

HOUSE BILL 124

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Joanne J. Ferrary

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PROTECTED PERSONS; AMENDING THE UNIFORM PROBATE CODE TO PROVIDE PROCEDURES UPON THE DEATH OF A PROTECTED PERSON, GUARDIAN OR CONSERVATOR.

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

SECTION 1. Section 45-5-306 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-306, as amended) is amended to read:

"45-5-306. DEATH OF PROTECTED PERSON OR GUARDIAN--

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~~INCAPACITY OF GUARDIAN.--[The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or protected person, the determination of incapacity of the guardian or upon removal or resignation as provided in Section 45-5-307 NMSA 1978. Upon the death of the protected person, the guardian shall submit notice to the appointing court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person.]~~

A. Upon the death of the guardian, the authority and responsibility of the guardian for a protected person terminates. The guardianship of the protected person continues after the death of the guardian, pending the appointment of a successor guardian pursuant to Section 45-5-303 NMSA 1978 and Subsection B of Section 45-5-307 NMSA 1978. Any interested person may notify the court of the guardian's death, and the court shall follow the procedures set out in Section 45-5-303 NMSA 1978 and Subsection B of Section 45-5-307 NMSA 1978 to appoint a successor guardian for the protected person. If the guardian has a testamentary document nominating a successor guardian, the court shall consider the nominee for appointment as successor guardian of the protected person.

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B. Upon the death of the protected person, the guardian shall notify the court within three days of learning of the death of the protected person. The guardian shall have the authority to obtain the death certificate of the protected person without a court order. Upon the death of the protected person, the guardian or an interested person may request that the court hold a hearing for the following limited purposes:

(1) to direct burial, cremation or funeral arrangements for the protected person; provided that the protected person does not have next of kin willing to make those arrangements or a legally executed document appointing a personal representative who is willing to accept those duties; and

(2) to authorize the guardian to use the protected person's estate to pay for reasonable funeral services.

The court shall hold a hearing within seven days of the request and may issue an appropriate order resulting from the hearing.

C. If a protected person dies, the guardian shall deliver to the court for safekeeping any will of the deceased protected person that may have come into the guardian's possession, inform the personal representative or a beneficiary named in the will that the guardian has done so and retain the estate for delivery to a duly appointed personal representative

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of the decedent or other persons entitled to the estate. If, after forty days from the death of the protected person, no other person has been appointed personal representative and no application or petition for appointment has been filed, the guardian may apply to exercise the powers and duties of a personal representative so that the guardian may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon request for an order granting the powers of a personal representative to a guardian, after notice to any person demanding notice under Section 45-3-204 NMSA 1978 and to any person nominated personal representative in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the guardian to note that the formerly protected person is deceased and that the guardian has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Sections 45-3-101 through 45-3-1204 NMSA 1978, except that the estate in the name of the guardian, after administration, may be distributed to the decedent's successors without prior retransfer to the guardian as personal representative.

D. If both the guardian and the conservator seek appointment as the personal representative, the conservator

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shall have priority for appointment as the personal representative of the decedent's estate. In the absence of a conservator, the court may appoint a guardian as the personal representative of the decedent's estate.

E. Upon the determination of the guardian's incapacity, the court shall follow the procedures in Section 45-5-303 NMSA 1978 and Subsection B of Section 45-5-307 NMSA 1978.

F. The guardian shall file a final report with the court within forty-five days of the protected person's death. Upon receipt of the final report, the court shall hold a hearing to determine the deliverance of the decedent's estate to a duly appointed personal representative or other persons entitled to the estate. After holding a hearing, the court shall issue an order terminating the guardianship and the guardian's authority upon the court's satisfaction that all matters are resolved. HJC→~~Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person.~~←HJC "

SECTION 2. Section 45-5-307 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-307, as amended) is amended to read:

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

A. On the petition of the [~~incapacitated~~] protected

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person or any person interested in the [incapacitated] protected person's welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the [incapacitated] protected person or if the guardian fails to comply with the guardian's duties as required by Section 45-5-312 NMSA 1978.

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

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

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

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45-5-303 NMSA 1978.

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

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

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

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

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

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

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

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appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978."

SECTION 3. A new section of the Uniform Probate Code, Section 45-5-412 NMSA 1978, is enacted to read:

"45-5-412. [NEW MATERIAL] DEATH OF PROTECTED PERSON OR CONSERVATOR--INCAPACITY OF CONSERVATOR.--

A. Upon the death of the conservator, the authority and responsibility of the conservator for a protected person terminates. The conservatorship of the protected person continues after the death of the conservator, pending the appointment of a successor conservator pursuant to Section 45-5-407 NMSA 1978 and Subsection B of Section 45-5-415 NMSA 1978. Any interested person may notify the court of the conservator's death, and the court shall follow the procedures set out in Section 45-5-407 NMSA 1978 and Subsection B of Section 45-5-415 NMSA 1978 to appoint a successor conservator for the protected person. If the conservator has a testamentary document nominating a successor conservator, the court shall consider the nominee for appointment as successor conservator of the protected person.

B. Upon the death of the protected person, the conservator shall notify the court within three days of learning of the death of the protected person. The conservator shall have the authority to obtain the death certificate of the protected person without a court order. Upon the death of the

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protected person, the conservator or an interested person may request that the court hold a hearing for the following limited purposes:

(1) to direct burial, cremation or funeral arrangements for the protected person; provided that the protected person does not have next of kin willing to make those arrangements or a legally executed document appointing a personal representative who is willing to accept those duties; and

(2) to authorize the conservator to use the protected person's estate to pay for reasonable funeral services.

The court shall hold a hearing within seven days of the request and may issue an appropriate order resulting from the hearing.

C. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession, inform the personal representative or a beneficiary named in the will that the conservator has done so and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to the estate. If, after forty days from the death of the protected person, no other person has been appointed personal representative and no application or petition for

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appointment has been filed, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon request for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 45-3-204 NMSA 1978 and to any person nominated personal representative in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Sections 45-3-101 through 45-3-1204 NMSA 1978, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

D. If both the guardian and the conservator seek appointment as the personal representative, the conservator shall have priority for appointment as the personal representative of the decedent's estate. In the absence of a conservator, the court may appoint a guardian as the personal

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representative of the decedent's estate.

E. Upon the determination of the conservator's incapacity, the court shall follow the procedures in Section 45-5-407 NMSA 1978 and Subsection B of Section 45-5-415 NMSA 1978.

F. The conservator shall file a final report with the court within forty-five days of the protected person's death. Upon receipt of the final report, the court shall hold a hearing to determine the deliverance of the decedent's estate to a duly appointed personal representative or other persons entitled to the estate. After holding a hearing, the court shall issue an order terminating the conservatorship and the conservator's authority upon the court's satisfaction that all matters are resolved. HJC→Termination←HJC HJC→Unless the procedures of Subsection F of Section 45-5-429 NMSA 1978 are followed, termination←HJC does not affect the conservator's liability for prior acts nor the conservator's obligation to account for funds and assets of the conservator's protected person."

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

"45-5-415. DEATH, SUBSTITUTION, REVIEW AND TERMINATION OF CONSERVATORSHIP.--

A. On the petition of the [incapacitated] protected person or a person interested in the [incapacitated] protected

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

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

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

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

E. In a proceeding that increases the conservator's authority or reduces the autonomy of the ~~[incapacitated]~~

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

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

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

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

(2) appoint a court investigator to assess the [~~incapacitated~~] protected person's capacity. The court

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

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

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

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forth in Section 45-5-407 NMSA 1978."

SECTION 5. Section 45-5-425 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-425) is amended to read:

"45-5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR.--

A. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the protected person and [~~his~~] the protected person's dependents in accordance with the following principles:

(1) the conservator is to consider recommendations relating to the appropriate standard of support, care, education or benefit for the protected person made by a parent, guardian or custodian, if any. [~~He~~] The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to such recommendations of a parent or guardian of the protected person unless [~~he~~] the conservator knows that the parent, guardian or custodian is deriving personal financial benefit therefrom, including relief from [~~any~~] personal duty of support, or unless such recommendations are clearly not in the best interests of the protected person;

(2) the conservator is to expend or distribute sums reasonably necessary for the support, education, care or

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benefit of the protected person with due regard to:

(a) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person at some future time may be fully able to manage ~~[his]~~ the protected person's affairs and the estate ~~[which]~~ that has been conserved for ~~[him]~~ the protected person;

(b) the accustomed standard of living of the protected person and members of ~~[his]~~ the protected person's household; and

(c) other funds or sources used for the support of the protected person;

(3) the conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support; and

(4) funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures ~~[which]~~ that the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that such services will be performed and where advance payments are customary or reasonably necessary under the circumstances.

B. If the estate is ample to provide for the

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purposes implicit in the distributions authorized by Subsection A of this section, a conservator for the protected person other than a minor has power to make gifts to charity and other persons as the protected person might have been expected to make in amounts [~~which~~] that do not exceed in total for any year twenty percent of the income from the estate.

C. When a minor who has not been adjudged disabled under Subsection B of Section [~~5-401~~] 45-5-401 NMSA 1978 attains [~~his~~] majority, [~~his~~] the former minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

D. When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

~~[E. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the personal representative or a beneficiary named therein that he has done so and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If, after forty days from the death of the protected person, no other person~~

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~~has been appointed personal representative and no application or petition for appointment has been filed, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon request for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 3-204 and to any person nominated personal representative in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Sections 3-101 through 3-1204, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.]"~~

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.