

SENATE BILL 395

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

James P. White and Daymon Ely

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM PROBATE CODE; PROVIDING FOR CERTIFICATION OF GUARDIANS AND CONSERVATORS; REVISING PROVISIONS FOR HEARING PROCEDURES, PENALTIES AND LIABILITY WAIVERS; PROVIDING FOR COURT INVESTIGATORS AND GRIEVANCES.

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

SECTION 1. Section 45-5-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-101, as amended) is amended to read:

"45-5-101. DEFINITIONS AND USE OF TERMS.--Unless

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otherwise apparent from the context or unless otherwise specifically defined in other sections that are applicable to specific articles, parts or sections of the Uniform Probate Code, as used in Chapter 45, Article 5 NMSA 1978:

A. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of a protected person;

B. "court" means the district court or the children's or family division of the district court where such jurisdiction is conferred by the Children's Code;

C. "functional impairment" means an impairment that is measured by a person's inability to manage the person's personal care or the person's inability to manage the person's estate or financial affairs or both;

D. "guardian" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

E. "guardian ad litem" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

F. "incapacitated person" means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that the person is unable to manage the person's personal affairs or the person is unable to manage the person's estate

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or financial affairs or both;

G. "inability to manage the person's personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future;

H. "inability to manage the person's estate or financial affairs or both" means gross mismanagement, as evidenced by recent behavior, of one's income and resources or medical inability to manage one's income and resources that has led or is likely in the near future to lead to financial vulnerability;

I. "interested person" means any person who has an interest in the welfare of the person to be protected pursuant to Chapter 45, Article 5 NMSA 1978;

J. "least restrictive form of intervention" means that the guardianship or conservatorship imposed on the incapacitated person or minor protected person represents only those limitations necessary to provide the needed care and rehabilitative services and that the incapacitated person or minor protected person shall enjoy the greatest amount of personal freedom and civil liberties;

K. "letters" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

L. "limited conservator" means any person who is

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qualified to manage the estate and financial affairs of an incapacitated person pursuant to a court appointment in a limited conservatorship;

M. "limited conservatorship" means that an incapacitated person is subject to a conservator's exercise of some but not all of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978;

N. "limited guardian" means any person who is qualified to manage the care, custody and control of an incapacitated person pursuant to a court appointment of a limited guardianship;

O. "limited guardianship" means that an incapacitated person is subject to a guardian's exercise of some but not all of the powers enumerated in Section 45-5-312 NMSA 1978;

P. "minor" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

Q. "minor protected person" means a minor for whom a guardian or conservator has been appointed solely because of minority;

R. "parent" means a parent whose parental rights have not been terminated or relinquished;

S. "professional conservator" means an individual or entity that serves as a conservator for more than two individuals who are not related to the conservator by marriage,

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adoption or third degree of blood or affinity;

T. "professional guardian" means an individual or entity that serves as a guardian for more than two individuals who are not related to the guardian by marriage, adoption or third degree of blood or affinity;

[S-] U. "protective proceeding" means a conservatorship proceeding under Section 45-5-401 NMSA 1978;

[T-] V. "protected person" means a minor or other person for whom a guardian or conservator has been appointed or other protective order has been made;

[U-] W. "qualified health care professional" means a physician, psychologist, physician assistant, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment; and

[V-] X. "visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, a social worker, a developmental incapacity professional, a physical and occupational therapist, an educator and a rehabilitation worker."

SECTION 2. Section 45-5-303 NMSA 1978 (being Laws 1989, Chapter 252, Section 5, as amended) is amended to read:

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"45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON.--

A. An interested person may petition for appointment of a guardian for an alleged incapacitated person.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the alleged incapacitated person, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the alleged incapacitated person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the alleged incapacitated person will reside if the petition is granted;

(2) the name and address of the alleged incapacitated person's:

(a) spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person consider themselves to be responsible for each other's well-being;

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(b) adult children or, if none, each parent and adult sibling of the alleged incapacitated person or, if none, at least one adult nearest in kinship to the alleged incapacitated person who can be found with reasonable diligence; and

(c) adult stepchildren whom the alleged incapacitated person actively parented during the stepchildren's minor years and with whom the alleged incapacitated person had an ongoing relationship in the two-year period immediately preceding the filing of the petition;

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

(a) a person responsible for care of the alleged incapacitated person;

(b) any attorney currently representing the alleged incapacitated person;

(c) any representative payee appointed by the federal social security administration for the alleged incapacitated person;

(d) a guardian or conservator acting for the alleged incapacitated person in New Mexico or in another jurisdiction;

(e) a trustee or custodian of a trust or custodianship of which the alleged incapacitated person is a beneficiary;

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(f) any fiduciary for the alleged incapacitated person appointed by the federal department of veterans affairs;

(g) an agent designated under a power of attorney for health care in which the alleged incapacitated person is identified as the principal;

(h) an agent designated under a power of attorney for finances in which the alleged incapacitated person is identified as the principal;

(i) a person nominated as guardian by the alleged incapacitated person;

(j) a person nominated as guardian by the alleged incapacitated person's parent or spouse in a will or other signed record;

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

(l) a person known to have routinely assisted the alleged incapacitated person with decision making during the six months immediately preceding the filing of the petition;

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

(a) the nature and extent of the alleged incapacitated person's alleged need;

(b) any least restrictive alternative

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for meeting the alleged incapacitated person's alleged need that has been considered or implemented;

(c) if no least restrictive alternative has been considered or implemented, the reason it has not been considered or implemented; and

(d) the reason a least restrictive alternative instead of guardianship is insufficient to meet the alleged incapacitated person's alleged need;

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

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

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

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

(9) if the alleged incapacitated person has property other than personal effects, a general statement of the alleged incapacitated person's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(10) whether the alleged incapacitated person needs an interpreter, translator or other form of support to

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communicate effectively with the court or understand court proceedings.

C. Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given as provided in Section 45-5-309 NMSA 1978.

D. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of the alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

E. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the alleged incapacitated person's intellectual, developmental and social functioning; and

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

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F. The court shall appoint a visitor who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed the alleged incapacitated person will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the court shall also include recommendations regarding:

(1) those aspects of personal care that the alleged incapacitated person can manage without supervision or assistance;

(2) those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from the visitor's duties upon entry of an order appointing a guardian and acceptance of the appointment by the guardian.

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G. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court. At a hearing conducted pursuant to this section, the person alleged to be incapacitated may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and

(3) otherwise participate in the hearing.

H. The court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

I. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof shall be established by clear and convincing evidence.

J. The existence of a proceeding for or the

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existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(1) the alleged incapacitated person or individual subject to guardianship requests that the record be sealed; and

(2) either:

(a) the petition for guardianship is dismissed; or

(b) the guardianship is terminated.

K. An alleged incapacitated person or the protected person subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the alleged incapacitated person or the protected person and a person entitled to notice are entitled to access court records of the proceeding and resulting guardianship. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship. The court shall grant access if access is in the best interest of the alleged incapacitated person or the protected person or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or the protected person.

L. A report pursuant to Subsections E and F of this section or a written report filed pursuant to Section

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45-5-303.1 or 45-5-314 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

- (1) the court;
- (2) the alleged incapacitated person who is the subject of the report or evaluation, without limitation as to use;
- (3) the petitioner, visitor, guardian ad litem and an attorney of record for purposes of the proceeding;
- (4) unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the alleged incapacitated person is the principal; and
- (5) any other person if it is in the public interest, as determined by the court, or for a purpose the court orders for good cause.

M. Notwithstanding the provisions of Subsection J of this section, a disclosure of information shall not include diagnostic information, treatment information or other medical or psychological information.

N. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise.

O. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial."

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SECTION 3. Section 45-5-303.1 NMSA 1978 (being Laws 1989, Chapter 252, Section 6, as amended) is amended to read:

"45-5-303.1. DUTIES OF GUARDIAN AD LITEM.--

A. The guardian ad litem shall:

- (1) interview in person the alleged incapacitated person prior to the hearing;
- (2) present the alleged incapacitated person's declared position to the court;
- (3) interview the qualified health care professional, the visitor and the proposed guardian;
- (4) review both the medical report submitted by the qualified health care professional and the report by the visitor; [~~and~~]
- (5) obtain independent medical or psychological assessments, or both, if necessary; and
- (6) file a written report with the court prior to the hearing on the petition for appointment.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from [~~his~~] duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian."

SECTION 4. Section 45-5-307 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-307, as amended) is amended to read:

"45-5-307. SPAC→DEATH,←SPAC SUBSTITUTION, REVIEW AND

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TERMINATION OF GUARDIANSHIP.--

A. On the petition of the incapacitated person or any person interested in the incapacitated person's welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the incapacitated person.

B. Upon death, removal or resignation of a guardian, the court may appoint another guardian or make any other order that may be appropriate. If a successor guardian is appointed, the successor guardian succeeds to the title and powers of the successor guardian's predecessor.

C. The incapacitated person or any person interested in the incapacitated person's welfare may petition for an order that the incapacitated person is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

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E. In a proceeding that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the guardian, terminating the guardianship or reducing the powers previously granted to the guardian. The court has the option to follow all or part of the procedures that apply for the appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

G. At any time following the appointment of a guardian, but not later than ten years after the initial appointment of a guardian for a protected person and every ten years thereafter, the court shall:

(1) hold a status hearing, after notice to the guardian, the protected person and appropriate interested persons, to review the status of the protected person's capacity and the continued need for a guardian; or

(2) appoint a court investigator to assess the

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protected person's capacity. The court investigator shall prepare a detailed report to the court regarding the status of the protected person's capacity and the continued need for a guardian. Any report shall be made available to the guardian, the protected person and interested persons identified by the court.

H. If the court is unable to contact either the guardian or the protected person and neither appears for the status hearing held pursuant to Paragraph (1) of Subsection G of this section, the court shall appoint a guardian ad litem to investigate and ~~advise~~ report to the court as to the status of the protected person and the guardian. Any report shall be made available to the guardian, the protected person and appropriate interested persons, if known to the court.

~~[H.]~~ I. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the protected person and the guardian as provided in Subsection [G] H of this section, the court may enter an appropriate order; provided that, in entering an order that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978."

SECTION 5. Section 45-5-311 NMSA 1978 (being Laws 1975,

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Chapter 257, Section 5-311, as amended) is amended to read:

"45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES--
QUALIFICATIONS.--

A. Any person deemed to be qualified by the court may be appointed guardian of an incapacitated person, except that no individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides may serve as guardian for the incapacitated person, except an employee may serve in such capacity when related by affinity or consanguinity.

B. Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) a guardian or other like fiduciary appointed by the appropriate court of any other jurisdiction;

(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing [~~as defined in Paragraph (4) of Subsection A of Section 45-5-309 NMSA 1978 to serve as guardian or agent in a writing signed by the incapacitated person prior to the incapacitated person's incapacity that has not been revoked by the incapacitated person or terminated by a court]~~ signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court.

This includes writings executed under the Uniform Health-Care

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Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code and the Uniform Trust Code;

- (3) the spouse of the incapacitated person;
- (4) an adult child of the incapacitated person;
- (5) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- (6) any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;
- (7) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person; and
- (8) any other person.

C. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person and for good cause shown, may pass over a person having priority and appoint a person having a lower priority under this section and shall take into consideration:

- (1) the preference of the incapacitated person, giving weight to preferences expressed in writing by

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the person while having capacity;

(2) the geographic location of the proposed guardian;

(3) the relationship of the proposed guardian to the incapacitated person;

(4) the ability of the proposed guardian to carry out the powers and duties of the guardianship; and

(5) potential financial conflicts of interest between the incapacitated person and proposed guardian.

D. A professional guardian shall not serve or be appointed as a guardian of the incapacitated person unless the professional guardian is certified and is in good standing with a national or state organization SJC→recognized by the supreme court←SJC that provides professional certification for guardians."

SECTION 6. Section 45-5-312 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-312, as amended) is amended to read:

"45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED GUARDIAN AND GUARDIAN.--

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the protected person is able to manage some but not all aspects of personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit

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the protected person to care for the protected person's own self commensurate with the protected person's ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise supervisory powers over the protected person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. ~~[A guardian of a protected person has the same powers, rights and duties respecting the protected person that a parent has respecting an unemancipated minor child, except that]~~ A guardian is not legally obligated to provide from the guardian's own funds for the protected person and is not liable to third persons for acts of the protected person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or the guardian's replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the protected person, a guardian is entitled to custody of the protected person and may establish the protected person's place of abode within or without New Mexico;

(2) if entitled to custody of the protected

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person, a guardian shall make provision for the care, comfort and maintenance of the protected person and, whenever appropriate, arrange for training and education. The guardian shall take reasonable care of the protected person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the protected person is in need of protection;

(3) if no agent is entitled to make health care decisions for the protected person under the provisions of the Uniform Health-Care Decisions Act, then the guardian shall make health care decisions for the protected person in accordance with the provisions of that act. In exercising health care powers, a guardian may consent or withhold consent that may be necessary to enable the protected person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the protected person, if known, or the best interests of the protected person if the values are not known;

(4) if no conservator for the estate of the protected person has been appointed, if the court has determined that a conservatorship is not appropriate and if a guardian appointed by the court has been granted authority to make financial decisions on behalf of the protected person in the order of appointment and in the letters of guardianship

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pursuant to Subsection C of Section 45-5-308 NMSA 1978, the guardian has the following powers and duties, including the power:

(a) to institute proceedings to compel any person under a duty to support the protected person or to pay sums for the welfare of the protected person to perform that duty;

(b) to receive money and tangible property deliverable to the protected person and apply the money and property for support, care and education of the protected person, but the guardian shall not use funds from the protected person's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished the protected person, unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the protected person, if notice is possible;

(c) to serve as advocate and [~~decision-maker~~] decision maker for the protected person in any disputes with persons or organizations, including financial institutions, regarding the protected person's finances;

(d) to obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;

(e) to file an initial inventory of all property belonging to the protected person within ninety days

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after appointment; and

(f) to exercise care to conserve any excess for the protected person's needs and include in the guardian's ninety-day and annual reports a description of decisions made regarding the protected person's finances and property; and

(5) the guardian shall exercise the guardian's supervisory powers over the protected person in a manner that is least restrictive of the protected person's personal freedom and consistent with the need for supervision.

C. A guardian of a protected person for whom a conservator also has been appointed shall control the care and custody of the protected person and is entitled to receive reasonable sums for services and for room and board furnished to the protected person. The guardian may request the conservator to expend the protected person's estate by payment to third persons or institutions for the protected person's care and maintenance.

D. Unless authorized by the court by specific order, a guardian for an adult shall not revoke or amend a power of attorney for health care or power of attorney for finances signed by the adult. If a power of attorney for health care is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian, and the guardian shall cooperate

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with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian, and the guardian shall cooperate with the agent to the extent feasible.

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

F. A guardian for a protected person shall not restrict the ability of the protected person to communicate, visit or interact with others, including receiving visitors and making or receiving telephone calls, personal mail or electronic communications, including through social media or participating in social activities, unless:

- (1) authorized by the court by specific order;
- (2) a less restrictive alternative is in effect that limits contact between the protected person and a person; or
- (3) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm to the protected person and the restriction is:
 - (a) for a period of not more than seven

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business days if the person has a family or preexisting social relationship with the protected person; or

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

SECTION 7. Section 45-5-314 NMSA 1978 (being Laws 1989, Chapter 252, Section 14, as amended) is amended to read:

"45-5-314. ANNUAL REPORT--AUDITS.--

A. The guardian of an incapacitated person shall file an initial report with the appointing court within ninety days of the guardian's appointment. Thereafter, the guardian shall file an annual report within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or the judge's successor, to the incapacitated person and to the incapacitated person's conservator, if any. The court shall review this report. The report shall include information concerning the progress and condition of the incapacitated person, including the incapacitated person's health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to Paragraph (4) of

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Subsection B of Section 45-5-312 NMSA 1978, the report shall contain information on financial decisions made by the guardian. ~~[The report may be substantially in the following form:~~

~~"STATE OF NEW MEXICO~~

~~COUNTY OF _____~~

~~_____ JUDICIAL DISTRICT COURT~~

~~IN THE MATTER OF THE GUARDIANSHIP OF~~

~~_____~~

~~_____ CAUSE NO. _____~~

~~an incapacitated adult~~

~~GUARDIAN'S 90-DAY _____ ANNUAL _____ FINAL _____ (check one)~~

~~REPORT ON THE CONDITION AND WELL-BEING OF AN ADULT PROTECTED PERSON~~

~~Date of Appointment: _____~~

~~Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly appointed, qualified and acting guardian of the above-mentioned protected person reports to the court as follows (attach additional sheets, if necessary):~~

~~1. PROTECTED Name _____~~

~~PERSON: Residential Address _____~~

~~Facility Name _____~~

~~City, State, Zip Code _____~~

~~Telephone _____ Date of Birth _____~~

~~Name of person primarily responsible at protected person's~~

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place of residence: _____.

2. ~~GUARDIAN:~~ Name _____

Business Name (if any) _____

Address _____

City, State, Zip Code _____

Telephone _____ Alternate Telephone # _____

Relation to Protected Person _____

3. ~~FINAL REPORTS ONLY~~ (otherwise, go to #4)

I am filing a Final Report because of: _____ My resignation

_____ Death of the Protected Person _____ Court Order

_____ Other (please explain): _____

A. If because of resignation, Name of successor, if appointed: _____

Address _____

City, State, Zip Code _____

B. If because of Protected Person's death: (attach copy of death certificate, if available)

Date and place of death: _____

Name of personal representative if appointed: _____

Address _____

City, State, Zip Code _____

4. During the past year or 90 days (if initial report), I have visited the Protected Person _____ times. The date of my last personal visit was _____.

5. (A) Describe the residence of the Protected Person:

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~~_____ Hospital/medical facility _____ Protected Person's home~~

~~_____ Guardian's home _____ Relative's home (explain below)~~

~~_____ Nursing home _____ Boarding/Foster/Group Home~~

~~_____ Other:~~

~~_____~~

~~(B) During the past year or 90 days (if first report), has the Protected Person changed his/her residence? _____ Do you anticipate a change of residence for the protected person in the next year? _____~~

~~6. The name and address of any hospital or other institution (if any) where the Protected Person is now admitted:~~

~~_____~~

~~7. The Protected Person is under a physician's regular care.~~

~~_____ Yes _____ No~~

~~Identify the health care providers.~~

~~Physician: _____~~

~~Dentist (if any): _____~~

~~Mental Health Professional (i.e., psychiatrist, counselor):~~

~~_____~~

~~Other: _____~~

~~8. (A) During the past year or 90 days (if initial report), the Protected Person's physical health:~~

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~~Remained the same _____~~

~~Primary diagnosis: _____~~

~~_____improved _____deteriorated~~

~~(explain) _____~~

~~(B) During the past year or 90 days (if initial report),
the Protected Person's mental health: Remained the same _____~~

~~Major diagnosis, if any: _____~~

~~Improved _____deteriorated (explain) _____~~

~~If physical or mental health has deteriorated, please explain:~~

~~9. Describe any significant hospitalizations or mental or
medical events during the past year or 90 days (if initial
report):~~

~~10. List the Protected Person's activities and changes, if
any, over the past year or 90 days (if initial report):~~

~~Recreational Activities: _____~~

~~Educational Activities: _____~~

~~Social Activities: _____~~

~~List Active Friends and/or Relatives: _____~~

~~Occupational activities: _____~~

~~Other: _____~~

~~11. Describe briefly any contracts entered into and major
decisions made on behalf of the Protected Person during the
past year or 90 days (if initial report): _____~~

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12. ~~The Protected Person has made the following statements regarding his/her living arrangements and the guardianship over him/her:~~ _____

13. ~~I believe the Protected Person has unmet needs.~~
~~_____ Yes (explain) _____ No~~

If yes, indicate efforts made to meet these needs: _____

14. ~~The Protected Person continues to require the assistance of a guardian:~~ _____ Yes _____ No

Explain why or why not: _____

_____.

15. ~~The authority given to me by the Court should:~~
~~_____ remain the same _____ be decreased _____ be increased~~
Why: _____

16. ~~Additional information concerning the Protected Person or myself (the guardian) that I wish to share with the Court:~~

17. ~~If the court has granted you the authority to make financial decisions on behalf of the Protected Person, then~~

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~~please describe the decisions you have made for the protected person:~~ _____.

~~Signature of Guardian:~~ _____ ~~Date:~~ _____

~~Printed Name:~~ _____".] Only

reports that substantially comply with forms approved by the supreme court shall be accepted by the court as fulfilling the requirements of this section.

B. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in ~~[items 7, 8, 9, 14 and 15 of the annual report as specified in]~~ the report provided for in Subsection A of this section.

C. The guardian may be fined ~~[five dollars (\$5.00)]~~ twenty-five dollars (\$25.00) per day for an overdue interim or annual report. The fine shall be ~~[used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code]~~ paid to the current school fund.

D. The court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed sixty days. The court may require the filing of more than one report annually.

E. A guardian of a protected person shall fully comply with the requirements of any audit of an account, inventory, report or property of a protected person."

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SECTION 8. Section 45-5-404.1 NMSA 1978 (being Laws 1989, Chapter 252, Section 18, as amended) is amended to read:

"45-5-404.1. DUTIES OF GUARDIAN AD LITEM.--

A. The guardian ad litem shall:

- (1) interview the person to be protected in person prior to the hearing;
- (2) present the position of the person to be protected to the court;
- (3) interview the qualified health care professional, the visitor, the proposed conservator and any other person who may have relevant information concerning the person to be protected;
- (4) review both the medical report submitted by the qualified health care professional and the report by the visitor; [~~and~~]
- (5) obtain independent medical or psychological assessments, or both, if necessary; and
- (6) file a written report with the court prior to the hearing on the petition for appointment.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from [~~his~~] the guardian ad litem's duties upon entry of the order appointing the conservator and acceptance of the appointment by the conservator."

SECTION 9. Section 45-5-407 NMSA 1978 (being Laws 1975, .211129.6

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Chapter 257, Section 5-407, as amended) is amended to read:

"45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A
CONSERVATOR.--

A. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor is fourteen years of age or older. An attorney appointed by the court to represent a minor shall represent and protect the interests of the minor.

B. Upon receipt of a petition for appointment of a conservator for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney of the person's own choice, the court shall appoint an attorney to represent the person to be protected in the proceeding. The court-appointed attorney shall have the duties of a guardian ad litem as set forth in Section 45-5-404.1 NMSA 1978.

C. If the petition is for the appointment of a conservator for an incapacitated person, the person to be protected shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

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(1) describe the nature and degree of the person's incapacity, if any, and the level of the intellectual, developmental and social functioning of the person to be protected; and

(2) contain observations, with supporting data, regarding the ability of the person to be protected to manage the person's estate or financial affairs.

D. The court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the person to be protected. The visitor shall also visit the present place of residence of the person to be protected. The visitor shall evaluate the needs of the person to be protected and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed conservator. The report shall also include recommendations regarding:

(1) those aspects of the person's financial affairs that the person to be protected can manage without supervision or assistance;

(2) those aspects of the person's financial affairs that the person to be protected could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of the person's financial affairs that the person to be protected is unable to manage even with the supervision or assistance of support services and

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benefits.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from duties upon entry of an order appointing a conservator and acceptance of the appointment by the conservator.

E. The person to be protected shall be present at the hearing on the issues raised by the petition and any response to the petition, unless the court determines it is not in the best interest of the person for whom a conservator is sought to be present because of a threat to the health or safety of the person for whom a conservator is sought or others as determined by the court. The court upon request or its own motion may conduct hearings at the location of the person to be protected if the person is unable to be present in court. At a hearing conducted pursuant to this section, the person to be protected may:

- (1) present evidence and subpoena witnesses and documents;
- (2) examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and
- (3) otherwise participate in the hearing.

F. The person to be protected shall not be permitted by the court to consent to the appointment of a conservator.

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G. The court, at the hearing on the petition for appointment of conservator, shall:

(1) inquire into the nature and extent of the functional limitations of the person to be protected; and

(2) ascertain the person's capacity to manage the person's financial affairs.

H. If it is determined that the person to be protected possesses the capacity to manage the person's estate or financial affairs, or both, the court shall dismiss the petition.

I. Alternatively, the court may appoint a full conservator, as requested in the petition, or a limited conservator and confer specific powers of conservatorship after finding in the record based on clear and convincing evidence that:

(1) the person to be protected is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the conservatorship is necessary as a means of effectively managing the estate or financial affairs, or both, of the person to be protected;

(3) there are not available alternative resources that enable the effective management of the estate and financial affairs of the person to be protected;

(4) the conservatorship is appropriate as the

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least restrictive form of intervention consistent with the preservation of the property of the person to be protected; and

(5) the proposed conservator is both qualified and suitable and is willing to serve.

J. After hearing, upon finding that a basis for the appointment of a conservator has been established, the court shall make an appointment of a conservator. The court shall appoint a limited conservator if it determines that the incapacitated person is able to manage some but not all aspects of the incapacitated person's estate and financial affairs. The court shall specify those powers that the limited conservator shall have and may further restrict each power so as to permit the incapacitated person to care for the incapacitated person's estate and financial affairs commensurate with the incapacitated person's ability to do so.

K. A person for whom a conservator has been appointed retains all legal and civil rights except those that have been specifically granted to the conservator by the court. The conservator shall exercise supervisory powers over the estate and financial affairs of the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

L. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in the

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Uniform Probate Code.

M. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

(1) the alleged incapacitated person, the protected person subject to conservatorship or the parent or a guardian of a minor subject to conservatorship requests that the record be sealed; and

(2) either:

(a) the petition for conservatorship is dismissed; or

(b) the conservatorship is terminated.

N. An alleged incapacitated person or protected person subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the alleged incapacitated person or protected person and a person entitled to notice may access court records of the proceeding and resulting conservatorship. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship. The court shall grant access if access is in the best interest of the alleged incapacitated person or protected person subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the alleged

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incapacitated person or individual.

O. A report [~~under Section~~] pursuant to Subsections C and D of this section or a written report filed pursuant to Section 45-5-404.1 or 45-5-409 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

- (1) the court;
- (2) the alleged incapacitated person or protected person who is the subject of the report, without limitation as to use;
- (3) the petitioner, guardian ad litem, visitor and an attorney of record, for purposes of the proceeding;
- (4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the alleged incapacitated person is identified as the principal; and
- (5) any other person if it is in the public interest, as determined by the court, or for a purpose the court orders for good cause.

P. Notwithstanding the provisions of Subsection M of this section, any disclosure of information shall not include any diagnostic information, treatment information or other medical or psychological information.

Q. The issue of whether a conservator shall be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good

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cause, the court determines otherwise.

R. Upon request of the petitioner or person to be protected, the court shall schedule a jury trial.

S. Upon entry of an order appointing a conservator, a copy of the order shall be furnished to the person for whom the conservator was appointed and that person's counsel. The order shall contain the name and address of the conservator as well as notice to the person for whom the conservator was appointed of that person's right to appeal the appointment and of that person's right to seek alteration or termination of the conservatorship at any time."

SECTION 10. Section 45-5-409 NMSA 1978 (being Laws 1989, Chapter 252, Section 22, as amended) is amended to read:

"45-5-409. ANNUAL REPORT AND ACCOUNT--AUDITS.--

A. Every conservator shall file an annual report and account with the appointing court within thirty days of the anniversary date of the conservator's appointment, upon the conservator's resignation or removal or upon termination of the conservatorship. A copy of the annual report and account shall also be mailed to the district judge who appointed the conservator or the conservator's successor, to the incapacitated person and to the incapacitated person's guardian, if any. The report shall include information concerning the progress and condition of the person under conservatorship, a report on the manner in which the

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conservator carried out the conservator's powers and fulfilled the conservator's duties and the conservator's opinion regarding the continued need for conservatorship. ~~[The report may be substantially in the following form:~~

~~"IN THE DISTRICT COURT~~

~~_____ COUNTY, STATE OF NEW MEXICO~~

~~In the matter of the _____) No. _____~~

~~Conservatorship of _____)~~

~~_____)~~

~~(Enter Name of Person Under Conservatorship)~~

~~CONSERVATOR'S REPORT AND ACCOUNT~~

~~Pursuant to Section 45-5-409 NMSA 1978, the undersigned duly appointed, qualified and acting conservator of the above-mentioned protected person reports to the court as follows:~~

~~1. My name is: _____~~

~~2. My address and telephone number are: _____~~

~~3. The name, if applicable, and address of the place where the person under conservatorship now resides are:~~

~~_____~~

~~4. The name of the person primarily responsible for the care of the person under conservatorship at such person's place of residence is: _____~~

~~5. The name and address of any hospital or other institution where the person under conservatorship is now admitted on a temporary basis are: _____~~

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~~6. A brief description of the physical condition of the person under conservatorship is: _____~~

~~7. A brief description of the mental condition of the person under conservatorship is: _____~~

~~8. A description of contracts entered into on behalf of the person under conservatorship during the past year: _____~~

~~9. Describe all financial decisions made during the past year, including all receipts and disbursements, any sale, lease or mortgage of estate assets and any investment made on behalf of the person under conservatorship (NOTE: If the person under conservatorship is sharing expenses with others in a household and paying into joint household expenses, please identify the percentage of the expenses paid for by the person under conservatorship and how you determined that this percentage is appropriate.): _____~~

~~10. The reasons, if any, why the conservatorship should continue are: _____~~

~~Signature of Conservator: _____~~

~~Date: _____".] Only reports that~~

~~substantially comply with forms approved by the supreme court shall be accepted by the court as fulfilling the requirements of this section.~~

B. Any conservator may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in

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~~[items 6, 7 and 10 of the annual report and account as specified]~~ the report provided for in Subsection A of this section.

C. The court shall not waive the requirement of an annual report and account under any circumstance, but may grant an extension of time. The court may require the filing of more than one report and account annually.

D. The conservator may be fined [~~five dollars~~ ~~(\$5.00)~~] twenty-five dollars (\$25.00) per day for an overdue interim or annual report and account. The fine shall be [~~used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code~~] paid to the current school fund.

E. In connection with an account, the court may require a conservator to submit to a physical check of the property in the conservator's control, to be made in any manner the court may order.

F. In any case in which property consists in whole or in part of benefits paid by the United States department of veterans affairs to the conservator or the conservator's predecessor for the benefit of the protected person, the department office that has jurisdiction over the area is entitled to a copy of any report and account filed under Chapter 45, Article 5 NMSA 1978.

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G. A conservator shall fully comply with the requirements of any audit of an account, inventory, report or property of a protected person."

SECTION 11. Section 45-5-410 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-410, as amended) is amended to read:

"45-5-410. WHO MAY BE APPOINTED CONSERVATOR--
PRIORITIES.--

A. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the incapacitated person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the incapacitated person resides;

SPAC→(2) ~~any person previously nominated to serve as conservator in a writing signed by the incapacitated person prior to [his] the person's incapacity;~~←SPAC

SPAC→(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes writings executed under the Uniform Health- Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the

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Uniform Probate Code and the Uniform Trust Code; ←SPAC

SPAC → ~~(3) an individual or corporation nominated by the incapacitated person if [he] the incapacitated person is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;~~ ←SPAC

SPAC → ~~(4)~~ (3) ←SPAC the spouse of the incapacitated person;

SPAC → ~~(5)~~ (4) ←SPAC an adult child of the incapacitated person;

SPAC → ~~(6)~~ (5) ←SPAC a parent of the incapacitated person or a person nominated by the will of a deceased parent;

SPAC → ~~(7)~~ (6) ←SPAC any relative of the incapacitated person with whom [he] the incapacitated person has resided for more than six months prior to the filing of the petition;

SPAC → ~~(8)~~ (7) ←SPAC a person nominated by the person who is caring for the incapacitated person or paying benefits to [him] the incapacitated person; and

SPAC → ~~(9)~~ (8) ←SPAC any other person.

B. A person under the priorities of Paragraph (1), (2), SPAC → ~~(4), (5), (6) or (7)~~ ←SPAC SPAC → (3), (4), (5) or (6) ←SPAC of Subsection A of this section may nominate in writing a person to serve in [his] the person's stead. With respect to persons having equal priority, the court shall select the one who is best qualified of those willing to serve.

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C. The court, for good cause, may pass over a person having priority and appoint a person having lesser priority under this section and shall take into consideration:

- (1) the preference of the incapacitated person;
- (2) the geographic location of the proposed conservator;
- (3) the relationship of the proposed conservator to the incapacitated person;
- (4) the ability of the proposed conservator to carry out the powers and duties of the conservatorship; and
- (5) potential financial conflicts of interest between the incapacitated person and the proposed conservator.

D. A professional conservator shall not serve or be appointed as a conservator of the protected person unless the professional conservator is certified and is in good standing with a national or state organization SJC→recognized by the supreme court←SJC that provides professional certification for conservators."

SECTION 12. Section 45-5-415 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-415, as amended) is amended to read:

"45-5-415. DEATH, SPAC→~~RESIGNATION OR REMOVAL OF CONSERVATOR--TERMINATION OF CONSERVATORSHIP.--~~ **SUBSTITUTION, REVIEW AND TERMINATION OF CONSERVATORSHIP.**←SPAC

A. On the petition of the incapacitated person or

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[~~any~~] a person interested in [~~his~~] the incapacitated person's welfare, the court may remove a conservator for good cause, upon notice and hearing. A temporary conservator may be appointed pursuant to Section 45-5-408 NMSA 1978 pending a final hearing.

B. Upon death, resignation or removal of a conservator, the court may appoint another conservator or make any other order that may be appropriate. If a successor conservator is appointed, [~~he~~] the successor conservator succeeds to the title and powers of [~~his~~] the predecessor.

C. The incapacitated person or [~~any~~] a person interested in [~~his~~] the incapacitated person's welfare may petition for an order that [~~he~~] the incapacitated person is no longer in need of a conservator and for removal or resignation of the conservator. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a conservatorship for reasons other than termination of minority or the death of the person under conservatorship, the court shall follow the same procedures as set forth in Section 45-5-407 NMSA 1978. SPAC→""←SPAC

SPAC→E. In a proceeding that increases the conservator's authority or reduces the autonomy of the incapacitated person,

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the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the conservator, terminating the conservatorship or reducing the powers previously granted to the conservator. The court has the option to follow all or part of the procedures that apply for the appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

G. At any time following the appointment of a conservator, but not later than ten years after the initial appointment of a conservator for an incapacitated person and every ten years thereafter, the court shall:

- (1) hold a status hearing, after notice to the conservator, the incapacitated person and appropriate interested persons, to review the status of the incapacitated person's capacity and the continued need for a conservator; or
- (2) appoint a court investigator to assess the incapacitated person's capacity. The court investigator shall

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prepare a detailed report to the court regarding the status of the incapacitated person's capacity and the continued need for a conservator. Any report shall be made available to the conservator, the incapacitated person and interested persons identified by the court.

H. If the court is unable to contact either the conservator or the incapacitated person and neither appears for the status hearing held pursuant to Paragraph (1) of Subsection G of this section, the court shall appoint a guardian ad litem to investigate and report to the court as to the status of the incapacitated person and the conservator. Any report shall be made available to the conservator, the incapacitated person and appropriate interested persons, if known to the court.

I. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the incapacitated person and the conservator as provided in Subsection H of this section, the court may enter an appropriate order; provided that, in entering an order that increases the conservator's authority or reduces the autonomy of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978."←SPAC

SECTION 13. Section 45-5-429 NMSA 1978 (being Laws 1975,

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Chapter 257, Section 5-429) is amended to read:

"45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

A. Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in [~~his~~] the conservator's fiduciary capacity in the course of administration of the estate unless [~~he~~] the conservator fails to reveal [~~his~~] the conservator's representative capacity and identify the estate in the contract.

B. The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if [~~he~~] the conservator is personally at fault.

C. Claims based on contracts entered into by a conservator in [~~his~~] the conservator's fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in [~~his~~] the conservator's fiduciary capacity, whether or not the conservator is individually liable [~~therefor~~] for those claims.

D. Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge or indemnification or other

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appropriate proceeding or action.

E. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator, an agent, an affiliate or a designee of a conservator or any other third party acting on behalf of a conservator.

F. A release or waiver of liability that is requested, procured or received contrary to the provisions of this section is void."

SECTION 14. A new section of the Uniform Probate Code is enacted to read:

"[NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.--

A. A protected person, or SJC→~~a person interested in the welfare of a protected person~~ any interested person regardless of previous standing←SJC, who believes a guardian, conservator or representative payee is breaching the guardian, conservator or representative payee's fiduciary duty or otherwise acting in a manner inconsistent with the Uniform Probate Code or orders of appointment, may file a grievance with the court.

B. Subject to Subsection C of this section, after receiving a grievance filed pursuant to Subsection A of this section, the court:

(1) shall review the grievance and, if

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necessary to determine the appropriate response, court records related to the guardianship or conservatorship;

(2) shall schedule a hearing if the grievance supports a reasonable belief that:

(a) removal of the guardian or conservator and appointment of a successor may be appropriate;

(b) termination or modification of the guardianship or conservatorship may be appropriate; and

(c) transfer of accounts to a successor representative payee may be appropriate; and

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

(a) ordering the guardian or conservator to provide the court with a report, accounting, inventory or other specified information;

(b) appointing a guardian ad litem; and

(c) holding a hearing.

C. The court may decline to take the actions provided for in Subsection B of this section if a similar grievance had been filed within six months preceding the filing of the current grievance and the court took the actions provided for in that subsection in considering the earlier grievance.

D. As used in this section, "representative payee" means a person appointed by the federal social security

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administration to receive and manage the supplemental security income or social security disability income for individuals who cannot fully manage their own income."

SECTION 15. REPEAL.--Section 45-5-409.1 NMSA 1978 (being Laws 2018, Chapter 10, Section 13) is repealed.

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.