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SENATE BILL 395

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

INTRODUCED BY

James P. White and Daymon Ely

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 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

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1 a court to manage the property or financial affairs or both of
2 a protected person;

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

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

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

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

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

22 G. "inability to manage the person's personal care"
23 means the inability, as evidenced by recent behavior, to meet
24 one's needs for medical care, nutrition, clothing, shelter,
25 hygiene or safety so that physical injury, illness or disease

1 has occurred or is likely to occur in the near future;

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

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

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

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

20 L. "limited conservator" means any person who is
21 qualified to manage the estate and financial affairs of an
22 incapacitated person pursuant to a court appointment in a
23 limited conservatorship;

24 M. "limited conservatorship" means that an
25 incapacitated person is subject to a conservator's exercise of

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1 some but not all of the powers enumerated in Sections 45-5-424
2 and 45-5-425 NMSA 1978;

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

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

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

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

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

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

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

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

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

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

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

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

21 "45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN
22 OF AN INCAPACITATED PERSON.--

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

25 B. A petition under Subsection A of this section

1 shall state the petitioner's name, principal residence, current
2 street address, if different, relationship to the alleged
3 incapacitated person, interest in the appointment, the name and
4 address of any attorney representing the petitioner and, to the
5 extent known, the following:

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

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

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

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

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

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

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

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

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

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

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

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

24 (g) an agent designated under a power of
25 attorney for health care in which the alleged incapacitated

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1 person is identified as the principal;

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

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

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

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

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

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

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

20 (b) any least restrictive alternative
21 for meeting the alleged incapacitated person's alleged need
22 that has been considered or implemented;

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

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

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

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

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

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

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

19 (10) whether the alleged incapacitated person
20 needs an interpreter, translator or other form of support to
21 communicate effectively with the court or understand court
22 proceedings.

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

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

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

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

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

21 F. The court shall appoint a visitor who shall
22 interview the person seeking appointment as guardian and the
23 person alleged to be incapacitated. The visitor shall also
24 visit the present place of abode of the person alleged to be
25 incapacitated and the place where it is proposed the alleged

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1 incapacitated person will be detained or reside if the
2 requested appointment is made. The visitor shall evaluate the
3 needs of the person alleged to be incapacitated and shall
4 submit a written report to the court. The report shall include
5 a recommendation regarding the appropriateness of the
6 appointment of the proposed guardian. The report to the court
7 shall also include recommendations regarding:

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

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

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

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

21 G. A person alleged to be incapacitated shall be
22 present at the hearing on the issues raised by the petition and
23 any response to the petition unless the court determines by
24 evidence that it is not in the alleged incapacitated person's
25 best interest to be present because of a threat to the health

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1 or safety of the alleged incapacitated person or others as
2 determined by the court. At a hearing conducted pursuant to
3 this section, the person alleged to be incapacitated may:

4 (1) present evidence and subpoena witnesses
5 and documents;

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

9 (3) otherwise participate in the hearing.

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

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

20 J. The existence of a proceeding for or the
21 existence of a guardianship for an adult is a matter of public
22 record unless the court seals the record after:

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

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(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 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

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1 to use;

2 (3) the petitioner, visitor, guardian ad litem
3 and an attorney of record for purposes of the proceeding;

4 (4) unless the court orders otherwise, an
5 agent appointed under a power of attorney for health care or
6 power of attorney for finances in which the alleged
7 incapacitated person is the principal; and

8 (5) any other person if it is in the public
9 interest, as determined by the court, or for a purpose the
10 court orders for good cause.

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

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

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

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

23 "45-5-303.1. DUTIES OF GUARDIAN AD LITEM.--

24 A. The guardian ad litem shall:

25 (1) interview in person the alleged

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1 incapacitated person prior to the hearing;

2 (2) present the alleged incapacitated person's
3 declared position to the court;

4 (3) interview the qualified health care
5 professional, the visitor and the proposed guardian;

6 (4) review both the medical report submitted
7 by the qualified health care professional and the report by the
8 visitor; ~~and~~

9 (5) obtain independent medical or
10 psychological assessments, or both, if necessary; and

11 (6) file a written report with the court prior
12 to the hearing on the petition for appointment.

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

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

20 "45-5-307. SUBSTITUTION, REVIEW AND TERMINATION OF
21 GUARDIANSHIP.--

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

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1 incapacitated person.

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

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

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

21 E. In a proceeding that increases the guardian's
22 authority or reduces the autonomy of the protected person, the
23 court shall follow the same procedures to safeguard the rights
24 of the incapacitated person as those that apply to a petition
25 for appointment of a guardian, as set forth in Section

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1 45-5-303 NMSA 1978.

2 F. Following receipt of a request for review, the
3 court shall hold a status hearing, which may be informal, to
4 determine the appropriate order to be entered. If the court
5 finds the incapacitated person is capable of more autonomy than
6 at the time of the original order, the court may enter an order
7 removing the guardian, terminating the guardianship or reducing
8 the powers previously granted to the guardian. The court has
9 the option to follow all or part of the procedures that apply
10 for the appointment of a guardian as set forth in Section
11 45-5-303 NMSA 1978.

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

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

20 (2) appoint a court investigator to assess the
21 protected person's capacity. The court investigator shall
22 prepare a detailed report to the court regarding the status of
23 the protected person's capacity and the continued need for a
24 guardian. Any report shall be made available to the guardian,
25 the protected person and interested persons identified by the

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1 court.

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

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

20 **SECTION 5.** Section 45-5-311 NMSA 1978 (being Laws 1975,
21 Chapter 257, Section 5-311, as amended) is amended to read:

22 "45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES--
23 QUALIFICATIONS.--

24 A. Any person deemed to be qualified by the court
25 may be appointed guardian of an incapacitated person, except

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1 that no individual who operates or is an employee of a boarding
2 home, residential care home, nursing home, group home or other
3 similar facility in which the incapacitated person resides may
4 serve as guardian for the incapacitated person, except an
5 employee may serve in such capacity when related by affinity or
6 consanguinity.

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

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

11 (2) a person, as far as known or as can be
12 reasonably ascertained, previously nominated or designated in a
13 writing ~~[as defined in Paragraph (4) of Subsection A of Section~~
14 ~~45-5-309 NMSA 1978 to serve as guardian or agent in a writing~~
15 ~~signed by the incapacitated person prior to the incapacitated~~
16 ~~person's incapacity that has not been revoked by the~~

17 ~~incapacitated person or terminated by a court]~~ signed by the
18 incapacitated person prior to incapacity that has not been
19 revoked by the incapacitated person or terminated by a court.
20 This includes writings executed under the Uniform Health-Care
21 Decisions Act, the Mental Health Care Treatment Decisions Act,
22 the Uniform Power of Attorney Act, the Uniform Probate Code and
23 the Uniform Trust Code;

24 (3) the spouse of the incapacitated person;

25 (4) an adult child of the incapacitated

1 person;

2 (5) a parent of the incapacitated person,
3 including a person nominated by will or other writing signed by
4 a deceased parent;

5 (6) any relative of the incapacitated person
6 with whom the incapacitated person has resided for more than
7 six months prior to the filing of the petition;

8 (7) a person nominated by the person who is
9 caring for the incapacitated person or paying benefits to the
10 incapacitated person; and

11 (8) any other person.

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

19 (1) the preference of the incapacitated
20 person, giving weight to preferences expressed in writing by
21 the person while having capacity;

22 (2) the geographic location of the proposed
23 guardian;

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

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

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

5 D. A professional guardian shall not serve or be
6 appointed as a guardian of the incapacitated person unless the
7 professional guardian is certified and is in good standing with
8 a national or state organization that provides professional
9 certification for guardians."

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

12 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED
13 GUARDIAN AND GUARDIAN.--

14 A. If the court enters judgment pursuant to
15 Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a
16 limited guardian if it determines that the protected person is
17 able to manage some but not all aspects of personal care. The
18 court shall specify those powers that the limited guardian
19 shall have and may further restrict each power so as to permit
20 the protected person to care for the protected person's own
21 self commensurate with the protected person's ability to do so.
22 A person for whom a limited guardian has been appointed retains
23 all legal and civil rights except those that have been
24 specifically granted to the limited guardian by the court. The
25 limited guardian shall exercise supervisory powers over the

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1 protected person in a manner that is the least restrictive form
2 of intervention consistent with the order of the court.

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

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

19 (2) if entitled to custody of the protected
20 person, a guardian shall make provision for the care, comfort
21 and maintenance of the protected person and, whenever
22 appropriate, arrange for training and education. The guardian
23 shall take reasonable care of the protected person's clothing,
24 furniture, vehicles and other personal effects and commence
25 conservatorship proceedings if other property of the protected

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1 person is in need of protection;

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

14 (4) if no conservator for the estate of the
15 protected person has been appointed, if the court has
16 determined that a conservatorship is not appropriate and if a
17 guardian appointed by the court has been granted authority to
18 make financial decisions on behalf of the protected person in
19 the order of appointment and in the letters of guardianship
20 pursuant to Subsection C of Section 45-5-308 NMSA 1978, the
21 guardian has the following powers and duties, including the
22 power:

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

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1 that duty;

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

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

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

18 (e) to file an initial inventory of all
19 property belonging to the protected person within ninety days
20 after appointment; and

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

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

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

13 D. Unless authorized by the court by specific
14 order, a guardian for an adult shall not revoke or amend a
15 power of attorney for health care or power of attorney for
16 finances signed by the adult. If a power of attorney for
17 health care is in effect, unless there is a court order to the
18 contrary, a health care decision of an agent takes precedence
19 over that of the guardian, and the guardian shall cooperate
20 with the agent to the extent feasible. If a power of attorney
21 for finances is in effect, unless there is a court order to the
22 contrary, a decision by the agent that the agent is authorized
23 to make under the power of attorney for finances takes
24 precedence over that of the guardian, and the guardian shall
25 cooperate with the agent to the extent feasible.

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

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

11 (1) authorized by the court by specific order;

12 (2) a less restrictive alternative is in
13 effect that limits contact between the protected person and a
14 person; or

15 (3) the guardian has good cause to believe
16 restriction is necessary because interaction with a specified
17 person poses a risk of significant physical, psychological or
18 financial harm to the protected person and the restriction is:

19 (a) for a period of not more than seven
20 business days if the person has a family or preexisting social
21 relationship with the protected person; or

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

25 **SECTION 7.** Section 45-5-314 NMSA 1978 (being Laws 1989,

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1 Chapter 252, Section 14, as amended) is amended to read:

2 "45-5-314. ANNUAL REPORT--AUDITS.--

3 A. The guardian of an incapacitated person shall
4 file an initial report with the appointing court within ninety
5 days of the guardian's appointment. Thereafter, the guardian
6 shall file an annual report within thirty days of the
7 anniversary date of the guardian's appointment. A copy of the
8 report shall also be submitted to the district judge who
9 appointed the guardian or the judge's successor, to the
10 incapacitated person and to the incapacitated person's
11 conservator, if any. The court shall review this report. The
12 report shall include information concerning the progress and
13 condition of the incapacitated person, including the
14 incapacitated person's health, medical and dental care,
15 residence, education, employment and habitation; a report on
16 the manner in which the guardian carried out the guardian's
17 powers and fulfilled the guardian's duties; and the guardian's
18 opinion regarding the continued need for guardianship. If the
19 guardian has been provided power pursuant to Paragraph (4) of
20 Subsection B of Section 45-5-312 NMSA 1978, the report shall
21 contain information on financial decisions made by the
22 guardian. [~~The report may be substantially in the following~~
23 ~~form:~~

24 ~~"STATE OF NEW MEXICO~~
25 ~~COUNTY OF _____~~

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~~_____ 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

place of residence: _____.

2. ~~GUARDIAN:~~ Name _____

Business Name (if any) _____

Address _____

City, State, Zip Code _____

Telephone _____ Alternate Telephone # _____

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~~(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:~~
~~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 _____~~

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- 1 Major diagnosis, if any: _____
2 Improved _____ deteriorated (explain) _____
3 If physical or mental health has deteriorated, please explain:
4 _____
5 9. Describe any significant hospitalizations or mental or
6 medical events during the past year or 90 days (if initial
7 report):
8 _____
9 10. List the Protected Person's activities and changes, if
10 any, over the past year or 90 days (if initial report):
11 Recreational Activities: _____
12 Educational Activities: _____
13 Social Activities: _____
14 List Active Friends and/or Relatives: _____
15 Occupational activities: _____
16 Other: _____
17 11. Describe briefly any contracts entered into and major
18 decisions made on behalf of the Protected Person during the
19 past year or 90 days (if initial report): _____
20 _____
21 12. The Protected Person has made the following statements
22 regarding his/her living arrangements and the guardianship
23 over him/her: _____
24 _____
25 13. I believe the Protected Person has unmet needs.

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1 Yes (explain) No

2 _____

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

4 _____

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

7 Explain why or why not: _____

8 _____.

9 15. ~~The authority given to me by the Court should:~~

10 remain the same be decreased be increased

11 Why: _____

12 _____

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

15 _____

16 _____

17 _____

18 17. ~~If the court has granted you the authority to make~~
19 ~~financial decisions on behalf of the Protected Person, then~~
20 ~~please describe the decisions you have made for the protected~~
21 ~~person:~~ _____.

22 Signature of Guardian: _____ Date: _____

23 Printed Name: _____".] Only

24 reports that substantially comply with forms approved by the
25 supreme court shall be accepted by the court as fulfilling the

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1 requirements of this section.

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

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

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

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

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

22 "45-5-404.1. DUTIES OF GUARDIAN AD LITEM.--

23 A. The guardian ad litem shall:

24 (1) interview the person to be protected in
25 person prior to the hearing;

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1 (2) present the position of the person to be
2 protected to the court;

3 (3) interview the qualified health care
4 professional, the visitor, the proposed conservator and any
5 other person who may have relevant information concerning the
6 person to be protected;

7 (4) review both the medical report submitted
8 by the qualified health care professional and the report by the
9 visitor; ~~and~~

10 (5) obtain independent medical or
11 psychological assessments, or both, if necessary; and

12 (6) file a written report with the court prior
13 to the hearing on the petition for appointment.

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

19 SECTION 9. Section 45-5-407 NMSA 1978 (being Laws 1975,
20 Chapter 257, Section 5-407, as amended) is amended to read:

21 "45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A
22 CONSERVATOR.--

23 A. Upon receipt of a petition for appointment of a
24 conservator or other protective order because of minority, the
25 court shall set a date for hearing on the matters alleged in

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1 the petition. If at any time in the proceeding the court finds
2 the minor is or may be inadequately represented, it may appoint
3 an attorney to represent the minor, giving consideration to the
4 choice of the minor if the minor is fourteen years of age or
5 older. An attorney appointed by the court to represent a minor
6 shall represent and protect the interests of the minor.

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

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

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

24 (2) contain observations, with supporting
25 data, regarding the ability of the person to be protected to

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1 manage the person's estate or financial affairs.

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

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

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

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

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

25 E. The person to be protected shall be present at

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

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

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

16 (3) otherwise participate in the hearing.

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

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

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

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

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

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

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

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

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

19 (4) the conservatorship is appropriate as the
20 least restrictive form of intervention consistent with the
21 preservation of the property of the person to be protected; and

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

24 J. After hearing, upon finding that a basis for the
25 appointment of a conservator has been established, the court

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1 shall make an appointment of a conservator. The court shall
2 appoint a limited conservator if it determines that the
3 incapacitated person is able to manage some but not all aspects
4 of the incapacitated person's estate and financial affairs.
5 The court shall specify those powers that the limited
6 conservator shall have and may further restrict each power so
7 as to permit the incapacitated person to care for the
8 incapacitated person's estate and financial affairs
9 commensurate with the incapacitated person's ability to do so.

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

17 L. The rules of evidence shall apply and no hearsay
18 evidence that is not otherwise admissible in a court shall be
19 admitted into evidence except as otherwise provided in the
20 Uniform Probate Code.

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

24 (1) the alleged incapacitated person, the
25 protected person subject to conservatorship or the parent or a

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1 guardian of a minor subject to conservatorship requests that
2 the record be sealed; and

3 (2) either:

4 (a) the petition for conservatorship is
5 dismissed; or

6 (b) the conservatorship is terminated.

7 N. An alleged incapacitated person or protected
8 person subject to a proceeding for a conservatorship, whether
9 or not a conservator is appointed, an attorney designated by
10 the alleged incapacitated person or protected person and a
11 person entitled to notice may access court records of the
12 proceeding and resulting conservatorship. A person not
13 otherwise entitled to access to court records under this
14 section for good cause may petition the court for access to
15 court records of the conservatorship. The court shall grant
16 access if access is in the best interest of the alleged
17 incapacitated person or protected person subject to
18 conservatorship or furthers the public interest and does not
19 endanger the welfare or financial interests of the alleged
20 incapacitated person or individual.

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

25 (1) the court;

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1 (2) the alleged incapacitated person or
2 protected person who is the subject of the report, without
3 limitation as to use;

4 (3) the petitioner, guardian ad litem, visitor
5 and an attorney of record, for purposes of the proceeding;

6 (4) unless the court directs otherwise, an
7 agent appointed under a power of attorney for finances in which
8 the alleged incapacitated person is identified as the
9 principal; and

10 (5) any other person if it is in the public
11 interest, as determined by the court, or for a purpose the
12 court orders for good cause.

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

17 Q. The issue of whether a conservator shall be
18 appointed for the alleged incapacitated person shall be
19 determined by the court at an open hearing unless, for good
20 cause, the court determines otherwise.

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

23 S. Upon entry of an order appointing a conservator,
24 a copy of the order shall be furnished to the person for whom
25 the conservator was appointed and that person's counsel. The

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1 order shall contain the name and address of the conservator as
2 well as notice to the person for whom the conservator was
3 appointed of that person's right to appeal the appointment and
4 of that person's right to seek alteration or termination of the
5 conservatorship at any time."

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

8 "45-5-409. ANNUAL REPORT AND ACCOUNT--AUDITS.--

9 A. Every conservator shall file an annual report
10 and account with the appointing court within thirty days of the
11 anniversary date of the conservator's appointment, upon the
12 conservator's resignation or removal or upon termination of the
13 conservatorship. A copy of the annual report and account shall
14 also be mailed to the district judge who appointed the
15 conservator or the conservator's successor, to the
16 incapacitated person and to the incapacitated person's
17 guardian, if any. The report shall include information
18 concerning the progress and condition of the person under
19 conservatorship, a report on the manner in which the
20 conservator carried out the conservator's powers and fulfilled
21 the conservator's duties and the conservator's opinion
22 regarding the continued need for conservatorship. [~~The report~~
23 ~~may be substantially in the following form:~~

24 ~~"IN THE DISTRICT COURT~~

25 ~~_____ COUNTY, STATE OF NEW MEXICO~~

underscored material = new
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1 In the matter of the _____) _____ No. _____
2 Conservatorship of _____)
3 _____)

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

5 CONSERVATOR'S REPORT AND ACCOUNT

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

9 1. My name is: _____

10 2. My address and telephone number are: _____

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

13 _____

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

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

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

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

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

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

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

12 ~~Signature of Conservator: _____~~

13 Date: _____".] Only reports that

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

17 B. Any conservator may rely on a qualified health
18 care professional's current written report to provide
19 descriptions of the physical and mental conditions required in
20 [items 6, 7 and 10 of the annual report and account as
21 specified] the report provided for in Subsection A of this
22 section.

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

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1 than one report and account annually.

2 D. The conservator may be fined [~~five dollars~~
3 ~~(\$5.00)] twenty-five dollars (\$25.00) per day for an overdue
4 interim or annual report and account. The fine shall be [~~used~~
5 ~~to fund the costs of visitors, counsel and functional~~
6 ~~assessments utilized in conservatorship and guardianship~~
7 ~~proceedings pursuant to the Uniform Probate Code] paid to the
8 current school fund.~~~~

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

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

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

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

25 "45-5-410. WHO MAY BE APPOINTED CONSERVATOR--

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1 PRIORITIES.--

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

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

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

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

18 (4) the spouse of the incapacitated person;

19 (5) an adult child of the incapacitated
20 person;

21 (6) a parent of the incapacitated person or a
22 person nominated by the will of a deceased parent;

23 (7) any relative of the incapacitated person
24 with whom ~~[he]~~ the incapacitated person has resided for more
25 than six months prior to the filing of the petition;

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1 (8) a person nominated by the person who is
2 caring for the incapacitated person or paying benefits to [~~him~~]
3 the incapacitated person; and

4 (9) any other person.

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

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

14 (1) the preference of the incapacitated
15 person;

16 (2) the geographic location of the proposed
17 conservator;

18 (3) the relationship of the proposed
19 conservator to the incapacitated person;

20 (4) the ability of the proposed conservator to
21 carry out the powers and duties of the conservatorship; and

22 (5) potential financial conflicts of interest
23 between the incapacitated person and the proposed conservator.

24 D. A professional conservator shall not serve or be
25 appointed as a conservator of the protected person unless the

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1 professional conservator is certified and is in good standing
2 with a national or state organization that provides
3 professional certification for conservators."

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

6 "45-5-415. DEATH, RESIGNATION OR REMOVAL OF
7 CONSERVATOR--TERMINATION OF CONSERVATORSHIP.--

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

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

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

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1 to the court may be adjudged guilty of contempt of court.

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

7 SECTION 13. Section 45-5-429 NMSA 1978 (being Laws 1975,
8 Chapter 257, Section 5-429) is amended to read:

9 "45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

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

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

22 C. Claims based on contracts entered into by a
23 conservator in [~~his~~] the conservator's fiduciary capacity on
24 obligations arising from ownership or control of the estate or
25 on torts committed in the course of administration of the

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1 estate may be asserted against the estate by proceeding against
2 the conservator in [~~his~~] the conservator's fiduciary capacity,
3 whether or not the conservator is individually liable
4 [~~therefor~~] for those claims.

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

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

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

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

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

21 A. A protected person, or a person interested in
22 the welfare of a protected person, who believes a guardian,
23 conservator or representative payee is breaching the guardian,
24 conservator or representative payee's fiduciary duty or
25 otherwise acting in a manner inconsistent with the Uniform

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1 Probate Code or orders of appointment, may file a grievance
2 with the court.

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

6 (1) shall review the grievance and, if
7 necessary to determine the appropriate response, court records
8 related to the guardianship or conservatorship;

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

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

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

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

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

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

22 (b) appointing a guardian ad litem; and

23 (c) holding a hearing.

24 C. The court may decline to take the actions
25 provided for in Subsection B of this section if a similar

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1 grievance had been filed within six months preceding the filing
2 of the current grievance and the court took the actions
3 provided for in that subsection in considering the earlier
4 grievance.

5 D. As used in this section, "representative payee"
6 means a person appointed by the federal social security
7 administration to receive and manage the supplemental security
8 income or social security disability income for individuals who
9 cannot fully manage their own income."

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

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