

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 35

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; REVISING PROCEDURES FOR
THE APPOINTMENT OF TEMPORARY GUARDIANS AND TEMPORARY
CONSERVATORS FOR ALLEGEDLY INCAPACITATED PERSONS; CLARIFYING
REPORTING REQUIREMENTS.

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

SECTION 1. Section 45-5-310 NMSA 1978 (being Laws 1975,
Chapter 257, Section 5-310, as amended) is amended to read:

"45-5-310. TEMPORARY GUARDIANS.--

A. When a petition for guardianship has been filed,
but adherence to the procedures set out in ~~[this section]~~
Section 45-5-303 NMSA 1978 would cause serious, immediate and
irreparable harm to the alleged incapacitated person's
~~[physical]~~ health, safety or welfare, the court may appoint a
temporary guardian prior to the final hearing and decision on

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1 the petition, subject to the requirements of this section.

2 B. Upon separate motion [~~of~~] by the petitioner, the
3 court shall schedule and hold a hearing on the appointment of a
4 temporary guardian [~~for the earliest possible date~~] no later
5 than ten business days from the date the motion is filed and
6 appoint [~~counsel~~] a guardian ad litem for the alleged
7 incapacitated person. [~~and give notice as provided~~] The
8 guardian ad litem shall file a report no later than two days
9 prior to the hearing. The report shall include those items
10 found in Paragraphs (1) through (3) of Subsection A of Section
11 45-5-303.1 NMSA 1978. Notice of the hearing shall be as set
12 out in Section 45-5-309 NMSA 1978.

13 C. Upon a finding that serious, immediate and
14 irreparable harm to the alleged incapacitated person's health,
15 safety or welfare would result during the pendency of petition,
16 the court shall appoint a temporary guardian and shall specify
17 the temporary guardian's powers in order to prevent serious,
18 immediate and irreparable harm to the alleged incapacitated
19 person. The duration of the temporary guardianship shall not
20 exceed [~~sixty~~] thirty days [~~except that upon order of the~~
21 ~~court, the temporary guardianship may be extended for not more~~
22 ~~than thirty days~~]. However, if after a hearing in which there
23 is a showing of good cause, the court may extend the temporary
24 guardianship for no more than an additional sixty days.

25 [~~G-~~] D. A temporary guardian may be appointed

1 without notice to the alleged incapacitated person and ~~[his]~~ to
2 the alleged incapacitated person's attorney only if it clearly
3 appears from specific facts shown by affidavit or sworn
4 testimony that serious, immediate and irreparable harm will
5 result to the alleged incapacitated ~~[person]~~ person's health,
6 safety or welfare before a ten-day hearing on the appointment
7 of a temporary guardian can be held. ~~[The alleged~~
8 ~~incapacitated person shall be notified within twenty-four hours~~
9 ~~of the appointment of a temporary guardian by the petitioner as~~
10 ~~provided in Subsection C of Section 45-5-309 NMSA 1978. On two~~
11 ~~days' notice to the party who obtained the appointment of a~~
12 ~~temporary guardian without notice, or on such shorter notice to~~
13 ~~that party as the court may prescribe]~~ If a temporary guardian
14 is appointed without notice to the alleged incapacitated person
15 and the alleged incapacitated person's attorney, the court
16 shall schedule and hold a hearing no later than ten business
17 days from the date the motion for temporary guardian is filed
18 to determine whether the temporary guardianship should continue
19 and, if so, to address the continued authority of the temporary
20 guardian. The petitioner shall have the alleged incapacitated
21 person and the alleged incapacitated person's attorney served
22 personally within twenty-four hours of the appointment of a
23 temporary guardian as provided in Subsection B of Section
24 45-5-309 NMSA 1978. The alleged incapacitated person, ~~[or his]~~
25 the alleged incapacitated person's counsel or any interested

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1 person may appear and move dissolution or modification of the
2 court's order, and, in that event, the court shall proceed to
3 hear and determine such motion [~~as expeditiously as the ends of~~
4 ~~justice require~~] at the initial ten-day hearing or no later
5 than ten business days from the date the motion is made,
6 whichever comes first.

7 [~~D.~~] E. A temporary guardian is entitled to the
8 care and custody of the alleged incapacitated person, [~~and the~~
9 ~~authority of any permanent guardian previously appointed by the~~
10 ~~court is suspended as to those specific matters granted to the~~
11 ~~temporary guardian by the court~~] but a temporary guardian may
12 not sell or dispose of any property belonging to the alleged
13 incapacitated person, or make a change to the housing or other
14 placement of the alleged incapacitated person, without specific
15 authorization from the court. A temporary guardian may be
16 removed by the court at any time. A temporary guardian shall
17 [~~make any report the court requires~~] file an initial written
18 report with the court within fifteen days of appointment by
19 completing the guardian's report, as approved by the supreme
20 court. A temporary guardian shall file a final written report
21 with the court by completing the guardian's report, as approved
22 by the supreme court, within fifteen days of the termination of
23 the temporary guardianship or as otherwise ordered by the
24 court. In all other respects, the provisions of the Uniform
25 Probate Code concerning guardians apply to temporary guardians.

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1 ~~[E.]~~ F. Appointment of a temporary guardian shall
 2 have the temporary effect of limiting the legal rights of the
 3 ~~[individual]~~ alleged incapacitated person as specified in the
 4 court order. Appointment of a temporary guardian shall not be
 5 evidence of incapacity."

6 SECTION 2. Section 45-5-408 NMSA 1978 (being Laws 1989,
 7 Chapter 252, Section 21, as amended) is amended to read:

8 "45-5-408. TEMPORARY CONSERVATORS.--

9 A. When a petition for ~~[appointment of a~~
 10 ~~conservator]~~ conservatorship has been filed, but adherence to
 11 the procedures set out in ~~[this section]~~ Section 45-5-407 NMSA
 12 1978 would cause serious, immediate and irreparable harm to the
 13 alleged incapacitated person's or minor's estate or financial
 14 interests, or both, ~~[of the person to be protected]~~ the court
 15 may appoint a temporary conservator prior to the final hearing
 16 and decision on the petition, subject to the requirements of
 17 this section.

18 B. Upon separate motion ~~[of]~~ by the petitioner, the
 19 court shall schedule and hold a hearing on the appointment of a
 20 temporary conservator ~~[for the earliest possible date, appoint~~
 21 ~~counsel for the person to be protected and give notice as~~
 22 ~~provided in Section 45-5-405 NMSA 1978]~~ no later than ten
 23 business days from the date the motion is filed and appoint a
 24 guardian ad litem for the alleged incapacitated person. The
 25 guardian ad litem shall file a report no later than two days

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1 prior to the hearing. The report shall identify and present
2 all available less restrictive alternatives to conservatorship
3 and include those items found in Paragraphs (1) and (2) of
4 Subsection A of Section 45-5-404.1 NMSA 1978. Notice of the
5 hearing shall be provided as set out in Section 45-5-405 NMSA
6 1978.

7 C. Upon a finding that serious, immediate and
8 irreparable harm to the alleged incapacitated person's estate
9 and financial interests [~~of the person to be protected~~] would
10 result during the pendency of petition, the court shall appoint
11 a temporary conservator and shall specify the temporary
12 conservator's powers in order to prevent serious, immediate and
13 irreparable harm to the alleged incapacitated person's property
14 [~~of the person to be protected~~]. The duration of the temporary
15 conservatorship shall not exceed [~~sixty days, except that upon~~
16 ~~order of the court, the temporary conservatorship may be~~
17 ~~extended for no more than~~] thirty days. However, if after a
18 hearing in which there is a showing of good cause, the court
19 may extend the temporary conservatorship for no more than an
20 additional sixty days.

21 [~~C.~~] D. A temporary conservator may be appointed
22 without notice to the alleged incapacitated person [~~to be~~
23 ~~protected~~] and to the alleged incapacitated person's attorney
24 only if it clearly appears from specific facts shown by
25 affidavit or sworn testimony that serious, immediate and

1 irreparable harm will result to the alleged incapacitated
2 person's estate or financial interests [~~of the person to be~~
3 ~~protected~~] before a ten-day hearing on the appointment of a
4 temporary conservator can be held. [~~The person to be protected~~
5 ~~shall be notified in a writing by the petitioner within twenty-~~
6 ~~four hours of the appointment of a temporary conservator in~~
7 ~~substantial accordance with the provisions of Subsection B of~~
8 ~~Section 45-5-405 NMSA 1978. On two days' notice to the party~~
9 ~~who obtained the appointment of a temporary conservator without~~
10 ~~notice or on such shorter notice to that party as the court may~~
11 ~~prescribe, the person to be protected may appear and move for~~
12 ~~dissolution or modification of the court's order, and, in that~~
13 ~~event, the court shall proceed to hear and determine such~~
14 ~~motion as expeditiously as the ends of justice require.] If a
15 temporary conservator is appointed without notice to the
16 alleged incapacitated person and the alleged incapacitated
17 person's attorney, the court shall schedule and hold a hearing
18 no later than ten business days from the date the motion for
19 temporary conservator is filed to determine whether the
20 temporary conservatorship should continue and, if so, to
21 address the continued authority of the temporary conservator.
22 The petitioner shall have the alleged incapacitated person and
23 the alleged incapacitated person's attorney served personally
24 within twenty-four hours of the appointment of a temporary
25 conservator as provided in Subsection B of Section 45-5-405~~

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1 NMSA 1978. The alleged incapacitated person, the alleged
2 incapacitated person's counsel or any interested person may
3 appear and move dissolution or modification of the court's
4 order, and, in that event, the court shall proceed to hear and
5 determine such motion at the initial ten-day hearing or no
6 later than ten business days from the date the motion is made,
7 whichever comes first.

8 E. A temporary conservator is entitled to the care
9 and custody of the alleged incapacitated person's estate and
10 financial interests, but a temporary conservator may not sell
11 or dispose of any property belonging to the alleged
12 incapacitated person, or make a change to the housing or other
13 placement of the alleged incapacitated person, without specific
14 authorization from the court. A temporary conservator may be
15 removed by the court at any time. A temporary conservator
16 shall file an initial written report with the court within
17 fifteen days of appointment by completing the conservator's
18 inventory, as approved by the supreme court. A temporary
19 conservator shall file a final written report with the court by
20 completing the conservator's report, as approved by the supreme
21 court, within fifteen days of the termination of the temporary
22 conservatorship or as otherwise ordered by the court. In all
23 other respects, the provisions of the Uniform Probate Code
24 concerning conservators apply to temporary conservators.

25 ~~[D-]~~ F. Appointment of a temporary conservator

1 shall have the temporary effect of limiting the legal rights of
2 the alleged incapacitated person [~~to be protected~~] as specified
3 in the court order. Appointment of a temporary conservator
4 shall not be evidence of incapacity."

5 SECTION 3. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2022.

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