

1 SENATE BILL 19

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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6
7 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
8 THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

9
10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 ARTICLE 1

17 GENERAL PROVISIONS

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

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

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

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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

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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 fewer 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 fewer 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

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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;

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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

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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 if
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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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

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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

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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

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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

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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.

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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 AND EXPENSES.--

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

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

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

24 (1) the necessity and quality of the services
25 provided;

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

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

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

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

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

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

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

21 E. If an individual subject to guardianship or
22 conservatorship seeks to modify or terminate the guardianship
23 or conservatorship or remove the guardian or conservator, the
24 court may order compensation to the guardian or conservator for
25 time spent opposing modification, termination or removal only

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1 to the extent the court determines the opposition was
2 reasonably necessary to protect the interest of the individual
3 subject to guardianship or conservatorship.

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

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

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

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

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

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

24 (1) the person has actual knowledge or a
25 reasonable belief that the letters of office of the guardian or

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1 conservator are invalid or the conservator or guardian is
2 exceeding or improperly exercising authority granted by the
3 court; or

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

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

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

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

23 C. A person that refuses to accept the authority of
24 a guardian or conservator in accordance with Subsection B of
25 this section may report the refusal and the reason for refusal

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1 to the court. The court on receiving the report shall consider
2 whether removal of the guardian or conservator or other action
3 is appropriate.

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

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

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

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

- 22 (1) selecting the agent;
23 (2) establishing the scope and terms of the
24 agent's work in accordance with the guardian's plan under
25 Section 316 of the Uniform Guardianship, Conservatorship and

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1 Other Protective Arrangements Act or conservator's plan under
2 Section 419 of that act;

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

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

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

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

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

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

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

24 F. A guardian or conservator that delegates and
25 monitors a power in compliance with this section is not liable

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1 for the decision, act or omission of the agent.

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

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

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

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

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

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

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

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

25 The authority of the existing guardian or conservator is

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1 suspended for as long as the temporary substitute guardian or
2 conservator has authority.

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

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

9 (2) the affected guardian or conservator; and

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

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

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

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

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1 of office.

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

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

23 D. The court may grant any relief available under
24 the Uniform Guardianship, Conservatorship and Other Protective
25 Arrangements Act or other law of New Mexico to enforce an order

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1 registered under this section.

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

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

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

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

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

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

25 (b) termination or modification of the

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1 guardianship may be appropriate under Section 319 of the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act;

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

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

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

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

17 (b) appointing a guardian ad litem;

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

20 (d) holding a hearing.

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

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

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

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

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

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

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

24 (5) the reason guardianship is sought and
25 would be in the best interest of the minor;

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- 1 (6) the name and address of any proposed
- 2 guardian and the reason the proposed guardian should be
- 3 selected;
- 4 (7) if the minor has property other than
- 5 personal effects, a general statement of the minor's property
- 6 with an estimate of its value;
- 7 (8) whether the minor needs an interpreter,
- 8 translator or other form of support to communicate effectively
- 9 with the court or understand court proceedings;
- 10 (9) whether any parent of the minor needs an
- 11 interpreter, translator or other form of support to communicate
- 12 effectively with the court or understand court proceedings; and
- 13 (10) whether any other proceeding concerning
- 14 the care or custody of the minor is pending in any court in New
- 15 Mexico or another jurisdiction.

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

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

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

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1 twelve years of age or older at the time of the hearing;

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

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

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

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

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

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

20 (b) any nominee of a parent;

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

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

25 (e) any other person the court

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1 determines.

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

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

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

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

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

21 (1) interview the petitioner and the minor;

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

25 (3) investigate any other matter relating to

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1 the petition the court directs.

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

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

- 8 (1) requested by the minor and the minor is
9 twelve years of age or older;
- 10 (2) recommended by a guardian ad litem; or
- 11 (3) the court determines the minor needs
12 representation.

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

- 15 (1) make a reasonable effort to ascertain the
16 minor's wishes;
- 17 (2) advocate for the minor's wishes to the
18 extent reasonably ascertainable; and
- 19 (3) if the minor's wishes are not reasonably
20 ascertainable, advocate for the minor's best interest.

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

25 D. A parent of a minor who is the subject of a

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1 proceeding under Section 202 of the Uniform Guardianship,
2 Conservatorship and Other Protective Arrangements Act may
3 retain an attorney to represent the parent in the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 education or other matter or access to a record regarding the
2 minor.

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

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

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

10 (3) the court has removed the guardian.

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

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

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

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

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1 standby guardian. The parent, in a signed record, may revoke
2 or amend the nomination at any time before the court appoints a
3 standby guardian.

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

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

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

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

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

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

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

23 (b) each parent of the minor;

24 (c) the person nominated as standby
25 guardian; and

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1 (d) any other person the court
2 determines; and

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

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

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

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

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

25 (2) each parent of the minor, unless the court

1 finds by clear and convincing evidence that the parent, in a
2 record, waived the right to notice or cannot be located and
3 served with due diligence.

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

9 (1) interview the petitioner and the minor;

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

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

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

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

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

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

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

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

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

11 (4) the court removes the guardian.

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

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

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

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

23 M. A person that receives notice under Subsection L
24 of this section or any other person interested in the welfare
25 of the minor may file with the court an objection to the

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

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

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

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

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

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

22 C. Except as otherwise provided in Subsection D of
23 this section, reasonable notice of the date, time and place of
24 a hearing on a petition for appointment of an emergency
25 guardian for a minor shall be given to:

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

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

6 (3) each parent of the minor;

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

9 (5) any other person the court determines.

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

23 E. Appointment of an emergency guardian under this
24 section, with or without notice, is not a determination that a
25 basis exists for appointment of a guardian under Section 201 of

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1 the Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act.

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

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

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

14 B. A guardian for a minor shall:

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

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

23 (3) expend funds of the minor that have been
24 received by the guardian for the minor's current needs for
25 support, care, education, health, safety and welfare;

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

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

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

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

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

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

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

25 (1) apply for and receive funds and benefits

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

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

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

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

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

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

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

25 SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR

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1 MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--

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

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

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

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

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

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

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

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1 other person the court determines.

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

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

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

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

19 ARTICLE 3

20 GUARDIANSHIP OF ADULT

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

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

25 (1) appoint a guardian for an adult if the

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1 court finds by clear and convincing evidence that:

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

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

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

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

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

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

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

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

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

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

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

25 (c) adult stepchildren whom the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 23 (1) the adult subject to guardianship;
24 (2) the guardian; and
25 (3) any other person the court determines.

1 SECTION 304. ~~[NEW MATERIAL]~~ APPOINTMENT AND ROLE OF

2 VISITOR.--

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

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

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

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

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

24 (4) inform the respondent that all costs and
25 expenses of the proceeding, including respondent's attorney's

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1 fees, may be paid from the respondent's assets.

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

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

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

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

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

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

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

23 (2) a recommendation regarding the
24 appropriateness of guardianship, including whether a protective
25 arrangement instead of guardianship or other less restrictive

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1 alternative for meeting the respondent's needs is available
2 and:

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

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

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

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

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

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

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

24 (8) any other matter the court directs.

25 SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF

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1 ATTORNEY FOR ADULT.--

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

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

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

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

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

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

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

20 (1) if the respondent requests the evaluation;

21 or

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

25 B. If the court orders an evaluation under

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

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

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

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

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

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

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

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

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

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

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

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

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1 If assistance would facilitate the respondent's participation
2 in the hearing, but is not otherwise available to the
3 respondent, the court shall make reasonable efforts to provide
4 it.

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

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

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

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

16 (3) otherwise participate in the hearing.

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

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

25 H. Any person may request to participate in a

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

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

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

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

13 (2) either:

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

16 (b) the guardianship is terminated.

17 B. An adult subject to a proceeding for a
18 guardianship, whether or not a guardian is appointed, an
19 attorney designated by the adult and a person entitled to
20 notice under Subsection E of Section 310 of the Uniform
21 Guardianship, Conservatorship and Other Protective Arrangements
22 Act or a subsequent order are entitled to access court records
23 of the proceeding and resulting guardianship, including the
24 guardian's plan under Section 316 of that act and report under
25 Section 317 of that act. A person not otherwise entitled to

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

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

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

24 SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN FOR
25 ADULT--ORDER OF PRIORITY.--

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

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

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

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

13 (4) a spouse of the respondent; and

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

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

25 C. The court, acting in the best interest of the

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1 respondent, may decline to appoint as guardian a person having
2 priority under Subsection A of this section and appoint a
3 person having a lower priority or no priority.

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

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

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

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

21 SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF
22 GUARDIAN FOR ADULT.--

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

25 (1) include a specific finding that clear and

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

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

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

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

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

24 C. A court order establishing a full guardianship
25 for an adult shall state the basis for granting a full

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1 guardianship and include specific findings that support the
2 conclusion that a limited guardianship would not meet the
3 functional needs of the adult subject to guardianship.

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

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

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

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

15 (3) notice that the guardian has delegated:

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

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

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

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

25 (e) substantially all powers of the

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1 guardian;

2 (4) notice that the guardian will be
3 unavailable to visit the adult for more than two months or
4 unavailable to perform the guardian's duties for more than one
5 month;

6 (5) a copy of the guardian's plan under
7 Section 316 of the Uniform Guardianship, Conservatorship and
8 Other Protective Arrangements Act and the guardian's report
9 under Section 317 of that act;

10 (6) access to court records relating to the
11 guardianship;

12 (7) notice of the death or significant change
13 in the condition of the adult;

14 (8) notice that the court has limited or
15 modified the powers of the guardian; and

16 (9) notice of the removal of the guardian.

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

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

25 A. A guardian appointed under Section 309 of the

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

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

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

24 (2) be involved in decisions affecting the
25 adult, including decisions about the adult's care, dwelling,

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1 activities or social interactions, to the extent reasonably
2 feasible;

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

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

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

17 (6) 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, unless:

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

24 (b) a protective order or protective
25 arrangement instead of guardianship is in effect that limits

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1 contact between the adult and a person; or

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

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

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

16 SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN FOR
17 ADULT.--

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;

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

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

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1 be substantially harmed before a hearing with notice on the
2 appointment can be held. If the court appoints an emergency
3 guardian without giving notice under Subsection C of this
4 section, the court shall:

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

7 (a) the respondent;

8 (b) the respondent's attorney; and

9 (c) any other person the court

10 determines; and

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

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

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

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

23 A. A guardian for an adult is a fiduciary. Except
24 as otherwise limited by the court, a guardian for an adult
25 shall make decisions regarding the support, care, education,

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1 health and welfare of the adult subject to guardianship to the
2 extent necessitated by the adult's limitations.

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

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

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

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

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

25 (1) take reasonable care of the personal

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1 effects, pets and service or support animals of the adult and
2 bring a proceeding for a conservatorship or protective
3 arrangement instead of conservatorship if necessary to protect
4 the adult's property;

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

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

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

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

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

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

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

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

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

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

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

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1 (1) apply for and receive funds and benefits
2 for the support of the adult, unless a conservator is appointed
3 for the adult and the application or receipt is within the
4 powers of the conservator;

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

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

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

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

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

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

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

23 (1) consent or withhold consent to the
24 marriage of the adult if the adult's right to marry has been
25 removed under Section 310 of the Uniform Guardianship,

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1 Conservatorship and Other Protective Arrangements Act;

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

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

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

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

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

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1 guardian shall choose in accordance with Subsection E of that
2 section a residential setting that is consistent with the
3 adult's best interest;

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

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

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

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

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

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1 (a) the establishment or move is in the
2 guardian's plan under Section 316 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act;

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

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

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

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

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

24 (b) the court authorizes the action by
25 specific order; or

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1 (c) notice of the action was given at
2 least fourteen days before the action to the adult and all
3 persons entitled to the notice under Paragraph (2) of
4 Subsection E of Section 310 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act or a
6 subsequent order and no objection has been filed.

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

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

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

18 (3) take into account:
19 (a) the risks and benefits of treatment
20 options; and

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

24 SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON
25 GUARDIAN'S POWER.--

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1 A. Unless authorized by the court by specific
2 order, a guardian for an adult shall not revoke or amend a
3 power of attorney for health care or power of attorney for
4 finances signed by the adult. If a power of attorney for
5 health care is in effect, unless there is a court order to the
6 contrary, a health care decision of an agent takes precedence
7 over that of the guardian and the guardian shall cooperate with
8 the agent to the extent feasible. If a power of attorney for
9 finances is in effect, unless there is a court order to the
10 contrary, a decision by the agent that the agent is authorized
11 to make under the power of attorney for finances takes
12 precedence over that of the guardian and the guardian shall
13 cooperate with the agent to the extent feasible.

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

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

- 24 (1) authorized by the court by specific order;
25 (2) a protective order or a protective

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

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

7 (a) 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

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

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

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

24 (1) the living arrangement, services and
25 supports the guardian expects to arrange, facilitate or

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1 continue for the adult;

2 (2) social and educational activities the
3 guardian expects to facilitate on behalf of the adult;

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

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

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

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

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

19 B. A guardian shall give notice of the filing of
20 the guardian's plan under Subsection A of this section,
21 together with a copy of the plan, to the adult subject to
22 guardianship, a person entitled to notice under Subsection E of
23 Section 310 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act or a subsequent order and any
25 other person the court determines. The notice shall include a

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1 statement of the right to object to the plan and be given not
2 later than fourteen days after the filing.

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

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

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

21 (2) a hearing.

22 E. After the guardian's plan filed under this
23 section is approved by the court, the guardian shall provide a
24 copy of the plan to the adult subject to guardianship, a person
25 entitled to notice under Subsection E of Section 310 of the

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1 Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act or a subsequent order and any other person the
3 court determines.

4 SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING
5 OF GUARDIANSHIP.--

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

12 B. A report under Subsection A of this section
13 shall state or contain:

14 (1) the mental, physical and social condition
15 of the adult;

16 (2) the living arrangements of the adult
17 during the reporting period;

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

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

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

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1 (6) the extent to which the adult has
2 participated in decision making;

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

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

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

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

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

24 (12) plans for future care and support of the
25 adult;

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1 (13) a recommendation as to the need for
2 continued guardianship and any recommended change in the scope
3 of the guardianship; and

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

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

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

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

24 (1) the report provides sufficient information
25 to establish the guardian has complied with the guardian's

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1 duties;

2 (2) the guardianship should continue; and

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

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

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

13 (2) may require additional information from
14 the guardian;

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

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

23 G. If the court has reason to believe fees
24 requested by a guardian for an adult are not reasonable, the
25 court shall hold a hearing to determine whether to adjust the

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1 requested fees and give notice of the hearing to the adult
2 subject to guardianship, a person entitled to notice under
3 Subsection E of Section 310 of the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act or under
5 a subsequent order and any other person the court determines.

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

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

17 (2) a hearing.

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

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

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

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1 successor guardian on:

2 (1) petition of the adult, guardian or person
3 interested in the welfare of the adult, that contains
4 allegations that, if true, would support a reasonable belief
5 that removal of the guardian and appointment of a successor
6 guardian may be appropriate, but the court may decline to hold
7 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 removal of the guardian and appointment
12 of a successor guardian may be appropriate; or

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

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

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

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1 reasonable attorney's fees to the attorney for the adult as
2 provided in Section 119 of that act.

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

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

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

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

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

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

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1 B. The court shall hold a hearing to determine
2 whether termination or modification of a guardianship for an
3 adult is appropriate on:

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

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

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

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

25 C. Notice of a petition under Paragraph (1) of

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1 Subsection B of this section shall be given to the adult
2 subject to guardianship, the guardian and any other person the
3 court determines.

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

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

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

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

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1 attorney's fees to the attorney for the adult as provided in
2 Section 119 of that act.

3 ARTICLE 4

4 CONSERVATORSHIP

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

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

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

15 (2) either:

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

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

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

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1 B. On petition and after notice and hearing, the
2 court may appoint a conservator for the property or financial
3 affairs of an adult if the court finds by clear and convincing
4 evidence that:

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

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

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

14 (2) appointment is necessary to:

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

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

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

24 C. The court shall grant a conservator only those
25 powers necessitated by demonstrated limitations and needs of

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

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

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

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

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

18 (3) the guardian for the individual.

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

25 (1) the respondent's name, age, principal

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

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

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

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

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

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

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

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

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

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1 respondent;

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

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

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

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

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

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

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

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

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1 days during the five years immediately before the filing of the
2 petition;

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

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

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

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

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

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

24 (e) the reason a protective arrangement
25 or other less restrictive alternative is insufficient to meet

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1 the respondent's need;

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

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

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

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

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

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

20 SECTION 403. [NEW MATERIAL] NOTICE AND HEARING FOR
21 APPOINTMENT OF CONSERVATOR.--

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

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1 B. A copy of a petition under Section 402 of the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act and notice of a hearing on the petition shall
4 be served personally on the respondent. If the respondent's
5 whereabouts are unknown or personal service cannot be made,
6 service on the respondent shall be made as provided in Section
7 45-1-401 NMSA 1978. The notice shall inform the respondent of
8 the respondent's rights at the hearing, including the right to
9 an attorney and to attend the hearing. The notice also shall
10 include a description of the nature, purpose and consequences
11 of granting the petition. The court shall not grant a petition
12 for appointment of a conservator if notice substantially
13 complying with this subsection is not served on the respondent.

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

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

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- 1 (1) the individual subject to conservatorship,
- 2 if the individual is twelve years of age or older and not
- 3 missing, detained or unable to return to the United States;
- 4 (2) the conservator; and
- 5 (3) any other person the court determines.

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

15 SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF
16 VISITOR.--

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

22 B. If the respondent in a proceeding to appoint a
23 conservator is an adult, the court shall appoint a visitor
24 unless the adult is represented by an attorney appointed by the
25 court. The duties and reporting requirements of the visitor

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1 are limited to the relief requested in the petition. The
2 visitor shall be an individual with training or experience in
3 the type of abilities, limitations and needs alleged in the
4 petition.

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

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

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

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

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

24 D. A visitor appointed under Subsection B of this
25 section for an adult shall:

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

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

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

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

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

17 (1) a recommendation:

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

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

24 (c) if a limited conservatorship is
25 recommended, the powers to be granted to the conservator and

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1 the property that should be placed under the conservator's
2 control;

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

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

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

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

17 (6) any other matter the court directs.

18 SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF
19 ATTORNEY.--

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

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

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

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

5 (3) if the respondent's wishes are not
6 reasonably ascertainable, advocate for the result that is the
7 least restrictive in type, duration and scope, consistent with
8 the respondent's interests.

9 SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

10 A. At or before a hearing on a petition for
11 conservatorship for an adult, the court shall order a
12 professional evaluation of the respondent:

13 (1) if the respondent requests the evaluation;
14 or

15 (2) in other cases, unless the court finds it
16 has sufficient information to determine the respondent's needs
17 and abilities without the evaluation.

18 B. If the court orders an evaluation under
19 Subsection A of this section, the respondent shall be examined
20 by a licensed physician, psychologist, social worker or other
21 individual appointed by the court who is qualified to evaluate
22 the respondent's alleged cognitive and functional abilities and
23 limitations and will not be advantaged or disadvantaged by a
24 decision to grant the petition or otherwise have a conflict of
25 interest. The individual conducting the evaluation promptly

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1 shall file a report in a record with the court. Unless
2 otherwise directed by the court, the report shall contain:

3 (1) a description of the nature, type and
4 extent of the respondent's cognitive and functional abilities
5 and limitations with regard to the management of the
6 respondent's property and financial affairs;

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

10 (3) a prognosis for improvement with regard to
11 the ability to manage the respondent's property and financial
12 affairs; and

13 (4) the date of the examination on which the
14 report is based.

15 C. A respondent may decline to participate in an
16 evaluation ordered under Subsection A of this section.

17 **SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT**
18 **HEARING.--**

19 A. Except as otherwise provided in Subsection B of
20 this section, a hearing under Section 403 of the Uniform
21 Guardianship, Conservatorship and Other Protective Arrangements
22 Act shall not proceed unless the respondent attends the
23 hearing. If it is not reasonably feasible for the respondent
24 to attend a hearing at the location court proceedings typically
25 are held, the court shall make reasonable efforts to hold the

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1 hearing at an alternative location convenient to the respondent
2 or allow the respondent to attend the hearing using real-time
3 audio-visual technology.

4 B. A hearing under Section 403 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act may proceed without the respondent in attendance if the
7 court finds by clear and convincing evidence that:

8 (1) the respondent consistently and repeatedly
9 has refused to attend the hearing after having been fully
10 informed of the right to attend and the potential consequences
11 of failing to do so;

12 (2) there is no practicable way for the
13 respondent to attend and participate in the hearing even with
14 appropriate supportive services or technological assistance; or

15 (3) the respondent is a minor who has received
16 proper notice and attendance would be harmful to the minor.

17 C. The respondent may be assisted in a hearing
18 under Section 403 of the Uniform Guardianship, Conservatorship
19 and Other Protective Arrangements Act by a person or persons of
20 the respondent's choosing, assistive technology or an
21 interpreter or translator or a combination of these supports.
22 If assistance would facilitate the respondent's participation
23 in the hearing, but is not otherwise available to the
24 respondent, the court shall make reasonable efforts to provide
25 it.

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1 D. The respondent has a right to choose an attorney
2 to represent the respondent at a hearing under Section 403 of
3 the Uniform Guardianship, Conservatorship and Other Protective
4 Arrangements Act.

5 E. At a hearing under Section 403 of the Uniform
6 Guardianship, Conservatorship and Other Protective Arrangements
7 Act, the respondent may:

8 (1) present evidence and subpoena witnesses
9 and documents;

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

12 (3) otherwise participate in the hearing.

13 F. Unless excused by the court for good cause, a
14 proposed conservator shall attend a hearing under Section 403
15 of the Uniform Guardianship, Conservatorship and Other
16 Protective Arrangements Act.

17 G. A hearing under Section 403 of the Uniform
18 Guardianship, Conservatorship and Other Protective Arrangements
19 Act shall be closed on request of the respondent and a showing
20 of good cause.

21 H. Any person may request to participate in a
22 hearing under Section 403 of the Uniform Guardianship,
23 Conservatorship and Other Protective Arrangements Act. The
24 court may grant the request, with or without a hearing, on
25 determining that the best interest of the respondent will be

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1 served. The court may impose appropriate conditions on the
2 person's participation.

3 SECTION 409. [NEW MATERIAL] CONFIDENTIALITY OF
4 RECORDS.--

5 A. The existence of a proceeding for or the
6 existence of conservatorship is a matter of public record
7 unless the court seals the record after:

8 (1) the respondent, the individual subject to
9 conservatorship or the parent of a minor subject to
10 conservatorship requests the record be sealed; and

11 (2) either:

12 (a) the petition for conservatorship is
13 dismissed; or

14 (b) the conservatorship is terminated.

15 B. An individual subject to a proceeding for a
16 conservatorship, whether or not a conservator is appointed, an
17 attorney designated by the individual and a person entitled to
18 notice under Section 411 of the Uniform Guardianship,
19 Conservatorship and Other Protective Arrangements Act or a
20 subsequent order may access court records of the proceeding and
21 resulting conservatorship, including the conservator's plan
22 under Section 419 of that act and the conservator's report
23 under Section 423 of that act. A person not otherwise entitled
24 to access to court records under this section for good cause
25 may petition the court for access to court records of the

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1 conservatorship, including the conservator's plan and report.
2 The court shall grant access if access is in the best interest
3 of the respondent or individual subject to conservatorship or
4 furthers the public interest and does not endanger the welfare
5 or financial interests of the respondent or individual.

6 C. A report under Section 405 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act of a visitor or professional evaluation under Section 407
9 of that act is confidential and shall be sealed on filing, but
10 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 directs otherwise, an
17 agent appointed under a power of attorney for finances in which
18 the respondent is identified as the principal; and
- 19 (5) any other person if it is in the public
20 interest or for a purpose the court orders for good cause.

21 SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER
22 OF PRIORITY.--

23 A. Except as otherwise provided in Subsection C of
24 this section, the court in appointing a conservator shall
25 consider persons qualified to be a conservator in the following

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1 order of priority:

2 (1) a conservator, other than a temporary or
3 emergency conservator, currently acting for the respondent in
4 another jurisdiction;

5 (2) a person nominated as conservator by the
6 respondent, including the respondent's most recent nomination
7 made in a power of attorney for finances;

8 (3) an agent appointed by the respondent to
9 manage the respondent's property under a power of attorney for
10 finances;

11 (4) a spouse of the respondent; and

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

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

23 C. The court, acting in the best interest of the
24 respondent, may decline to appoint as conservator a person
25 having priority under Subsection A of this section and appoint

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1 a person having a lower priority or no priority.

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

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

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

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

19 SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT OF
20 CONSERVATOR.--

21 A. A court order appointing a conservator for a
22 minor shall include findings to support appointment of a
23 conservator and, if a full conservatorship is granted, the
24 reason a limited conservatorship would not meet the identified
25 needs of the minor.

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1 B. A court order appointing a conservator for an
2 adult shall:

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

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

12 C. A court order establishing a full
13 conservatorship for an adult shall state the basis for granting
14 a full conservatorship and include specific findings to support
15 the conclusion that a limited conservatorship would not meet
16 the functional needs of the adult.

17 D. A court order establishing a limited
18 conservatorship shall state the specific property placed under
19 the control of the conservator and the powers granted to the
20 conservator.

21 E. The court, as part of an order establishing a
22 conservatorship, shall identify any person that subsequently is
23 entitled to:

24 (1) notice of the rights of the individual
25 subject to conservatorship under Subsection B of Section 412 of
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1 the Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act;

3 (2) notice of a sale of or surrender of a
4 lease to the primary dwelling of the individual;

5 (3) notice that the conservator has delegated
6 a power that requires court approval under Section 414 of the
7 Uniform Guardianship, Conservatorship and Other Protective
8 Arrangements Act or substantially all powers of the
9 conservator;

10 (4) notice that the conservator will be
11 unavailable to perform the conservator's duties for more than
12 one month;

13 (5) a copy of the conservator's plan under
14 Section 419 of the Uniform Guardianship, Conservatorship and
15 Other Protective Arrangements Act and the conservator's report
16 under Section 423 of that act;

17 (6) access to court records relating to the
18 conservatorship;

19 (7) notice of a transaction involving a
20 substantial conflict between the conservator's fiduciary duties
21 and personal interests;

22 (8) notice of the death or significant change
23 in the condition of the individual;

24 (9) notice that the court has limited or
25 modified the powers of the conservator; and

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1 (10) notice of the removal of the conservator.

2 F. If an individual subject to conservatorship is
3 an adult, the spouse and adult children of the adult subject to
4 conservatorship are entitled under Subsection E of this section
5 to notice unless the court determines notice would be contrary
6 to the preferences or prior directions of the adult subject to
7 conservatorship or not in the best interest of the adult.

8 G. If an individual subject to conservatorship is a
9 minor, each parent and adult sibling of the minor is entitled
10 under Subsection E of this section to notice unless the court
11 determines notice would not be in the best interest of the
12 minor.

13 SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF
14 APPOINTMENT--RIGHTS.--

15 A. A conservator appointed under Section 411 of the
16 Uniform Guardianship, Conservatorship and Other Protective
17 Arrangements Act shall give to the individual subject to
18 conservatorship and to all other persons given notice under
19 Section 403 of that act a copy of the order of appointment,
20 together with notice of the right to request termination or
21 modification. The order and notice shall be given not later
22 than fourteen days after the appointment.

23 B. Not later than thirty days after appointment of
24 a conservator under Section 411 of the Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act, the

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1 court shall give to the individual subject to conservatorship,
2 the conservator and any other person entitled to notice under
3 Subsection E of Section 411 of the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act a
5 statement of the rights of the individual subject to
6 conservatorship and procedures to seek relief if the individual
7 is denied those rights. The statement shall be in plain
8 language, in at least sixteen-point font and, to the extent
9 feasible, in a language in which the individual subject to
10 conservatorship is proficient. The statement shall notify the
11 individual subject to conservatorship of the right to:

12 (1) seek termination or modification of the
13 conservatorship, or removal of the conservator, and choose an
14 attorney to represent the individual in these matters;

15 (2) participate in decision making to the
16 extent reasonably feasible;

17 (3) receive a copy of the conservator's plan
18 under Section 419 of the Uniform Guardianship, Conservatorship
19 and Other Protective Arrangements Act, the conservator's
20 inventory under Section 420 of that act and the conservator's
21 report under Section 423 of that act; and

22 (4) object to the conservator's inventory,
23 plan or report.

24 C. If a conservator is appointed for the reasons
25 stated in Subparagraph (b) of Paragraph (1) of Subsection B of

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1 Section 401 of the Uniform Guardianship, Conservatorship and
2 Other Protective Arrangements Act and the individual subject to
3 conservatorship is missing, notice under this section to the
4 individual is not required.

5 SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

6 A. On its own or on petition by a person interested
7 in an individual's welfare after a petition has been filed
8 under Section 402 of the Uniform Guardianship, Conservatorship
9 and Other Protective Arrangements Act, the court may appoint an
10 emergency conservator for the individual if the court finds:

11 (1) appointment of an emergency conservator is
12 likely to prevent substantial and irreparable harm to the
13 individual's property or financial interests;

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

16 (3) there is reason to believe that a basis
17 for appointment of a conservator under Section 401 of the
18 Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act exists.

20 B. The duration of authority of an emergency
21 conservator shall not exceed sixty days, and the emergency
22 conservator may exercise only the powers specified in the order
23 of appointment. The emergency conservator's authority may be
24 extended once for not more than sixty days if the court finds
25 that the conditions for appointment of an emergency conservator

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1 under Subsection A of this section continue.

2 C. Immediately on filing of a petition for an
3 emergency conservator, the court shall appoint an attorney to
4 represent the respondent in the proceeding. Except as
5 otherwise provided in Subsection D of this section, reasonable
6 notice of the date, time and place of a hearing on the petition
7 shall be given to the respondent, the respondent's attorney and
8 any other person the court determines.

9 D. The court may appoint an emergency conservator
10 without notice to the respondent and any attorney for the
11 respondent only if the court finds from an affidavit or
12 testimony that the respondent's property or financial interests
13 will be substantially and irreparably harmed before a hearing
14 with notice on the appointment can be held. If the court
15 appoints an emergency conservator without giving notice under
16 Subsection C of this section, the court shall give notice of
17 the appointment not later than forty-eight hours after the
18 appointment to:

- 19 (1) the respondent;
20 (2) the respondent's attorney; and
21 (3) any other person the court determines.

22 E. Not later than five days after the appointment,
23 the court shall hold a hearing on the appropriateness of the
24 appointment.

25 F. Appointment of an emergency conservator under

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1 this section is not a determination that a basis exists for
2 appointment of a conservator under Section 401 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act.

5 G. The court may remove an emergency conservator
6 appointed under this section at any time. The emergency
7 conservator shall make any report the court requires.

8 SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR
9 REQUIRING COURT APPROVAL.--

10 A. Except as otherwise ordered by the court, a
11 conservator shall give notice to persons entitled to notice
12 under Subsection D of Section 403 of the Uniform Guardianship,
13 Conservatorship and Other Protective Arrangements Act and
14 receive specific authorization by the court before the
15 conservator may exercise with respect to the conservatorship
16 the power to:

17 (1) make a gift, except a gift of de minimis
18 value;

19 (2) sell, encumber an interest in or surrender
20 a lease to the primary dwelling of the individual subject to
21 conservatorship;

22 (3) convey, release or disclaim a contingent
23 or expectant interest in property, including marital property
24 and any right of survivorship incident to joint tenancy or
25 tenancy by the entirety;

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1 (4) exercise or release a power of
2 appointment;

3 (5) create a revocable or irrevocable trust of
4 property of the conservatorship estate, whether or not the
5 trust extends beyond the duration of the conservatorship, or
6 revoke or amend a trust revocable by the individual subject to
7 conservatorship;

8 (6) exercise a right to elect an option or
9 change a beneficiary under an insurance policy or annuity or
10 surrender the policy or annuity for its cash value;

11 (7) exercise a right to an elective share in
12 the estate of a deceased spouse of the individual subject to
13 conservatorship or renounce or disclaim a property interest;

14 (8) grant a creditor priority for payment over
15 creditors of the same or higher class if the creditor is
16 providing property or services used to meet the basic living
17 and care needs of the individual subject to conservatorship and
18 preferential treatment otherwise would be impermissible under
19 Subsection E of Section 428 of the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act; and

21 (9) make, modify, amend or revoke the will of
22 the individual subject to conservatorship in compliance with
23 the Uniform Probate Code.

24 B. In approving a conservator's exercise of a power
25 listed in Subsection A of this section, the court shall

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1 consider primarily the decision the individual subject to
2 conservatorship would make if able, to the extent the decision
3 can be ascertained.

4 C. To determine under Subsection B of this section
5 the decision the individual subject to conservatorship would
6 make if able, the court shall consider the individual's prior
7 or current directions, preferences, opinions, values and
8 actions, to the extent actually known or reasonably
9 ascertainable by the conservator. The court also shall
10 consider:

- 11 (1) the financial needs of the individual
12 subject to conservatorship and individuals who are in fact
13 dependent on the individual subject to conservatorship for
14 support and the interests of creditors of the individual;
- 15 (2) possible reduction of income, estate,
16 inheritance or other tax liabilities;
- 17 (3) eligibility for governmental assistance;
- 18 (4) the previous pattern of giving or level of
19 support provided by the individual;
- 20 (5) any existing estate plan or lack of estate
21 plan of the individual;
- 22 (6) the life expectancy of the individual and
23 the probability the conservatorship will terminate before the
24 individual's death; and
- 25 (7) any other relevant factor.

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1 D. A conservator shall not revoke or amend a power
2 of attorney for finances signed by the individual subject to
3 conservatorship. If a power of attorney for finances is in
4 effect, a decision of the agent takes precedence over that of
5 the conservator, unless the court orders otherwise.

6 SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER
7 APPOINTMENT.--An individual subject to conservatorship or a
8 person interested in the welfare of the individual may petition
9 for an order:

10 A. requiring the conservator to furnish a bond or
11 collateral or additional bond or collateral or allowing a
12 reduction in a bond or collateral previously furnished;

13 B. requiring an accounting for the administration
14 of the conservatorship estate;

15 C. directing distribution;

16 D. removing the conservator and appointing a
17 temporary or successor conservator;

18 E. modifying the type of appointment or powers
19 granted to the conservator, if the extent of protection or
20 management previously granted is excessive or insufficient to
21 meet the individual's needs, including because the individual's
22 abilities or supports have changed;

23 F. rejecting or modifying the conservator's plan
24 under Section 419 of the Uniform Guardianship, Conservatorship
25 and Other Protective Arrangements Act, the conservator's

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1 inventory under Section 420 of that act or the conservator's
2 report under Section 423 of that act; or

3 G. granting other appropriate relief.

4 SECTION 416. [NEW MATERIAL] BOND--ALTERNATIVE ASSET-
5 PROTECTION ARRANGEMENT.--

6 A. Except as otherwise provided in Subsection C of
7 this section, the court shall require a conservator to furnish
8 a bond with a surety the court specifies, or require an
9 alternative asset-protection arrangement, conditioned on
10 faithful discharge of all duties of the conservator. The court
11 may waive the requirement only if the court finds that a bond
12 or other asset-protection arrangement is not necessary to
13 protect the interests of the individual subject to
14 conservatorship. Except as otherwise provided in Subsection C
15 of this section, the court shall not waive the requirement if
16 the conservator is in the business of serving as a conservator
17 and is being paid for the conservator's service.

18 B. Unless the court directs otherwise, the bond
19 required under this section shall be in the amount of the
20 aggregate capital value of the conservatorship estate, plus one
21 year's estimated income, less the value of property deposited
22 under an arrangement requiring a court order for its removal
23 and real property the conservator lacks power to sell or convey
24 without specific court authorization. The court, in place of
25 surety on a bond, may accept collateral for the performance of

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1 the bond, including a pledge of securities or a mortgage of
2 real property.

3 C. A financial institution that possesses and is
4 exercising general trust powers in New Mexico is not required
5 to give a bond under this section. As used in this subsection,
6 "financial institution" means a state- or federally chartered,
7 federally insured depository bank or trust company.

8 SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF
9 BOND.--

10 A. The following rules apply to the bond required
11 under Section 416 of the Uniform Guardianship, Conservatorship
12 and Other Protective Arrangements Act:

13 (1) except as otherwise provided by the bond,
14 the surety and the conservator are jointly and severally
15 liable;

16 (2) by executing a bond provided by a
17 conservator, the surety submits to the personal jurisdiction of
18 the court that issued letters of office to the conservator in a
19 proceeding relating to the duties of the conservator in which
20 the surety is named as a party. Notice of the proceeding shall
21 be given to the surety at the address shown in the records of
22 the court in which the bond is filed and any other address of
23 the surety then known to the person required to provide the
24 notice;

25 (3) on petition of a successor conservator or

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1 person affected by a breach of the obligation of the bond, a
2 proceeding may be brought against the surety for breach of the
3 obligation of the bond; and

4 (4) a proceeding against the bond may be
5 brought until liability under the bond is exhausted.

6 B. A proceeding shall not be brought under this
7 section against a surety of a bond on a matter as to which a
8 proceeding against the conservator is barred.

9 C. If a bond under Section 416 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act is not renewed by the conservator, the surety or sureties
12 immediately shall give notice to the court and the individual
13 subject to conservatorship.

14 SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

15 A. A conservator is a fiduciary and has duties of
16 prudence and loyalty to the individual subject to
17 conservatorship.

18 B. A conservator shall promote the self-
19 determination of the individual subject to conservatorship and,
20 to the extent feasible, encourage the individual to participate
21 in decisions, act on the individual's own behalf and develop or
22 regain the capacity to manage the individual's personal
23 affairs.

24 C. In making a decision for an individual subject
25 to conservatorship, the conservator shall make the decision the

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1 conservator reasonably believes the individual would make if
2 able, unless doing so would fail to preserve the resources
3 needed to maintain the individual's well-being and lifestyle or
4 otherwise unreasonably harm or endanger the welfare or personal
5 or financial interests of the individual. To determine the
6 decision the individual would make if able, the conservator
7 shall consider the individual's prior or current directions,
8 preferences, opinions, values and actions, to the extent
9 actually known or reasonably ascertainable by the conservator.

10 D. If a conservator cannot make a decision under
11 Subsection C of this section because the conservator does not
12 know and cannot reasonably determine the decision the
13 individual subject to conservatorship probably would make if
14 able, or the conservator reasonably believes the decision the
15 individual would make would fail to preserve resources needed
16 to maintain the individual's well-being and lifestyle or
17 otherwise unreasonably harm or endanger the welfare or personal
18 or financial interests of the individual, the conservator shall
19 act in accordance with the best interest of the individual.
20 In determining the best interest of the individual, the
21 conservator shall consider:

22 (1) information received from professionals
23 and persons that demonstrate sufficient interest in the welfare
24 of the individual;

25 (2) other information the conservator believes

1 the individual would have considered if the individual were
2 able to act; and

3 (3) other factors a reasonable person in the
4 circumstances of the individual would consider, including
5 consequences for others.

6 E. Except when inconsistent with the conservator's
7 duties under Subsections A through D of this section, a
8 conservator shall invest and manage the conservatorship estate
9 as a prudent investor would, by considering:

10 (1) the circumstances of the individual
11 subject to conservatorship and the conservatorship estate;

12 (2) general economic conditions;

13 (3) the possible effect of inflation or
14 deflation;

15 (4) the expected tax consequences of an
16 investment decision or strategy;

17 (5) the role of each investment or course of
18 action in relation to the conservatorship estate as a whole;

19 (6) the expected total return from income and
20 appreciation of capital;

21 (7) the need for liquidity, regularity of
22 income and preservation or appreciation of capital; and

23 (8) the special relationship or value, if any,
24 of specific property to the individual subject to
25 conservatorship.

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1 F. The propriety of a conservator's investment and
2 management of the conservatorship estate is determined in light
3 of the facts and circumstances existing when the conservator
4 decides or acts and not by hindsight.

5 G. A conservator shall make a reasonable effort to
6 verify facts relevant to the investment and management of the
7 conservatorship estate.

8 H. A conservator that has special skills or
9 expertise, or is named conservator in reliance on the
10 conservator's representation of special skills or expertise,
11 has a duty to use the special skills or expertise in carrying
12 out the conservator's duties.

13 I. In investing, selecting specific property for
14 distribution and invoking a power of revocation or withdrawal
15 for the use or benefit of the individual subject to
16 conservatorship, a conservator shall consider any estate plan
17 of the individual known or reasonably ascertainable to the
18 conservator and may examine the will or other donative,
19 nominative or appointive instrument of the individual.

20 J. A conservator shall maintain insurance on the
21 insurable real and personal property of the individual subject
22 to conservatorship, unless the conservatorship estate lacks
23 sufficient funds to pay for insurance or the court finds:

- 24 (1) the property lacks sufficient equity; or
25 (2) insuring the property would unreasonably

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1 dissipate the conservatorship estate or otherwise not be in the
2 best interest of the individual.

3 K. If a power of attorney for finances is in
4 effect, a conservator shall cooperate with the agent to the
5 extent feasible.

6 L. A conservator has access to and authority over a
7 digital asset of the individual subject to conservatorship to
8 the extent provided by the Revised Uniform Fiduciary Access to
9 Digital Assets Act or court order.

10 M. A conservator for an adult shall notify the
11 court if the condition of the adult has changed so that the
12 adult is capable of exercising rights previously removed. The
13 notice shall be given immediately upon learning of the change.

14 SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

15 A. A conservator, not later than sixty days after
16 appointment and when there is a significant change in
17 circumstances or the conservator seeks to deviate significantly
18 from the conservator's plan, shall file with the court a plan
19 for protecting, managing, expending and distributing the assets
20 of the conservatorship estate. The plan shall be based on the
21 needs of the individual subject to conservatorship and take
22 into account the best interest of the individual as well as the
23 individual's preferences, values and prior directions, to the
24 extent known to or reasonably ascertainable by the conservator.
25 The conservator shall include in the plan:

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1 (1) a budget containing projected expenses and
2 resources, including an estimate of the total amount of fees
3 the conservator anticipates charging per year and a statement
4 or list of the amount the conservator proposes to charge for
5 each service the conservator anticipates providing to the
6 individual;

7 (2) how the conservator will involve the
8 individual in decisions about management of the conservatorship
9 estate;

10 (3) any step the conservator plans to take to
11 develop or restore the ability of the individual to manage the
12 conservatorship estate; and

13 (4) an estimate of the duration of the
14 conservatorship.

15 B. A conservator shall give notice of the filing of
16 the conservator's plan under Subsection A of this section,
17 together with a copy of the plan, to the individual subject to
18 conservatorship, a person entitled to notice under Subsection E
19 of Section 411 of the Uniform Guardianship, Conservatorship and
20 Other Protective Arrangements Act or a subsequent order and any
21 other person the court determines. The notice shall include a
22 statement of the right to object to the plan and be given not
23 later than fourteen days after the filing.

24 C. An individual subject to conservatorship and any
25 person entitled under Subsection B of this section to receive

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1 notice and a copy of the conservator's plan may object to the
2 plan.

3 D. A conservator shall petition the court for
4 approval of a plan filed under Subsection A of this section.
5 The court shall review the plan and determine whether to
6 approve it or require a new plan. In deciding whether to
7 approve the plan, the court shall consider an objection under
8 Subsection C of this section and whether the plan is consistent
9 with the conservator's duties and powers. The court shall not
10 approve the plan without:

11 (1) notice to the adult subject to
12 conservatorship, a person entitled to notice under Subsection E
13 of Section 411 of the Uniform Guardianship, Conservatorship and
14 Other Protective Arrangements Act or under a subsequent order
15 and any other person the court determines; and

16 (2) a hearing.

17 E. After a conservator's plan under this section is
18 approved by the court, the conservator shall provide a copy of
19 the plan to the individual subject to conservatorship, a person
20 entitled to notice under Subsection E of Section 411 of the
21 Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act or a subsequent order and any other person the
23 court determines.

24 SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

25 A. Not later than sixty days after appointment, a

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1 conservator shall prepare and file with the appointing court a
2 detailed inventory of the conservatorship estate, together with
3 an oath or affirmation that the inventory is believed to be
4 complete and accurate as far as information permits.

5 B. A conservator shall give notice of the filing of
6 an inventory to the individual subject to conservatorship, a
7 person entitled to notice under Subsection E of Section 411 of
8 the Uniform Guardianship, Conservatorship and Other Protective
9 Arrangements Act or a subsequent order and any other person the
10 court determines. The notice shall be given not later than
11 fourteen days after the filing.

12 C. A conservator shall keep records of the
13 administration of the conservatorship estate and make them
14 available for examination on reasonable request of the
15 individual subject to conservatorship, a guardian for the
16 individual or any other person the conservator or the court
17 determines.

18 SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF
19 CONSERVATOR NOT REQUIRING COURT APPROVAL.--

20 A. Except as otherwise provided in Section 414 of
21 the Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act or qualified or limited in the court's order
23 of appointment and stated in the letters of office, a
24 conservator has all powers granted in this section and any
25 additional power granted to a trustee by law of New Mexico

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1 other than that act.

2 B. A conservator, acting reasonably and consistent
3 with the fiduciary duties of the conservator to accomplish the
4 purpose of the conservatorship, without specific court
5 authorization or confirmation, may with respect to the
6 conservatorship estate:

7 (1) collect, hold and retain property,
8 including property in which the conservator has a personal
9 interest and real property in another state, until the
10 conservator determines disposition of the property should be
11 made;

12 (2) receive additions to the conservatorship
13 estate;

14 (3) continue or participate in the operation
15 of a business or other enterprise;

16 (4) acquire an undivided interest in property
17 in which the conservator, in a fiduciary capacity, holds an
18 undivided interest;

19 (5) invest assets;

20 (6) deposit funds or other property in a
21 financial institution, including one operated by the
22 conservator;

23 (7) acquire or dispose of property, including
24 real property in another state, for cash or on credit, at
25 public or private sale and manage, develop, improve, exchange,

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1 partition, change the character of or abandon property;

2 (8) make ordinary or extraordinary repairs or
3 alterations in a building or other structure, demolish any
4 improvement or raze an existing or erect a new party wall or
5 building;

6 (9) subdivide or develop land, dedicate land
7 to public use, make or obtain the vacation of a plat and adjust
8 a boundary, adjust a difference in valuation of land, exchange
9 or partition land by giving or receiving consideration and
10 dedicate an easement to public use without consideration;

11 (10) enter for any purpose into a lease of
12 property as lessor or lessee, with or without an option to
13 purchase or renew, for a term within or extending beyond the
14 term of the conservatorship;

15 (11) enter into a lease or arrangement for
16 exploration and removal of minerals or other natural resources
17 or a pooling or unitization agreement;

18 (12) grant an option involving disposition of
19 property or accept or exercise an option for the acquisition of
20 property;

21 (13) vote a security, in person or by general
22 or limited proxy;

23 (14) pay a call, assessment or other sum
24 chargeable or accruing against or on account of a security;

25 (15) sell or exercise a stock subscription or

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1 conversion right;

2 (16) consent, directly or through a committee
3 or agent, to the reorganization, consolidation, merger,
4 dissolution or liquidation of a corporation or other business
5 enterprise;

6 (17) hold a security in the name of a nominee
7 or in other form without disclosure of the conservatorship so
8 that title to the security may pass by delivery;

9 (18) insure:

10 (a) the conservatorship estate, in whole
11 or in part, against damage or loss in accordance with
12 Subsection J of Section 418 of the Uniform Guardianship,
13 Conservatorship and Other Protective Arrangements Act; and

14 (b) the conservator against liability
15 with respect to a third person;

16 (19) borrow funds, with or without security,
17 to be repaid from the conservatorship estate or otherwise;

18 (20) advance funds for the protection of the
19 conservatorship estate or the individual subject to
20 conservatorship and all expenses, losses and liability
21 sustained in the administration of the conservatorship estate
22 or because of holding any property for which the conservator
23 has a lien on the conservatorship estate;

24 (21) pay or contest a claim, settle a claim by
25 or against the conservatorship estate or the individual subject

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1 to conservatorship by compromise, arbitration or otherwise or
2 release, in whole or in part, a claim belonging to the
3 conservatorship estate to the extent the claim is
4 uncollectible;

5 (22) pay a tax, assessment, compensation of
6 the conservator or any guardian and other expense incurred in
7 the collection, care, administration and protection of the
8 conservatorship estate;

9 (23) pay a sum distributable to the individual
10 subject to conservatorship or an individual who is in fact
11 dependent on the individual subject to conservatorship by
12 paying the sum to the distributee or for the use of the
13 distributee:

14 (a) to the guardian for the distributee;

15 (b) to the custodian of the distributee
16 under the Uniform Transfers to Minors Act or custodial trustee
17 under the Uniform Custodial Trust Act; or

18 (c) if there is no guardian, custodian
19 or custodial trustee, to a relative or other person having
20 physical custody of the distributee;

21 (24) bring or defend an action, claim or
22 proceeding in any jurisdiction for the protection of the
23 conservatorship estate or the conservator in the performance of
24 the conservator's duties;

25 (25) structure the finances of the individual

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1 subject to conservatorship to establish eligibility for a
2 public benefit, including by making gifts consistent with the
3 individual's preferences, values and prior directions, if the
4 conservator's action does not jeopardize the individual's
5 welfare and otherwise is consistent with the conservator's
6 duties; and

7 (26) execute and deliver any instrument that
8 will accomplish or facilitate the exercise of a power of the
9 conservator.

10 SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM
11 CONSERVATORSHIP ESTATE.--Except as otherwise provided in
12 Section 414 of the Uniform Guardianship, Conservatorship and
13 Other Protective Arrangements Act or qualified or limited in
14 the court's order of appointment and stated in the letters of
15 office and unless contrary to a conservator's plan under
16 Section 419 of that act, the conservator may expend or
17 distribute income or principal of the conservatorship estate
18 without specific court authorization or confirmation for the
19 support, care, education, health or welfare of the individual
20 subject to conservatorship or an individual who is in fact
21 dependent on the individual subject to conservatorship,
22 including the payment of child or spousal support, in
23 accordance with the following rules:

24 A. the conservator shall consider a recommendation
25 relating to the appropriate standard of support, care,

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1 education, health or welfare for the individual subject to
2 conservatorship or individual who is dependent on the
3 individual subject to conservatorship, made by a guardian for
4 the individual subject to conservatorship, if any, and, if the
5 individual subject to conservatorship is a minor, a
6 recommendation made by a parent of the minor;

7 B. the conservator acting in compliance with the
8 conservator's duties under Section 418 of the Uniform
9 Guardianship, Conservatorship and Other Protective Arrangements
10 Act is not liable for an expenditure or distribution made based
11 on a recommendation under Subsection A of this section unless
12 the conservator knows the expenditure or distribution is not in
13 the best interest of the individual subject to conservatorship;

14 C. in making an expenditure or distribution under
15 this section, the conservator shall consider:

16 (1) the size of the conservatorship estate,
17 the estimated duration of the conservatorship and the
18 likelihood the individual subject to conservatorship, at some
19 future time, may be fully self-sufficient and able to manage
20 the individual's financial affairs and the conservatorship
21 estate;

22 (2) the accustomed standard of living of the
23 individual subject to conservatorship and individual who is
24 dependent on the individual subject to conservatorship;

25 (3) other funds or source used for the support

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1 of the individual subject to conservatorship; and

2 (4) the preferences, values and prior
3 directions of the individual subject to conservatorship; and

4 D. funds expended or distributed under this section
5 may be paid by the conservator to any person, including the
6 individual subject to conservatorship, as reimbursement for
7 expenditures the conservator might have made, or in advance for
8 services to be provided to the individual subject to
9 conservatorship or individual who is dependent on the
10 individual subject to conservatorship if it is reasonable to
11 expect the services will be performed and advance payment is
12 customary or reasonably necessary under the circumstances.

13 SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND
14 ACCOUNTING--MONITORING.--

15 A. A conservator shall file with the court a report
16 in a record regarding the administration of the conservatorship
17 estate annually unless the court otherwise directs, on
18 resignation or removal, on termination of the conservatorship
19 and at any other time the court directs.

20 B. A report under Subsection A of this section
21 shall state or contain:

22 (1) an accounting that lists property included
23 in the conservatorship estate and the receipts, disbursements,
24 liabilities and distributions during the period for which the
25 report is made;

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1 (2) a list of the services provided to the
2 individual subject to conservatorship;

3 (3) a copy of the conservator's most recently
4 approved plan and a statement whether the conservator has
5 deviated from the plan and, if so, how the conservator has
6 deviated and why;

7 (4) a recommendation as to the need for
8 continued conservatorship and any recommended change in the
9 scope of the conservatorship;

10 (5) to the extent feasible, a copy of the most
11 recent reasonably available financial statements evidencing the
12 status of bank accounts, investment accounts and mortgages or
13 other debts of the individual subject to conservatorship with
14 all but the last four digits of the account numbers and social
15 security number redacted;

16 (6) anything of more than de minimis value
17 that the conservator, any individual who resides with the
18 conservator or the spouse, parent, child or sibling of the
19 conservator has received from a person providing goods or
20 services to the individual subject to conservatorship;

21 (7) any business relation the conservator has
22 with a person the conservator has paid or that has benefited
23 from the property of the individual subject to conservatorship;
24 and

25 (8) whether any co-conservator or successor

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1 conservator appointed to serve when a designated event occurs
2 is alive and able to serve.

3 C. The court may appoint a visitor to review a
4 report under this section or conservator's plan under Section
5 419 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act, interview the individual subject
7 to conservatorship or conservator or investigate any other
8 matter involving the conservatorship. In connection with the
9 report, the court may order the conservator to submit the
10 conservatorship estate to appropriate examination in a manner
11 the court directs.

12 D. Notice of the filing under this section of a
13 conservator's report, together with a copy of the report, shall
14 be provided to the individual subject to conservatorship, a
15 person entitled to notice under Subsection E of Section 411 of
16 the Uniform Guardianship, Conservatorship and Other Protective
17 Arrangements Act or a subsequent order and any other person the
18 court determines. The notice and report shall be given not
19 later than fourteen days after filing.

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

23 (1) the reports provide sufficient information
24 to establish the conservator has complied with the
25 conservator's duties;

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1 (2) the conservatorship should continue; and

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

4 F. If the court determines there is reason to
5 believe a conservator has not complied with the conservator's
6 duties or the conservatorship should not continue, the court:

7 (1) shall notify the individual subject to
8 conservatorship, the conservator and any other person entitled
9 to notice under Subsection E of Section 411 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act or a subsequent order;

12 (2) may require additional information from
13 the conservator;

14 (3) may appoint a visitor to interview the
15 individual subject to conservatorship or conservator or
16 investigate any matter involving the conservatorship; and

17 (4) consistent with Sections 430 and 431 of
18 the Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act, may hold a hearing to consider removal of the
20 conservator, termination of the conservatorship or a change in
21 the powers granted to the conservator or terms of the
22 conservatorship.

23 G. If the court has reason to believe fees
24 requested by a conservator are not reasonable, the court shall
25 hold a hearing to determine whether to adjust the requested

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1 fees and give notice of the hearing to the individual subject
2 to conservatorship, a person entitled to notice under
3 Subsection E of Section 411 of the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act or under
5 a subsequent order and any other person the court determines.

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

12 (1) notice to the individual subject to
13 conservatorship, a person entitled to notice under Subsection E
14 of Section 411 of the Uniform Guardianship, Conservatorship and
15 Other Protective Arrangements Act or under a subsequent order
16 and any other person the court determines; and

17 (2) a hearing.

18 I. An order, after notice and hearing, approving an
19 interim report of a conservator filed under this section
20 adjudicates liabilities concerning a matter adequately
21 disclosed in the report, as to a person given notice of the
22 report or accounting.

23 J. An order, after notice and hearing, approving a
24 final report filed under this section discharges the
25 conservator from all liabilities, claims and causes of action

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1 by a person given notice of the report and the hearing as to a
2 matter adequately disclosed in the report.

3 SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF
4 PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--

5 A. The interest of an individual subject to
6 conservatorship in property included in the conservatorship
7 estate is not transferrable or assignable by the individual and
8 is not subject to levy, garnishment or similar process for
9 claims against the individual unless allowed under Section 428
10 of the Uniform Guardianship, Conservatorship and Other
11 Protective Arrangements Act.

12 B. If an individual subject to conservatorship
13 enters into a contract after having the right to enter the
14 contract removed by the court, the contract is void against the
15 individual and the individual's property but is enforceable
16 against the person that contracted with the individual.

17 C. A person other than the conservator that deals
18 with an individual subject to conservatorship with respect to
19 property included in the conservatorship estate is entitled to
20 protection provided by law of New Mexico other than the Uniform
21 Guardianship, Conservatorship and Other Protective Arrangements
22 Act.

23 SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING
24 CONFLICT OF INTEREST.--A transaction involving a
25 conservatorship estate that is affected by a substantial

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1 conflict between the conservator's fiduciary duties and
2 personal interests is voidable unless the transaction is
3 authorized by court order after notice to persons entitled to
4 notice under Subsection E of Section 411 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act or a subsequent order. A transaction affected by a
7 substantial conflict includes a sale, encumbrance or other
8 transaction involving the conservatorship estate entered into
9 by the conservator, an individual with whom the conservator
10 resides, the spouse, descendant, sibling, agent or attorney of
11 the conservator or a corporation or other enterprise in which
12 the conservator has a substantial beneficial interest.

13 SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING
14 WITH CONSERVATOR.--

15 A. A person that assists or deals with a
16 conservator in good faith and for value in any transaction,
17 other than a transaction requiring a court order under Section
18 414 of the Uniform Guardianship, Conservatorship and Other
19 Protective Arrangements Act, is protected as though the
20 conservator properly exercised any power in question.
21 Knowledge by a person that the person is dealing with a
22 conservator alone does not require the person to inquire into
23 the existence of authority of the conservator or the propriety
24 of the conservator's exercise of authority, but restrictions on
25 authority stated in letters of office, or otherwise provided by

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1 law, are effective as to the person. A person that pays or
2 delivers property to a conservator is not responsible for
3 proper application of the property.

4 B. Protection under Subsection A of this section
5 extends to a procedural irregularity or jurisdictional defect
6 in the proceeding leading to the issuance of letters of office
7 and does not substitute for protection for a person that
8 assists or deals with a conservator provided by comparable
9 provisions in law of New Mexico other than the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act relating to a commercial transaction or simplifying a
12 transfer of securities by a fiduciary.

13 SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT
14 TO CONSERVATORSHIP.--

15 A. If an individual subject to conservatorship
16 dies, the conservator shall deliver to the court for
17 safekeeping any will of the individual in the conservator's
18 possession and inform the personal representative named in the
19 will, if feasible, or, if not feasible, a beneficiary named in
20 the will, of the delivery.

21 B. On the death of an individual subject to
22 conservatorship, the conservator shall conclude the
23 administration of the conservatorship estate as provided in
24 Section 431 of the Uniform Guardianship, Conservatorship and
25 Other Protective Arrangements Act.

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1 SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF

2 CLAIM.--

3 A. A conservator may pay, or secure by encumbering
4 property included in the conservatorship estate, a claim
5 against the conservatorship estate or the individual subject to
6 conservatorship arising before or during the conservatorship,
7 on presentation and allowance in accordance with the priorities
8 under Subsection D of this section. A claimant may present a
9 claim by:

10 (1) sending or delivering to the conservator a
11 statement in a record of the claim, indicating its basis, the
12 name and address of the claimant and the amount claimed; or

13 (2) filing the claim with the court, in a form
14 acceptable to the court, and sending or delivering a copy of
15 the claim to the conservator.

16 B. A claim under Subsection A of this section is
17 presented on receipt by the conservator of the statement of the
18 claim or the filing with the court of the claim, whichever
19 first occurs. A presented claim is allowed if it is not
20 disallowed in whole or in part by the conservator in a record
21 sent or delivered to the claimant not later than sixty days
22 after its presentation. Before payment, the conservator may
23 change an allowance of the claim to a disallowance in whole or
24 in part, but not after allowance under a court order or order
25 directing payment of the claim. Presentation of a claim tolls

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1 until thirty days after disallowance of the claim the running
2 of a statute of limitations that has not expired relating to
3 the claim.

4 C. A claimant whose claim under Subsection A of
5 this section has not been paid may petition the court to
6 determine the claim at any time before it is barred by a
7 statute of limitations, and the court may order its allowance,
8 payment or security by encumbering property included in the
9 conservatorship estate. If a proceeding is pending against the
10 individual subject to conservatorship at the time of
11 appointment of the conservator or is initiated thereafter, the
12 moving party shall give the conservator notice of the
13 proceeding if it could result in creating a claim against the
14 conservatorship estate.

15 D. If a conservatorship estate is likely to be
16 exhausted before all existing claims are paid, the conservator
17 shall distribute the estate in money or in kind in payment of
18 claims in the following order:

- 19 (1) costs and expenses of administration;
20 (2) a claim of the federal or state government
21 having priority under law other than the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act;
23 (3) a claim incurred by the conservator for
24 support, care, education, health or welfare previously provided
25 to the individual subject to conservatorship or an individual

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1 who is in fact dependent on the individual subject to
2 conservatorship;

3 (4) a claim arising before the
4 conservatorship; and

5 (5) all other claims.

6 E. Preference shall not be given in the payment of
7 a claim under Subsection D of this section over another claim
8 of the same class. A claim due and payable shall not be
9 preferred over a claim not due unless:

10 (1) doing so would leave the conservatorship
11 estate without sufficient funds to pay the basic living and
12 health care expenses of the individual subject to
13 conservatorship; and

14 (2) the court authorizes the preference under
15 Paragraph (8) of Subsection A of Section 414 of the Uniform
16 Guardianship, Conservatorship and Other Protective Arrangements
17 Act.

18 F. If assets of a conservatorship estate are
19 adequate to meet all existing claims, the court, acting in the
20 best interest of the individual subject to conservatorship, may
21 order the conservator to grant a security interest in the
22 conservatorship estate for payment of a claim at a future date.

23 SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF
24 CONSERVATOR.--

25 A. Except as otherwise agreed by a conservator, the

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1 conservator is not personally liable on a contract properly
2 entered into in a fiduciary capacity in the course of
3 administration of the conservatorship estate unless the
4 conservator fails to reveal the conservator's representative
5 capacity in the contract or before entering into the contract.

6 B. A conservator is personally liable for an
7 obligation arising from control of property of the
8 conservatorship estate or an act or omission occurring in the
9 course of administration of the conservatorship estate only if
10 the conservator is personally at fault.

11 C. A claim based on a contract entered into by a
12 conservator in a fiduciary capacity, an obligation arising from
13 control of property included in the conservatorship estate or a
14 tort committed in the course of administration of the
15 conservatorship estate may be asserted against the
16 conservatorship estate in a proceeding against the conservator
17 in a fiduciary capacity, whether or not the conservator is
18 personally liable for the claim.

19 D. A question of liability between a
20 conservatorship estate and the conservator personally may be
21 determined in a proceeding for accounting, surcharge or
22 indemnification or another appropriate proceeding or action.

23 SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--
24 APPOINTMENT OF SUCCESSOR.--

25 A. The court may remove a conservator for failure

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1 to perform the conservator's duties or other good cause and
2 appoint a successor conservator to assume the duties of the
3 conservator.

4 B. The court shall hold a hearing to determine
5 whether to remove a conservator and appoint a successor on:

6 (1) petition of the individual subject to
7 conservatorship, conservator or person interested in the
8 welfare of the individual that contains allegations that, if
9 true, would support a reasonable belief that removal of the
10 conservator and appointment of a successor may be appropriate,
11 but the court may decline to hold a hearing if a petition based
12 on the same or substantially similar facts was filed during the
13 preceding six months;

14 (2) communication from the individual subject
15 to conservatorship, conservator or person interested in the
16 welfare of the individual that supports a reasonable belief
17 that removal of the conservator and appointment of a successor
18 may be appropriate; or

19 (3) determination by the court that a hearing
20 would be in the best interest of the individual subject to
21 conservatorship.

22 C. Notice of a petition under Paragraph (1) of
23 Subsection B of this section shall be given to the individual
24 subject to conservatorship, the conservator and any other
25 person the court determines.

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1 D. An individual subject to conservatorship who
2 seeks to remove the conservator and have a successor appointed
3 has the right to choose an attorney to represent the individual
4 in this matter. If the individual is not represented by an
5 attorney, the court shall appoint an attorney under the same
6 conditions as in Section 406 of the Uniform Guardianship,
7 Conservatorship and Other Protective Arrangements Act. The
8 court shall award reasonable attorney's fees to the attorney as
9 provided in Section 119 of that act.

10 E. In selecting a successor conservator, the court
11 shall follow the priorities under Section 410 of the Uniform
12 Guardianship, Conservatorship and Other Protective Arrangements
13 Act.

14 F. Not later than thirty days after appointing a
15 successor conservator, the court shall give notice of the
16 appointment to the individual subject to conservatorship and
17 any person entitled to notice under Subsection E of Section 411
18 of the Uniform Guardianship, Conservatorship and Other
19 Protective Arrangements Act or a subsequent order.

20 **SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION**
21 **OF CONSERVATORSHIP.--**

22 A. A conservatorship for a minor terminates on the
23 earliest of:

- 24 (1) a court order terminating the
25 conservatorship;

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1 (2) the minor becoming an adult or, if the
2 minor consents or the court finds by clear and convincing
3 evidence that substantial harm to the minor's interests is
4 otherwise likely, attaining twenty-one years of age;

5 (3) emancipation of the minor; or

6 (4) death of the minor.

7 B. A conservatorship for an adult terminates on
8 order of the court or when the adult dies.

9 C. An individual subject to conservatorship, the
10 conservator or a person interested in the welfare of the
11 individual may petition for:

12 (1) termination of the conservatorship on the
13 ground that a basis for appointment under Section 401 of the
14 Uniform Guardianship, Conservatorship and Other Protective
15 Arrangements Act does not exist or termination would be in the
16 best interest of the individual or for other good cause; or

17 (2) modification of the conservatorship on the
18 ground that the extent of protection or assistance granted is
19 not appropriate or for other good cause.

20 D. The court shall hold a hearing to determine
21 whether termination or modification of a conservatorship is
22 appropriate on:

23 (1) petition under Subsection C of this
24 section that contains allegations that, if true, would support
25 a reasonable belief that termination or modification of the

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1 conservatorship may be appropriate, but the court may decline
2 to hold a hearing if a petition based on the same or
3 substantially similar facts was filed within the preceding six
4 months;

5 (2) a communication from the individual
6 subject to conservatorship, conservator or person interested in
7 the welfare of the individual that supports a reasonable belief
8 that termination or modification of the conservatorship may be
9 appropriate, including because the functional needs of the
10 individual or supports or services available to the individual
11 have changed;

12 (3) a report from a guardian or conservator
13 that indicates that termination or modification may be
14 appropriate because the functional needs or supports or
15 services available to the individual have changed or a
16 protective arrangement instead of conservatorship or other less
17 restrictive alternative is available; or

18 (4) a determination by the court that a
19 hearing would be in the best interest of the individual.

20 E. Notice of a petition under Subsection C of this
21 section shall be given to the individual subject to
22 conservatorship, the conservator and any such other person the
23 court determines.

24 F. On presentation of prima facie evidence for
25 termination of a conservatorship, the court shall order

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1 termination unless it is proven that a basis for appointment of
2 a conservator under Section 401 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act exists.

4 G. The court shall modify the powers granted to a
5 conservator if the powers are excessive or inadequate due to a
6 change in the abilities or limitations of the individual
7 subject to conservatorship, the individual's supports or other
8 circumstances.

9 H. Unless the court otherwise orders for good
10 cause, before terminating a conservatorship, the court shall
11 follow the same procedures to safeguard the rights of the
12 individual subject to conservatorship that apply to a petition
13 for conservatorship.

14 I. An individual subject to conservatorship who
15 seeks to terminate or modify the terms of the conservatorship
16 has the right to choose an attorney to represent the individual
17 in this matter. If the individual is not represented by an
18 attorney, the court shall appoint an attorney under the same
19 conditions as in Section 406 of the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act. The
21 court shall award reasonable attorney's fees to the attorney as
22 provided in Section 119 of that act.

23 J. On termination of a conservatorship other than
24 by reason of the death of the individual subject to
25 conservatorship, property of the conservatorship estate passes

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1 to the individual. The order of termination shall direct the
2 conservator to file a final report and petition for discharge
3 on approval by the court of the final report.

4 K. On termination of a conservatorship by reason of
5 the death of the individual subject to conservatorship, the
6 conservator promptly shall file a final report and petition for
7 discharge on approval by the court of the final report. On
8 approval of the final report, the conservator shall proceed
9 expeditiously to distribute the conservatorship estate to the
10 individual's estate or as otherwise ordered by the court. The
11 conservator may take reasonable measures necessary to preserve
12 the conservatorship estate until distribution can be made.

13 L. The court shall issue a final order of discharge
14 on the approval by the court of the final report and
15 satisfaction by the conservator of any other condition the
16 court imposed on the conservator's discharge.

17 SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR
18 WITHOUT APPOINTMENT OF CONSERVATOR.--

19 A. Unless a person required to transfer funds or
20 other property to a minor knows that a conservator for the
21 minor has been appointed or a proceeding is pending for
22 conservatorship, the person may transfer an amount or value not
23 exceeding fifteen thousand dollars (\$15,000) in a twelve-month
24 period to:

25 (1) a person that has care or custody of the

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1 minor and with whom the minor resides;

2 (2) a guardian for the minor;

3 (3) a custodian under the Uniform Transfers to
4 Minors Act; or

5 (4) a financial institution as a deposit in an
6 interest-bearing account or certificate solely in the name of
7 the minor and shall give notice to the minor of the deposit.

8 B. A person that transfers funds or other property
9 under this section is not responsible for its proper
10 application.

11 C. A person that receives funds or other property
12 for a minor under Paragraph (1) or (2) of Subsection A of this
13 section may apply it only to the support, care, education,
14 health or welfare of the minor and shall not derive a personal
15 financial benefit from it, except for reimbursement for
16 necessary expenses. Funds not applied for these purposes shall
17 be preserved for the future support, care, education, health or
18 welfare of the minor and the balance, if any, transferred to
19 the minor when the minor becomes an adult or otherwise is
20 emancipated.

21 ARTICLE 5

22 OTHER PROTECTIVE ARRANGEMENTS

23 SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE
24 ARRANGEMENT.--

25 A. Under this article, a court:

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1 (1) on receiving a petition for a guardianship
2 for an adult may order a protective arrangement instead of
3 guardianship as a less restrictive alternative to guardianship;
4 and

5 (2) on receiving a petition for a
6 conservatorship for an individual may order a protective
7 arrangement instead of conservatorship as a less restrictive
8 alternative to conservatorship.

9 B. A person interested in an adult's welfare,
10 including the adult or a conservator for the adult, may
11 petition under this article for a protective arrangement
12 instead of guardianship.

13 C. The following persons may petition under this
14 article for a protective arrangement instead of
15 conservatorship:

16 (1) the individual for whom the protective
17 arrangement is sought;

18 (2) a person interested in the property,
19 financial affairs or welfare of the individual, including a
20 person that would be affected adversely by lack of effective
21 management of property or financial affairs of the individual;
22 and

23 (3) the guardian for the individual.

24 SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE
25 ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

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1 A. After the hearing on a petition under Section
2 302 of the Uniform Guardianship, Conservatorship and Other
3 Protective Arrangements Act for a guardianship or under
4 Subsection B of Section 501 of that act for a protective
5 arrangement instead of guardianship, the court may issue an
6 order under Subsection B of this section for a protective
7 arrangement instead of guardianship if the court finds by clear
8 and convincing evidence that:

9 (1) the respondent lacks the ability to meet
10 essential requirements for physical health, safety or self-care
11 because the respondent is unable to receive and evaluate
12 information or make or communicate decisions, even with
13 appropriate supportive services, technological assistance or
14 supported decision making; and

15 (2) the respondent's identified needs cannot
16 be met by a less restrictive alternative.

17 B. If the court makes the findings under Subsection
18 A of this section, the court, instead of appointing a guardian,
19 may:

20 (1) authorize or direct a transaction
21 necessary to meet the respondent's need for health, safety or
22 care, including:

23 (a) a particular medical treatment or
24 refusal of a particular medical treatment;

25 (b) a move to a specified place of

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1 dwelling; or

2 (c) visitation or supervised visitation
3 between the respondent and another person;

4 (2) restrict access to the respondent by a
5 specified person whose access places the respondent at serious
6 risk of physical, psychological or financial harm; and

7 (3) order other arrangements on a limited
8 basis that are appropriate.

9 C. In deciding whether to issue an order under this
10 section, the court shall consider the factors under Sections
11 313 and 314 of the Uniform Guardianship, Conservatorship and
12 Other Protective Arrangements Act that a guardian shall
13 consider when making a decision on behalf of an adult subject
14 to guardianship.

15 SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE
16 ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

17 A. After the hearing on a petition under Section
18 402 of the Uniform Guardianship, Conservatorship and Other
19 Protective Arrangements Act for conservatorship for an adult or
20 under Subsection C of Section 501 of that act for a protective
21 arrangement instead of conservatorship for an adult, 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:

25 (1) by clear and convincing evidence that the

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1 respondent is unable to manage the respondent's property or
2 financial affairs because:

3 (a) of a limitation in the ability to
4 receive and evaluate information or make or communicate
5 decisions, even with appropriate supportive services,
6 technological assistance or supported decision making; or

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

9 (2) by a preponderance of the evidence that:

10 (a) the respondent has property likely
11 to be wasted or dissipated unless management is provided; or

12 (b) an order under Subsection C of this
13 section is necessary or desirable to obtain or provide funds or
14 other property needed for the support, care, education, health
15 or welfare of the respondent or an individual entitled to the
16 respondent's support; and

17 (3) the respondent's identified needs cannot
18 be met by a less restrictive alternative.

19 B. After the hearing on a petition under Section
20 402 of the Uniform Guardianship, Conservatorship and Other
21 Protective Arrangements Act for conservatorship for a minor or
22 under Subsection C of Section 501 of that act for a protective
23 arrangement instead of conservatorship for a minor, the court
24 may issue an order under Subsection C of this section for a
25 protective arrangement instead of conservatorship for the

1 respondent if the court finds by a preponderance of the
2 evidence that the arrangement is in the minor's best interest
3 and:

4 (1) if the minor has a parent, the court gives
5 weight to any recommendation of the parent whether an
6 arrangement is in the minor's best interest;

7 (2) either:

8 (a) the minor owns money or property
9 requiring management or protection that otherwise cannot be
10 provided;

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

14 (c) the arrangement is necessary or
15 desirable to obtain or provide funds or other property needed
16 for the support, care, education, health or welfare of the
17 minor; and

18 (3) the order under Subsection C of this
19 section is necessary or desirable to obtain or provide money
20 needed for the support, care, education, health or welfare of
21 the minor.

22 C. If the court makes the findings under Subsection
23 A or B of this section, the court, instead of appointing a
24 conservator, may:

25 (1) authorize or direct a transaction

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1 necessary to protect the financial interest or property of the
2 respondent, including:

3 (a) an action to establish eligibility
4 for benefits;

5 (b) payment, delivery, deposit or
6 retention of funds or property;

7 (c) sale, mortgage, lease or other
8 transfer of property;

9 (d) purchase of an annuity;

10 (e) entry into a contractual
11 relationship, including a contract to provide for personal
12 care, supportive services, education, training or employment;

13 (f) addition to or establishment of a
14 trust;

15 (g) ratification or invalidation of a
16 contract, trust, will or other transaction, including a
17 transaction related to the property or business affairs of the
18 respondent; or

19 (h) settlement of a claim; or

20 (2) restrict access to the respondent's
21 property by a specified person whose access to the property
22 places the respondent at serious risk of financial harm.

23 D. After the hearing on a petition under Paragraph
24 (2) of Subsection A of Section 501 of the Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act or

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1 Subsection C of that section, whether or not the court makes
2 the findings under Subsection A or B of this section, the court
3 may issue an order to restrict access to the respondent or the
4 respondent's property by a specified person that the court
5 finds by clear and convincing evidence:

6 (1) through fraud, coercion, duress or the use
7 of deception and control caused or attempted to cause an action
8 that would have resulted in financial harm to the respondent or
9 the respondent's property; and

10 (2) poses a serious risk of substantial
11 financial harm to the respondent or the respondent's property.

12 E. Before issuing an order under Subsection C or D
13 of this section, the court shall consider the factors under
14 Section 418 of the Uniform Guardianship, Conservatorship and
15 Other Protective Arrangements Act that a conservator shall
16 consider when making a decision on behalf of an individual
17 subject to conservatorship.

18 F. Before issuing an order under Subsection C or D
19 of this section for a respondent who is a minor, the court also
20 shall consider the best interest of the minor, the preference
21 of the parents of the minor and the preference of the minor, if
22 the minor is twelve years of age or older.

23 SECTION 504. [NEW MATERIAL] PETITION FOR PROTECTIVE
24 ARRANGEMENT.--A petition for a protective arrangement instead
25 of guardianship or conservatorship shall state the petitioner's

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1 name, principal residence, current street address, if
2 different, relationship to the respondent, interest in the
3 protective arrangement, the name and address of any attorney
4 representing the petitioner and, to the extent known, the
5 following:

6 A. the respondent's name, age, principal residence,
7 current street address, if different, and, if different,
8 address of the dwelling in which it is proposed the respondent
9 will reside if the petition is granted;

10 B. the name and address of the respondent's:

11 (1) spouse or, if the respondent has none, an
12 adult with whom the respondent has shared household
13 responsibilities for more than six months in the twelve-month
14 period before the filing of the petition;

15 (2) adult children or, if none, each parent
16 and adult sibling of the respondent, or, if none, at least one
17 adult nearest in kinship to the respondent who can be found
18 with reasonable diligence; and

19 (3) adult stepchildren whom the respondent
20 actively parented during the stepchildren's minor years and
21 with whom the respondent had an ongoing relationship in the
22 two-year period immediately before the filing of the petition;

23 C. the name and current address of each of the
24 following, if applicable:

25 (1) a person responsible for the care or

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1 custody of the respondent;

2 (2) any attorney currently representing the
3 respondent;

4 (3) the representative payee appointed by the
5 federal social security administration for the respondent;

6 (4) a guardian or conservator acting for the
7 respondent in New Mexico or another jurisdiction;

8 (5) a trustee or custodian of a trust or
9 custodianship of which the respondent is a beneficiary;

10 (6) the fiduciary appointed for the respondent
11 by the federal department of veterans affairs;

12 (7) an agent designated under a power of
13 attorney for health care in which the respondent is identified
14 as the principal;

15 (8) an agent designated under a power of
16 attorney for finances in which the respondent is identified as
17 the principal;

18 (9) a person nominated as guardian or
19 conservator by the respondent if the respondent is twelve years
20 of age or older;

21 (10) a person nominated as guardian by the
22 respondent's parent or spouse in a will or other signed record;

23 (11) a person known to have routinely assisted
24 the respondent with decision making in the six-month period
25 immediately before the filing of the petition; and

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1 (12) if the respondent is a minor:

2 (a) an adult not otherwise listed with
3 whom the respondent resides; and

4 (b) each person not otherwise listed
5 that had primary care or custody of the respondent for at least
6 sixty days during the two years immediately before the filing
7 of the petition or for at least seven hundred thirty days
8 during the five years immediately before the filing of the
9 petition;

10 D. the nature of the protective arrangement sought;

11 E. the reason the protective arrangement sought is
12 necessary, including a brief description of:

13 (1) the nature and extent of the respondent's
14 alleged need;

15 (2) any less restrictive alternative for
16 meeting the respondent's alleged need that has been considered
17 or implemented;

18 (3) if no less restrictive alternative has
19 been considered or implemented, the reason less restrictive
20 alternatives have not been considered or implemented; and

21 (4) the reason other less restrictive
22 alternatives are insufficient to meet the respondent's alleged
23 need;

24 F. the name and current address, if known, of any
25 person with whom the petitioner seeks to limit the respondent's

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1 contact;

2 G. whether the respondent needs an interpreter,
3 translator or other form of support to communicate effectively
4 with the court or understand court proceedings;

5 H. if a protective arrangement instead of
6 guardianship is sought and the respondent has property other
7 than personal effects, a general statement of the respondent's
8 property with an estimate of its value, including any insurance
9 or pension and the source and amount of any other anticipated
10 income or receipts; and

11 I. if a protective arrangement instead of
12 conservatorship is sought, a general statement of the
13 respondent's property with an estimate of its value, including
14 any insurance or pension and the source and amount of other
15 anticipated income or receipts.

16 SECTION 505. [NEW MATERIAL] NOTICE AND HEARING FOR
17 PROTECTIVE ARRANGEMENT.--

18 A. On filing of a petition under Section 501 of the
19 Uniform Guardianship, Conservatorship and Other Protective
20 Arrangements Act, the court shall set a date, time and place
21 for a hearing on the petition.

22 B. A copy of a petition under Section 501 of the
23 Uniform Guardianship, Conservatorship and Other Protective
24 Arrangements Act and notice of a hearing on the petition shall
25 be served personally on the respondent. The notice shall

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1 inform the respondent of the respondent's rights at the
2 hearing, including the right to an attorney and to attend the
3 hearing. The notice shall include a description of the nature,
4 purpose and consequences of granting the petition. The court
5 shall not grant the petition if notice substantially complying
6 with this subsection is not served on the respondent.

7 C. In a proceeding on a petition under Section 501
8 of the Uniform Guardianship, Conservatorship and Other
9 Protective Arrangements Act, the notice required under
10 Subsection B of this section shall be given to the persons
11 required to be listed in the petition under Subsections A
12 through C of Section 504 of that act and any other person
13 interested in the respondent's welfare the court determines.
14 Failure to give notice under this subsection does not preclude
15 the court from granting the petition.

16 D. After the court has ordered a protective
17 arrangement under this article, notice of a hearing on a
18 petition filed under the Uniform Guardianship, Conservatorship
19 and Other Protective Arrangements Act, together with a copy of
20 the petition, shall be given to the respondent and any other
21 person the court determines.

22 SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF
23 VISITOR.--

24 A. On filing of a petition under Section 501 of the
25 Uniform Guardianship, Conservatorship and Other Protective

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1 Arrangements Act for a protective arrangement instead of
2 guardianship, the court shall appoint a visitor. The visitor
3 shall be an individual with training or experience in the type
4 of abilities, limitations and needs alleged in the petition.

5 B. On filing of a petition under Section 501 of the
6 Uniform Guardianship, Conservatorship and Other Protective
7 Arrangements Act for a protective arrangement instead of
8 conservatorship for a minor, the court may appoint a visitor to
9 investigate a matter related to the petition or inform the
10 minor or a parent of the minor about the petition or a related
11 matter.

12 C. On filing of a petition under Section 501 of the
13 Uniform Guardianship, Conservatorship and Other Protective
14 Arrangements Act for a protective arrangement instead of
15 conservatorship for an adult, the court shall appoint a visitor
16 unless the respondent is represented by an attorney appointed
17 by the court. The visitor shall be an individual with training
18 or experience in the types of abilities, limitations and needs
19 alleged in the petition.

20 D. A visitor appointed under Subsection A or C of
21 this section shall interview the respondent in person and, in a
22 manner the respondent is best able to understand:

23 (1) explain to the respondent the substance of
24 the petition, the nature, purpose and effect of the proceeding
25 and the respondent's rights at the hearing on the petition;

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1 (2) determine the respondent's views with
2 respect to the order sought;

3 (3) inform the respondent of the respondent's
4 right to employ and consult with an attorney at the
5 respondent's expense and the right to request a court-appointed
6 attorney;

7 (4) inform the respondent that all costs and
8 expenses of the proceeding, including respondent's attorney's
9 fees, may be paid from the respondent's assets;

10 (5) if the petitioner seeks an order related
11 to the dwelling of the respondent, visit the respondent's
12 present dwelling and any dwelling in which it is reasonably
13 believed the respondent will live if the order is granted;

14 (6) if a protective arrangement instead of
15 guardianship is sought, obtain information from any physician
16 or other person known to have treated, advised or assessed the
17 respondent's relevant physical or mental condition;

18 (7) if a protective arrangement instead of
19 conservatorship is sought, review financial records of the
20 respondent, if relevant to the visitor's recommendation under
21 Paragraph (2) of Subsection E of this section; and

22 (8) investigate the allegations in the
23 petition and any other matter relating to the petition the
24 court directs.

25 E. A visitor under this section promptly shall file

1 a report in a record with the court that includes:

2 (1) to the extent relevant to the order
3 sought, a summary of self-care, independent-living tasks and
4 financial-management tasks that the respondent:

5 (a) can manage without assistance or
6 with existing supports;

7 (b) could manage with the assistance of
8 appropriate supportive services, technological assistance or
9 supported decision making; and

10 (c) cannot manage;

11 (2) a recommendation regarding the
12 appropriateness of the protective arrangement sought and
13 whether a less restrictive alternative for meeting the
14 respondent's needs is available;

15 (3) if the petition seeks to change the
16 physical location of the dwelling of the respondent, a
17 statement whether the proposed dwelling meets the respondent's
18 needs and whether the respondent has expressed a preference as
19 to the respondent's dwelling;

20 (4) a recommendation whether a professional
21 evaluation under Section 508 of the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act is
23 necessary;

24 (5) a statement whether the respondent is able
25 to attend a hearing at the location court proceedings typically

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1 are held;

2 (6) a statement whether the respondent is able
3 to participate in a hearing and that identifies any technology
4 or other form of support that would enhance the respondent's
5 ability to participate; and

6 (7) any other matter the court directs.

7 SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF
8 ATTORNEY.--

9 A. Unless the respondent in a proceeding under this
10 article is represented by an attorney, the court shall appoint
11 an attorney to represent the respondent, regardless of the
12 respondent's ability to pay.

13 B. An attorney representing the respondent in a
14 proceeding under this article shall:

15 (1) make reasonable efforts to ascertain the
16 respondent's wishes;

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

19 (3) if the respondent's wishes are not
20 reasonably ascertainable, advocate for the result that is the
21 least restrictive alternative in type, duration and scope,
22 consistent with the respondent's interests.

23 SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

24 A. At or before a hearing on a petition under this
25 article for a protective arrangement, the court shall order a

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1 professional evaluation of the respondent:

2 (1) if the respondent requests the evaluation;

3 or

4 (2) or in other cases, unless the court finds
5 that it has sufficient information to determine the
6 respondent's needs and abilities without the evaluation.

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

17 (1) a description of the nature, type and
18 extent of the respondent's cognitive and functional abilities
19 and limitations;

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

23 (3) a prognosis for improvement, including
24 with regard to the ability to manage the respondent's property
25 and financial affairs if a limitation in that ability is

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1 alleged and recommendation for the appropriate treatment,
2 support or habilitation plan; and

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

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

7 SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
8 HEARING.--

9 A. Except as otherwise provided in Subsection B of
10 this section, a hearing under this article shall not proceed
11 unless the respondent attends the hearing. If it is not
12 reasonably feasible for the respondent to attend a hearing at
13 the location court proceedings typically are held, the court
14 shall make reasonable efforts to hold the hearing at an
15 alternative location convenient to the respondent or allow the
16 respondent to attend the hearing using real-time audio-visual
17 technology.

18 B. A hearing under this article may proceed without
19 the respondent in attendance if the court finds by clear and
20 convincing evidence that:

21 (1) the respondent consistently and repeatedly
22 has refused to attend the hearing after having been fully
23 informed of the right to attend and the potential consequences
24 of failing to do so;

25 (2) there is no practicable way for the

1 respondent to attend and participate in the hearing even with
2 appropriate supportive services and technological assistance;
3 or

4 (3) the respondent is a minor who has received
5 proper notice and attendance would be harmful to the minor.

6 C. The respondent may be assisted in a hearing
7 under this article by a person or persons of the respondent's
8 choosing, assistive technology or an interpreter or translator
9 or a combination of these supports. If assistance would
10 facilitate the respondent's participation in the hearing, but
11 is not otherwise available to the respondent, the court shall
12 make reasonable efforts to provide it.

13 D. The respondent has a right to choose an attorney
14 to represent the respondent at a hearing under this article.

15 E. At a hearing under this article, the respondent
16 may:

17 (1) present evidence and subpoena witnesses
18 and documents;

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

21 (3) otherwise participate in the hearing.

22 F. A hearing under this article shall be closed on
23 request of the respondent and a showing of good cause.

24 G. Any person may request to participate in a
25 hearing under this article. The court may grant the request,

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1 with or without a hearing, on determining that the best
2 interest of the respondent will be served. The court may
3 impose appropriate conditions on the person's participation.

4 SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court
5 shall give notice of an order under this article to the
6 individual who is subject to the protective arrangement instead
7 of guardianship or conservatorship, a person whose access to
8 the individual is restricted by the order and any other person
9 the court determines.

10 SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

11 A. The existence of a proceeding for or the
12 existence of a protective arrangement instead of guardianship
13 or conservatorship is a matter of public record unless the
14 court seals the record after:

15 (1) the respondent, the individual subject to
16 the protective arrangement or the parent of a minor subject to
17 the protective arrangement requests the record be sealed; and

18 (2) either:
19 (a) the proceeding is dismissed;
20 (b) the protective arrangement is no
21 longer in effect; or

22 (c) an act authorized by the order
23 granting the protective arrangement has been completed.

24 B. A respondent, an individual subject to a
25 protective arrangement instead of guardianship or

1 conservatorship, an attorney designated by the respondent or
2 individual, a parent of a minor subject to a protective
3 arrangement and any other person the court determines are
4 entitled to access court records of the proceeding and
5 resulting protective arrangement. A person not otherwise
6 entitled to access to court records under this subsection for
7 good cause may petition the court for access. The court shall
8 grant access if access is in the best interest of the
9 respondent or individual subject to the protective arrangement
10 or furthers the public interest and does not endanger the
11 welfare or financial interests of the respondent or individual.

12 C. A report of a visitor or professional evaluation
13 generated in the course of a proceeding under this article
14 shall be sealed on filing, but is available to:

- 15 (1) the court;
- 16 (2) the individual who is the subject of the
17 report or evaluation, without limitation as to use;
- 18 (3) the petitioner, visitor and petitioner's
19 and respondent's attorneys, for purposes of the proceeding;
- 20 (4) unless the court orders otherwise, an
21 agent appointed under a power of attorney for finances in which
22 the respondent is the principal;
- 23 (5) if the order is for a protective
24 arrangement instead of guardianship and unless the court orders
25 otherwise, an agent appointed under a power of attorney for

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1 health care in which the respondent is identified as the
2 principal; and

3 (6) any other person if it is in the public
4 interest or for a purpose the court orders for good cause.

5 SECTION 512. [NEW MATERIAL] APPOINTMENT OF SPECIAL
6 MASTER.--The court may appoint a special master to assist in
7 implementing a protective arrangement under this article. The
8 special master has the authority conferred by the order of
9 appointment and serves until discharged by court order.

10 ARTICLE 6

11 MISCELLANEOUS PROVISIONS

12 SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
13 CONSTRUCTION.--In applying and construing the Uniform
14 Guardianship, Conservatorship and Other Protective Arrangements
15 Act, consideration shall be given to the need to promote
16 uniformity of the law with respect to its subject matter among
17 states that enact it.

18 SECTION 602. [NEW MATERIAL] RELATION TO ELECTRONIC
19 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
20 Guardianship, Conservatorship and Other Protective Arrangements
21 Act modifies, limits or supersedes the federal Electronic
22 Signatures in Global and National Commerce Act, 15 U.S.C.
23 Section 7001 et seq., but does not modify, limit or supersede
24 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
25 authorize electronic delivery of any of the notices described

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1 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

2 **SECTION 603.** REPEAL.--Sections 45-5-101 through 45-5-105,
3 45-5-201 through 45-5-205, 45-5-206 through 45-5-301.1,
4 45-5-302 through 45-5-411, 45-5-413 through 45-5-418, 45-5-420
5 through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being
6 Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws
7 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section
8 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter
9 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210,
10 Section 54, Laws 1975, Chapter 257, Sections 5-210 through
11 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975,
12 Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5
13 through 7, Laws 1975, Chapter 257, Sections 5-305 through
14 5-307, Laws 1989, Chapter 252, Section 9, Laws 1975, Chapter
15 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252,
16 Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and
17 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter
18 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section
19 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter
20 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and
21 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975,
22 Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420
23 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975,
24 Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter
25 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through
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1 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as
2 amended) are repealed.

3 SECTION 604. APPLICABILITY.--The Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act applies
5 to a proceeding for appointment of a guardian or conservator or
6 for a protective arrangement instead of guardianship or
7 conservatorship commenced after January 1, 2019 and a
8 guardianship, conservatorship or protective arrangement instead
9 of guardianship or conservatorship in existence on January 1,
10 2019 unless the court finds application of a particular
11 provision of that act would substantially interfere with the
12 effective conduct of the proceeding or prejudice the rights of
13 a party, in which case the particular provision of that act
14 does not apply and the superseded law applies.

15 SECTION 605. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is January 1, 2019.

