

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 234

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO GUARDIANSHIP; STRENGTHENING OFFICE OF GUARDIANSHIP
LEGAL AND PROFESSIONAL SERVICES FOR INCOME-ELIGIBLE ADULTS;
ESTABLISHING A WORKING INTERDISCIPLINARY NETWORK OF
GUARDIANSHIP STAKEHOLDERS; REQUIRING THE OFFICE OF GUARDIANSHIP
TO PUBLISH AN ANNUAL REPORT; ESTABLISHING THE OFFICE OF
GUARDIANSHIP VOLUNTEER COURT VISITOR PROGRAM; REQUIRING
CONSIDERATION OF LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP;
ESTABLISHING THE COURT VISITOR PILOT PROGRAM; MAKING AN
APPROPRIATION.

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

SECTION 1. A new section of the Office of Guardianship
Act is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Office of
Guardianship Act:

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underscoring material = new
[bracketed material] = delete

1 A. "professional guardian" means an individual or
2 entity appointed by a court that serves as a guardian for more
3 than two individuals who are not related to the guardian by
4 marriage, adoption or third degree of blood or affinity; and

5 B. "protected person" means a person eighteen years
6 of age or older for whom a guardian or conservator has been
7 appointed or other protective order has been made."

8 SECTION 2. Section 28-16B-2 NMSA 1978 (being Laws 2003,
9 Chapter 280, Section 2) is amended to read:

10 "28-16B-2. OFFICE OF GUARDIANSHIP--CREATED--STAFF.--

11 A. The "office of guardianship" is created in the
12 developmental disabilities planning council.

13 B. The executive director of the developmental
14 disabilities planning council shall employ a head of the office
15 who shall be an attorney licensed in New Mexico who is hired on
16 the basis of ability, experience and knowledge of guardianship
17 issues under the Uniform Probate Code. The position shall be
18 classified pursuant to the Personnel Act.

19 C. Subject to appropriations, the executive
20 director may hire such other professional and clerical staff as
21 necessary to carry out the purposes of the office."

22 SECTION 3. Section 28-16B-3 NMSA 1978 (being Laws 2003,
23 Chapter 280, Section 3, as amended) is amended to read:

24 "28-16B-3. OFFICE--POWERS AND DUTIES.--

25 A. The office of guardianship may:

1 (1) promulgate rules in accordance with the
2 State Rules Act to carry out the provisions of the Office of
3 Guardianship Act; and

4 (2) enter into agreements with other state or
5 federal agencies to provide guardianship services and to
6 provide or receive payment for such services.

7 B. The office of guardianship shall:

8 (1) ~~[contract for the provision of probate]~~
9 provide for adult guardianship services to income-eligible
10 incapacitated persons, including temporary guardianship as
11 provided in Section 45-5-310 NMSA 1978;

12 (2) provide for the recruitment and training
13 of persons interested and willing to serve as mental health
14 treatment guardians;

15 (3) provide training and information to
16 interested persons on the duties and responsibilities of
17 guardians, including alternatives to guardianship and mental
18 health treatment guardianship;

19 (4) establish procedures for the investigation
20 and resolution of complaints against ~~[contractors]~~ guardianship
21 and legal services providers that have entered into service
22 agreements with the office;

23 (5) ~~[contract for attorneys]~~ provide legal
24 services, including petitioning attorney, guardian ad litem and
25 court visitor services, to petition the district court for

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1 guardianship of persons believed to be incapacitated or to seek
2 amendment or termination of existing guardianship orders if the
3 needs or situation of protected persons have changed; provided
4 that the selection of persons [~~to be served under such~~
5 ~~contracts~~] to receive guardianship and legal services shall be
6 made by the office based on selection criteria established by
7 rule; [~~and~~]

8 (6) prior to providing legal services to
9 petition for guardianship, identify and provide information on
10 least restrictive options, including alternatives to
11 guardianship, to the alleged incapacitated person and to
12 individuals applying for guardianship services;

13 (7) publish an annual report regarding the
14 guardianship and legal services provided by the office of
15 guardianship, including the:

16 (a) number and ages of protected persons
17 assigned to a professional guardian, the judicial district
18 where the guardianship case is assigned and the reason for
19 appointment of a guardian;

20 (b) number of guardianship petitions
21 filed by the office and the status of the petitions;

22 (c) number of income-eligible alleged
23 incapacitated persons or protected persons on the wait list;

24 (d) number of applicants requesting
25 family guardians and the number requesting professional

1 guardians;

2 (e) number of cases dismissed or
3 terminated and the reasons for the dismissal or termination;

4 (f) number of complaints the office
5 received against guardianship and legal services providers, and
6 the status of the complaints;

7 (g) disciplinary or legal actions taken
8 by the office against guardianship and legal services
9 providers; and

10 (h) number of complaints filed against
11 the office and the status of the complaints;

12 (8) establish and manage a volunteer court
13 visitor program to provide post-adjudication court visitor
14 services for adult guardianship cases when requested by the
15 district court; and

16 ~~[(6)]~~ (9) serve as an interested person as
17 defined in Subsection I of Section 45-5-101 NMSA 1978."

18 **SECTION 4.** Section 28-16B-4 NMSA 1978 (being Laws 2003,
19 Chapter 280, Section 4, as amended) is amended to read:

20 "28-16B-4. ~~[CONTRACT]~~ SERVICE AGREEMENT MONITORING AND
21 ENFORCEMENT.--

22 A. The office of guardianship shall monitor ~~[and~~
23 ~~enforce all guardianship contracts]~~ professional guardians
24 providing services to income-eligible protected persons and
25 enforce agreements the office has executed with guardianship

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underscored material = new
[bracketed material] = delete

1 and legal services providers. In carrying out this duty, the
2 office may:

3 (1) have access to case records, copies of
4 court filings and reports, financial records and other records
5 maintained by [~~contractors related to contract services~~
6 ~~provided~~] guardianship and legal services providers related to
7 the services provided to income-eligible protected persons,
8 unless specifically sequestered by the court;

9 (2) petition the court of jurisdiction for
10 access to records that have been sequestered;

11 [~~(3) arrange visits with protected persons who~~
12 ~~are served by contract guardians]~~

13 (3) conduct annual comprehensive service
14 reviews to ensure service providers comply with service
15 agreements and statutory duties;

16 (4) visit protected persons to evaluate the
17 adequacy of guardianship services provided and determine if the
18 guardianship should be amended or terminated; and

19 [~~(4)~~] (5) pursue legal and other remedies
20 against [~~contractors for noncompliance with contract~~
21 ~~provisions~~] service providers for noncompliance with service
22 agreements and statutory duties.

23 B. The office shall protect and maintain the
24 confidentiality of all client-specific information and records
25 obtained to the same extent as required for the [~~contractor~~]

1 service providers and to any extent otherwise required by state
2 or federal law."

3 SECTION 5. Section 28-16B-5 NMSA 1978 (being Laws 2003,
4 Chapter 280, Section 5, as amended) is amended to read:

5 "28-16B-5. [~~CONTRACTS~~] GUARDIANSHIP SERVICE AGREEMENTS.--
6 A [~~contract~~] service agreement for guardianship services shall
7 include:

8 [~~A. a requirement that contractors and their staff~~
9 ~~meet nationally recognized standards for guardianship~~
10 ~~services;~~]

11 A. a requirement that service providers be
12 certified and in good standing with a national or state
13 organization recognized by the supreme court that provides
14 professional certification for guardians;

15 B. a requirement for adoption and compliance with a
16 code of ethics for guardians;

17 C. the maximum caseload for guardians;

18 D. the fee schedule for services provided;

19 E. assurance that the civil rights of protected
20 persons served by the [~~contractor~~] service provider shall be
21 met, including the right to be served in the most integrated
22 setting appropriate to the needs of the protected person;

23 F. provisions for access by the office of
24 guardianship to records, protected persons and [~~contractor~~]
25 service provider staff as needed to monitor and enforce

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1 contract compliance and for quality assurance purposes; and

2 G. minimum financial accounting and reporting
3 requirements."

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

6 "45-5-303.1. DUTIES OF GUARDIAN AD LITEM.--

7 A. The guardian ad litem shall:

8 (1) interview in person the alleged
9 incapacitated person prior to the hearing;

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

12 (3) identify and present all available less
13 restrictive alternatives to guardianship;

14 [~~(3)~~] (4) interview the qualified health care
15 professional, the visitor and the proposed guardian;

16 [~~(4)~~] (5) review both the medical report
17 submitted by the qualified health care professional and the
18 report by the visitor;

19 [~~(5)~~] (6) obtain independent medical or
20 psychological assessments, or both, if necessary; and

21 [~~(6)~~] (7) file a written report with the court
22 prior to the hearing on the petition for appointment.

23 B. Unless otherwise ordered by the court, the
24 duties of the guardian ad litem terminate and the guardian ad
25 litem is discharged from duties upon entry of the order

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1 appointing the guardian and acceptance of the appointment by
2 the guardian."

3 SECTION 7. Section 45-5-307 NMSA 1978 (being Laws 1975,
4 Chapter 257, Section 5-307, as amended) is amended to read:

5 "45-5-307. DEATH, SUBSTITUTION, REVIEW AND TERMINATION OF
6 GUARDIANSHIP.--

7 A. On the petition of the incapacitated person or
8 any person interested in the incapacitated person's welfare and
9 upon notice and hearing, the court may remove a guardian and
10 appoint a successor if it is in the best interest of the
11 incapacitated person or if the guardian fails to comply with
12 the guardian's duties as required by Section 45-5-312 NMSA
13 1978.

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

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

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1 adjudged guilty of contempt of court.

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

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

14 F. Following receipt of a request for review, the
15 court shall hold a status hearing, which may be informal, to
16 determine the appropriate order to be entered. If the court
17 finds the incapacitated person is capable of more autonomy than
18 at the time of the original order, the court may enter an order
19 removing the guardian, terminating the guardianship or reducing
20 the powers previously granted to the guardian. The court has
21 the option to follow all or part of the procedures that apply
22 for the appointment of a guardian as set forth in Section
23 45-5-303 NMSA 1978.

24 G. At any time following the appointment of a
25 guardian, but not later than ten years after the initial

1 appointment of a guardian for a protected person and every ten
2 years thereafter, the court shall:

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

7 (2) appoint a court investigator to assess the
8 protected person's capacity. The court investigator shall
9 prepare a detailed report to the court regarding the status of
10 the protected person's capacity and the continued need for a
11 guardian. Any report shall be made available to the guardian,
12 the protected person and interested persons identified by the
13 court.

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

23 I. Following the status hearing or the court's
24 report from the court investigator or guardian ad litem on the
25 status of the protected person and the guardian as provided in

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1 Subsection H of this section, the court may enter an
2 appropriate order; provided that, in entering an order that
3 increases the guardian's authority or reduces the autonomy of
4 the protected person, the court shall follow the same
5 procedures to safeguard the rights of the incapacitated person
6 as those that apply to a petition for appointment of a
7 guardian, as set forth in Section 45-5-303 NMSA 1978."

8 SECTION 8. Section 45-5-312 NMSA 1978 (being Laws 1975,
9 Chapter 257, Section 5-312, as amended) is amended to read:

10 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED
11 GUARDIAN AND GUARDIAN.--

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

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1 B. A guardian is not legally obligated to provide
2 from the guardian's own funds for the protected person and is
3 not liable to third persons for acts of the protected person
4 solely by reason of the guardianship. In particular and
5 without qualifying the foregoing, a guardian or the guardian's
6 replacement has the following powers and duties, except as
7 modified by order of the court:

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

14 (2) if entitled to custody of the protected
15 person, a guardian shall make provision for the care, comfort
16 and maintenance of the protected person and, whenever
17 appropriate, arrange for training and education. The guardian
18 shall take reasonable care of the protected person's clothing,
19 furniture, vehicles and other personal effects and commence
20 conservatorship proceedings if other property of the protected
21 person is in need of protection;

22 (3) if no agent is entitled to make health
23 care decisions for the protected person under the provisions of
24 the Uniform Health-Care Decisions Act, then the guardian shall
25 make health care decisions for the protected person in

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1 accordance with the provisions of that act. In exercising
2 health care powers, a guardian may consent or withhold consent
3 that may be necessary to enable the protected person to receive
4 or refuse medical or other professional care, counsel,
5 treatment or service. That decision shall be made in
6 accordance with the values of the protected person, if known,
7 or the best interests of the protected person if the values are
8 not known;

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

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

22 (b) to receive money and tangible
23 property deliverable to the protected person and apply the
24 money and property for support, care and education of the
25 protected person, but the guardian shall not use funds from the

1 protected person's estate for room and board that the guardian
2 or the guardian's spouse, parent or child has furnished the
3 protected person, unless a charge for the service is approved
4 by order of the court made upon notice to at least one of the
5 next of kin of the protected person, if notice is possible;

6 (c) to serve as advocate and decision
7 maker for the protected person in any disputes with persons or
8 organizations, including financial institutions, regarding the
9 protected person's finances;

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

13 (e) to file an initial inventory of all
14 property belonging to the protected person within ninety days
15 after appointment; and

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

21 (5) the guardian shall exercise the guardian's
22 supervisory powers over the protected person in a manner that
23 is least restrictive of the protected person's personal freedom
24 and consistent with the need for supervision, including
25 compliance with the following standards in the national

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1 guardianship association standards of practice:

2 (a) informed consent;

3 (b) standards for decision making;

4 (c) least restrictive alternatives;

5 (d) self-determination of the person;

6 and

7 (e) the guardian's duties regarding

8 diversity and personal preferences of the person.

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

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

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1 contrary, a decision by the agent that the agent is authorized
2 to make under the power of attorney for finances takes
3 precedence over that of the guardian, and the guardian shall
4 cooperate with the agent to the extent feasible.

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

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

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

16 (2) a less restrictive alternative is in
17 effect that limits contact between the protected person and a
18 person; or

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

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

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

4 G. A guardian for an adult shall seek and support
5 the least restrictive option for the protected person,
6 consistent with the court's guardianship order of appointment,
7 including developing adequate supports for the protected person
8 and requesting guardianship termination if less restrictive
9 alternatives are appropriate for the protected person."

10 SECTION 9. Section 45-5-314 NMSA 1978 (being Laws 1989,
11 Chapter 252, Section 14, as amended) is amended to read:

12 "45-5-314. ANNUAL REPORT--AUDITS.--

13 A. The guardian of an incapacitated person shall
14 file an initial report with the appointing court within ninety
15 days of the guardian's appointment. Thereafter, the guardian
16 shall file an annual report within thirty days of the
17 anniversary date of the guardian's appointment. A copy of the
18 report shall also be submitted to the district judge who
19 appointed the guardian or the judge's successor, to the
20 incapacitated person and to the incapacitated person's
21 conservator, if any. [~~The court shall review this report.~~]
22 All reports shall be directed to the guardianship annual report
23 review division at the administrative office of the courts for
24 a compliance and audit review. The results of the review shall
25 be delivered to the district judge presiding over the

1 guardianship case. The report shall include information
2 concerning the progress and condition of the incapacitated
3 person, including the incapacitated person's health, medical
4 and dental care, residence, education, employment and
5 habitation; a report on the manner in which the guardian
6 carried out the guardian's powers and fulfilled the guardian's
7 duties; and the guardian's opinion regarding the continued need
8 for guardianship. If the guardian has been provided power
9 pursuant to Paragraph (4) of Subsection B of Section 45-5-312
10 NMSA 1978, the report shall contain information on financial
11 decisions made by the guardian. Only reports that
12 substantially comply with forms approved by the supreme court
13 shall be accepted by the court as fulfilling the requirements
14 of this section.

15 B. Any guardian may rely on a qualified health
16 care professional's current written report to provide
17 descriptions of the physical and mental conditions required in
18 the report provided for in Subsection A of this section.

19 C. The guardian may be fined twenty-five dollars
20 (\$25.00) per day for an overdue interim or annual report. The
21 fine shall be paid to the current school fund.

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

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

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

6 "45-5-409. ANNUAL REPORT AND ACCOUNT--AUDITS.--

7 A. Every conservator shall file an annual report
8 and account with the appointing court within thirty days of the
9 anniversary date of the conservator's appointment, upon the
10 conservator's resignation or removal or upon termination of the
11 conservatorship. A copy of the annual report and account shall
12 also be ~~[mailed]~~ submitted to the district judge who appointed
13 the conservator or the conservator's successor, to the
14 incapacitated person and to the incapacitated person's
15 guardian, if any. The report shall include information
16 concerning the progress and condition of the person under
17 conservatorship, a report on the manner in which the
18 conservator carried out the conservator's powers and fulfilled
19 the conservator's duties and the conservator's opinion
20 regarding the continued need for conservatorship. Only reports
21 that substantially comply with forms approved by the supreme
22 court shall be accepted by the court as fulfilling the
23 requirements of this section.

24 B. Any conservator may rely on a qualified health
25 care professional's current written report to provide

1 descriptions of the physical and mental conditions required in
2 the report provided for in Subsection A of this section.

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

7 D. The conservator may be fined twenty-five dollars
8 (\$25.00) per day for an overdue interim or annual report and
9 account. The fine shall be paid to the current school fund.

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

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

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

24 H. The court shall forward all reports submitted
25 under Section 45-5-409 NMSA 1978 to the office of the state

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1 auditor for review within five business days of receipt of the
2 report. The office of the state auditor shall review the
3 report filed by the conservator and decide whether a full audit
4 is necessary. The office of the state auditor shall submit,
5 within fifteen business days of receiving a report from the
6 court, either a letter of review declining to conduct a full
7 audit or a letter of acceptance to conduct an audit. If the
8 office of the state auditor decides to conduct an audit of the
9 contents in the report, an audit report shall be filed with the
10 court within ninety calendar days of the receipt of the report
11 from the court. The state auditor may subpoena any documents,
12 records or statements from any individual, company, entity or
13 financial institution necessary to conduct an audit of the
14 contents of a conservator's report. The office of the state
15 auditor shall be available to testify at any court hearing
16 concerning the results of the audit report."

17 SECTION 11. A new section of Chapter 34, Article 2 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] WORKING INTERDISCIPLINARY NETWORK OF
20 GUARDIANSHIP STAKEHOLDERS--CREATED.--

21 A. The supreme court shall establish the "working
22 interdisciplinary network of guardianship stakeholders" to
23 provide ongoing evaluation of New Mexico laws, services and
24 practices related to adult guardianship and conservatorship.

25 B. The network shall consist of the following

1 members appointed by the chief justice of the supreme court in
2 a manner that reflects a geographic balance:

- 3 (1) one or more members of the judiciary;
- 4 (2) the secretary of aging and long-term
5 services or the secretary's designee;
- 6 (3) the executive director of the
7 developmental disabilities planning council or the executive
8 director's designee;
- 9 (4) the chief executive officer of the
10 interagency behavioral health purchasing collaborative or the
11 chief executive officer's designee;
- 12 (5) the state auditor or the state auditor's
13 designee;
- 14 (6) the attorney general or the attorney
15 general's designee;
- 16 (7) one or more members of the legislature;
- 17 (8) the chief executive officer of disability
18 rights New Mexico or the chief executive officer's designee;
- 19 (9) a professional guardian;
- 20 (10) a professional conservator;
- 21 (11) a family guardian;
- 22 (12) a family member, who is not a guardian or
23 conservator, of a protected person;
- 24 (13) an attorney;
- 25 (14) a health care provider with experience in

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1 working with patients in need of guardianship;

2 (15) one or more members of an Indian nation,
3 tribe or pueblo located wholly or partly in New Mexico;

4 (16) two protected persons;

5 (17) a representative of the administrative
6 office of the courts;

7 (18) a representative of the American
8 association of retired persons; and

9 (19) any other stakeholder the chief justice
10 deems appropriate.

11 C. The chief justice shall appoint the network
12 chair and an executive committee from the network membership.

13 D. After the initial appointments, members shall
14 serve staggered four-year terms and may be reappointed.
15 Initial appointments shall be for terms of at least two years.

16 E. The network shall meet at least four times each
17 year. Members may be reimbursed for travel expenses in
18 accordance with the Per Diem and Mileage Act. The network
19 shall provide appropriate reasonable accommodations to make the
20 meetings accessible to its members."

21 SECTION 12. A new section of Chapter 34, Article 2 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] WORKING INTERDISCIPLINARY NETWORK OF
24 GUARDIANSHIP STAKEHOLDERS--DUTIES.--The working
25 interdisciplinary network of guardianship stakeholders shall:

.219907.6

1 A. identify strengths and weaknesses in New
2 Mexico's system of adult guardianship and conservatorship;

3 B. identify the least restrictive decision-making
4 options for alleged incapacitated persons and protected persons
5 under guardianship and conservatorship;

6 C. review national standards on guardianship and
7 conservatorship practices and recommend standards for
8 implementation in New Mexico;

9 D. propose methods of training guardians and
10 conservators in best practices or adopted standards;

11 E. recommend outreach, education and training as
12 needed; and

13 F. serve as an ongoing problem-solving mechanism to
14 enhance the quality of care and quality of life for adults who
15 are or may soon be in the guardianship or conservatorship
16 system."

17 SECTION 13. [NEW MATERIAL] COURT VISITOR PILOT PROGRAM.--

18 A. The supreme court shall designate three judicial
19 districts to participate in a court visitor pilot program. The
20 administrative office of the courts shall randomly select cases
21 from each judicial district designated to participate in the
22 pilot program, and in each selected case, the court shall
23 appoint a volunteer court visitor post-adjudication, who shall
24 be provided by the office of guardianship.

25 B. The visitor shall review any reports filed by

.219907.6

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

1 the guardian, visit the protected person where the person
2 resides, fulfill all responsibilities outlined in the volunteer
3 court visitor agreement executed with the office of
4 guardianship and submit a written report to the court. The
5 report to the court shall include:

6 (1) any changes to the information provided in
7 the guardian's last report;

8 (2) any changes in the protected person's
9 needs since the filing of the guardian's last report;

10 (3) whether any grievances, as defined in
11 Section 45-5-110 NMSA 1978, have been made, and resolutions of
12 the grievances, if any;

13 (4) whether the guardian adequately meets the
14 protected person's needs, including to the protected person's
15 living arrangements, medical and health care needs, and, if
16 not, the reasons why the needs are not adequately met;

17 (5) a recommendation regarding the
18 appropriateness of the guardianship, including whether the
19 guardianship should be limited, increased or terminated; and

20 (6) any other information the court deems
21 appropriate.

22 C. The court visitor pilot program shall be
23 implemented no later than July 1, 2022.

24 SECTION 14. APPROPRIATIONS.--

25 A. One hundred eighty-five thousand dollars

1 (\$185,000) is appropriated from the general fund to the office
2 of guardianship fund for expenditure in fiscal year 2022 and
3 subsequent fiscal years to support the guardianship monitoring
4 and volunteer court visitor program activities established in
5 the Office of Guardianship Act, including the addition of two
6 full-time-equivalent positions. Any unexpended or unencumbered
7 balance remaining at the end of a fiscal year shall not revert
8 to the general fund.

9 B. Three hundred twenty-five thousand dollars
10 (\$325,000) is appropriated from the general fund to the supreme
11 court for expenditure in fiscal year 2022 to:

12 (1) support the activities of the working
13 interdisciplinary network of guardianship stakeholders
14 established in Section 11 of this act, including the addition
15 of one full-time-equivalent position; and

16 (2) review the guardianship and
17 conservatorship annual reports and audits established in the
18 Uniform Probate Code, including the addition of three full-
19 time-equivalent positions.

20 C. Any unexpended or unencumbered balance remaining
21 at the end of fiscal year 2022 from the appropriation in
22 Subsection B of this section shall revert to the general fund.

23 SECTION 15. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2021.