and benefits of health care options to  
7 the extent reasonably feasible;

8 (4) be notified at least fourteen days before  
9 a change in the adult's primary dwelling or permanent move to a  
10 nursing home, mental health treatment facility or other  
11 facility that places restrictions on the individual's ability  
12 to leave or have visitors unless the change or move is proposed  
13 in the guardian's plan under Section 316 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act or authorized by the court by specific order;

16 (5) object to a change or move described in  
17 Paragraph (4) of this subsection and the process for objecting;

18 (6) communicate, visit or interact with  
19 others, including receiving visitors and making or receiving  
20 telephone calls, personal mail or electronic communications,  
21 including through social media, unless:

22 (a) the guardian has been authorized by  
23 the court by specific order to restrict communications, visits  
24 or interactions;

25 (b) a protective order or protective

underscored material = new  
[bracketed material] = delete

1 arrangement instead of guardianship is in effect that limits  
2 contact between the adult and a person; or

3 (c) the guardian has good cause to  
4 believe restriction is necessary because interaction with a  
5 specified person poses a risk of significant physical,  
6 psychological or financial harm to the adult and the  
7 restriction is: 1) for a period of not more than seven  
8 business days if the person has a family or preexisting social  
9 relationship with the adult; or 2) for a period of not more  
10 than sixty days if the person does not have a family or  
11 preexisting social relationship with the adult;

12 (7) receive a copy of the guardian's plan  
13 under Section 316 of the Uniform Guardianship, Conservatorship  
14 and Other Protective Arrangements Act and the guardian's report  
15 under Section 317 of that act; and

16 (8) object to the guardian's plan or report.

17 SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN.--

18 A. On its own after a petition has been filed under  
19 Section 302 of the Uniform Guardianship, Conservatorship and  
20 Other Protective Arrangements Act, or on petition by a person  
21 interested in an adult's welfare, the court may appoint an  
22 emergency guardian for the adult if the court finds:

23 (1) appointment of an emergency guardian is  
24 likely to prevent substantial harm to the adult's physical  
25 health, safety or welfare;

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1                   (2) no other person appears to have authority  
2 and willingness to act in the circumstances; and

3                   (3) there is reason to believe that a basis  
4 for appointment of a guardian under Section 301 of the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act exists.

7                   B. The duration of authority of an emergency  
8 guardian for an adult shall not exceed sixty days, and the  
9 emergency guardian may exercise only the powers specified in  
10 the order of appointment. The emergency guardian's authority  
11 may be extended once for not more than sixty days if the court  
12 finds that the conditions for appointment of an emergency  
13 guardian in Subsection A of this section continue.

14                   C. Immediately on filing of a petition for an  
15 emergency guardian for an adult, the court shall appoint an  
16 attorney to represent the respondent in the proceeding. Except  
17 as otherwise provided in Subsection D of this section,  
18 reasonable notice of the date, time and place of a hearing on  
19 the petition shall be given to the respondent, the respondent's  
20 attorney and any other person the court determines.

21                   D. The court may appoint an emergency guardian for  
22 an adult without notice to the adult and any attorney for the  
23 adult only if the court finds from an affidavit or testimony  
24 that the respondent's physical health, safety or welfare will  
25 be substantially harmed before a hearing with notice on the

.208901.3

underscored material = new  
[bracketed material] = delete

1 appointment can be held. If the court appoints an emergency  
2 guardian without giving notice under Subsection C of this  
3 section, the court shall:

4 (1) give notice of the appointment not later  
5 than forty-eight hours after the appointment to:

- 6 (a) the respondent;  
7 (b) the respondent's attorney; and  
8 (c) any other person the court  
9 determines; and

10 (2) hold a hearing on the appropriateness of  
11 the appointment not later than five days after the appointment.

12 E. Appointment of an emergency guardian under this  
13 section is not a determination that a basis exists for  
14 appointment of a guardian under Section 301 of the Uniform  
15 Guardianship, Conservatorship and Other Protective Arrangements  
16 Act.

17 F. The court may remove an emergency guardian  
18 appointed under this section at any time. The emergency  
19 guardian shall make any report the court requires.

20 SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR  
21 ADULT.--

22 A. A guardian for an adult is a fiduciary. Except  
23 as otherwise limited by the court, a guardian for an adult  
24 shall make decisions regarding the support, care, education,  
25 health and welfare of the adult subject to guardianship to the

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 extent necessitated by the adult's limitations.

2 B. A guardian for an adult shall promote the self-  
3 determination of the adult and, to the extent reasonably  
4 feasible, encourage the adult to participate in decisions, act  
5 on the adult's own behalf and develop or regain the capacity to  
6 manage the adult's personal affairs. In furtherance of this  
7 duty, the guardian shall:

8 (1) become or remain personally acquainted  
9 with the adult and maintain sufficient contact with the adult,  
10 including through regular visitation, to know the adult's  
11 abilities, limitations, needs, opportunities and physical and  
12 mental health;

13 (2) to the extent reasonably feasible,  
14 identify the values and preferences of the adult and involve  
15 the adult in decisions affecting the adult, including decisions  
16 about the adult's care, dwelling, activities or social  
17 interactions; and

18 (3) make reasonable efforts to identify and  
19 facilitate supportive relationships and services for the adult.

20 C. A guardian for an adult at all times shall  
21 exercise reasonable care, diligence and prudence when acting on  
22 behalf of or making decisions for the adult. In furtherance of  
23 this duty, the guardian shall:

24 (1) take reasonable care of the personal  
25 effects, pets and service or support animals of the adult and

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 bring a proceeding for a conservatorship or protective  
2 arrangement instead of conservatorship if necessary to protect  
3 the adult's property;

4 (2) expend funds and other property of the  
5 adult received by the guardian for the adult's current needs  
6 for support, care, education, health and welfare;

7 (3) conserve any funds and other property of  
8 the adult not expended under Paragraph (2) of this subsection  
9 for the adult's future needs, but if a conservator has been  
10 appointed for the adult, pay the funds and other property at  
11 least quarterly to the conservator to be conserved for the  
12 adult's future needs; and

13 (4) monitor the quality of services, including  
14 long-term care services, provided to the adult.

15 D. In making a decision for an adult subject to  
16 guardianship, the guardian shall make the decision the guardian  
17 reasonably believes the adult would make if the adult were able  
18 unless doing so would unreasonably harm or endanger the welfare  
19 or personal or financial interests of the adult. To determine  
20 the decision the adult subject to guardianship would make if  
21 able, the guardian shall consider the adult's previous or  
22 current directions, preferences, opinions, values and actions,  
23 to the extent actually known or reasonably ascertainable by the  
24 guardian.

25 E. If a guardian for an adult cannot make a

.208901.3

underscored material = new  
[bracketed material] = delete

1 decision under Subsection D of this section because the  
2 guardian does not know and cannot reasonably determine the  
3 decision the adult probably would make if able, or the guardian  
4 reasonably believes the decision the adult would make would  
5 unreasonably harm or endanger the welfare or personal or  
6 financial interests of the adult, the guardian shall act in  
7 accordance with the best interest of the adult. In determining  
8 the best interest of the adult, the guardian shall consider:

9 (1) information received from professionals  
10 and persons that demonstrate sufficient interest in the welfare  
11 of the adult;

12 (2) other information the guardian believes  
13 the adult would have considered if the adult were able to act;  
14 and

15 (3) other factors a reasonable person in the  
16 circumstances of the adult would consider, including  
17 consequences for others.

18 F. A guardian for an adult immediately shall notify  
19 the court if the condition of the adult has changed so that the  
20 adult is capable of exercising rights previously removed.

21 SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR  
22 ADULT.--

23 A. Except as limited by court order, a guardian for  
24 an adult may:

25 (1) apply for and receive funds and benefits

.208901.3



underscoring material = new  
~~[bracketed material]~~ = delete

1 for the support of the adult, unless a conservator is appointed  
2 for the adult and the application or receipt is within the  
3 powers of the conservator;

4 (2) unless inconsistent with a court order,  
5 establish the adult's place of dwelling;

6 (3) consent to health or other care, treatment  
7 or service for the adult;

8 (4) if a conservator for the adult has not  
9 been appointed, commence a proceeding, including an  
10 administrative proceeding, or take other appropriate action to  
11 compel another person to support the adult or pay funds for the  
12 adult's benefit;

13 (5) to the extent reasonable, delegate to the  
14 adult responsibility for a decision affecting the adult's well-  
15 being; and

16 (6) receive personally identifiable health  
17 care information regarding the adult.

18 B. The court by specific order may authorize a  
19 guardian for an adult to consent to the adoption of the adult.

20 C. The court by specific order may authorize a  
21 guardian for an adult to:

22 (1) consent or withhold consent to the  
23 marriage of the adult if the adult's right to marry has been  
24 removed under Section 310 of the Uniform Guardianship,  
25 Conservatorship and Other Protective Arrangements Act;

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1                   (2) petition for divorce, dissolution or  
2 annulment of marriage of the adult or a declaration of  
3 invalidity of the adult's marriage; or

4                   (3) support or oppose a petition for divorce,  
5 dissolution or annulment of marriage of the adult or a  
6 declaration of invalidity of the adult's marriage.

7                   D. In determining whether to authorize a power  
8 under Subsection B of this section, the court shall consider  
9 whether the underlying act would be in accordance with the  
10 adult's preferences, values and prior directions and whether  
11 the underlying act would be in the adult's best interest.

12                   E. In exercising a guardian's power under Paragraph  
13 (2) of Subsection A of this section to establish the adult's  
14 place of dwelling, the guardian shall:

15                   (1) select a residential setting the guardian  
16 believes the adult would select if the adult were able, in  
17 accordance with the decision-making standard in Subsections D  
18 and E of Section 313 of the Uniform Guardianship,  
19 Conservatorship and Other Protective Arrangements Act. If the  
20 guardian does not know and cannot reasonably determine what  
21 setting the adult subject to guardianship probably would choose  
22 if able, or the guardian reasonably believes the decision the  
23 adult would make would unreasonably harm or endanger the  
24 welfare or personal or financial interests of the adult, the  
25 guardian shall choose in accordance with Subsection E of that

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 section a residential setting that is consistent with the  
2 adult's best interest;

3 (2) in selecting among residential settings,  
4 give priority to a residential setting in a location that will  
5 allow the adult to interact with persons important to the adult  
6 and meet the adult's needs in the least restrictive manner  
7 reasonably feasible unless to do so would be inconsistent with  
8 the decision-making standard in Subsections D and E of Section  
9 313 of the Uniform Guardianship, Conservatorship and Other  
10 Protective Arrangements Act;

11 (3) not later than thirty days after a change  
12 in the dwelling of the adult:

13 (a) give notice of the change to the  
14 court, the adult and any person identified as entitled to the  
15 notice in the court order appointing the guardian or a  
16 subsequent order; and

17 (b) include in the notice the address  
18 and nature of the new dwelling and state whether the adult  
19 received advance notice of the change and whether the adult  
20 objected to the change;

21 (4) establish or move the permanent place of  
22 dwelling of the adult to a nursing home, mental health  
23 treatment facility or other facility that places restrictions  
24 on the adult's ability to leave or have visitors only if:

25 (a) the establishment or move is in the

underscoring material = new  
~~[bracketed material] = delete~~

1 guardian's plan under Section 316 of the Uniform Guardianship,  
2 Conservatorship and Other Protective Arrangements Act;

3 (b) the court authorizes the  
4 establishment or move; or

5 (c) the guardian gives notice of the  
6 establishment or move at least fourteen days before the  
7 establishment or move to the adult and all persons entitled to  
8 notice under Paragraph (2) of Subsection E of Section 310 of  
9 the Uniform Guardianship, Conservatorship and Other Protective  
10 Arrangements Act or a subsequent order and no objection is  
11 filed;

12 (5) establish or move the place of dwelling of  
13 the adult outside New Mexico only if consistent with the  
14 guardian's plan and authorized by the court by specific order;  
15 and

16 (6) take action that would result in the sale  
17 of or surrender of the lease to the primary dwelling of the  
18 adult only if:

19 (a) the action is specifically in the  
20 guardian's plan under Section 316 of the Uniform Guardianship,  
21 Conservatorship and Other Protective Arrangements Act;

22 (b) the court authorizes the action by  
23 specific order; or

24 (c) notice of the action was given at  
25 least fourteen days before the action to the adult and all

underscored material = new  
[bracketed material] = delete

1 persons entitled to the notice under Paragraph (2) of  
2 Subsection E of Section 310 of the Uniform Guardianship,  
3 Conservatorship and Other Protective Arrangements Act or a  
4 subsequent order and no objection has been filed.

5 F. In exercising a guardian's power under Paragraph  
6 (3) of Subsection A of this section to make health care  
7 decisions, the guardian shall:

8 (1) involve the adult in decision making to  
9 the extent reasonably feasible, including, when practicable, by  
10 encouraging and supporting the adult in understanding the risks  
11 and benefits of health care options;

12 (2) defer to a decision by an agent under a  
13 power of attorney for health care signed by the adult and  
14 cooperate to the extent feasible with the agent making the  
15 decision; and

16 (3) take into account:

17 (a) the risks and benefits of treatment  
18 options; and

19 (b) the current and previous wishes and  
20 values of the adult, if known or reasonably ascertainable by  
21 the guardian.

22 SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON  
23 GUARDIAN'S POWER.--

24 A. Unless authorized by the court by specific  
25 order, a guardian for an adult does not have the power to

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 revoke or amend a power of attorney for health care or power of  
2 attorney for finances signed by the adult. If a power of  
3 attorney for health care is in effect, unless there is a court  
4 order to the contrary, a health care decision of an agent takes  
5 precedence over that of the guardian and the guardian shall  
6 cooperate with the agent to the extent feasible. If a power of  
7 attorney for finances is in effect, unless there is a court  
8 order to the contrary, a decision by the agent that the agent  
9 is authorized to make under the power of attorney for finances  
10 takes precedence over that of the guardian and the guardian  
11 shall cooperate with the agent to the extent feasible.

12 B. A guardian for an adult shall not initiate the  
13 commitment of the adult to a mental health treatment facility  
14 except in accordance with the state's procedure for involuntary  
15 civil commitment.

16 C. A guardian for an adult shall not restrict the  
17 ability of the adult to communicate, visit or interact with  
18 others, including receiving visitors and making or receiving  
19 telephone calls, personal mail or electronic communications,  
20 including through social media or participating in social  
21 activities, unless:

- 22 (1) authorized by the court by specific order;  
23 (2) a protective order or a protective  
24 arrangement instead of guardianship is in effect that limits  
25 contact between the adult and a person; or

.208901.3

underscored material = new  
[bracketed material] = delete

1 (3) the guardian has good cause to believe  
2 restriction is necessary because interaction with a specified  
3 person poses a risk of significant physical, psychological or  
4 financial harm to the adult and the restriction is:

5 (a) for a period of not more than seven  
6 business days if the person has a family or preexisting social  
7 relationship with the adult; or

8 (b) for a period of not more than sixty  
9 days if the person does not have a family or preexisting social  
10 relationship with the adult.

11 SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--

12 A. A guardian for an adult, not later than sixty  
13 days after appointment and when there is a significant change  
14 in circumstances, or the guardian seeks to deviate  
15 significantly from the guardian's plan, shall file with the  
16 court a plan for the care of the adult. The plan shall be  
17 based on the needs of the adult and take into account the best  
18 interest of the adult as well as the adult's preferences,  
19 values and prior directions, to the extent known to or  
20 reasonably ascertainable by the guardian. The guardian shall  
21 include in the plan:

22 (1) the living arrangement, services and  
23 supports the guardian expects to arrange, facilitate or  
24 continue for the adult;

25 (2) social and educational activities the

underscoring material = new  
~~[bracketed material]~~ = delete

1 guardian expects to facilitate on behalf of the adult;

2 (3) any person with whom the adult has a close  
3 personal relationship or relationship involving regular  
4 visitation and any plan the guardian has for facilitating  
5 visits with the person;

6 (4) the anticipated nature and frequency of  
7 the guardian's visits and communication with the adult;

8 (5) goals for the adult, including any goal  
9 related to the restoration of the adult's rights and how the  
10 guardian anticipates achieving the goals;

11 (6) whether the adult has an existing plan  
12 and, if so, whether the guardian's plan is consistent with the  
13 adult's plan; and

14 (7) a statement or list of the amount the  
15 guardian proposes to charge for each service the guardian  
16 anticipates providing to the adult.

17 B. A guardian shall give notice of the filing of  
18 the guardian's plan under Subsection A of this section,  
19 together with a copy of the plan, to the adult subject to  
20 guardianship, a person entitled to notice under Subsection E of  
21 Section 310 of the Uniform Guardianship, Conservatorship and  
22 Other Protective Arrangements Act or a subsequent order and any  
23 other person the court determines. The notice shall include a  
24 statement of the right to object to the plan and be given not  
25 later than fourteen days after the filing.

.208901.3



underscoring material = new  
~~[bracketed material]~~ = delete

1 C. An adult subject to guardianship and any person  
2 entitled under Subsection B of this section to receive notice  
3 and a copy of the guardian's plan may object to the plan.

4 D. A guardian shall petition the court for approval  
5 of a plan filed under Subsection A of this section. The court  
6 shall review the plan and determine whether to approve it or  
7 require a new plan. In deciding whether to approve the plan,  
8 the court shall consider an objection under Subsection C of  
9 this section and whether the plan is consistent with the  
10 guardian's duties and powers under Sections 313 and 314 of the  
11 Uniform Guardianship, Conservatorship and Other Protective  
12 Arrangements Act. The court shall not approve the plan  
13 without:

14 (1) notice to the adult subject to  
15 guardianship, a person entitled to notice under Subsection E of  
16 Section 310 of the Uniform Guardianship, Conservatorship and  
17 Other Protective Arrangements Act or under a subsequent order  
18 and any other person the court deems entitled to notice; and

19 (2) a hearing.

20 E. After the guardian's plan filed under this  
21 section is approved by the court, the guardian shall provide a  
22 copy of the plan to the adult subject to guardianship, a person  
23 entitled to notice under Subsection E of Section 310 of the  
24 Uniform Guardianship, Conservatorship and Other Protective  
25 Arrangements Act or a subsequent order and any other person the

.208901.3

underscored material = new  
[bracketed material] = delete

1 court determines.

2 SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING  
3 OF GUARDIANSHIP.--

4 A. A guardian for an adult, not later than sixty  
5 days after appointment and at least annually thereafter, shall  
6 file with the court a report in a record regarding the  
7 condition of the adult and accounting for funds and other  
8 property in the guardian's possession or subject to the  
9 guardian's control.

10 B. A report under Subsection A of this section  
11 shall state or contain:

12 (1) the mental, physical and social condition  
13 of the adult;

14 (2) the living arrangements of the adult  
15 during the reporting period;

16 (3) a summary of the supported decision  
17 making, technological assistance, medical services, educational  
18 and vocational services and other supports and services  
19 provided to the adult and the guardian's opinion as to the  
20 adequacy of the adult's care;

21 (4) a summary of the guardian's visits with  
22 the adult, including the dates of the visits;

23 (5) action taken on behalf of the adult;

24 (6) the extent to which the adult has  
25 participated in decision making;

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 (7) if the adult is living in a mental health  
2 treatment facility or living in a facility that provides the  
3 adult with health care or other personal services, whether the  
4 guardian considers the facility's current plan for support,  
5 care, treatment or habilitation consistent with the adult's  
6 preferences, values, prior directions and best interest;

7 (8) anything of more than de minimis value  
8 that the guardian, any individual who resides with the guardian  
9 or the spouse, parent, child or sibling of the guardian has  
10 received from an individual providing goods or services to the  
11 adult;

12 (9) if the guardian delegated a power to an  
13 agent, the power delegated and the reason for the delegation;

14 (10) any business relation the guardian has  
15 with a person the guardian has paid or that has benefited from  
16 the property of the adult;

17 (11) a copy of the guardian's most recently  
18 approved plan under Section 316 of the Uniform Guardianship,  
19 Conservatorship and Other Protective Arrangements Act and a  
20 statement whether the guardian has deviated from the plan and,  
21 if so, how the guardian has deviated and why;

22 (12) plans for future care and support of the  
23 adult;

24 (13) a recommendation as to the need for  
25 continued guardianship and any recommended change in the scope

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 of the guardianship; and

2 (14) whether any co-guardian or successor  
3 guardian appointed to serve when a designated event occurs is  
4 alive and able to serve.

5 C. The court may appoint a visitor to review a  
6 report submitted under this section or a guardian's plan  
7 submitted under Section 316 of the Uniform Guardianship,  
8 Conservatorship and Other Protective Arrangements Act,  
9 interview the guardian or adult subject to guardianship or  
10 investigate any other matter involving the guardianship.

11 D. Notice of the filing under this section of a  
12 guardian's report, together with a copy of the report, shall be  
13 given to the adult subject to guardianship, a person entitled  
14 to notice under Subsection E of Section 310 of the Uniform  
15 Guardianship, Conservatorship and Other Protective Arrangements  
16 Act or a subsequent order and any other person the court  
17 determines. The notice and report shall be given not later  
18 than fourteen days after the filing.

19 E. The court may establish procedures for  
20 monitoring a report submitted under this section and may review  
21 each report at any time to determine whether:

22 (1) the report provides sufficient information  
23 to establish the guardian has complied with the guardian's  
24 duties;

25 (2) the guardianship should continue; and

underscoring material = new  
~~[bracketed material]~~ = delete

1                   (3) the guardian's requested fees, if any,  
2 should be approved.

3                   F. If the court determines there is reason to  
4 believe a guardian for an adult has not complied with the  
5 guardian's duties or the guardianship should be modified or  
6 terminated, the court:

7                   (1) shall notify the adult, the guardian and  
8 any other person entitled to notice under Subsection E of  
9 Section 310 of the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act or a subsequent order;

11                   (2) may require additional information from  
12 the guardian;

13                   (3) may appoint a visitor to interview the  
14 adult or guardian or investigate any matter involving the  
15 guardianship; and

16                   (4) consistent with Sections 318 and 319 of  
17 the Uniform Guardianship, Conservatorship and Other Protective  
18 Arrangements Act, may hold a hearing to consider removal of the  
19 guardian, termination of the guardianship or a change in the  
20 powers granted to the guardian or terms of the guardianship.

21                   G. If the court has reason to believe fees  
22 requested by a guardian for an adult are not reasonable, the  
23 court shall hold a hearing to determine whether to adjust the  
24 requested fees and give notice of the hearing to the adult  
25 subject to guardianship, a person entitled to notice under

.208901.3

underscored material = new  
[bracketed material] = delete

1 Subsection E of Section 310 of the Uniform Guardianship,  
2 Conservatorship and Other Protective Arrangements Act or under  
3 a subsequent order and any other person the court deems  
4 entitled to notice.

5 H. A guardian for an adult may petition the court  
6 for approval of a report filed under this section and shall  
7 petition the court for approval of an annual report, a report  
8 filed upon resignation, removal or termination or a report  
9 filed upon the court's direction. The court shall not approve  
10 the report without:

11 (1) notice to the adult subject to  
12 guardianship, a person entitled to notice under Subsection E of  
13 Section 310 of the Uniform Guardianship, Conservatorship and  
14 Other Protective Arrangements Act or under a subsequent order  
15 and any other person the court deems entitled to notice; and

16 (2) a hearing.

17 SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR  
18 ADULT--APPOINTMENT OF SUCCESSOR.--

19 A. The court may remove a guardian for an adult for  
20 failure to perform the guardian's duties or for other good  
21 cause and appoint a successor guardian to assume the duties of  
22 guardian.

23 B. The court shall hold a hearing to determine  
24 whether to remove a guardian for an adult and appoint a  
25 successor guardian on:

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1                   (1) petition of the adult, guardian or person  
2 interested in the welfare of the adult, that contains  
3 allegations that, if true, would support a reasonable belief  
4 that removal of the guardian and appointment of a successor  
5 guardian may be appropriate, but the court may decline to hold  
6 a hearing if a petition based on the same or substantially  
7 similar facts was filed during the preceding six months;

8                   (2) communication from the adult, guardian or  
9 person interested in the welfare of the adult that supports a  
10 reasonable belief that removal of the guardian and appointment  
11 of a successor guardian may be appropriate; or

12                   (3) determination by the court that a hearing  
13 would be in the best interest of the adult.

14                   C. Notice of a petition under Paragraph (1) of  
15 Subsection B of this section shall be given to the adult  
16 subject to guardianship, the guardian and any other person the  
17 court determines.

18                   D. An adult subject to guardianship who seeks to  
19 remove the guardian and have a successor guardian appointed has  
20 the right to choose an attorney to represent the adult in this  
21 matter. If the adult is not represented by an attorney, the  
22 court shall appoint an attorney under the same conditions as in  
23 Section 305 of the Uniform Guardianship, Conservatorship and  
24 Other Protective Arrangements Act. The court shall award  
25 reasonable attorney's fees to the attorney for the adult as

underscored material = new  
[bracketed material] = delete

1 provided in Section 119 of that act.

2 E. In selecting a successor guardian for an adult,  
3 the court shall follow the priorities under Section 309 of the  
4 Uniform Guardianship, Conservatorship and Other Protective  
5 Arrangements Act.

6 F. Not later than thirty days after appointing a  
7 successor guardian, the court shall give notice of the  
8 appointment to the adult subject to guardianship and any person  
9 entitled to notice under Subsection E of Section 310 of the  
10 Uniform Guardianship, Conservatorship and Other Protective  
11 Arrangements Act or a subsequent order.

12 SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION  
13 OF GUARDIANSHIP FOR ADULT.--

14 A. An adult subject to guardianship, the guardian  
15 for the adult or a person interested in the welfare of the  
16 adult may petition for:

17 (1) termination of the guardianship on the  
18 ground that a basis for appointment under Section 301 of the  
19 Uniform Guardianship, Conservatorship and Other Protective  
20 Arrangements Act does not exist or termination would be in the  
21 best interest of the adult or for other good cause; or

22 (2) modification of the guardianship on the  
23 ground that the extent of protection or assistance granted is  
24 not appropriate or for other good cause.

25 B. The court shall hold a hearing to determine

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1 whether termination or modification of a guardianship for an  
2 adult is appropriate on:

3 (1) petition under Subsection A of this  
4 section that contains allegations that, if true, would support  
5 a reasonable belief that termination or modification of the  
6 guardianship may be appropriate, but the court may decline to  
7 hold a hearing if a petition based on the same or substantially  
8 similar facts was filed during the preceding six months;

9 (2) communication from the adult, guardian or  
10 person interested in the welfare of the adult that supports a  
11 reasonable belief that termination or modification of the  
12 guardianship may be appropriate, including because the  
13 functional needs of the adult or supports or services available  
14 to the adult have changed;

15 (3) a report from a guardian or conservator  
16 that indicates that termination or modification may be  
17 appropriate because the functional needs of the adult or  
18 supports or services available to the adult have changed or a  
19 protective arrangement instead of guardianship or other less  
20 restrictive alternative for meeting the adult's needs is  
21 available; or

22 (4) a determination by the court that a  
23 hearing would be in the best interest of the adult.

24 C. Notice of a petition under Paragraph (1) of  
25 Subsection B of this section shall be given to the adult

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 subject to guardianship, the guardian and any other person the  
2 court determines.

3 D. On presentation of prima facie evidence for  
4 termination of a guardianship for an adult, the court shall  
5 order termination unless it is proven that a basis for  
6 appointment of a guardian under Section 301 of the Uniform  
7 Guardianship, Conservatorship and Other Protective Arrangements  
8 Act exists.

9 E. The court shall modify the powers granted to a  
10 guardian for an adult if the powers are excessive or inadequate  
11 due to a change in the abilities or limitations of the adult,  
12 the adult's supports or other circumstances.

13 F. Unless the court otherwise orders for good  
14 cause, before terminating or modifying a guardianship for an  
15 adult, the court shall follow the same procedures to safeguard  
16 the rights of the adult that apply to a petition for  
17 guardianship.

18 G. An adult subject to guardianship who seeks to  
19 terminate or modify the terms of the guardianship has the right  
20 to choose an attorney to represent the adult in the matter. If  
21 the adult is not represented by an attorney, the court shall  
22 appoint an attorney under the same conditions as in Section 305  
23 of the Uniform Guardianship, Conservatorship and Other  
24 Protective Arrangements Act. The court shall award reasonable  
25 attorney's fees to the attorney for the adult as provided in

.208901.3

1 Section 119 of that act.

2 ARTICLE 4

3 CONSERVATORSHIP

4 SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF  
5 CONSERVATOR.--

6 A. On petition and after notice and hearing, the  
7 court may appoint a conservator for the property or financial  
8 affairs of a minor if the court finds by a preponderance of  
9 evidence that appointment of a conservator is in the minor's  
10 best interest and:

11 (1) if the minor has a parent, the court gives  
12 weight to any recommendation of the parent whether an  
13 appointment is in the minor's best interest; and

14 (2) either:

15 (a) the minor owns funds or other  
16 property requiring management or protection that otherwise  
17 cannot be provided;

18 (b) the minor has or may have financial  
19 affairs that may be put at unreasonable risk or hindered  
20 because of the minor's age; or

21 (c) appointment is necessary or  
22 desirable to obtain or provide funds or other property needed  
23 for the support, care, education, health or welfare of the  
24 minor.

25 B. On petition and after notice and hearing, the

.208901.3

1 court may appoint a conservator for the property or financial  
2 affairs of an adult if the court finds by clear and convincing  
3 evidence that:

4 (1) the adult is unable to manage property or  
5 financial affairs because:

6 (a) of a limitation in the adult's  
7 ability to receive and evaluate information or make or  
8 communicate decisions, even with the use of appropriate  
9 supportive services, technological assistance or supported  
10 decision making; or

11 (b) the adult is missing, detained or  
12 unable to return to the United States;

13 (2) appointment is necessary to:

14 (a) avoid harm to the adult or  
15 significant dissipation of the property of the adult; or

16 (b) obtain or provide funds or other  
17 property needed for the support, care, education, health or  
18 welfare of the adult or of an individual entitled to the  
19 adult's support; and

20 (3) the respondent's identified needs cannot  
21 be met by a protective arrangement instead of conservatorship  
22 or other less restrictive alternative.

23 C. The court shall grant a conservator only those  
24 powers necessitated by demonstrated limitations and needs of  
25 the respondent and issue orders that will encourage development

underscored material = new  
[bracketed material] = delete

1 of the respondent's maximum self-determination and  
2 independence. The court shall not establish a full  
3 conservatorship if a limited conservatorship, protective  
4 arrangement instead of conservatorship or other less  
5 restrictive alternative would meet the needs of the respondent.

6 SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF  
7 CONSERVATOR.--

8 A. The following may petition for the appointment  
9 of a conservator:

10 (1) the individual for whom the order is  
11 sought;

12 (2) a person interested in the estate,  
13 financial affairs or welfare of the individual, including a  
14 person that would be adversely affected by lack of effective  
15 management of property or financial affairs of the individual;  
16 or

17 (3) the guardian for the individual.

18 B. A petition under Subsection A of this section  
19 shall state the petitioner's name, principal residence, current  
20 street address, if different, relationship to the respondent,  
21 interest in the appointment, the name and address of any  
22 attorney representing the petitioner and, to the extent known,  
23 the following:

24 (1) the respondent's name, age, principal  
25 residence, current street address, if different, and, if

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 different, address of the dwelling in which it is proposed the  
2 respondent will reside if the petition is granted;

3 (2) the name and address of the respondent's:

4 (a) spouse or, if the respondent has  
5 none, an adult with whom the respondent has shared household  
6 responsibilities for more than six months in the twelve-month  
7 period before the filing of the petition;

8 (b) adult children or, if none, each  
9 parent and adult sibling of the respondent or, if none, at  
10 least one adult nearest in kinship to the respondent who can be  
11 found with reasonable diligence; and

12 (c) adult stepchildren whom the  
13 respondent actively parented during the stepchildren's minor  
14 years and with whom the respondent had an ongoing relationship  
15 during the two years immediately before the filing of the  
16 petition;

17 (3) the name and current address of each of  
18 the following, if applicable:

19 (a) a person responsible for the care or  
20 custody of the respondent;

21 (b) any attorney currently representing  
22 the respondent;

23 (c) the representative payee appointed  
24 by the federal social security administration for the  
25 respondent;

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (d) a guardian or conservator acting for  
2 the respondent in New Mexico or another jurisdiction;

3 (e) a trustee or custodian of a trust or  
4 custodianship of which the respondent is a beneficiary;

5 (f) the fiduciary appointed for the  
6 respondent by the federal department of veterans affairs;

7 (g) an agent designated under a power of  
8 attorney for health care in which the respondent is identified  
9 as the principal;

10 (h) an agent designated under a power of  
11 attorney for finances in which the respondent is identified as  
12 the principal;

13 (i) a person known to have routinely  
14 assisted the respondent with decision making in the six-month  
15 period immediately before the filing of the petition;

16 (j) any proposed conservator, including  
17 a person nominated by the respondent, if the respondent is  
18 twelve years of age or older; and

19 (k) if the individual for whom a  
20 conservator is sought is a minor: 1) an adult not otherwise  
21 listed with whom the minor resides; and 2) each person not  
22 otherwise listed that had primary care or custody of the minor  
23 for at least sixty days during the two years immediately before  
24 the filing of the petition or for at least seven hundred thirty  
25 days during the five years immediately before the filing of the

.208901.3

1 petition;

2 (4) a general statement of the respondent's  
3 property with an estimate of its value, including any insurance  
4 or pension and the source and amount of other anticipated  
5 income or receipts;

6 (5) the reason conservatorship is necessary,  
7 including a brief description of:

8 (a) the nature and extent of the  
9 respondent's alleged need;

10 (b) if the petition alleges the  
11 respondent is missing, detained or unable to return to the  
12 United States, the relevant circumstances, including the time  
13 and nature of the disappearance or detention and any search or  
14 inquiry concerning the respondent's whereabouts;

15 (c) any protective arrangement instead  
16 of conservatorship or other less restrictive alternative for  
17 meeting the respondent's alleged need that has been considered  
18 or implemented;

19 (d) if no protective arrangement or  
20 other less restrictive alternatives have been considered or  
21 implemented, the reason it has not been considered or  
22 implemented; and

23 (e) the reason a protective arrangement  
24 or other less restrictive alternative is insufficient to meet  
25 the respondent's need;



underscored material = new  
[bracketed material] = delete

1 (6) whether the petitioner seeks a limited  
2 conservatorship or a full conservatorship;

3 (7) if the petitioner seeks a full  
4 conservatorship, the reason a limited conservatorship or  
5 protective arrangement instead of conservatorship is not  
6 appropriate;

7 (8) if the petition includes the name of a  
8 proposed conservator, the reason the proposed conservator  
9 should be appointed;

10 (9) if the petition is for a limited  
11 conservatorship, a description of the property to be placed  
12 under the conservator's control and any requested limitation on  
13 the authority of the conservator;

14 (10) whether the respondent needs an  
15 interpreter, translator or other form of support to communicate  
16 effectively with the court or understand court proceedings; and

17 (11) the name and address of an attorney  
18 representing the petitioner, if any.

19 SECTION 403. [NEW MATERIAL] NOTICE AND HEARING.--

20 A. On filing of a petition under Section 402 of the  
21 Uniform Guardianship, Conservatorship and Other Protective  
22 Arrangements Act for appointment of a conservator, the court  
23 shall set a date, time and place for a hearing on the petition.

24 B. A copy of a petition under Section 402 of the  
25 Uniform Guardianship, Conservatorship and Other Protective

underscoring material = new  
~~[bracketed material] = delete~~

1 Arrangements Act and notice of a hearing on the petition shall  
2 be served personally on the respondent. If the respondent's  
3 whereabouts are unknown or personal service cannot be made,  
4 service on the respondent shall be made as provided in Section  
5 45-1-401 NMSA 1978. The notice shall inform the respondent of  
6 the respondent's rights at the hearing, including the right to  
7 an attorney and to attend the hearing. The notice also shall  
8 include a description of the nature, purpose and consequences  
9 of granting the petition. The court shall not grant a petition  
10 for appointment of a conservator if notice substantially  
11 complying with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 402  
13 of the Uniform Guardianship, Conservatorship and Other  
14 Protective Arrangements Act, notice of the hearing shall be  
15 given to the persons required to be listed in the petition  
16 under Paragraphs (1) through (3) of Subsection B of Section 402  
17 of that act and any other person interested in the respondent's  
18 welfare the court determines. Failure to give notice under  
19 this subsection does not preclude the court from appointing a  
20 conservator.

21 D. After the appointment of a conservator, notice  
22 of a hearing on a petition for an order under this article,  
23 together with a copy of the petition, shall be given to:

24 (1) the individual subject to conservatorship,  
25 if the individual is twelve years of age or older and not

.208901.3

underscoring material = new  
[bracketed material] = delete

- 1 missing, detained or unable to return to the United States;
- 2 (2) the conservator; and
- 3 (3) any other person the court determines.

4 SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY  
5 PROPERTY WHILE PROCEEDING PENDING.--While a petition under  
6 Section 402 of the Uniform Guardianship, Conservatorship and  
7 Other Protective Arrangements Act is pending, after preliminary  
8 hearing and without notice to others, the court may issue an  
9 order to preserve and apply property of the respondent as  
10 required for the support of the respondent or an individual who  
11 is in fact dependent on the respondent. The court may appoint  
12 a special master to assist in implementing the order.

13 SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
14 VISITOR.--

15 A. If the respondent in a proceeding to appoint a  
16 conservator is a minor, the court may appoint a visitor to  
17 investigate a matter related to the petition or inform the  
18 minor or a parent of the minor about the petition or a related  
19 matter.

20 B. If the respondent in a proceeding to appoint a  
21 conservator is an adult, the court shall appoint a visitor  
22 unless the adult is represented by an attorney appointed by the  
23 court. The duties and reporting requirements of the visitor  
24 are limited to the relief requested in the petition. The  
25 visitor shall be an individual with training or experience in

1 the type of abilities, limitations and needs alleged in the  
2 petition.

3 C. A visitor appointed under Subsection B of this  
4 section for an adult shall interview the respondent in person  
5 and, in a manner the respondent is best able to understand:

6 (1) explain to the respondent the substance of  
7 the petition, the nature, purpose and effect of the proceeding,  
8 the respondent's rights at the hearing on the petition and the  
9 general powers and duties of a conservator;

10 (2) determine the respondent's views about the  
11 appointment sought by the petitioner, including views about a  
12 proposed conservator, the conservator's proposed powers and  
13 duties and the scope and duration of the proposed  
14 conservatorship;

15 (3) inform the respondent of the respondent's  
16 right to employ and consult with an attorney at the  
17 respondent's expense and the right to request a court-appointed  
18 attorney; and

19 (4) inform the respondent that all costs and  
20 expenses of the proceeding, including respondent's attorney's  
21 fees, may be paid from the respondent's assets.

22 D. The visitor appointed for an adult under  
23 Subsection B of this section shall:

24 (1) interview the petitioner and proposed  
25 conservator, if any;

underscoring material = new  
~~[bracketed material]~~ = delete

1 (2) review financial records of the  
2 respondent, if relevant to the visitor's recommendation under  
3 Paragraph (1) of Subsection E of this section;

4 (3) investigate whether the respondent's needs  
5 could be met by a protective arrangement instead of  
6 conservatorship or other less restrictive alternative and, if  
7 so, identify the arrangement or other less restrictive  
8 alternative; and

9 (4) investigate the allegations in the  
10 petition and any other matter relating to the petition the  
11 court directs.

12 E. A visitor appointed for an adult under  
13 Subsection B of this section promptly shall file a report in a  
14 record with the court that includes:

15 (1) a recommendation:

16 (a) regarding the appropriateness of  
17 conservatorship or whether a protective arrangement instead of  
18 conservatorship or other less restrictive alternative for  
19 meeting the respondent's needs is available;

20 (b) if a conservatorship is recommended,  
21 whether it should be full or limited; and

22 (c) if a limited conservatorship is  
23 recommended, the powers to be granted to the conservator and  
24 the property that should be placed under the conservator's  
25 control;

.208901.3

underscored material = new  
[bracketed material] = delete

1 (2) a statement of the qualifications of the  
2 proposed conservator and whether the respondent approves or  
3 disapproves of the proposed conservator;

4 (3) a recommendation whether a professional  
5 evaluation under Section 407 of the Uniform Guardianship,  
6 Conservatorship and Other Protective Arrangements Act is  
7 necessary;

8 (4) a statement whether the respondent is able  
9 to attend a hearing at the location court proceedings typically  
10 are held;

11 (5) a statement whether the respondent is able  
12 to participate in a hearing and that identifies any technology  
13 or other form of support that would enhance the respondent's  
14 ability to participate; and

15 (6) any other matter the court directs.

16 SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
17 ATTORNEY.--

18 A. Unless the respondent in a proceeding for  
19 appointment of a conservator is represented by an attorney, the  
20 court shall appoint an attorney to represent the respondent  
21 regardless of the respondent's ability to pay.

22 B. An attorney representing the respondent in a  
23 proceeding for appointment of a conservator shall:

24 (1) make reasonable efforts to ascertain the  
25 respondent's wishes;

1 (2) advocate for the respondent's wishes to  
2 the extent reasonably ascertainable; and

3 (3) if the respondent's wishes are not  
4 reasonably ascertainable, advocate for the result that is the  
5 least restrictive in type, duration and scope, consistent with  
6 the respondent's interests.

7 SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

8 A. At or before a hearing on a petition for  
9 conservatorship for an adult, the court shall order a  
10 professional evaluation of the respondent:

11 (1) if the respondent requests the evaluation;  
12 or

13 (2) in other cases, unless the court finds it  
14 has sufficient information to determine the respondent's needs  
15 and abilities without the evaluation.

16 B. If the court orders an evaluation under  
17 Subsection A of this section, the respondent shall be examined  
18 by a licensed physician, psychologist, social worker or other  
19 individual appointed by the court who is qualified to evaluate  
20 the respondent's alleged cognitive and functional abilities and  
21 limitations and will not be advantaged or disadvantaged by a  
22 decision to grant the petition or otherwise have a conflict of  
23 interest. The individual conducting the evaluation promptly  
24 shall file a report in a record with the court. Unless  
25 otherwise directed by the court, the report shall contain:

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (1) a description of the nature, type and  
2 extent of the respondent's cognitive and functional abilities  
3 and limitations with regard to the management of the  
4 respondent's property and financial affairs;

5 (2) an evaluation of the respondent's mental  
6 and physical condition and, if appropriate, educational  
7 potential, adaptive behavior and social skills;

8 (3) a prognosis for improvement with regard to  
9 the ability to manage the respondent's property and financial  
10 affairs; and

11 (4) the date of the examination on which the  
12 report is based.

13 C. A respondent may decline to participate in an  
14 evaluation ordered under Subsection A of this section.

15 SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
16 HEARING.--

17 A. Except as otherwise provided in Subsection B of  
18 this section, a hearing under Section 403 of the Uniform  
19 Guardianship, Conservatorship and Other Protective Arrangements  
20 Act shall not proceed unless the respondent attends the  
21 hearing. If it is not reasonably feasible for the respondent  
22 to attend a hearing at the location court proceedings typically  
23 are held, the court shall make reasonable efforts to hold the  
24 hearing at an alternative location convenient to the respondent  
25 or allow the respondent to attend the hearing using real-time

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1 audio-visual technology.

2 B. A hearing under Section 403 of the Uniform  
3 Guardianship, Conservatorship and Other Protective Arrangements  
4 Act may proceed without the respondent in attendance if the  
5 court finds by clear and convincing evidence that:

6 (1) the respondent consistently and repeatedly  
7 has refused to attend the hearing after having been fully  
8 informed of the right to attend and the potential consequences  
9 of failing to do so;

10 (2) there is no practicable way for the  
11 respondent to attend and participate in the hearing even with  
12 appropriate supportive services or technological assistance; or

13 (3) the respondent is a minor who has received  
14 proper notice and attendance would be harmful to the minor.

15 C. The respondent may be assisted in a hearing  
16 under Section 403 of the Uniform Guardianship, Conservatorship  
17 and Other Protective Arrangements Act by a person or persons of  
18 the respondent's choosing, assistive technology or an  
19 interpreter or translator or a combination of these supports.  
20 If assistance would facilitate the respondent's participation  
21 in the hearing, but is not otherwise available to the  
22 respondent, the court shall make reasonable efforts to provide  
23 it.

24 D. The respondent has a right to choose an attorney  
25 to represent the respondent at a hearing under Section 403 of

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 the Uniform Guardianship, Conservatorship and Other Protective  
2 Arrangements Act.

3 E. At a hearing under Section 403 of the Uniform  
4 Guardianship, Conservatorship and Other Protective Arrangements  
5 Act, the respondent may:

6 (1) present evidence and subpoena witnesses  
7 and documents;

8 (2) examine witnesses, including any court-  
9 appointed evaluator and the visitor; and

10 (3) otherwise participate in the hearing.

11 F. Unless excused by the court for good cause, a  
12 proposed conservator shall attend a hearing under Section 403  
13 of the Uniform Guardianship, Conservatorship and Other  
14 Protective Arrangements Act.

15 G. A hearing under Section 403 of the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act shall be closed on request of the respondent and a showing  
18 of good cause.

19 H. Any person may request to participate in a  
20 hearing under Section 403 of the Uniform Guardianship,  
21 Conservatorship and Other Protective Arrangements Act. The  
22 court may grant the request, with or without a hearing, on  
23 determining that the best interest of the respondent will be  
24 served. The court may impose appropriate conditions on the  
25 person's participation.

.208901.3

1           SECTION 409.   [NEW MATERIAL] CONFIDENTIALITY OF

2 RECORDS.--

3           A.   The existence of a proceeding for or the  
4 existence of conservatorship is a matter of public record  
5 unless the court seals the record after:

6                   (1) the respondent, the individual subject to  
7 conservatorship or the parent of a minor subject to  
8 conservatorship requests the record be sealed; and

9                   (2) either:

10                           (a) the petition for conservatorship is  
11 dismissed; or

12                           (b) the conservatorship is terminated.

13           B.   An individual subject to a proceeding for a  
14 conservatorship, whether or not a conservator is appointed, an  
15 attorney designated by the individual and a person entitled to  
16 notice under Section 411 of the Uniform Guardianship,  
17 Conservatorship and Other Protective Arrangements Act or a  
18 subsequent order may access court records of the proceeding and  
19 resulting conservatorship, including the conservator's plan  
20 under Section 419 of that act and the conservator's report  
21 under Section 423 of that act. A person not otherwise entitled  
22 to access to court records under this section for good cause  
23 may petition the court for access to court records of the  
24 conservatorship, including the conservator's plan and report.  
25 The court shall grant access if access is in the best interest

.208901.3

underscored material = new  
[bracketed material] = delete

1 of the respondent or individual subject to conservatorship or  
2 furthers the public interest and does not endanger the welfare  
3 or financial interests of the respondent or individual.

4 C. A report under Section 405 of the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act of a visitor or professional evaluation under Section 407  
7 of that act is confidential and shall be sealed on filing, but  
8 is available to:

9 (1) the court;

10 (2) the individual who is the subject of the  
11 report or evaluation, without limitation as to use;

12 (3) the petitioner, visitor and petitioner's  
13 and respondent's attorneys, for purposes of the proceeding;

14 (4) unless the court directs otherwise, an  
15 agent appointed under a power of attorney for finances in which  
16 the respondent is identified as the principal; and

17 (5) any other person if it is in the public  
18 interest or for a purpose the court orders for good cause.

19 SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER  
20 OF PRIORITY.--

21 A. Except as otherwise provided in Subsection C of  
22 this section, the court in appointing a conservator shall  
23 consider persons qualified to be a conservator in the following  
24 order of priority:

25 (1) a conservator, other than a temporary or

.208901.3

1 emergency conservator, currently acting for the respondent in  
2 another jurisdiction;

3 (2) a person nominated as conservator by the  
4 respondent, including the respondent's most recent nomination  
5 made in a power of attorney for finances;

6 (3) an agent appointed by the respondent to  
7 manage the respondent's property under a power of attorney for  
8 finances;

9 (4) a spouse of the respondent; and

10 (5) a family member or other individual who  
11 has shown special care and concern for the respondent.

12 B. If two or more persons have equal priority under  
13 Subsection A of this section, the court shall select as  
14 conservator the person the court considers best qualified. In  
15 determining the best qualified person, the court shall consider  
16 the person's relationship with the respondent, the person's  
17 skills, the expressed wishes of the respondent, the extent to  
18 which the person and the respondent have similar values and  
19 preferences and the likelihood the person will be able to  
20 perform the duties of a conservator successfully.

21 C. The court, acting in the best interest of the  
22 respondent, may decline to appoint as conservator a person  
23 having priority under Subsection A of this section and appoint  
24 a person having a lower priority or no priority.

25 D. A person that provides paid services to the

underscored material = new  
[bracketed material] = delete

1 respondent, or an individual who is employed by a person that  
2 provides paid services to the respondent or is the spouse,  
3 domestic partner, parent or child of an individual who provides  
4 or is employed to provide paid services to the respondent,  
5 shall not be appointed as conservator unless:

6 (1) the individual is related to the  
7 respondent by blood, marriage or adoption; or

8 (2) the court finds by clear and convincing  
9 evidence that the person is the best qualified person available  
10 for appointment and the appointment is in the best interest of  
11 the respondent.

12 E. An owner, operator or employee of a long-term  
13 care facility at which the respondent is receiving care shall  
14 not be appointed as conservator unless the owner, operator or  
15 employee is related to the respondent by blood, marriage or  
16 adoption.

17 SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT.--

18 A. A court order appointing a conservator for a  
19 minor shall include findings to support appointment of a  
20 conservator and, if a full conservatorship is granted, the  
21 reason a limited conservatorship would not meet the identified  
22 needs of the minor.

23 B. A court order appointing a conservator for an  
24 adult shall:

25 (1) include a specific finding that clear and

underscoring material = new  
~~[bracketed material] = delete~~

1 convincing evidence has established that the identified needs  
2 of the respondent cannot be met by a protective arrangement  
3 instead of conservatorship or other less restrictive  
4 alternative, including use of appropriate supportive services,  
5 technological assistance or supported decision making; and

6 (2) include a specific finding that clear and  
7 convincing evidence established the respondent was given proper  
8 notice of the hearing on the petition.

9 C. A court order establishing a full  
10 conservatorship for an adult shall state the basis for granting  
11 a full conservatorship and include specific findings to support  
12 the conclusion that a limited conservatorship would not meet  
13 the functional needs of the adult.

14 D. A court order establishing a limited  
15 conservatorship shall state the specific property placed under  
16 the control of the conservator and the powers granted to the  
17 conservator.

18 E. The court, as part of an order establishing a  
19 conservatorship, shall identify any person that subsequently is  
20 entitled to:

21 (1) notice of the rights of the individual  
22 subject to conservatorship under Subsection B of Section 412 of  
23 the Uniform Guardianship, Conservatorship and Other Protective  
24 Arrangements Act;

25 (2) notice of a sale of or surrender of a

underscoring material = new  
~~[bracketed material] = delete~~

1 lease to the primary dwelling of the individual;

2 (3) notice that the conservator has delegated  
3 a power that requires court approval under Section 414 of the  
4 Uniform Guardianship, Conservatorship and Other Protective  
5 Arrangements Act or substantially all powers of the  
6 conservator;

7 (4) notice that the conservator will be  
8 unavailable to perform the conservator's duties for more than  
9 one month;

10 (5) a copy of the conservator's plan under  
11 Section 419 of the Uniform Guardianship, Conservatorship and  
12 Other Protective Arrangements Act and the conservator's report  
13 under Section 423 of that act;

14 (6) access to court records relating to the  
15 conservatorship;

16 (7) notice of a transaction involving a  
17 substantial conflict between the conservator's fiduciary duties  
18 and personal interests;

19 (8) notice of the death or significant change  
20 in the condition of the individual;

21 (9) notice that the court has limited or  
22 modified the powers of the conservator; and

23 (10) notice of the removal of the conservator.

24 F. If an individual subject to conservatorship is  
25 an adult, the spouse and adult children of the adult subject to

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1 conservatorship are entitled under Subsection E of this section  
2 to notice unless the court determines notice would be contrary  
3 to the preferences or prior directions of the adult subject to  
4 conservatorship or not in the best interest of the adult.

5 G. If an individual subject to conservatorship is a  
6 minor, each parent and adult sibling of the minor is entitled  
7 under Subsection E of this section to notice unless the court  
8 determines notice would not be in the best interest of the  
9 minor.

10 SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF  
11 APPOINTMENT--RIGHTS.--

12 A. A conservator appointed under Section 411 of the  
13 Uniform Guardianship, Conservatorship and Other Protective  
14 Arrangements Act shall give to the individual subject to  
15 conservatorship and to all other persons given notice under  
16 Section 403 of that act a copy of the order of appointment,  
17 together with notice of the right to request termination or  
18 modification. The order and notice shall be given not later  
19 than fourteen days after the appointment.

20 B. Not later than thirty days after appointment of  
21 a conservator under Section 411 of the Uniform Guardianship,  
22 Conservatorship and Other Protective Arrangements Act, the  
23 court shall give to the individual subject to conservatorship,  
24 the conservator and any other person entitled to notice under  
25 Subsection E of Section 411 of the Uniform Guardianship,

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 Conservatorship and Other Protective Arrangements Act a  
2 statement of the rights of the individual subject to  
3 conservatorship and procedures to seek relief if the individual  
4 is denied those rights. The statement shall be in plain  
5 language, in at least sixteen-point font and, to the extent  
6 feasible, in a language in which the individual subject to  
7 conservatorship is proficient. The statement shall notify the  
8 individual subject to conservatorship of the right to:

9 (1) seek termination or modification of the  
10 conservatorship, or removal of the conservator, and choose an  
11 attorney to represent the individual in these matters;

12 (2) participate in decision making to the  
13 extent reasonably feasible;

14 (3) receive a copy of the conservator's plan  
15 under Section 419 of the Uniform Guardianship, Conservatorship  
16 and Other Protective Arrangements Act, the conservator's  
17 inventory under Section 420 of that act and the conservator's  
18 report under Section 423 of that act; and

19 (4) object to the conservator's inventory,  
20 plan or report.

21 C. If a conservator is appointed for the reasons  
22 stated in Subparagraph (b) of Paragraph (1) of Subsection B of  
23 Section 401 of the Uniform Guardianship, Conservatorship and  
24 Other Protective Arrangements Act and the individual subject to  
25 conservatorship is missing, notice under this section to the

.208901.3

underscored material = new  
[bracketed material] = delete

1 individual is not required.

2 SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

3 A. On its own or on petition by a person interested  
4 in an individual's welfare after a petition has been filed  
5 under Section 402 of the Uniform Guardianship, Conservatorship  
6 and Other Protective Arrangements Act, the court may appoint an  
7 emergency conservator for the individual if the court finds:

8 (1) appointment of an emergency conservator is  
9 likely to prevent substantial and irreparable harm to the  
10 individual's property or financial interests;

11 (2) no other person appears to have authority  
12 and willingness to act in the circumstances; and

13 (3) there is reason to believe that a basis  
14 for appointment of a conservator under Section 401 of the  
15 Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act exists.

17 B. The duration of authority of an emergency  
18 conservator shall not exceed sixty days, and the emergency  
19 conservator may exercise only the powers specified in the order  
20 of appointment. The emergency conservator's authority may be  
21 extended once for not more than sixty days if the court finds  
22 that the conditions for appointment of an emergency conservator  
23 under Subsection A of this section continue.

24 C. Immediately on filing of a petition for an  
25 emergency conservator, the court shall appoint an attorney to

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 represent the respondent in the proceeding. Except as  
2 otherwise provided in Subsection D of this section, reasonable  
3 notice of the date, time and place of a hearing on the petition  
4 shall be given to the respondent, the respondent's attorney and  
5 any other person the court determines.

6 D. The court may appoint an emergency conservator  
7 without notice to the respondent and any attorney for the  
8 respondent only if the court finds from an affidavit or  
9 testimony that the respondent's property or financial interests  
10 will be substantially and irreparably harmed before a hearing  
11 with notice on the appointment can be held. If the court  
12 appoints an emergency conservator without giving notice under  
13 Subsection C of this section, the court shall give notice of  
14 the appointment not later than forty-eight hours after the  
15 appointment to:

- 16 (1) the respondent;  
17 (2) the respondent's attorney; and  
18 (3) any other person the court determines.

19 E. Not later than five days after the appointment,  
20 the court shall hold a hearing on the appropriateness of the  
21 appointment.

22 F. Appointment of an emergency conservator under  
23 this section is not a determination that a basis exists for  
24 appointment of a conservator under Section 401 of the Uniform  
25 Guardianship, Conservatorship and Other Protective Arrangements

underscored material = new  
[bracketed material] = delete

1 Act.

2 G. The court may remove an emergency conservator  
3 appointed under this section at any time. The emergency  
4 conservator shall make any report the court requires.

5 SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR  
6 REQUIRING COURT APPROVAL.--

7 A. Except as otherwise ordered by the court, a  
8 conservator shall give notice to persons entitled to notice  
9 under Subsection D of Section 403 of the Uniform Guardianship,  
10 Conservatorship and Other Protective Arrangements Act and  
11 receive specific authorization by the court before the  
12 conservator may exercise with respect to the conservatorship  
13 the power to:

14 (1) make a gift, except a gift of de minimis  
15 value;

16 (2) sell, encumber an interest in or surrender  
17 a lease to the primary dwelling of the individual subject to  
18 conservatorship;

19 (3) convey, release or disclaim a contingent  
20 or expectant interest in property, including marital property  
21 and any right of survivorship incident to joint tenancy or  
22 tenancy by the entireties;

23 (4) exercise or release a power of  
24 appointment;

25 (5) create a revocable or irrevocable trust of

underscoring material = new  
~~[bracketed material] = delete~~

1 property of the conservatorship estate, whether or not the  
2 trust extends beyond the duration of the conservatorship, or  
3 revoke or amend a trust revocable by the individual subject to  
4 conservatorship;

5 (6) exercise a right to elect an option or  
6 change a beneficiary under an insurance policy or annuity or  
7 surrender the policy or annuity for its cash value;

8 (7) exercise a right to an elective share in  
9 the estate of a deceased spouse of the individual subject to  
10 conservatorship or renounce or disclaim a property interest;

11 (8) grant a creditor priority for payment over  
12 creditors of the same or higher class if the creditor is  
13 providing property or services used to meet the basic living  
14 and care needs of the individual subject to conservatorship and  
15 preferential treatment otherwise would be impermissible under  
16 Subsection E of Section 428 of the Uniform Guardianship,  
17 Conservatorship and Other Protective Arrangements Act; and

18 (9) make, modify, amend or revoke the will of  
19 the individual subject to conservatorship in compliance with  
20 the Uniform Probate Code.

21 B. In approving a conservator's exercise of a power  
22 listed in Subsection A of this section, the court shall  
23 consider primarily the decision the individual subject to  
24 conservatorship would make if able, to the extent the decision  
25 can be ascertained.

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1           C. To determine under Subsection B of this section  
2 the decision the individual subject to conservatorship would  
3 make if able, the court shall consider the individual's prior  
4 or current directions, preferences, opinions, values and  
5 actions, to the extent actually known or reasonably  
6 ascertainable by the conservator. The court also shall  
7 consider:

- 8                   (1) the financial needs of the individual  
9 subject to conservatorship and individuals who are in fact  
10 dependent on the individual subject to conservatorship for  
11 support and the interests of creditors of the individual;
- 12                   (2) possible reduction of income, estate,  
13 inheritance or other tax liabilities;
- 14                   (3) eligibility for governmental assistance;
- 15                   (4) the previous pattern of giving or level of  
16 support provided by the individual;
- 17                   (5) any existing estate plan or lack of estate  
18 plan of the individual;
- 19                   (6) the life expectancy of the individual and  
20 the probability the conservatorship will terminate before the  
21 individual's death; and
- 22                   (7) any other relevant factor.

23           D. A conservator shall not revoke or amend a power  
24 of attorney for finances signed by the individual subject to  
25 conservatorship. If a power of attorney for finances is in

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 effect, a decision of the agent takes precedence over that of  
2 the conservator, unless the court orders otherwise.

3 SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER  
4 APPOINTMENT.--An individual subject to conservatorship or a  
5 person interested in the welfare of the individual may petition  
6 for an order:

7 A. requiring the conservator to furnish a bond or  
8 collateral or additional bond or collateral or allowing a  
9 reduction in a bond or collateral previously furnished;

10 B. requiring an accounting for the administration  
11 of the conservatorship estate;

12 C. directing distribution;

13 D. removing the conservator and appointing a  
14 temporary or successor conservator;

15 E. modifying the type of appointment or powers  
16 granted to the conservator, if the extent of protection or  
17 management previously granted is excessive or insufficient to  
18 meet the individual's needs, including because the individual's  
19 abilities or supports have changed;

20 F. rejecting or modifying the conservator's plan  
21 under Section 419 of the Uniform Guardianship, Conservatorship  
22 and Other Protective Arrangements Act, the conservator's  
23 inventory under Section 420 of that act or the conservator's  
24 report under Section 423 of that act; or

25 G. granting other appropriate relief.



1           SECTION 416.   ~~[NEW MATERIAL]~~ BOND--ALTERNATIVE ASSET-

2 PROTECTION ARRANGEMENT.--

3           A.   Except as otherwise provided in Subsection C of  
4 this section, the court shall require a conservator to furnish  
5 a bond with a surety the court specifies, or require an  
6 alternative asset-protection arrangement, conditioned on  
7 faithful discharge of all duties of the conservator. The court  
8 may waive the requirement only if the court finds that a bond  
9 or other asset-protection arrangement is not necessary to  
10 protect the interests of the individual subject to  
11 conservatorship. Except as otherwise provided in Subsection C  
12 of this section, the court shall not waive the requirement if  
13 the conservator is in the business of serving as a conservator  
14 and is being paid for the conservator's service.

15           B.   Unless the court directs otherwise, the bond  
16 required under this section shall be in the amount of the  
17 aggregate capital value of the conservatorship estate, plus one  
18 year's estimated income, less the value of property deposited  
19 under an arrangement requiring a court order for its removal  
20 and real property the conservator lacks power to sell or convey  
21 without specific court authorization. The court, in place of  
22 surety on a bond, may accept collateral for the performance of  
23 the bond, including a pledge of securities or a mortgage of  
24 real property.

25           C.   A financial institution that possesses and is

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1 exercising general trust powers in New Mexico is not required  
2 to give a bond under this section. As used in this subsection,  
3 "financial institution" means a state- or federally chartered,  
4 federally insured depository bank or trust company.

5 SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF  
6 BOND.--

7 A. The following rules apply to the bond required  
8 under Section 416 of the Uniform Guardianship, Conservatorship  
9 and Other Protective Arrangements Act:

10 (1) except as otherwise provided by the bond,  
11 the surety and the conservator are jointly and severally  
12 liable;

13 (2) by executing a bond provided by a  
14 conservator, the surety submits to the personal jurisdiction of  
15 the court that issued letters of office to the conservator in a  
16 proceeding relating to the duties of the conservator in which  
17 the surety is named as a party. Notice of the proceeding shall  
18 be given to the surety at the address shown in the records of  
19 the court in which the bond is filed and any other address of  
20 the surety then known to the person required to provide the  
21 notice;

22 (3) on petition of a successor conservator or  
23 person affected by a breach of the obligation of the bond, a  
24 proceeding may be brought against the surety for breach of the  
25 obligation of the bond; and

.208901.3

underscored material = new  
[bracketed material] = delete

1 (4) a proceeding against the bond may be  
2 brought until liability under the bond is exhausted.

3 B. A proceeding shall not be brought under this  
4 section against a surety of a bond on a matter as to which a  
5 proceeding against the conservator is barred.

6 C. If a bond under Section 416 of the Uniform  
7 Guardianship, Conservatorship and Other Protective Arrangements  
8 Act is not renewed by the conservator, the surety or sureties  
9 immediately shall give notice to the court and the individual  
10 subject to conservatorship.

11 SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

12 A. A conservator is a fiduciary and has duties of  
13 prudence and loyalty to the individual subject to  
14 conservatorship.

15 B. A conservator shall promote the self-  
16 determination of the individual subject to conservatorship and,  
17 to the extent feasible, encourage the individual to participate  
18 in decisions, act on the individual's own behalf and develop or  
19 regain the capacity to manage the individual's personal  
20 affairs.

21 C. In making a decision for an individual subject  
22 to conservatorship, the conservator shall make the decision the  
23 conservator reasonably believes the individual would make if  
24 able, unless doing so would fail to preserve the resources  
25 needed to maintain the individual's well-being and lifestyle or

underscoring material = new  
~~[bracketed material] = delete~~

1 otherwise unreasonably harm or endanger the welfare or personal  
2 or financial interests of the individual. To determine the  
3 decision the individual would make if able, the conservator  
4 shall consider the individual's prior or current directions,  
5 preferences, opinions, values and actions, to the extent  
6 actually known or reasonably ascertainable by the conservator.

7 D. If a conservator cannot make a decision under  
8 Subsection C of this section because the conservator does not  
9 know and cannot reasonably determine the decision the  
10 individual subject to conservatorship probably would make if  
11 able, or the conservator reasonably believes the decision the  
12 individual would make would fail to preserve resources needed  
13 to maintain the individual's well-being and lifestyle or  
14 otherwise unreasonably harm or endanger the welfare or personal  
15 or financial interests of the individual, the conservator shall  
16 act in accordance with the best interest of the individual.

17 In determining the best interest of the individual, the  
18 conservator shall consider:

19 (1) information received from professionals  
20 and persons that demonstrate sufficient interest in the welfare  
21 of the individual;

22 (2) other information the conservator believes  
23 the individual would have considered if the individual were  
24 able to act; and

25 (3) other factors a reasonable person in the

1 circumstances of the individual would consider, including  
2 consequences for others.

3 E. Except when inconsistent with the conservator's  
4 duties under Subsections A through D of this section, a  
5 conservator shall invest and manage the conservatorship estate  
6 as a prudent investor would, by considering:

7 (1) the circumstances of the individual  
8 subject to conservatorship and the conservatorship estate;

9 (2) general economic conditions;

10 (3) the possible effect of inflation or  
11 deflation;

12 (4) the expected tax consequences of an  
13 investment decision or strategy;

14 (5) the role of each investment or course of  
15 action in relation to the conservatorship estate as a whole;

16 (6) the expected total return from income and  
17 appreciation of capital;

18 (7) the need for liquidity, regularity of  
19 income and preservation or appreciation of capital; and

20 (8) the special relationship or value, if any,  
21 of specific property to the individual subject to  
22 conservatorship.

23 F. The propriety of a conservator's investment and  
24 management of the conservatorship estate is determined in light  
25 of the facts and circumstances existing when the conservator

underscoring material = new  
~~[bracketed material] = delete~~

1 decides or acts and not by hindsight.

2 G. A conservator shall make a reasonable effort to  
3 verify facts relevant to the investment and management of the  
4 conservatorship estate.

5 H. A conservator that has special skills or  
6 expertise, or is named conservator in reliance on the  
7 conservator's representation of special skills or expertise,  
8 has a duty to use the special skills or expertise in carrying  
9 out the conservator's duties.

10 I. In investing, selecting specific property for  
11 distribution and invoking a power of revocation or withdrawal  
12 for the use or benefit of the individual subject to  
13 conservatorship, a conservator shall consider any estate plan  
14 of the individual known or reasonably ascertainable to the  
15 conservator and may examine the will or other donative,  
16 nominative or appointive instrument of the individual.

17 J. A conservator shall maintain insurance on the  
18 insurable real and personal property of the individual subject  
19 to conservatorship, unless the conservatorship estate lacks  
20 sufficient funds to pay for insurance or the court finds:

21 (1) the property lacks sufficient equity; or

22 (2) insuring the property would unreasonably  
23 dissipate the conservatorship estate or otherwise not be in the  
24 best interest of the individual.

25 K. If a power of attorney for finances is in

underscored material = new  
~~[bracketed material] = delete~~

1 effect, a conservator shall cooperate with the agent to the  
2 extent feasible.

3 L. A conservator has access to and authority over a  
4 digital asset of the individual subject to conservatorship to  
5 the extent provided by the Revised Uniform Fiduciary Access to  
6 Digital Assets Act or court order.

7 M. A conservator for an adult shall notify the  
8 court if the condition of the adult has changed so that the  
9 adult is capable of exercising rights previously removed. The  
10 notice shall be given immediately upon learning of the change.

11 SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

12 A. A conservator, not later than sixty days after  
13 appointment and when there is a significant change in  
14 circumstances or the conservator seeks to deviate significantly  
15 from the conservator's plan, shall file with the court a plan  
16 for protecting, managing, expending and distributing the assets  
17 of the conservatorship estate. The plan shall be based on the  
18 needs of the individual subject to conservatorship and take  
19 into account the best interest of the individual as well as the  
20 individual's preferences, values and prior directions, to the  
21 extent known to or reasonably ascertainable by the conservator.  
22 The conservator shall include in the plan:

23 (1) a budget containing projected expenses and  
24 resources, including an estimate of the total amount of fees  
25 the conservator anticipates charging per year and a statement

underscoring material = new  
~~[bracketed material] = delete~~

1 or list of the amount the conservator proposes to charge for  
2 each service the conservator anticipates providing to the  
3 individual;

4 (2) how the conservator will involve the  
5 individual in decisions about management of the conservatorship  
6 estate;

7 (3) any step the conservator plans to take to  
8 develop or restore the ability of the individual to manage the  
9 conservatorship estate; and

10 (4) an estimate of the duration of the  
11 conservatorship.

12 B. A conservator shall give notice of the filing of  
13 the conservator's plan under Subsection A of this section,  
14 together with a copy of the plan, to the individual subject to  
15 conservatorship, a person entitled to notice under Subsection E  
16 of Section 411 of the Uniform Guardianship, Conservatorship and  
17 Other Protective Arrangements Act or a subsequent order and any  
18 other person the court determines. The notice shall include a  
19 statement of the right to object to the plan and be given not  
20 later than fourteen days after the filing.

21 C. An individual subject to conservatorship and any  
22 person entitled under Subsection B of this section to receive  
23 notice and a copy of the conservator's plan may object to the  
24 plan.

25 D. A conservator shall petition the court for



underscored material = new  
[bracketed material] = delete

1 approval of a plan filed under Subsection A of this section.  
2 The court shall review the plan and determine whether to  
3 approve it or require a new plan. In deciding whether to  
4 approve the plan, the court shall consider an objection under  
5 Subsection C of this section and whether the plan is consistent  
6 with the conservator's duties and powers. The court shall not  
7 approve the plan without:

8 (1) notice to the adult subject to  
9 conservatorship, a person entitled to notice under Subsection E  
10 of Section 411 of the Uniform Guardianship, Conservatorship and  
11 Other Protective Arrangements Act or under a subsequent order  
12 and any other person the court deems entitled to notice; and

13 (2) a hearing.

14 E. After a conservator's plan under this section is  
15 approved by the court, the conservator shall provide a copy of  
16 the plan to the individual subject to conservatorship, a person  
17 entitled to notice under Subsection E of Section 411 of the  
18 Uniform Guardianship, Conservatorship and Other Protective  
19 Arrangements Act or a subsequent order and any other person the  
20 court determines.

21 SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

22 A. Not later than sixty days after appointment, a  
23 conservator shall prepare and file with the appointing court a  
24 detailed inventory of the conservatorship estate, together with  
25 an oath or affirmation that the inventory is believed to be

.208901.3

underscored material = new  
[bracketed material] = delete

1 complete and accurate as far as information permits.

2 B. A conservator shall give notice of the filing of  
3 an inventory to the individual subject to conservatorship, a  
4 person entitled to notice under Subsection E of Section 411 of  
5 the Uniform Guardianship, Conservatorship and Other Protective  
6 Arrangements Act or a subsequent order and any other person the  
7 court determines. The notice shall be given not later than  
8 fourteen days after the filing.

9 C. A conservator shall keep records of the  
10 administration of the conservatorship estate and make them  
11 available for examination on reasonable request of the  
12 individual subject to conservatorship, a guardian for the  
13 individual or any other person the conservator or the court  
14 determines.

15 SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF  
16 CONSERVATOR NOT REQUIRING COURT APPROVAL.--

17 A. Except as otherwise provided in Section 414 of  
18 the Uniform Guardianship, Conservatorship and Other Protective  
19 Arrangements Act or qualified or limited in the court's order  
20 of appointment and stated in the letters of office, a  
21 conservator has all powers granted in this section and any  
22 additional power granted to a trustee by law of New Mexico  
23 other than that act.

24 B. A conservator, acting reasonably and consistent  
25 with the fiduciary duties of the conservator to accomplish the

.208901.3

1 purpose of the conservatorship, without specific court  
2 authorization or confirmation, may with respect to the  
3 conservatorship estate:

4 (1) collect, hold and retain property,  
5 including property in which the conservator has a personal  
6 interest and real property in another state, until the  
7 conservator determines disposition of the property should be  
8 made;

9 (2) receive additions to the conservatorship  
10 estate;

11 (3) continue or participate in the operation  
12 of a business or other enterprise;

13 (4) acquire an undivided interest in property  
14 in which the conservator, in a fiduciary capacity, holds an  
15 undivided interest;

16 (5) invest assets;

17 (6) deposit funds or other property in a  
18 financial institution, including one operated by the  
19 conservator;

20 (7) acquire or dispose of property, including  
21 real property in another state, for cash or on credit, at  
22 public or private sale and manage, develop, improve, exchange,  
23 partition, change the character of or abandon property;

24 (8) make ordinary or extraordinary repairs or  
25 alterations in a building or other structure, demolish any

underscoring material = new  
~~[bracketed material] = delete~~

1 improvement or raze an existing or erect a new party wall or  
2 building;

3 (9) subdivide or develop land, dedicate land  
4 to public use, make or obtain the vacation of a plat and adjust  
5 a boundary, adjust a difference in valuation of land, exchange  
6 or partition land by giving or receiving consideration and  
7 dedicate an easement to public use without consideration;

8 (10) enter for any purpose into a lease of  
9 property as lessor or lessee, with or without an option to  
10 purchase or renew, for a term within or extending beyond the  
11 term of the conservatorship;

12 (11) enter into a lease or arrangement for  
13 exploration and removal of minerals or other natural resources  
14 or a pooling or unitization agreement;

15 (12) grant an option involving disposition of  
16 property or accept or exercise an option for the acquisition of  
17 property;

18 (13) vote a security, in person or by general  
19 or limited proxy;

20 (14) pay a call, assessment or other sum  
21 chargeable or accruing against or on account of a security;

22 (15) sell or exercise a stock subscription or  
23 conversion right;

24 (16) consent, directly or through a committee  
25 or agent, to the reorganization, consolidation, merger,

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 dissolution or liquidation of a corporation or other business  
2 enterprise;

3 (17) hold a security in the name of a nominee  
4 or in other form without disclosure of the conservatorship so  
5 that title to the security may pass by delivery;

6 (18) insure:

7 (a) the conservatorship estate, in whole  
8 or in part, against damage or loss in accordance with  
9 Subsection J of Section 418 of the Uniform Guardianship,  
10 Conservatorship and Other Protective Arrangements Act; and

11 (b) the conservator against liability  
12 with respect to a third person;

13 (19) borrow funds, with or without security,  
14 to be repaid from the conservatorship estate or otherwise;

15 (20) advance funds for the protection of the  
16 conservatorship estate or the individual subject to  
17 conservatorship and all expenses, losses and liability  
18 sustained in the administration of the conservatorship estate  
19 or because of holding any property for which the conservator  
20 has a lien on the conservatorship estate;

21 (21) pay or contest a claim, settle a claim by  
22 or against the conservatorship estate or the individual subject  
23 to conservatorship by compromise, arbitration or otherwise or  
24 release, in whole or in part, a claim belonging to the  
25 conservatorship estate to the extent the claim is

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 uncollectible;

2 (22) pay a tax, assessment, compensation of  
3 the conservator or any guardian and other expense incurred in  
4 the collection, care, administration and protection of the  
5 conservatorship estate;

6 (23) pay a sum distributable to the individual  
7 subject to conservatorship or an individual who is in fact  
8 dependent on the individual subject to conservatorship by  
9 paying the sum to the distributee or for the use of the  
10 distributee:

11 (a) to the guardian for the distributee;

12 (b) to the custodian of the distributee  
13 under the Uniform Transfers to Minors Act or custodial trustee  
14 under the Uniform Custodial Trust Act; or

15 (c) if there is no guardian, custodian  
16 or custodial trustee, to a relative or other person having  
17 physical custody of the distributee;

18 (24) bring or defend an action, claim or  
19 proceeding in any jurisdiction for the protection of the  
20 conservatorship estate or the conservator in the performance of  
21 the conservator's duties;

22 (25) structure the finances of the individual  
23 subject to conservatorship to establish eligibility for a  
24 public benefit, including by making gifts consistent with the  
25 individual's preferences, values and prior directions, if the

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 conservator's action does not jeopardize the individual's  
2 welfare and otherwise is consistent with the conservator's  
3 duties; and

4 (26) execute and deliver any instrument that  
5 will accomplish or facilitate the exercise of a power of the  
6 conservator.

7 SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM  
8 CONSERVATORSHIP ESTATE.--Except as otherwise provided in  
9 Section 414 of the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act or qualified or limited in  
11 the court's order of appointment and stated in the letters of  
12 office and unless contrary to a conservator's plan under  
13 Section 419 of that act, the conservator may expend or  
14 distribute income or principal of the conservatorship estate  
15 without specific court authorization or confirmation for the  
16 support, care, education, health or welfare of the individual  
17 subject to conservatorship or an individual who is in fact  
18 dependent on the individual subject to conservatorship,  
19 including the payment of child or spousal support, in  
20 accordance with the following rules:

21 A. the conservator shall consider a recommendation  
22 relating to the appropriate standard of support, care,  
23 education, health or welfare for the individual subject to  
24 conservatorship or individual who is dependent on the  
25 individual subject to conservatorship, made by a guardian for

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 the individual subject to conservatorship, if any, and, if the  
2 individual subject to conservatorship is a minor, a  
3 recommendation made by a parent of the minor;

4 B. the conservator acting in compliance with the  
5 conservator's duties under Section 418 of the Uniform  
6 Guardianship, Conservatorship and Other Protective Arrangements  
7 Act is not liable for an expenditure or distribution made based  
8 on a recommendation under Subsection A of this section unless  
9 the conservator knows the expenditure or distribution is not in  
10 the best interest of the individual subject to conservatorship;

11 C. in making an expenditure or distribution under  
12 this section, the conservator shall consider:

13 (1) the size of the conservatorship estate,  
14 the estimated duration of the conservatorship and the  
15 likelihood the individual subject to conservatorship, at some  
16 future time, may be fully self-sufficient and able to manage  
17 the individual's financial affairs and the conservatorship  
18 estate;

19 (2) the accustomed standard of living of the  
20 individual subject to conservatorship and individual who is  
21 dependent on the individual subject to conservatorship;

22 (3) other funds or source used for the support  
23 of the individual subject to conservatorship; and

24 (4) the preferences, values and prior  
25 directions of the individual subject to conservatorship; and

.208901.3



underscored material = new  
[bracketed material] = delete

1           D. funds expended or distributed under this section  
2 may be paid by the conservator to any person, including the  
3 individual subject to conservatorship, as reimbursement for  
4 expenditures the conservator might have made, or in advance for  
5 services to be provided to the individual subject to  
6 conservatorship or individual who is dependent on the  
7 individual subject to conservatorship if it is reasonable to  
8 expect the services will be performed and advance payment is  
9 customary or reasonably necessary under the circumstances.

10           SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND  
11 ACCOUNTING--MONITORING.--

12           A. A conservator shall file with the court a report  
13 in a record regarding the administration of the conservatorship  
14 estate annually unless the court otherwise directs, on  
15 resignation or removal, on termination of the conservatorship  
16 and at any other time the court directs.

17           B. A report under Subsection A of this section  
18 shall state or contain:

19                   (1) an accounting that lists property included  
20 in the conservatorship estate and the receipts, disbursements,  
21 liabilities and distributions during the period for which the  
22 report is made;

23                   (2) a list of the services provided to the  
24 individual subject to conservatorship;

25                   (3) a copy of the conservator's most recently

underscoring material = new  
~~[bracketed material] = delete~~

1 approved plan and a statement whether the conservator has  
2 deviated from the plan and, if so, how the conservator has  
3 deviated and why;

4 (4) a recommendation as to the need for  
5 continued conservatorship and any recommended change in the  
6 scope of the conservatorship;

7 (5) to the extent feasible, a copy of the most  
8 recent reasonably available financial statements evidencing the  
9 status of bank accounts, investment accounts and mortgages or  
10 other debts of the individual subject to conservatorship with  
11 all but the last four digits of the account numbers and social  
12 security number redacted;

13 (6) anything of more than de minimis value  
14 that the conservator, any individual who resides with the  
15 conservator or the spouse, parent, child or sibling of the  
16 conservator has received from a person providing goods or  
17 services to the individual subject to conservatorship;

18 (7) any business relation the conservator has  
19 with a person the conservator has paid or that has benefited  
20 from the property of the individual subject to conservatorship;  
21 and

22 (8) whether any co-conservator or successor  
23 conservator appointed to serve when a designated event occurs  
24 is alive and able to serve.

25 C. The court may appoint a visitor to review a

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 report under this section or conservator's plan under Section  
2 419 of the Uniform Guardianship, Conservatorship and Other  
3 Protective Arrangements Act, interview the individual subject  
4 to conservatorship or conservator or investigate any other  
5 matter involving the conservatorship. In connection with the  
6 report, the court may order the conservator to submit the  
7 conservatorship estate to appropriate examination in a manner  
8 the court directs.

9 D. Notice of the filing under this section of a  
10 conservator's report, together with a copy of the report, shall  
11 be provided to the individual subject to conservatorship, a  
12 person entitled to notice under Subsection E of Section 411 of  
13 the Uniform Guardianship, Conservatorship and Other Protective  
14 Arrangements Act or a subsequent order and other persons the  
15 court determines. The notice and report shall be given not  
16 later than fourteen days after filing.

17 E. The court may establish procedures for  
18 monitoring a report submitted under this section and review  
19 each report at least annually to determine whether:

20 (1) the reports provide sufficient information  
21 to establish the conservator has complied with the  
22 conservator's duties;

23 (2) the conservatorship should continue; and

24 (3) the conservator's requested fees, if any,  
25 should be approved.

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 F. If the court determines there is reason to  
2 believe a conservator has not complied with the conservator's  
3 duties or the conservatorship should not continue, the court:

4 (1) shall notify the individual subject to  
5 conservatorship, the conservator and any other person entitled  
6 to notice under Subsection E of Section 411 of the Uniform  
7 Guardianship, Conservatorship and Other Protective Arrangements  
8 Act or a subsequent order;

9 (2) may require additional information from  
10 the conservator;

11 (3) may appoint a visitor to interview the  
12 individual subject to conservatorship or conservator or  
13 investigate any matter involving the conservatorship; and

14 (4) consistent with Sections 430 and 431 of  
15 the Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act, may hold a hearing to consider removal of the  
17 conservator, termination of the conservatorship or a change in  
18 the powers granted to the conservator or terms of the  
19 conservatorship.

20 G. If the court has reason to believe fees  
21 requested by a conservator are not reasonable, the court shall  
22 hold a hearing to determine whether to adjust the requested  
23 fees and give notice of the hearing to the individual subject  
24 to conservatorship, a person entitled to notice under  
25 Subsection E of Section 411 of the Uniform Guardianship,

.208901.3

underscored material = new  
~~[bracketed material] = delete~~

1 Conservatorship and Other Protective Arrangements Act or under  
2 a subsequent order and any other person the court deems  
3 entitled to notice.

4 H. A conservator may petition the court for  
5 approval of a report filed under this section and shall  
6 petition the court for approval of an annual report, a report  
7 filed upon resignation, removal or termination or a report  
8 filed upon the court's direction. The court after review shall  
9 not approve the report without:

10 (1) notice to the individual subject to  
11 conservatorship, a person entitled to notice under Subsection E  
12 of Section 411 of the Uniform Guardianship, Conservatorship and  
13 Other Protective Arrangements Act or under a subsequent order  
14 and any other person the court deems entitled to notice; and

15 (2) a hearing.

16 I. An order, after notice and hearing, approving an  
17 interim report of a conservator filed under this section  
18 adjudicates liabilities concerning a matter adequately  
19 disclosed in the report, as to a person given notice of the  
20 report or accounting.

21 J. An order, after notice and hearing, approving a  
22 final report filed under this section discharges the  
23 conservator from all liabilities, claims and causes of action  
24 by a person given notice of the report and the hearing as to a  
25 matter adequately disclosed in the report.

underscored material = new  
[bracketed material] = delete

1           **SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF**  
2           **PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--**

3           A. The interest of an individual subject to  
4           conservatorship in property included in the conservatorship  
5           estate is not transferrable or assignable by the individual and  
6           is not subject to levy, garnishment or similar process for  
7           claims against the individual unless allowed under Section 428  
8           of the Uniform Guardianship, Conservatorship and Other  
9           Protective Arrangements Act.

10          B. If an individual subject to conservatorship  
11          enters into a contract after having the right to enter the  
12          contract removed by the court, the contract is void against the  
13          individual and the individual's property but is enforceable  
14          against the person that contracted with the individual.

15          C. A person other than the conservator that deals  
16          with an individual subject to conservatorship with respect to  
17          property included in the conservatorship estate is entitled to  
18          protection provided by law of New Mexico other than the Uniform  
19          Guardianship, Conservatorship and Other Protective Arrangements  
20          Act.

21           **SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING**  
22           **CONFLICT OF INTEREST.--**A transaction involving a  
23           conservatorship estate that is affected by a substantial  
24           conflict between the conservator's fiduciary duties and  
25           personal interest is voidable unless the transaction is

underscoring material = new  
~~[bracketed material]~~ = delete

1 authorized by court order after notice to persons entitled to  
2 notice under Subsection E of Section 411 of the Uniform  
3 Guardianship, Conservatorship and Other Protective Arrangements  
4 Act or a subsequent order. A transaction affected by a  
5 substantial conflict includes a sale, encumbrance or other  
6 transaction involving the conservatorship estate entered into  
7 by the conservator, an individual with whom the conservator  
8 resides, the spouse, descendant, sibling, agent or attorney of  
9 the conservator or a corporation or other enterprise in which  
10 the conservator has a substantial beneficial interest.

11 SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING  
12 WITH CONSERVATOR.--

13 A. A person that assists or deals with a  
14 conservator in good faith and for value in any transaction,  
15 other than a transaction requiring a court order under Section  
16 414 of the Uniform Guardianship, Conservatorship and Other  
17 Protective Arrangements Act, is protected as though the  
18 conservator properly exercised any power in question.  
19 Knowledge by a person that the person is dealing with a  
20 conservator alone does not require the person to inquire into  
21 the existence of authority of the conservator or the propriety  
22 of the conservator's exercise of authority, but restrictions on  
23 authority stated in letters of office, or otherwise provided by  
24 law, are effective as to the person. A person that pays or  
25 delivers property to a conservator is not responsible for

.208901.3

underscored material = new  
[bracketed material] = delete

1 proper application of the property.

2 B. Protection under Subsection A of this section  
3 extends to a procedural irregularity or jurisdictional defect  
4 in the proceeding leading to the issuance of letters of office  
5 and does not substitute for protection for a person that  
6 assists or deals with a conservator provided by comparable  
7 provisions in law of New Mexico other than the Uniform  
8 Guardianship, Conservatorship and Other Protective Arrangements  
9 Act relating to a commercial transaction or simplifying a  
10 transfer of securities by a fiduciary.

11 SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT  
12 TO CONSERVATORSHIP.--

13 A. If an individual subject to conservatorship  
14 dies, the conservator shall deliver to the court for  
15 safekeeping any will of the individual in the conservator's  
16 possession and inform the personal representative named in the  
17 will, if feasible, or, if not feasible, a beneficiary named in  
18 the will, of the delivery.

19 B. On the death of an individual subject to  
20 conservatorship, the conservator shall conclude the  
21 administration of the conservatorship estate as provided in  
22 Section 431 of the Uniform Guardianship, Conservatorship and  
23 Other Protective Arrangements Act.

24 SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF  
25 CLAIM.--

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1           A. A conservator may pay, or secure by encumbering  
2 property included in the conservatorship estate, a claim  
3 against the conservatorship estate or the individual subject to  
4 conservatorship arising before or during the conservatorship,  
5 on presentation and allowance in accordance with the priorities  
6 under Subsection D of this section. A claimant may present a  
7 claim by:

8                   (1) sending or delivering to the conservator a  
9 statement in a record of the claim, indicating its basis, the  
10 name and address of the claimant and the amount claimed; or

11                   (2) filing the claim with the court, in a form  
12 acceptable to the court, and sending or delivering a copy of  
13 the claim to the conservator.

14           B. A claim under Subsection A of this section is  
15 presented on receipt by the conservator of the statement of the  
16 claim or the filing with the court of the claim, whichever  
17 first occurs. A presented claim is allowed if it is not  
18 disallowed in whole or in part by the conservator in a record  
19 sent or delivered to the claimant not later than sixty days  
20 after its presentation. Before payment, the conservator may  
21 change an allowance of the claim to a disallowance in whole or  
22 in part, but not after allowance under a court order or order  
23 directing payment of the claim. Presentation of a claim tolls  
24 until thirty days after disallowance of the claim the running  
25 of a statute of limitations that has not expired relating to

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 the claim.

2 C. A claimant whose claim under Subsection A of  
3 this section has not been paid may petition the court to  
4 determine the claim at any time before it is barred by a  
5 statute of limitations, and the court may order its allowance,  
6 payment or security by encumbering property included in the  
7 conservatorship estate. If a proceeding is pending against the  
8 individual subject to conservatorship at the time of  
9 appointment of the conservator or is initiated thereafter, the  
10 moving party shall give the conservator notice of the  
11 proceeding if it could result in creating a claim against the  
12 conservatorship estate.

13 D. If a conservatorship estate is likely to be  
14 exhausted before all existing claims are paid, the conservator  
15 shall distribute the estate in money or in kind in payment of  
16 claims in the following order:

- 17 (1) costs and expenses of administration;
- 18 (2) a claim of the federal or state government  
19 having priority under law other than the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act;
- 21 (3) a claim incurred by the conservator for  
22 support, care, education, health or welfare previously provided  
23 to the individual subject to conservatorship or an individual  
24 who is in fact dependent on the individual subject to  
25 conservatorship;

.208901.3

underscored material = new  
[bracketed material] = delete

1 (4) a claim arising before the  
2 conservatorship; and

3 (5) all other claims.

4 E. Preference shall not be given in the payment of  
5 a claim under Subsection D of this section over another claim  
6 of the same class. A claim due and payable shall not be  
7 preferred over a claim not due unless:

8 (1) doing so would leave the conservatorship  
9 estate without sufficient funds to pay the basic living and  
10 health care expenses of the individual subject to  
11 conservatorship; and

12 (2) the court authorizes the preference under  
13 Paragraph (8) of Subsection A of Section 414 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act.

16 F. If assets of a conservatorship estate are  
17 adequate to meet all existing claims, the court, acting in the  
18 best interest of the individual subject to conservatorship, may  
19 order the conservator to grant a security interest in the  
20 conservatorship estate for payment of a claim at a future date.

21 SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF  
22 CONSERVATOR.--

23 A. Except as otherwise agreed by a conservator, the  
24 conservator is not personally liable on a contract properly  
25 entered into in a fiduciary capacity in the course of

underscored material = new  
[bracketed material] = delete

1 administration of the conservatorship estate unless the  
2 conservator fails to reveal the conservator's representative  
3 capacity before entering into the contract or in the contract.

4 B. A conservator is personally liable for an  
5 obligation arising from control of property of the  
6 conservatorship estate or an act or omission occurring in the  
7 course of administration of the conservatorship estate only if  
8 the conservator is personally at fault.

9 C. A claim based on a contract entered into by a  
10 conservator in a fiduciary capacity, an obligation arising from  
11 control of property included in the conservatorship estate or a  
12 tort committed in the course of administration of the  
13 conservatorship estate may be asserted against the  
14 conservatorship estate in a proceeding against the conservator  
15 in a fiduciary capacity, whether or not the conservator is  
16 personally liable for the claim.

17 D. A question of liability between a  
18 conservatorship estate and the conservator personally may be  
19 determined in a proceeding for accounting, surcharge or  
20 indemnification or another appropriate proceeding or action.

21 SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--  
22 APPOINTMENT OF SUCCESSOR.--

23 A. The court may remove a conservator for failure  
24 to perform the conservator's duties or other good cause and  
25 appoint a successor conservator to assume the duties of the

.208901.3

1 conservator.

2 B. The court shall hold a hearing to determine  
3 whether to remove a conservator and appoint a successor on:

4 (1) petition of the individual subject to  
5 conservatorship, conservator or person interested in the  
6 welfare of the individual that contains allegations that, if  
7 true, would support a reasonable belief that removal of the  
8 conservator and appointment of a successor may be appropriate,  
9 but the court may decline to hold a hearing if a petition based  
10 on the same or substantially similar facts was filed during the  
11 preceding six months;

12 (2) communication from the individual subject  
13 to conservatorship, conservator or person interested in the  
14 welfare of the individual that supports a reasonable belief  
15 that removal of the conservator and appointment of a successor  
16 may be appropriate; or

17 (3) determination by the court that a hearing  
18 would be in the best interest of the individual subject to  
19 conservatorship.

20 C. Notice of a petition under Paragraph (1) of  
21 Subsection B of this section shall be given to the individual  
22 subject to conservatorship, the conservator and any other  
23 person the court determines.

24 D. An individual subject to conservatorship who  
25 seeks to remove the conservator and have a successor appointed

underscored material = new  
[bracketed material] = delete

1 has the right to choose an attorney to represent the individual  
2 in this matter. If the individual is not represented by an  
3 attorney, the court shall appoint an attorney under the same  
4 conditions as in Section 406 of the Uniform Guardianship,  
5 Conservatorship and Other Protective Arrangements Act. The  
6 court shall award reasonable attorney's fees to the attorney as  
7 provided in Section 119 of that act.

8 E. In selecting a successor conservator, the court  
9 shall follow the priorities under Section 410 of the Uniform  
10 Guardianship, Conservatorship and Other Protective Arrangements  
11 Act.

12 F. Not later than thirty days after appointing a  
13 successor conservator, the court shall give notice of the  
14 appointment to the individual subject to conservatorship and  
15 any person entitled to notice under Subsection E of Section 411  
16 of the Uniform Guardianship, Conservatorship and Other  
17 Protective Arrangements Act or a subsequent order.

18 SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION  
19 OF CONSERVATORSHIP.--

20 A. A conservatorship for a minor terminates on the  
21 earliest of:

22 (1) a court order terminating the  
23 conservatorship;

24 (2) the minor becoming an adult or, if the  
25 minor consents or the court finds by clear and convincing

.208901.3

1 evidence that substantial harm to the minor's interests is  
2 otherwise likely, attaining twenty-one years of age;

3 (3) emancipation of the minor; or

4 (4) death of the minor.

5 B. A conservatorship for an adult terminates on  
6 order of the court or when the adult dies.

7 C. An individual subject to conservatorship, the  
8 conservator or a person interested in the welfare of the  
9 individual may petition for:

10 (1) termination of the conservatorship on the  
11 ground that a basis for appointment under Section 401 of the  
12 Uniform Guardianship, Conservatorship and Other Protective  
13 Arrangements Act does not exist or termination would be in the  
14 best interest of the individual or for other good cause; or

15 (2) modification of the conservatorship on the  
16 ground that the extent of protection or assistance granted is  
17 not appropriate or for other good cause.

18 D. The court shall hold a hearing to determine  
19 whether termination or modification of a conservatorship is  
20 appropriate on:

21 (1) petition under Subsection C of this  
22 section that contains allegations that, if true, would support  
23 a reasonable belief that termination or modification of the  
24 conservatorship may be appropriate, but the court may decline  
25 to hold a hearing if a petition based on the same or

underscored material = new  
~~[bracketed material] = delete~~

1 substantially similar facts was filed within the preceding six  
2 months;

3 (2) a communication from the individual  
4 subject to conservatorship, conservator or person interested in  
5 the welfare of the individual that supports a reasonable belief  
6 that termination or modification of the conservatorship may be  
7 appropriate, including because the functional needs of the  
8 individual or supports or services available to the individual  
9 have changed;

10 (3) a report from a guardian or conservator  
11 that indicates that termination or modification may be  
12 appropriate because the functional needs or supports or  
13 services available to the individual have changed or a  
14 protective arrangement instead of conservatorship or other less  
15 restrictive alternative is available; or

16 (4) a determination by the court that a  
17 hearing would be in the best interest of the individual.

18 E. Notice of a petition under Subsection C of this  
19 section shall be given to the individual subject to  
20 conservatorship, the conservator and any such other person the  
21 court determines.

22 F. On presentation of prima facie evidence for  
23 termination of a conservatorship, the court shall order  
24 termination unless it is proven that a basis for appointment of  
25 a conservator under Section 401 of the Uniform Guardianship,

.208901.3



underscoring material = new  
~~[bracketed material]~~ = delete

1 Conservatorship and Other Protective Arrangements Act exists.

2 G. The court shall modify the powers granted to a  
3 conservator if the powers are excessive or inadequate due to a  
4 change in the abilities or limitations of the individual  
5 subject to conservatorship, the individual's supports or other  
6 circumstances.

7 H. Unless the court otherwise orders for good  
8 cause, before terminating a conservatorship, the court shall  
9 follow the same procedures to safeguard the rights of the  
10 individual subject to conservatorship that apply to a petition  
11 for conservatorship.

12 I. An individual subject to conservatorship who  
13 seeks to terminate or modify the terms of the conservatorship  
14 has the right to choose an attorney to represent the individual  
15 in this matter. If the individual is not represented by an  
16 attorney, the court shall appoint an attorney under the same  
17 conditions as in Section 406 of the Uniform Guardianship,  
18 Conservatorship and Other Protective Arrangements Act. The  
19 court shall award reasonable attorney's fees to the attorney as  
20 provided in Section 119 of that act.

21 J. On termination of a conservatorship other than  
22 by reason of the death of the individual subject to  
23 conservatorship, property of the conservatorship estate passes  
24 to the individual. The order of termination shall direct the  
25 conservator to file a final report and petition for discharge

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 on approval by the court of the final report.

2 K. On termination of a conservatorship by reason of  
3 the death of the individual subject to conservatorship, the  
4 conservator promptly shall file a final report and petition for  
5 discharge on approval by the court of the final report. On  
6 approval of the final report, the conservator shall proceed  
7 expeditiously to distribute the conservatorship estate to the  
8 individual's estate or as otherwise ordered by the court. The  
9 conservator may take reasonable measures necessary to preserve  
10 the conservatorship estate until distribution can be made.

11 L. The court shall issue a final order of discharge  
12 on the approval by the court of the final report and  
13 satisfaction by the conservator of any other condition the  
14 court imposed on the conservator's discharge.

15 SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR  
16 WITHOUT APPOINTMENT OF CONSERVATOR.--

17 A. Unless a person required to transfer funds or  
18 other property to a minor knows that a conservator for the  
19 minor has been appointed or a proceeding is pending for  
20 conservatorship, the person may transfer an amount or value not  
21 exceeding fifteen thousand dollars (\$15,000) in a twelve-month  
22 period to:

- 23 (1) a person that has care or custody of the  
24 minor and with whom the minor resides;  
25 (2) a guardian for the minor;

underscored material = new  
[bracketed material] = delete

1 (3) a custodian under the Uniform Transfers to  
2 Minors Act; or

3 (4) a financial institution as a deposit in an  
4 interest-bearing account or certificate solely in the name of  
5 the minor and shall give notice to the minor of the deposit.

6 B. A person that transfers funds or other property  
7 under this section is not responsible for its proper  
8 application.

9 C. A person that receives funds or other property  
10 for a minor under Paragraph (1) or (2) of Subsection A of this  
11 section may apply it only to the support, care, education,  
12 health or welfare of the minor and shall not derive a personal  
13 financial benefit from it, except for reimbursement for  
14 necessary expenses. Funds not applied for these purposes shall  
15 be preserved for the future support, care, education, health or  
16 welfare of the minor and the balance, if any, transferred to  
17 the minor when the minor becomes an adult or otherwise is  
18 emancipated.

19 ARTICLE 5

20 OTHER PROTECTIVE ARRANGEMENTS

21 SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE  
22 ARRANGEMENT.--

23 A. Under this article, a court:

24 (1) on receiving a petition for a guardianship  
25 for an adult may order a protective arrangement instead of

.208901.3

underscored material = new  
[bracketed material] = delete

1 guardianship as a less restrictive alternative to guardianship;  
2 and

3 (2) on receiving a petition for a  
4 conservatorship for an individual may order a protective  
5 arrangement instead of conservatorship as a less restrictive  
6 alternative to conservatorship.

7 B. A person interested in an adult's welfare,  
8 including the adult or a conservator for the adult, may  
9 petition under this article for a protective arrangement  
10 instead of guardianship.

11 C. The following persons may petition under this  
12 article for a protective arrangement instead of  
13 conservatorship:

14 (1) the individual for whom the protective  
15 arrangement is sought;

16 (2) a person interested in the property,  
17 financial affairs or welfare of the individual, including a  
18 person that would be affected adversely by lack of effective  
19 management of property or financial affairs of the individual;  
20 and

21 (3) the guardian for the individual.

22 SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE  
23 ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

24 A. After the hearing on a petition under Section  
25 302 of the Uniform Guardianship, Conservatorship and Other

.208901.3

1 Protective Arrangements Act for a guardianship or under  
2 Subsection B of Section 501 of that act for a protective  
3 arrangement instead of guardianship, the court may issue an  
4 order under Subsection B of this section for a protective  
5 arrangement instead of guardianship if the court finds by clear  
6 and convincing evidence that:

7 (1) the respondent lacks the ability to meet  
8 essential requirements for physical health, safety or self-care  
9 because the respondent is unable to receive and evaluate  
10 information or make or communicate decisions, even with  
11 appropriate supportive services, technological assistance or  
12 supported decision making; and

13 (2) the respondent's identified needs cannot  
14 be met by a less restrictive alternative.

15 B. If the court makes the findings under Subsection  
16 A of this section, the court, instead of appointing a guardian,  
17 may:

18 (1) authorize or direct a transaction  
19 necessary to meet the respondent's need for health, safety or  
20 care, including:

21 (a) a particular medical treatment or  
22 refusal of a particular medical treatment;

23 (b) a move to a specified place of  
24 dwelling; or

25 (c) visitation or supervised visitation

underscored material = new  
[bracketed material] = delete

1 between the respondent and another person;

2 (2) restrict access to the respondent by a  
3 specified person whose access places the respondent at serious  
4 risk of physical, psychological or financial harm; and

5 (3) order other arrangements on a limited  
6 basis that are appropriate.

7 C. In deciding whether to issue an order under this  
8 section, the court shall consider the factors under Sections  
9 313 and 314 of the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act that a guardian shall  
11 consider when making a decision on behalf of an adult subject  
12 to guardianship.

13 SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE  
14 ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

15 A. After the hearing on a petition under Section  
16 402 of the Uniform Guardianship, Conservatorship and Other  
17 Protective Arrangements Act for conservatorship for an adult or  
18 under Subsection C of Section 501 of that act for a protective  
19 arrangement instead of conservatorship for an adult, the court  
20 may issue an order under Subsection C of this section for a  
21 protective arrangement instead of conservatorship for the  
22 respondent if the court finds:

23 (1) by clear and convincing evidence that the  
24 respondent is unable to manage the respondent's property or  
25 financial affairs because:

.208901.3

underscoring material = new  
~~[bracketed material] = delete~~

1 (a) of a limitation in the ability to  
2 receive and evaluate information or make or communicate  
3 decisions, even with appropriate supportive services,  
4 technological assistance or supported decision making; or

5 (b) the adult is missing, detained or  
6 unable to return to the United States;

7 (2) by a preponderance of the evidence that:

8 (a) the respondent has property likely  
9 to be wasted or dissipated unless management is provided; or

10 (b) an order under Subsection C of this  
11 section is necessary or desirable to obtain or provide funds or  
12 other property needed for the support, care, education, health  
13 or welfare of the respondent or an individual entitled to the  
14 respondent's support; and

15 (3) the respondent's identified needs cannot  
16 be met by a less restrictive alternative.

17 B. After the hearing on a petition under Section  
18 402 of the Uniform Guardianship, Conservatorship and Other  
19 Protective Arrangements Act for conservatorship for a minor or  
20 under Subsection C of Section 501 of that act for a protective  
21 arrangement instead of conservatorship for a minor, the court  
22 may issue an order under Subsection C of this section for a  
23 protective arrangement instead of conservatorship for the  
24 respondent if the court finds by a preponderance of the  
25 evidence that the arrangement is in the minor's best interest

.208901.3

1 and:

2 (1) if the minor has a parent, the court gives  
3 weight to any recommendation of the parent whether an  
4 arrangement is in the minor's best interest;

5 (2) either:

6 (a) the minor owns money or property  
7 requiring management or protection that otherwise cannot be  
8 provided;

9 (b) the minor has or may have financial  
10 affairs that may be put at unreasonable risk or hindered  
11 because of the minor's age; or

12 (c) the arrangement is necessary or  
13 desirable to obtain or provide funds or other property needed  
14 for the support, care, education, health or welfare of the  
15 minor; and

16 (3) the order under Subsection C of this  
17 section is necessary or desirable to obtain or provide money  
18 needed for the support, care, education, health or welfare of  
19 the minor.

20 C. If the court makes the findings under Subsection  
21 A or B of this section, the court, instead of appointing a  
22 conservator, may:

23 (1) authorize or direct a transaction  
24 necessary to protect the financial interest or property of the  
25 respondent, including:

.208901.3



underscoring material = new  
~~[bracketed material] = delete~~

1 (a) an action to establish eligibility  
2 for benefits;

3 (b) payment, delivery, deposit or  
4 retention of funds or property;

5 (c) sale, mortgage, lease or other  
6 transfer of property;

7 (d) purchase of an annuity;

8 (e) entry into a contractual  
9 relationship, including a contract to provide for personal  
10 care, supportive services, education, training or employment;

11 (f) addition to or establishment of a  
12 trust;

13 (g) ratification or invalidation of a  
14 contract, trust, will or other transaction, including a  
15 transaction related to the property or business affairs of the  
16 respondent; or

17 (h) settlement of a claim; or

18 (2) restrict access to the respondent's  
19 property by a specified person whose access to the property  
20 places the respondent at serious risk of financial harm.

21 D. After the hearing on a petition under Paragraph  
22 (2) of Subsection A of Section 501 of the Uniform Guardianship,  
23 Conservatorship and Other Protective Arrangements Act or  
24 Subsection C of that section, whether or not the court makes  
25 the findings under Subsection A or B of this section, the court

.208901.3

underscoring material = new  
[bracketed material] = delete

1 may issue an order to restrict access to the respondent or the  
2 respondent's property by a specified person that the court  
3 finds by clear and convincing evidence:

4 (1) through fraud, coercion, duress or the use  
5 of deception and control caused or attempted to cause an action  
6 that would have resulted in financial harm to the respondent or  
7 the respondent's property; and

8 (2) poses a serious risk of substantial  
9 financial harm to the respondent or the respondent's property.

10 E. Before issuing an order under Subsection C or D  
11 of this section, the court shall consider the factors under  
12 Section 418 of the Uniform Guardianship, Conservatorship and  
13 Other Protective Arrangements Act that a conservator shall  
14 consider when making a decision on behalf of an individual  
15 subject to conservatorship.

16 F. Before issuing an order under Subsection C or D  
17 of this section for a respondent who is a minor, the court also  
18 shall consider the best interest of the minor, the preference  
19 of the parents of the minor and the preference of the minor, if  
20 the minor is twelve years of age or older.

21 **SECTION 504.** [NEW MATERIAL] PETITION FOR PROTECTIVE  
22 ARRANGEMENT.--A petition for a protective arrangement instead  
23 of guardianship or conservatorship shall state the petitioner's  
24 name, principal residence, current street address, if  
25 different, relationship to the respondent, interest in the

.208901.3

1 protective arrangement, the name and address of any attorney  
2 representing the petitioner and, to the extent known, the  
3 following:

4 A. the respondent's name, age, principal residence,  
5 current street address, if different, and, if different,  
6 address of the dwelling in which it is proposed the respondent  
7 will reside if the petition is granted;

8 B. the name and address of the respondent's:

9 (1) spouse or, if the respondent has none, an  
10 adult with whom the respondent has shared household  
11 responsibilities for more than six months in the twelve-month  
12 period before the filing of the petition;

13 (2) adult children or, if none, each parent  
14 and adult sibling of the respondent, or, if none, at least one  
15 adult nearest in kinship to the respondent who can be found  
16 with reasonable diligence; and

17 (3) adult stepchildren whom the respondent  
18 actively parented during the stepchildren's minor years and  
19 with whom the respondent had an ongoing relationship in the  
20 two-year period immediately before the filing of the petition;

21 C. the name and current address of each of the  
22 following, if applicable:

23 (1) a person responsible for the care or  
24 custody of the respondent;

25 (2) any attorney currently representing the

underscored material = new  
~~[bracketed material] = delete~~

1 respondent;

2 (3) the representative payee appointed by the  
3 federal social security administration for the respondent;

4 (4) a guardian or conservator acting for the  
5 respondent in New Mexico or another jurisdiction;

6 (5) a trustee or custodian of a trust or  
7 custodianship of which the respondent is a beneficiary;

8 (6) the fiduciary appointed for the respondent  
9 by the federal department of veterans affairs;

10 (7) an agent designated under a power of  
11 attorney for health care in which the respondent is identified  
12 as the principal;

13 (8) an agent designated under a power of  
14 attorney for finances in which the respondent is identified as  
15 the principal;

16 (9) a person nominated as guardian or  
17 conservator by the respondent if the respondent is twelve years  
18 of age or older;

19 (10) a person nominated as guardian by the  
20 respondent's parent or spouse in a will or other signed record;

21 (11) a person known to have routinely assisted  
22 the respondent with decision making in the six-month period  
23 immediately before the filing of the petition; and

24 (12) if the respondent is a minor:

25 (a) an adult not otherwise listed with

.208901.3

1 whom the respondent resides; and

2 (b) each person not otherwise listed  
3 that had primary care or custody of the respondent for at least  
4 sixty days during the two years immediately before the filing  
5 of the petition or for at least seven hundred thirty days  
6 during the five years immediately before the filing of the  
7 petition;

8 D. the nature of the protective arrangement sought;

9 E. the reason the protective arrangement sought is  
10 necessary, including a brief description of:

11 (1) the nature and extent of the respondent's  
12 alleged need;

13 (2) any less restrictive alternative for  
14 meeting the respondent's alleged need that has been considered  
15 or implemented;

16 (3) if no less restrictive alternative has  
17 been considered or implemented, the reason less restrictive  
18 alternatives have not been considered or implemented; and

19 (4) the reason other less restrictive  
20 alternatives are insufficient to meet the respondent's alleged  
21 need;

22 F. the name and current address, if known, of any  
23 person with whom the petitioner seeks to limit the respondent's  
24 contact;

25 G. whether the respondent needs an interpreter,

underscored material = new  
[bracketed material] = delete

1 translator or other form of support to communicate effectively  
2 with the court or understand court proceedings;

3 H. if a protective arrangement instead of  
4 guardianship is sought and the respondent has property other  
5 than personal effects, a general statement of the respondent's  
6 property with an estimate of its value, including any insurance  
7 or pension and the source and amount of any other anticipated  
8 income or receipts; and

9 I. if a protective arrangement instead of  
10 conservatorship is sought, a general statement of the  
11 respondent's property with an estimate of its value, including  
12 any insurance or pension and the source and amount of other  
13 anticipated income or receipts.

14 SECTION 505. [NEW MATERIAL] NOTICE AND HEARING.--

15 A. On filing of a petition under Section 501 of the  
16 Uniform Guardianship, Conservatorship and Other Protective  
17 Arrangements Act, the court shall set a date, time and place  
18 for a hearing on the petition.

19 B. A copy of a petition under Section 501 of the  
20 Uniform Guardianship, Conservatorship and Other Protective  
21 Arrangements Act and notice of a hearing on the petition shall  
22 be served personally on the respondent. The notice shall  
23 inform the respondent of the respondent's rights at the  
24 hearing, including the right to an attorney and to attend the  
25 hearing. The notice shall include a description of the nature,

.208901.3

underscored material = new  
[bracketed material] = delete

1 purpose and consequences of granting the petition. The court  
2 shall not grant the petition if notice substantially complying  
3 with this subsection is not served on the respondent.

4 C. In a proceeding on a petition under Section 501  
5 of the Uniform Guardianship, Conservatorship and Other  
6 Protective Arrangements Act, notice of the hearing shall be  
7 given to the persons required to be listed in the petition  
8 under Subsections A through C of Section 504 of that act and  
9 any other person interested in the respondent's welfare the  
10 court determines. Failure to give notice under this subsection  
11 does not preclude the court from granting the petition.

12 D. After the court has ordered a protective  
13 arrangement under this article, notice of a hearing on a  
14 petition filed under the Uniform Guardianship, Conservatorship  
15 and Other Protective Arrangements Act, together with a copy of  
16 the petition, shall be given to the respondent and any other  
17 person the court determines.

18 SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
19 VISITOR.--

20 A. On filing of a petition under Section 501 of the  
21 Uniform Guardianship, Conservatorship and Other Protective  
22 Arrangements Act for a protective arrangement instead of  
23 guardianship, the court shall appoint a visitor. The visitor  
24 shall be an individual with training or experience in the type  
25 of abilities, limitations and needs alleged in the petition.

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1           B. On filing of a petition under Section 501 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act for a protective arrangement instead of  
4 conservatorship for a minor, the court may appoint a visitor to  
5 investigate a matter related to the petition or inform the  
6 minor or a parent of the minor about the petition or a related  
7 matter.

8           C. On filing of a petition under Section 501 of the  
9 Uniform Guardianship, Conservatorship and Other Protective  
10 Arrangements Act for a protective arrangement instead of  
11 conservatorship for an adult, the court shall appoint a visitor  
12 unless the respondent is represented by an attorney appointed  
13 by the court. The visitor shall be an individual with training  
14 or experience in the types of abilities, limitations and needs  
15 alleged in the petition.

16           D. A visitor appointed under Subsection A or C of  
17 this section shall interview the respondent in person and, in a  
18 manner the respondent is best able to understand:

19                   (1) explain to the respondent the substance of  
20 the petition, the nature, purpose and effect of the proceeding  
21 and the respondent's rights at the hearing on the petition;

22                   (2) determine the respondent's views with  
23 respect to the order sought;

24                   (3) inform the respondent of the respondent's  
25 right to employ and consult with an attorney at the



underscoring material = new  
~~[bracketed material] = delete~~

1 respondent's expense and the right to request a court-appointed  
2 attorney;

3 (4) inform the respondent that all costs and  
4 expenses of the proceeding, including respondent's attorney's  
5 fees, may be paid from the respondent's assets;

6 (5) if the petitioner seeks an order related  
7 to the dwelling of the respondent, visit the respondent's  
8 present dwelling and any dwelling in which it is reasonably  
9 believed the respondent will live if the order is granted;

10 (6) if a protective arrangement instead of  
11 guardianship is sought, obtain information from any physician  
12 or other person known to have treated, advised or assessed the  
13 respondent's relevant physical or mental condition;

14 (7) if a protective arrangement instead of  
15 conservatorship is sought, review financial records of the  
16 respondent, if relevant to the visitor's recommendation under  
17 Paragraph (2) of Subsection E of this section; and

18 (8) investigate the allegations in the  
19 petition and any other matter relating to the petition the  
20 court directs.

21 E. A visitor under this section promptly shall file  
22 a report in a record with the court that includes:

23 (1) to the extent relevant to the order  
24 sought, a summary of self-care, independent-living tasks and  
25 financial-management tasks that the respondent:

.208901.3

1 (a) can manage without assistance or  
2 with existing supports;

3 (b) could manage with the assistance of  
4 appropriate supportive services, technological assistance or  
5 supported decision making; and

6 (c) cannot manage;

7 (2) a recommendation regarding the  
8 appropriateness of the protective arrangement sought and  
9 whether a less restrictive alternative for meeting the  
10 respondent's needs is available;

11 (3) if the petition seeks to change the  
12 physical location of the dwelling of the respondent, a  
13 statement whether the proposed dwelling meets the respondent's  
14 needs and whether the respondent has expressed a preference as  
15 to the respondent's dwelling;

16 (4) a recommendation whether a professional  
17 evaluation under Section 508 of the Uniform Guardianship,  
18 Conservatorship and Other Protective Arrangements Act is  
19 necessary;

20 (5) a statement whether the respondent is able  
21 to attend a hearing at the location court proceedings typically  
22 are held;

23 (6) a statement whether the respondent is able  
24 to participate in a hearing and that identifies any technology  
25 or other form of support that would enhance the respondent's

underscored material = new  
[bracketed material] = delete

1 ability to participate; and

2 (7) any other matter the court directs.

3 SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
4 ATTORNEY.--

5 A. Unless the respondent in a proceeding under this  
6 article is represented by an attorney, the court shall appoint  
7 an attorney to represent the respondent, regardless of the  
8 respondent's ability to pay.

9 B. An attorney representing the respondent in a  
10 proceeding under this article shall:

11 (1) make reasonable efforts to ascertain the  
12 respondent's wishes;

13 (2) advocate for the respondent's wishes to  
14 the extent reasonably ascertainable; and

15 (3) if the respondent's wishes are not  
16 reasonably ascertainable, advocate for the result that is the  
17 least restrictive alternative in type, duration and scope,  
18 consistent with the respondent's interests.

19 SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

20 A. At or before a hearing on a petition under this  
21 article for a protective arrangement, the court shall order a  
22 professional evaluation of the respondent:

23 (1) if the respondent requests the evaluation;

24 or

25 (2) or in other cases, unless the court finds

1 that it has sufficient information to determine the  
2 respondent's needs and abilities without the evaluation.

3 B. If the court orders an evaluation under  
4 Subsection A of this section, the respondent shall be examined  
5 by a licensed physician, psychologist, social worker or other  
6 individual appointed by the court who is qualified to evaluate  
7 the respondent's alleged cognitive and functional abilities and  
8 limitations and will not be advantaged or disadvantaged by a  
9 decision to grant the petition or otherwise have a conflict of  
10 interest. The individual conducting the evaluation promptly  
11 shall file a report in a record with the court. Unless  
12 otherwise directed by the court, the report shall contain:

13 (1) a description of the nature, type and  
14 extent of the respondent's cognitive and functional abilities  
15 and limitations;

16 (2) an evaluation of the respondent's mental  
17 and physical condition and, if appropriate, educational  
18 potential, adaptive behavior and social skills;

19 (3) a prognosis for improvement, including  
20 with regard to the ability to manage the respondent's property  
21 and financial affairs if a limitation in that ability is  
22 alleged and recommendation for the appropriate treatment,  
23 support or habilitation plan; and

24 (4) the date of the examination on which the  
25 report is based.

underscoring material = new  
~~[bracketed material] = delete~~

1 C. The respondent may decline to participate in an  
2 evaluation ordered under Subsection A of this section.

3 SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
4 HEARING.--

5 A. Except as otherwise provided in Subsection B of  
6 this section, a hearing under this article shall not proceed  
7 unless the respondent attends the hearing. If it is not  
8 reasonably feasible for the respondent to attend a hearing at  
9 the location court proceedings typically are held, the court  
10 shall make reasonable efforts to hold the hearing at an  
11 alternative location convenient to the respondent or allow the  
12 respondent to attend the hearing using real-time audio-visual  
13 technology.

14 B. A hearing under this article may proceed without  
15 the respondent in attendance if the court finds by clear and  
16 convincing evidence that:

17 (1) the respondent consistently and repeatedly  
18 has refused to attend the hearing after having been fully  
19 informed of the right to attend and the potential consequences  
20 of failing to do so;

21 (2) there is no practicable way for the  
22 respondent to attend and participate in the hearing even with  
23 appropriate supportive services and technological assistance;  
24 or

25 (3) the respondent is a minor who has received

underscored material = new  
[bracketed material] = delete

1 proper notice and attendance would be harmful to the minor.

2 C. The respondent may be assisted in a hearing  
3 under this article by a person or persons of the respondent's  
4 choosing, assistive technology or an interpreter or translator  
5 or a combination of these supports. If assistance would  
6 facilitate the respondent's participation in the hearing, but  
7 is not otherwise available to the respondent, the court shall  
8 make reasonable efforts to provide it.

9 D. The respondent has a right to choose an attorney  
10 to represent the respondent at a hearing under this article.

11 E. At a hearing under this article, the respondent  
12 may:

13 (1) present evidence and subpoena witnesses  
14 and documents;

15 (2) examine witnesses, including any court-  
16 appointed evaluator and the visitor; and

17 (3) otherwise participate in the hearing.

18 F. A hearing under this article shall be closed on  
19 request of the respondent and a showing of good cause.

20 G. Any person may request to participate in a  
21 hearing under this article. The court may grant the request,  
22 with or without a hearing, on determining that the best  
23 interest of the respondent will be served. The court may  
24 impose appropriate conditions on the person's participation.

25 SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court

.208901.3

underscored material = new  
[bracketed material] = delete

1 shall give notice of an order under this article to the  
2 individual who is subject to the protective arrangement instead  
3 of guardianship or conservatorship, a person whose access to  
4 the individual is restricted by the order and any other person  
5 the court determines.

6 SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

7 A. The existence of a proceeding for or the  
8 existence of a protective arrangement instead of guardianship  
9 or conservatorship is a matter of public record unless the  
10 court seals the record after:

11 (1) the respondent, the individual subject to  
12 the protective arrangement or the parent of a minor subject to  
13 the protective arrangement requests the record be sealed; and

14 (2) either:

15 (a) the proceeding is dismissed;

16 (b) the protective arrangement is no  
17 longer in effect; or

18 (c) an act authorized by the order  
19 granting the protective arrangement has been completed.

20 B. A respondent, an individual subject to a  
21 protective arrangement instead of guardianship or  
22 conservatorship, an attorney designated by the respondent or  
23 individual, a parent of a minor subject to a protective  
24 arrangement and any other person the court determines are  
25 entitled to access court records of the proceeding and

1 resulting protective arrangement. A person not otherwise  
2 entitled to access to court records under this subsection for  
3 good cause may petition the court for access. The court shall  
4 grant access if access is in the best interest of the  
5 respondent or individual subject to the protective arrangement  
6 or furthers the public interest and does not endanger the  
7 welfare or financial interests of the respondent or individual.

8 C. A report of a visitor or professional evaluation  
9 generated in the course of a proceeding under this article  
10 shall be sealed on filing, but is available to:

- 11 (1) the court;
- 12 (2) the individual who is the subject of the  
13 report or evaluation, without limitation as to use;
- 14 (3) the petitioner, visitor and petitioner's  
15 and respondent's attorneys, for purposes of the proceeding;
- 16 (4) unless the court orders otherwise, an  
17 agent appointed under a power of attorney for finances in which  
18 the respondent is the principal;
- 19 (5) if the order is for a protective  
20 arrangement instead of guardianship and unless the court orders  
21 otherwise, an agent appointed under a power of attorney for  
22 health care in which the respondent is identified as the  
23 principal; and
- 24 (6) any other person if it is in the public  
25 interest or for a purpose the court orders for good cause.





underscored material = new  
~~[bracketed material]~~ = delete

1 through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being  
2 Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws  
3 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section  
4 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter  
5 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210,  
6 Section 54, Laws 1975, Chapter 257, Sections 5-210 through  
7 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975,  
8 Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5  
9 through 7, Laws 1975, Chapter 257, Sections 5-305 through  
10 5-307, Laws 1989, Chapter 252, Section 9, Laws 1975, Chapter  
11 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252,  
12 Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and  
13 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter  
14 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section  
15 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter  
16 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and  
17 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975,  
18 Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420  
19 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975,  
20 Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter  
21 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through  
22 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as  
23 amended) are repealed.

24 **SECTION 604. APPLICABILITY.**--The Uniform Guardianship,  
25 Conservatorship and Other Protective Arrangements Act applies

.208901.3

underscoring material = new  
~~[bracketed material]~~ = delete

1 to a proceeding for appointment of a guardian or conservator or  
2 for a protective arrangement instead of guardianship or  
3 conservatorship commenced after January 1, 2019 and a  
4 guardianship, conservatorship or protective arrangement instead  
5 of guardianship or conservatorship in existence on January 1,  
6 2019 unless the court finds application of a particular  
7 provision of that act would substantially interfere with the  
8 effective conduct of the proceeding or prejudice the rights of  
9 a party, in which case the particular provision of that act  
10 does not apply and the superseded law applies.

11 SECTION 605. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is January 1, 2019.