

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 19

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

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

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; HJC→~~ENACTING THE UNIFORM  
GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS  
ACT;~~ ←HJC HJC→AMENDING ARTICLE 5 OF THE UNIFORM PROBATE CODE  
ADDRESSING SEPARATE ACCOUNTS AND RECORDS, LIABILITY OF A  
GUARDIAN OR CONSERVATOR, VOTING RIGHTS OF A PROTECTED PERSON,  
NOTICE, CONFIDENTIALITY, VISITATION, ALTERNATE PROTECTIVE  
ARRANGEMENTS, WAIVERS OF LIABILITY AND BONDING; ←HJC AMENDING,  
HJC→~~REPEALING~~ ←HJC AND ENACTING SECTIONS OF THE NMSA 1978.

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

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HJC → SECTION 1. ~~Section 45-3-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-203, as amended) is amended to read:~~

~~"45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.--~~

~~A. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:~~

~~(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;~~

~~(2) the surviving spouse of the decedent who is a devisee of the decedent;~~

~~(3) other devisees of the decedent;~~

~~(4) the surviving spouse of the decedent;~~

~~(5) other heirs of the decedent; [and]~~

~~(6) thirty days after the death of the decedent, a conservator or guardian of the decedent duly appointed pursuant to the Uniform Probate Code; and~~

~~[(6)] (7) forty-five days after the death of the decedent, any creditor.~~

~~B. An objection to an appointment may be made only in formal proceedings. In case of objection, the priorities stated in Subsection A of this section apply except that:~~

~~(1) if the estate appears to be more than~~

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~~adequate to meet allowances and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; and~~

~~(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value of the estate or, in default of this accord, any suitable person.~~

~~C. A person entitled to letters under Paragraphs (2) through [(5)] (6) of Subsection A of this section or a person who has not reached the age of majority and who would be entitled to letters but for the person's age may nominate a qualified person to act as personal representative by an appropriate writing filed with the court and thereby confer the person's relative priority for appointment on the person's nominee. Any person who has reached the age of majority may renounce the right to nominate or to an appointment by an appropriate writing filed with the court. When two or more persons entitled to letters under Paragraphs (2) through [(5)] (6) of Subsection A of this section share a priority, all those who do not renounce must concur in nominating another to act for them or in applying for appointment by an appropriate writing filed with the court. The person so nominated shall have the same priority as those who nominated the person. A~~

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~~nomination or renunciation shall be signed by each person making it, the person's attorney or the person's representative authorized by Subsection D of this section.~~

~~D. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person would have if qualified for appointment.~~

~~E. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court shall determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.~~

~~F. No person is qualified to serve as a personal representative who is:~~

~~(1) under the age of majority; or~~

~~(2) a person whom the court finds unsuitable in formal proceedings.~~

~~G. A personal representative appointed by a court of the decedent's domicile has priority over all other persons~~

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~~except where the decedent's will nominates different persons to be personal representatives in New Mexico and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.~~

~~H. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator."~~←HJC

SECTION HJC→2←HJC HJC→1←HJC. A new section of Part 1 of Article 5 of the Uniform Probate Code, Section 45-5-107 NMSA 1978, is enacted to read:

"45-5-107. [NEW MATERIAL] SEPARATE ACCOUNTS AND RECORDS.--

A. A guardian or conservator shall not commingle the guardian's or conservator's funds or investments with those held by the guardian or conservator as a fiduciary for a minor or an adult. Funds and any investments held by the guardian or conservator as a fiduciary for the minor or the adult shall be held in accounts that are separate from those of the guardian or conservator. If a guardian or conservator serves as fiduciary for one or more individuals subject to guardianship or conservatorship, the guardian or conservator shall hold the funds and any investments held as a fiduciary in a separate account for each individual subject to guardianship or conservatorship. Except as otherwise provided in the Uniform Probate Code, and to the extent that is reasonable and customary, any other property held by the guardian or conservator as a fiduciary for one or more individuals subject

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to guardianship or conservatorship shall be titled separately:

(1) from the guardian's or conservator's property; and

(2) for each individual subject to guardianship or conservatorship.

B. A court at any time may require a guardian to bring a proceeding for a conservatorship if necessary or advisable to:

(1) protect property of a minor or an adult, including any property held by the guardian as a fiduciary for the minor or the adult;

(2) conserve for the minor's future needs all funds of the minor not expended for the minor's current needs; or

(3) conserve for the adult's future needs all funds of the adult not expended for the adult's current needs.

HJC → ~~G. By accepting appointment by a court as guardian or conservator, the guardian or conservator consents to review and examination at any time by the court or its designee of all:~~

~~(1) accounts with financial institutions and other third parties holding funds or investments held by the guardian or conservator as a fiduciary for persons under guardianship or conservatorship;~~

~~(2) other property held by the guardian or~~

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~~conservator as a fiduciary for persons under guardianship or conservatorship; and~~

~~(3) books and records in the possession, custody or control of the guardian or conservator relating to those accounts and that other property.~~

~~D. The guardian or conservator shall cooperate fully to facilitate the review and examination of accounts, property, books and records as set forth in Subsection C of this section.~~

~~E. The guardian or conservator shall maintain those books and records described in Paragraph (3) of Subsection C of this section for no less than seven years, or for such other period as may be provided by the supreme court."←HJC~~

HJC→C. The guardian or conservator shall maintain those books and records that are in the possession, custody or control of the guardian or conservator and that concern the funds, investments or other property held by the guardian or conservator as a fiduciary for an individual for seven years, or for such other period as may be provided by the court."←HJC

SECTION HJC→3←HJC HJC→2←HJC. A new section of Part 1 of Article 5 of the Uniform Probate Code, Section 45-5-108 NMSA 1978, is enacted to read:

"45-5-108. [NEW MATERIAL] LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.--A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship."

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SECTION HJC→4←HJC HJC→3←HJC. A new section of Part 1 of Article 5 of the Uniform Probate Code, Section 45-5-109 NMSA 1978, is enacted to read:

"45-5-109. [NEW MATERIAL] VOTING RIGHTS.--The voting rights of a protected person shall not be abridged or restricted except pursuant to Article 7, Section 1 of the constitution of New Mexico."

SECTION HJC→5←HJC HJC→4←HJC. Section 45-5-303 NMSA 1978 (being Laws 1989, Chapter 252, Section 5, as amended) is amended to read:

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

~~[A. An interested person may file a petition for the appointment of a person to serve as guardian for an alleged incapacitated person under the Uniform Probate Code. The petition shall state the following:~~

~~(1) the name, date of birth and address of the alleged incapacitated person for whom the guardian is sought to be appointed;~~

~~(2) the nature of the alleged incapacity as it relates to the functional limitations and physical and mental condition of the alleged incapacitated person and the reasons why guardianship is being requested;~~

~~(3) if a limited guardianship is sought, the particular limitations requested;~~

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~~(4) whether a guardian has been appointed or is acting in any state for the alleged incapacitated person;~~

~~(5) the efforts that have been made that demonstrate due diligence to locate the other court-appointed guardian, agent or surrogate designated by the allegedly incapacitated person;~~

~~(6) the name and address of the proposed guardian;~~

~~(7) the name and address of two persons able to contact the proposed guardian if address or telephone contact information of the proposed guardian changes;~~

~~(8) the names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;~~

~~(9) the name and address of the person or institution having the care and custody of the alleged incapacitated person;~~

~~(10) the number of other protected persons served by the proposed guardian, the other protected persons' relationships to the proposed guardian and the types of guardianship held if the proposed guardian is an individual;~~

~~(11) the reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment;~~

~~(12) the steps taken to find less restrictive alternatives to the proposed guardianship; and~~

~~(13) the qualifications of the proposed~~

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~~guardian, including whether the guardian has ever been convicted of a felony.]~~

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

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

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

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

~~HJC→(a) spouse or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person has shared household responsibilities for more than six months in the twelve-month period immediately preceding the filing of the petition;~~←HJC

HJC→(a) spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of

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indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person consider themselves to be responsible for each other's well-being; ←HJC

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

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

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

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

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

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

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

(e) a trustee or custodian of a trust or

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custodianship of which the alleged incapacitated person is a beneficiary;

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

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

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

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

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

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

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

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

(a) the nature and extent of the alleged

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incapacitated person's alleged need;

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

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

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

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

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

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

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

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

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

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proceedings.

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

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

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

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

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to

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make health care decisions and manage the activities of daily living.

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

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

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

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

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

[F.] G. A person alleged to be incapacitated shall

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be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court.

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

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

~~[I.] A record of the proceedings shall be made if requested by the alleged incapacitated person or the alleged incapacitated person's attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential, except that the public shall be granted access to the following information:~~

- ~~(1) docket entries;~~
- ~~(2) date of the proceeding, appointment and~~

~~termination;~~

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~~(3) duration of the guardianship; and  
(4) the name and other information necessary  
to identify the alleged incapacitated person.]~~

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

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

(2) either:

(a) the petition for guardianship is  
dismissed; or

(b) the guardianship is terminated.

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

L. A report pursuant to Subsections E and F of this

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section or a written report filed pursuant to Section 45-5-303.1 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

(1) the court;

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

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

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

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

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

[K.] HJC→N. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at a closed hearing unless the alleged incapacitated person requests otherwise. ←HJC

HJC→N. The issue of whether a guardian shall

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be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise. ←HJC

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

SECTION HJC→6←HJC HJC→5←HJC. Section 45-5-309 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-309, as amended) is amended to read:

"45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

~~[A. In a proceeding for the appointment or removal of a guardian of an incapacitated person, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:~~

- ~~(1) the person alleged to be incapacitated;~~
- ~~(2) the person's spouse, parents and adult children, or if there are no adult children, at least one of the person's closest adult relatives if any can be found;~~
- ~~(3) the proposed guardian; and~~
- ~~(4) a person, as far as known or as can reasonably be ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes but is not limited to writings executed under the Uniform Health-Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code and~~

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~~the Uniform Trust Code.~~

~~Notice of hearing shall be given to a person who is serving as the guardian or conservator of the person to be protected or who has primary responsibility for the person's care.~~

~~B. Notice shall be served personally on the alleged incapacitated person and the person's spouse if they can be found within New Mexico. Notice to an out-of-state spouse, the parents and to all other persons, except the alleged incapacitated person, shall be given as provided in Section 45-1-401 NMSA 1978.~~

~~C. At least fourteen days' notice shall be given before the hearing takes place. The notice shall be in plain language and large type and shall include the following information and shall be substantially in the following form:~~

~~"NOTICE~~

~~TO: (name and address of person receiving notice)~~

~~On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed for (name of alleged incapacitated person). The purpose of this proceeding is to protect (name of alleged incapacitated person). A copy of the petition requesting appointment of a guardian is attached to this notice.~~

~~At the hearing, the court will determine whether (name of~~

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~~alleged incapacitated person) is an incapacitated person under New Mexico law.~~

~~If the court finds that (name of alleged incapacitated person) is incapacitated, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person) to retain control over certain activities.~~

~~(Name of alleged incapacitated person) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not possible. If (name of alleged incapacitated person) attends the hearing and is not represented by an attorney, the court must appoint an attorney to represent the alleged incapacitated person.~~

~~The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.~~

\_\_\_\_\_  
\_\_\_\_\_  
~~(signature of petitioner)]~~

A. On filing of a petition under Section 45-5-303 NMSA 1978 for appointment of a guardian for an HJC→adult←HJC alleged incapacitated person, the court shall set a date, time and place for hearing the petition.

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B. A copy of a petition under Section 45-5-303 NMSA 1978 and notice of a hearing on the petition shall be served personally on the alleged incapacitated person. The notice shall inform the alleged incapacitated person of the alleged incapacitated person's rights at the hearing and the right to attend the hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the alleged incapacitated person.

C. In a proceeding on a petition under Section 45-5-303 NMSA 1978, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Section 45-5-303 NMSA 1978 and any other person interested in the alleged incapacitated person's welfare that the court determines. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

D. After the appointment of a guardian, notice of a hearing on a petition for HJC→~~an~~←HJC HJC→~~any~~←HJC order under Part 3 of Chapter 45, Article 5 NMSA 1978, together with a copy of the petition, shall be given to:

- (1) the protected person subject to guardianship;
- (2) the guardian; and

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(3) any other person the court determines."

SECTION HJC→7←HJC HJC→6←HJC. Section 45-5-312 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-312, as amended) is amended to read:

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

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

B. A guardian of HJC→an incapacitated ←HJC HJC→a protected ←HJC person has the same powers, rights and duties respecting the HJC→incapacitated ←HJC HJC→protected ←HJC person that a parent has respecting an unemancipated minor child, except that a guardian is not legally obligated to

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provide from the guardian's own funds for the HJC→incapacitated  
←HJC HJC→protected ←HJCperson and is not liable to third  
persons for acts of the HJC→incapacitated←HJC HJC→protected  
←HJC person solely by reason of the guardianship. In  
particular and without qualifying the foregoing, a guardian or  
the guardian's replacement has the following powers and duties,  
except as modified by order of the court:

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

(2) if entitled to custody of the  
HJC→incapacitated←HJC HJC→protected ←HJC person, a guardian  
shall make provision for the care, comfort and maintenance of  
the HJC→incapacitated←HJC HJC→protected ←HJC person and,  
whenever appropriate, arrange for training and education. The  
guardian shall take reasonable care of the HJC→incapacitated  
←HJC HJC→protected ←HJCperson's clothing, furniture, vehicles  
and other personal effects and commence conservatorship  
proceedings if other property of the HJC→incapacitated←HJC  
HJC→protected ←HJC person is in need of protection;

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

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

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

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

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

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

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

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

(5) the guardian shall exercise the

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guardian's supervisory powers over the HJC→~~incapacitated~~←HJC  
HJC→protected←HJC person in a manner that is least restrictive  
of the HJC→~~incapacitated~~←HJC HJC→protected ←HJCperson's  
personal freedom and consistent with the need for supervision.

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

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

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

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

(1) authorized by the court by specific order;

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

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

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

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

HJC→SECTION 7. Section 45-5-314 NMSA 1978 (being Laws

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1989, Chapter 252, Section 14, as amended) is amended to read:

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

A. The guardian of an incapacitated person shall file an initial report with the appointing court within ninety days of the guardian's appointment. Thereafter, the guardian shall file an annual report within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or the judge's successor, to the incapacitated person and to the incapacitated person's conservator, if any. The court shall review this report. The report shall include information concerning the progress and condition of the incapacitated person, including ~~[but not limited to]~~ the incapacitated person's health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978, the report shall contain information on financial decisions made by the guardian. The report ~~[shall]~~ may be substantially in the following form:

"STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT COURT

IN THE MATTER OF THE GUARDIANSHIP OF \_\_\_\_\_

\_\_\_\_\_

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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 # \_\_\_\_\_

Relation to Protected Person \_\_\_\_\_

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

I am filing a Final Report because of: \_\_\_ My resignation

\_\_\_ Death of the Protected Person \_\_\_ Court Order

\_\_\_ Other (please explain): \_\_\_\_\_

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

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

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

Date and place of death: \_\_\_\_\_

Name of personal representative if appointed: \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

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

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

\_\_\_ Hospital/medical facility \_\_\_ Protected Person's home

\_\_\_ Guardian's home \_\_\_ Relative's home (explain below)

\_\_\_ Nursing home \_\_\_ Boarding/Foster/Group Home

\_\_\_ Other: \_\_\_\_\_

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[REDACTED]

(B) During the past year or 90 days (if first report), has the Protected Person changed his/her residence? \_\_\_\_\_

Do you anticipate a change of residence for the protected person in the next year? \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_.

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

\_\_\_\_\_ Yes \_\_\_\_\_ No

Identify the health care providers.

Physician: \_\_\_\_\_

Dentist (if any): \_\_\_\_\_

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

\_\_\_\_\_

Other: \_\_\_\_\_

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

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Remained the same \_\_\_\_\_

Primary diagnosis: \_\_\_\_\_

\_\_\_\_\_ improved \_\_\_\_\_ deteriorated

(explain) \_\_\_\_\_

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

Major diagnosis, if any: \_\_\_\_\_

Improved \_\_\_\_\_ deteriorated (explain) \_\_\_\_\_

If physical or mental health has deteriorated, please explain:

\_\_\_\_\_

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

\_\_\_\_\_

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

Recreational Activities: \_\_\_\_\_

Educational Activities: \_\_\_\_\_

Social Activities: \_\_\_\_\_

List Active Friends and/or Relatives: \_\_\_\_\_

Occupational activities: \_\_\_\_\_

Other: \_\_\_\_\_

11. Describe briefly any contracts entered into and major  
decisions made on behalf of the Protected Person during the

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past year or 90 days (if initial report): \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

13. I believe the Protected Person has unmet needs.

Yes (explain)  No

\_\_\_\_\_

If yes, indicate efforts made to meet these needs: \_\_\_\_\_

\_\_\_\_\_

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

Explain why or why not: \_\_\_\_\_

\_\_\_\_\_

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

remain the same  be decreased  be increased

Why: \_\_\_\_\_

\_\_\_\_\_

16. Additional information concerning the Protected Person or

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myself (the guardian) that I wish to share with the Court:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. If the court has granted you the authority to make financial decisions on behalf of the Protected Person, then please describe the decisions you have made for the protected person: \_\_\_\_\_.

Signature of Guardian: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_."

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

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

~~[G-]~~ D. The court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed sixty days. The court may

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require the filing of more than one report annually.

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

SECTION 8. Section 45-5-404 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-404, as amended) is amended to read:

"45-5-404. ORIGINAL PETITION FOR APPOINTMENT OF CONSERVATOR.--

~~A. Any of the following persons may petition for the appointment of a conservator:~~

~~(1) the person for whom a conservator is sought;~~

~~(2) any person who is interested in the estate, affairs or welfare of the person to be protected, including his spouse, parent, guardian or custodian; or~~

~~(3) any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected.~~

~~B. The petition shall state the following:~~

~~(1) the interest of the petitioner;~~

~~(2) the name, age, residence and address of the person for whom a conservator is sought;~~

~~(3) the name and address of the guardian, if any, of the person for whom a conservator is sought;~~

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~~(4) the names and addresses, as far as known or as can be reasonably ascertained, of the persons most closely related by blood or marriage to the person for whom a conservator is sought;~~

~~(5) the approximate value and description of the property of the person for whom a conservator is sought, including any compensation, insurance, pension or allowance to which the person may be or is entitled;~~

~~(6) the reasons why appointment of a conservator is necessary, including but not limited to evidence of the person's recent behavior that demonstrates gross mismanagement of his income and resources to the extent that it has led or is likely to lead in the near future to waste and dissipation of the income and resources;~~

~~(7) the name and address of the person or institution, if any, having the care and custody of the person for whom a conservator is sought;~~

~~(8) the steps taken to find less restrictive alternatives to the proposed conservatorship;~~

~~(9) the name and address of the person whose appointment is sought;~~

~~(10) the basis of his priority for appointment;~~

~~(11) the names and addresses of any other persons for whom the proposed conservator is a conservator if the proposed conservator is an individual; and~~

~~(12) the qualifications of the proposed conservator.]~~

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A. The following may petition for the appointment of a conservator:

(1) a person interested in the estate, financial affairs or welfare of an individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of an individual;  
or

(2) the guardian for an individual.

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

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

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

HJC → ~~(a) spouse or, if the alleged~~

~~incapacitated person has none, an adult with whom the alleged  
incapacitated person has shared household responsibilities for  
more than six months in the twelve-month period before the~~

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~~filing of the petition;~~←HJC

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

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

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

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

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

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

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

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

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

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

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

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

(i) a person known to have routinely assisted the alleged incapacitated person with decision making in the six-month period immediately before the filing of the petition; and

(j) any proposed conservator, including a person nominated by the alleged incapacitated person;

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

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(5) the reason conservatorship is necessary, including a brief description of:

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

(b) if the petition alleges the alleged incapacitated person is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the alleged incapacitated person's whereabouts;

(c) any less restrictive alternative for meeting the alleged incapacitated person's alleged need that has been considered or implemented;

(d) if no less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and

(e) the reason a less restrictive alternative is insufficient to meet the alleged incapacitated person's need;

(6) whether the petitioner seeks a limited conservatorship or a full conservatorship;

(7) if the petitioner seeks a full conservatorship, the reason a limited conservatorship instead of conservatorship is not appropriate;

(8) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;

(9) if the petition is for a limited

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conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;

(10) whether the alleged incapacitated person needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and

(11) the name and address of an attorney representing the petitioner, if any."

SECTION 9. Section 45-5-405 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-405, as amended) is amended to read:

"45-5-405. NOTICE IN CONSERVATORSHIP PROCEEDINGS.--

~~[A. In a proceeding for the appointment or removal of a conservator of an incapacitated person or a person to be protected, other than the appointment of a temporary conservator or the temporary suspension of a conservator, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:~~

~~(1) the person to be protected; and~~

~~(2) his spouse, parents and adult children, or~~

~~if there are no adult children, at least one of his closest adult relatives if any can be found.~~

~~Notice of hearing shall be given to any person who is serving as the guardian or conservator of the person to be~~

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~~protected or who has primary responsibility for his care.~~

~~B. Notice shall be served personally on the person to be protected and his spouse if the spouse can be found within New Mexico. Notice to an out-of-state spouse, parent and all other persons, except the person to be protected, shall be given as provided in Section 45-1-401 NMSA 1978.~~

~~C. At least fourteen days' notice shall be given before the hearing takes place. The notice should be in plain language and large type and shall include the following information and shall be substantially in the following form:~~

~~"NOTICE~~

~~TO: (name and address of person receiving notice)~~

~~On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a conservator should be appointed for (name of the person to be protected). The purpose of this proceeding is to appoint a conservator. A copy of the petition requesting appointment of a conservator is attached to this notice.~~

~~At the hearing, the court will determine whether (name of person to be protected) needs to be protected by a conservator under New Mexico law.~~

~~If the court finds that (name of the person to be protected) is in need of a conservator, the court at the hearing shall also consider whether (name of proposed conservator, if any) should be appointed as conservator of (name of person to be protected). The court may, in its discretion, appoint some other qualified person as conservator.~~

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~~The court may also, in its discretion, limit the powers and duties of the conservator to allow (name of person to be protected) to retain control over certain activities.~~

~~(Name of person to be protected) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of person to be protected) if the court determines that the presence of (name of person to be protected) is not required. If (name of person to be protected) attends the hearing and is not represented by an attorney, the court shall appoint an attorney to represent the person to be protected.~~

\_\_\_\_\_

~~(signature of petitioner)".~~

~~D. Notice of a petition for appointment of a conservator and of any subsequent hearing shall be given to any interested person who has filed a request for notice under Section 45-5-406 NMSA 1978 and to such other persons as the court may direct. Except as otherwise provided in Subsection A of this section, notice shall be given in accordance with Section 45-1-401 NMSA 1978.]~~

A. On filing of a petition under Section 45-5-404 NMSA 1978 for appointment of a conservator, the court shall set a date, time and place for a hearing on the petition.

B. A copy of a petition under Section 45-5-404 NMSA 1978 and notice of a hearing on the petition shall be served

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personally on the alleged incapacitated person. If the alleged incapacitated person's whereabouts are unknown or personal service cannot be made, service on the alleged incapacitated person shall be made as provided in Section 45-1-401 NMSA 1978. The notice shall inform the alleged incapacitated person of the alleged incapacitated person's rights at the hearing and the right to attend the hearing. The notice also shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the alleged incapacitated person.

C. In a proceeding on a petition under Subsection B of this section, the notice required shall be given to the persons required to be listed in the petition under Section 45-5-404 NMSA 1978 and any other person interested in the alleged incapacitated person's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

D. After the appointment of a conservator, notice of a hearing on a petition for an order under Part 4 of Chapter 45, Article 5 NMSA 1978, together with a copy of the petition, shall be given to:

(1) the protected person subject to conservatorship if the protected person is not missing, detained or unable to return to the United States;

(2) the conservator; and

(3) any other person the court determines."

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HJC→SECTION 10. Section 45-5-405.1 NMSA 1978 (being Laws 1993, Chapter 301, Section 26) is amended to read:

"45-5-405.1. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED.--

A. If after notice in accordance with Section 45-5-405 NMSA 1978 to all interested persons, as defined in Section 45-1-201 NMSA 1978, and after hearing, it is established that a basis exists as described in Section 45-5-401 NMSA 1978 for affecting the estate and financial affairs of a person, the court, without appointing a conservator, may ~~[authorize, direct or ratify any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the person. The court shall appoint a guardian ad litem to represent the interests of the person at the hearing. Protective arrangements and single transactions include:~~

~~(1) payment, delivery, deposit or retention of funds or property;~~

~~(2) sale, mortgage, lease or other transfer of property;~~

~~(3) entry into an annuity contract, a contract for life care, a deposit contract and a contract for training and education; and~~

~~(4) addition to or establishment of a trust.~~

~~B. When it has been established in a proceeding authorized by this section that a basis exists as described in~~

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~~Section 45-5-401 NMSA 1978 for affecting the estate and financial affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other single transaction relating to the protected person's estate and financial affairs if the court finds that the transaction is in the best interests of the protected person.~~

~~G. Before approving a transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the disability, whether the protected person needs the continuing protection of a conservator. The court may appoint one or more persons to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. That person shall have the authority conferred by order of the court, shall serve until discharged by order of the court and shall report to the court of all matters done pursuant to the court's order] issue an order pursuant to Subsection B of this section for a protective arrangement instead of conservatorship for the person. Unless the person already has an attorney of the person's own choice, the court shall appoint an attorney to represent the person at the hearing. The court-appointed attorney shall have the duties of a guardian ad litem, as set forth in Section 45-5-404.1 NMSA 1978.~~

B. The court, instead of appointing a conservator, may:

(1) authorize a person or direct a person to execute a transaction necessary to protect the financial

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interest or property of the protected person, including:

(a) an action to establish eligibility for benefits;

(b) payment, delivery, deposit or retention of funds or property;

(c) sale, mortgage, lease or other transfer of property, including water rights and oil, gas and other mineral interests;

(d) purchase of an annuity;

(e) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(f) addition to or establishment of a trust;

(g) ratification or invalidation of a contract, trust or other transaction, including a transaction related to the property or business affairs of the protected person; or

(h) settlement of a claim; or

(2) restrict access to the protected person's property by a specified person whose access to the property places the protected person at serious risk of financial harm.

C. After the notice and hearing pursuant to Subsection A of this section, the court may issue an order to

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restrict access to the protected person or the protected person's property by a specified person that the court finds by clear and convincing evidence:

(1) through fraud, coercion, duress or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the protected person or the protected person's property; and

(2) poses a serious risk of substantial financial harm to the protected person or the protected person's property.

D. Before issuing an order pursuant to Subsection B or C of this section, the court shall consider the factors described in Section 45-5-417 NMSA 1978 that a conservator shall consider when making a decision on behalf of an individual subject to conservatorship.

E. Before issuing an order pursuant to Subsection B or C of this section for a protected person who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor and the preference of the minor, if the minor is twelve years of age or older.

F. Before issuing an order pursuant to Subsection B or C of this section for a protected person who is an adult, the court shall also consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable."←HJC

SECTION HJC→10←HJC HJC→11←HJC. Section 45-5-407 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-407, as amended) is amended to read:

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

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

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

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

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in writing to the court. The report shall:

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

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

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

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

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

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

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

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

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

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

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

(2) ascertain [~~his~~] the person's capacity to manage [~~his~~] the person's financial affairs.

H. If it is determined that the person to be protected possesses the capacity to manage [~~his~~] the person's

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estate or financial affairs, or both, the court shall dismiss the petition.

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

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

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

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

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

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

J. After hearing, upon finding that a basis for the appointment of a conservator has been established, the court shall make an appointment of a conservator. The court shall appoint a limited conservator if it determines that the incapacitated person is able to manage some but not all aspects of ~~his~~ the incapacitated person's estate and financial affairs. The court shall specify those powers that the limited

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conservator shall have and may further restrict each power so as to permit the incapacitated person to care for ~~[his]~~ the incapacitated person's estate and financial affairs commensurate with ~~[his]~~ the incapacitated person's ability to do so.

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

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

~~[M. A record of the proceedings shall be made if requested by the person to be protected, his attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential, except that the public shall be granted access to the following information:~~

- ~~(1) docket entries;~~
- ~~(2) date of the proceeding, appointment and termination;~~

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~~(3) duration of the conservatorship and whether limited or unlimited;~~  
~~(4) for a limited conservatorship, the nature of the limitation; and~~  
~~(5) the name and other information necessary to identify the alleged incapacitated person.]~~

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

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

(2) either:

(a) the petition for conservatorship is dismissed; or

(b) the conservatorship is terminated.

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

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conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or individual.

O. A report under Section 45-5-409 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

(1) the court;

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

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

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

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

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

[O.] HJC→Q. ~~The issue of whether a conservator shall be appointed shall be determined by the court at a closed~~

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~~hearing unless the person to be protected requests~~

~~otherwise.~~ ←HJC

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

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

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

HJC → ~~SECTION 11. A new section of Part 4 of Article 5 of the Uniform Probate Code, Section 45-5-409.1 NMSA 1978, is enacted to read:~~

~~"45-5-409.1. [NEW MATERIAL] CONSERVATOR'S REPORT AND ACCOUNTING--NOTICE AND HEARING--WAIVER OF LIABILITY.--~~

~~A. Notice of the filing under this section of a conservator's report, together with a copy of the report, shall be provided to the individual under conservatorship, a person entitled to notice under Section 45-5-405 NMSA 1978 or a subsequent order and any other person the court determines. The notice and report shall be given not later than fourteen days after filing.~~

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~~B. If the court determines that there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:~~

~~(1) shall notify the individual under conservatorship, the conservator, any other person entitled to notice under Section 45-5-405 NMSA 1978 or a subsequent order and any other person the court determines;~~

~~(2) may require additional information from the conservator;~~

~~(3) may appoint a visitor to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and~~

~~(4) consistent with Section 45-5-416 NMSA 1978, may hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.~~

~~C. If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees and give notice of the hearing to the individual under conservatorship, a person entitled to notice under Section 45-5-405 NMSA 1978 or under a subsequent order and any other person the court determines.~~

~~D. A conservator may petition the court for~~

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~~approval of a report filed under this section. The conservator shall send a copy of the petition to the adult subject to conservatorship and to a person entitled to notice pursuant to Subsection A of this section and shall file proof of the sending of the petition with the court. The court shall not approve the report until the later of thirty days after its filing and fourteen days after the petition was sent to the persons entitled to notice. The court may then approve the report with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the conservator, the person under conservatorship or a person entitled to notice pursuant to Subsection A of this section requests a hearing in connection with the report, the court after review shall not approve the report without:~~

~~————— (1) notice to the individual subject to conservatorship, a person entitled to notice under Section 45-5-405 NMSA 1978 or under a subsequent order and any other person the court determines; and~~

~~————— (2) a hearing.~~

~~————— E. An order, after timely notice and hearing, approving an interim report of a conservator filed under this section adjudicates liabilities concerning a matter adequately disclosed in the report as to a person given timely notice of the report or accounting and the hearing.~~

~~————— F. An order, after timely notice and hearing, approving a final report filed under this section discharges the conservator from all liabilities, claims and causes of~~

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~~action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.~~

~~G. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator or an agent or affiliate of a conservator:~~

~~(1) concerning any matter not adequately disclosed in a report or accounting filed pursuant to Subsection E or F of this section; or~~

~~(2) from a person who was not given, in a timely manner, a copy of the report or accounting and a notice of the hearing pursuant to Subsection E or F of this section.~~

~~H. A release or waiver of liability that is requested, procured or received contrary to the provisions of Subsection G of this section is void."~~←HJC

HJC→SECTION 12. Section 45-5-409 NMSA 1978 (being Laws 1989, Chapter 252, Section 22, as amended) is amended to read:

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

A. Every conservator shall file an annual report and account with the appointing court within thirty days of the anniversary date of the conservator's appointment, upon the conservator's resignation or removal or upon termination of the conservatorship. A copy of the annual report and account shall also be mailed to the district judge who appointed the conservator or [his] the conservator's successor, to the incapacitated person and to [his] the incapacitated person's

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guardian, if any. The report shall include information concerning the progress and condition of the person under conservatorship, a report on the manner in which the conservator carried out ~~his~~ the conservator's powers and fulfilled ~~his~~ the conservator's duties and the conservator's opinion regarding the continued need for conservatorship. The report may be substantially in the following form:

"IN THE DISTRICT COURT

\_\_\_\_\_ COUNTY, STATE OF NEW MEXICO

In the matter of the \_\_\_\_\_ ) No. \_\_\_\_\_

Conservatorship of \_\_\_\_\_ )

\_\_\_\_\_ )

(Enter Name of Person Under Conservatorship)

CONSERVATOR'S REPORT AND ACCOUNT

Pursuant to Section ~~[45-5-407]~~ 45-5-409 NMSA 1978, the undersigned duly appointed, qualified and acting conservator of the above-mentioned protected person reports to the court as follows:

1. My name is: \_\_\_\_\_

2. My address and telephone number are: \_\_\_\_\_

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

\_\_\_\_\_

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

5. The name and address of any hospital or other institution where the person under conservatorship is now

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admitted on a temporary basis are: \_\_\_\_\_

6. A brief description of the physical condition of the person under conservatorship is: \_\_\_\_\_

7. A brief description of the mental condition of the person under conservatorship is: \_\_\_\_\_

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

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

10. The reasons, if any, why the conservatorship should continue are: \_\_\_\_\_

Signature of Conservator: \_\_\_\_\_

Date: \_\_\_\_\_".

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

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

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

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

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

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

SECTION 13. A new section of Part 4 of Article 5 of the Uniform Probate Code, Section 45-5-409.1 NMSA 1978, is enacted to read:

"45-5-409.1. [NEW MATERIAL] WAIVER OF LIABILITY.--

A. No person shall request, procure or receive a

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release or waiver of liability, however denominated, of a conservator, an agent, an affiliate or a designee of a conservator or any other third party acting on behalf of a conservator.

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

SECTION HJC→12←HJC HJC→14←HJC. Section 45-5-411 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-411) is amended to read:

"45-5-411. BOND AND TERMS--REQUIREMENTS OF BONDS.--

~~[A. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify specifies. Unless otherwise directed, the bond shall be in the amount of the total value of the property of the estate in his control plus one year's estimated income less the value of securities deposited under arrangements requiring an order of the court for their removal less the value of property which may not be sold or conveyed without an order of the court. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond.~~

~~B. If the veterans administration is paying or planning to pay benefits to a person to be protected, the court may, upon the request of the veterans administration, require a~~

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~~bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify.]~~

A. Except as otherwise provided in Subsection C of this section, the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in Subsection C of this section, the court shall not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

B. Unless the court directs otherwise, the bond required under this section shall be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

C. A financial institution that possesses and is exercising general trust powers in New Mexico is not required to give a bond under this section. As used in this subsection, "financial institution" means a state- or federally chartered,

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federally insured depository bank or trust company.

D. The following rules apply to the bond required under this section:

(1) except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable;

(2) by executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of conservatorship in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding shall be given to the surety;

(3) on petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond; and

(4) a proceeding against the bond may be brought until liability under the bond is exhausted.

E. If a bond under this section is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the protected person subject to conservatorship."

HJC → ~~SECTION 13. A new section of a new Part 7 of Article 5 of the Uniform Probate Code, Section 45-5-701 NMSA 1978, is enacted to read:~~

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~~"45-5-701. [NEW MATERIAL] PETITION FOR PROTECTIVE~~

~~ARRANGEMENT.--A petition for a protective arrangement instead of guardianship or conservatorship shall state the petitioner's name, principal residence, current street address, if different, relationship to the protected person, interest in the protective arrangement, the name and address of any attorney representing the petitioner and, to the extent known, the following:~~

~~A. the protected person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the protected person will reside if the petition is granted;~~

~~B. the name and address of the protected person's:~~

~~(1) spouse or, if the protected person has none, an adult with whom the protected person has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;~~

~~(2) adult children or, if none, each parent and adult sibling of the protected person, or, if none, at least one adult nearest in kinship to the protected person who can be found with reasonable diligence; and~~

~~(3) adult stepchildren whom the protected person actively parented during the stepchildren's minor years and with whom the protected person had an ongoing relationship in the two-year period immediately before the filing of the petition;~~

~~G. the name and current address of each of the following, if applicable:~~

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- ~~(1) a person responsible for the care or custody of the protected person;~~
- ~~(2) any attorney currently representing the protected person;~~
- ~~(3) the representative payee appointed by the federal social security administration for the protected person;~~
- ~~(4) a guardian or conservator acting for the protected person in New Mexico or another jurisdiction;~~
- ~~(5) a trustee or custodian of a trust or custodianship of which the protected person is a beneficiary;~~
- ~~(6) the fiduciary appointed for the protected person by the federal department of veterans affairs;~~
- ~~(7) an agent designated under a power of attorney for health care in which the protected person is identified as the principal;~~
- ~~(8) an agent designated under a power of attorney for finances in which the protected person is identified as the principal;~~
- ~~(9) a person nominated as guardian or conservator by the protected person if the protected person is twelve years of age or older;~~
- ~~(10) a person nominated as guardian by the protected person's parent or spouse in a will or other signed record;~~

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~~(11) a person known to have routinely assisted the protected person with decision making in the six-month period immediately before the filing of the petition; and~~

~~(12) if the protected person is a minor:~~

~~(a) an adult not otherwise listed with whom the protected person resides; and~~

~~(b) each person not otherwise listed that had primary care or custody of the protected person for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;~~

~~D. the nature of the protective arrangement sought;~~

~~E. the reason the protective arrangement sought is necessary, including a brief description of:~~

~~(1) the nature and extent of the protected person's alleged need;~~

~~(2) any less restrictive alternative for meeting the protected person's alleged need that has been considered or implemented;~~

~~(3) if no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and~~

~~(4) the reason other less restrictive alternatives are insufficient to meet the protected person's alleged need;~~

~~F. the name and current address, if known, of any person with whom the petitioner seeks to limit the protected~~

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~~person's contact;~~

~~G. whether the protected person needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;~~

~~H. if a protective arrangement instead of guardianship is sought and the protected person has property other than personal effects, a general statement of the protected person's property with an estimate of its value, including any insurance or pension and the source and amount of any other anticipated income or receipts; and~~

~~I. if a protective arrangement instead of conservatorship is sought, a general statement of the protected person's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts."~~

~~SECTION 14. A new section of a new Part 7 of Article 5 of the Uniform Probate Code, Section 45-5-702 NMSA 1978, is enacted to read:~~

~~"45-5-702. [NEW MATERIAL] NOTICE AND HEARING FOR PROTECTIVE ARRANGEMENT.--~~

~~A. On filing of a petition under Section 45-5-701 NMSA 1978, the court shall set a date, time and place for a hearing on the petition.~~

~~B. A copy of a petition under Section 45-5-701 NMSA 1978 and notice of a hearing on the petition shall be served~~

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~~personally on the protected person. The notice shall inform the protected person of the protected person's rights at the hearing, including the right to an attorney and to attend the hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the protected person.~~

~~C. In a proceeding on a petition under Section 45-5-701 NMSA 1978, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Subsections A through C of Section 45-5-701 NMSA 1978 and any other person interested in the protected person's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.~~

~~D. After the court has ordered a protective arrangement pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978, notice of a hearing on a petition filed under the Uniform Probate Code, together with a copy of the petition, shall be given to the protected person and any other person the court determines."~~

~~SECTION 15. A new section of a new Part 7 of Article 5 of the Uniform Probate Code, Section 45-5-703 NMSA 1978, is enacted to read:~~

~~"45-5-703. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.--~~

~~A. Except as otherwise provided in Subsection B of this section, a hearing pursuant to Part 7 of Chapter 45,~~

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~~Article 5 NMSA 1978 shall not proceed unless the protected person attends the hearing. If it is not reasonably feasible for the protected person to attend a hearing at the location that court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location more convenient to the protected person or allow the protected person to attend the hearing using real-time audio-visual technology, if available.~~

~~B. A hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978 may proceed without the protected person in attendance if the court finds by clear and convincing evidence that:~~

~~(1) the protected person consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;~~

~~(2) there is no practicable way for the protected person to attend and participate in the hearing even with appropriate supportive services and technological assistance; or~~

~~(3) the protected person is a minor who has received proper notice and attendance would be harmful to the minor.~~

~~G. The protected person may be assisted in a hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978~~

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~~by a person or persons of the protected person's choosing; assistive technology; an interpreter or translator; or a combination of these supports. If assistance would facilitate the protected person's participation in the hearing but is not otherwise available to the protected person, the court shall make reasonable efforts to provide it.~~

~~D. The protected person has a right to choose an attorney to represent the protected person at a hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978.~~

~~E. At a hearing pursuant to Part 7 of Article 5 of the Uniform Probate Code, the protected person may:~~

~~(1) present evidence and subpoena witnesses and documents;~~

~~(2) examine witnesses, including any court-appointed evaluator and the visitor; and~~

~~(3) otherwise participate in the hearing.~~

~~F. A hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978 shall be closed on request of the protected person and a showing of good cause.~~

~~G. Any person may request to participate in a hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978. The court may grant the request, with or without a hearing, on determining that the best interest of the protected person will be served. The court may impose appropriate conditions on the person's participation."~~

~~SECTION 16. A new section of a new Part 7 of Article 5 of the Uniform Probate Code, Section 45-5-704 NMSA 1978, is enacted to read:~~

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~~"45-5-704. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--~~

~~A. The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:~~

~~(1) the protected person, the individual subject to the protective arrangement or the parent of a minor subject to the protective arrangement requests the record be sealed; and~~

~~(2) either:~~

~~(a) the proceeding is dismissed;~~

~~(b) the protective arrangement is no longer in effect; or~~

~~(c) an act authorized by the order granting the protective arrangement has been completed.~~

~~B. A protected person, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the protected person or individual, a parent of a minor subject to a protective arrangement and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the protected~~

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~~person or individual subject to a protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the protected person or individual.~~

~~G. A report of a visitor or professional evaluation generated in the course of a proceeding pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978 shall be sealed on filing, but is available to:~~

~~(1) the court;~~

~~(2) the individual who is the subject of the report or evaluation, without limitation as to use;~~

~~(3) the petitioner, the visitor and the petitioner's and protected person's attorneys, for purposes of the proceeding;~~

~~(4) unless the court orders otherwise, an agent appointed under a power of attorney for finances in which the protected person is the principal;~~

~~(5) if the order is for a protective arrangement instead of guardianship and unless the court orders otherwise, an agent appointed under a power of attorney for health care in which the protected person is identified as the principal; and~~

~~(6) any other person if it is in the public interest or for a purpose the court orders for good cause."~~←HJC

## ARTICLE 1

### GENERAL PROVISIONS

HJC→~~SECTION 101. [NEW MATERIAL] SHORT TITLE.--Sections 101 through 604 of this act may be cited as the "Uniform Guardianship, Conservatorship and Other Protective Arrangements~~

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Act".

~~SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~A. "adult" means an individual at least eighteen years of age or an emancipated individual under eighteen years of age;~~

~~B. "adult subject to conservatorship" means an adult for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~C. "adult subject to guardianship" means an adult for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~D. "affiliated" or "affiliate", with reference to a guardian or conservator, means:~~

~~(1) a person that, directly or indirectly, through one or more intermediaries, is controlled by the guardian or conservator, controls the guardian or conservator or is under common control with the guardian or conservator; or~~

~~(2) an individual who is related to the guardian or conservator by blood, marriage or adoption as a spouse, parent, grandparent, child, grandchild, cousin, niece, nephew or household member;~~

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~~E. "affirmation" means a written, dated and signed affirmation under penalty of perjury pursuant to the laws of the state of New Mexico that a statement or other record is true and correct;~~

~~F. "claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise;~~

~~G. "conservator":~~

~~(1) means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship; and~~

~~(2) includes a co-conservator;~~

~~H. "conservatorship estate" means the property subject to conservatorship under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~I. "domestic partner" means an individual in a long-term relationship of indefinite duration with the respondent or other person in which the individual has demonstrated an actual commitment to the respondent or other person similar to the commitment of a spouse and in which the individual and the respondent or other person consider themselves to be responsible for each other's well-being;~~

~~J. "full conservatorship" means a conservatorship that grants the conservator all powers available to a conservator under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~K. "full guardianship" means a guardianship that grants the guardian all powers available to a guardian under~~

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~~the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~L. "guardian":~~

~~(1) means a person appointed by the court to make decisions with respect to the personal affairs of an individual;~~

~~(2) includes a co-guardian; and~~

~~(3) does not include a guardian ad litem;~~

~~M. "guardian ad litem" means an attorney appointed to inform the court about, and to represent, the needs and best interest of an individual;~~

~~N. "individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~O. "individual subject to guardianship" means an adult or minor for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~P. "less restrictive alternative":~~

~~(1) means an approach to meeting an individual's needs that restricts fewer rights of the individual than would the appointment of a guardian or conservator; and~~

~~(2) includes supported decision making,~~

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~~appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances;~~

~~Q. "letters of office" means a record issued by a court certifying a guardian's or conservator's authority to act;~~

~~R. "limited conservatorship" means a conservatorship that grants the conservator fewer than all powers available to a conservator under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, grants powers over only certain property or otherwise restricts the powers of the conservator;~~

~~S. "limited guardianship" means a guardianship that grants the guardian fewer than all powers available to a guardian under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or otherwise restricts the powers of the guardian;~~

~~T. "long-term care facility" means a nursing home licensed by the department of health to provide intermediate or skilled nursing care;~~

~~U. "mental health treatment facility" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide mental health treatment in the ordinary course of business;~~

~~V. "minor" means an unemancipated individual under eighteen years of age;~~

~~W. "minor subject to conservatorship" means a minor~~

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~~for whom a conservator has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~X. "minor subject to guardianship" means a minor for whom a guardian has been appointed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~Y. "parent" does not include an individual whose parental rights have been terminated;~~

~~Z. "person" means an individual; estate; business or nonprofit entity; public corporation; government; governmental subdivision, agency or instrumentality; or other legal entity;~~

~~AA. "power of attorney for finances" means a power of attorney signed under the Uniform Power of Attorney Act or a similar act;~~

~~BB. "power of attorney for health care" means:~~

~~(1) a record signed under the Uniform Health-Care Decisions Act;~~

~~(2) a record signed under the Mental Health Care Treatment Decisions Act; and~~

~~(3) a record signed pursuant to an act similar to the Uniform Health-Care Decisions Act or the Mental Health Care Treatment Decisions Act;~~

~~CC. "property" includes tangible and intangible~~

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property;

~~DD. "protective arrangement instead of conservatorship" means a court order entered under Section 503 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~EE. "protective arrangement instead of guardianship" means a court order entered under Section 502 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~FF. "protective arrangement under Article 5" means a court order entered under Section 502 or 503 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~GG. "record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;~~

~~HH. "respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought;~~

~~II. "sign" means, with present intent to authenticate or adopt a record:~~

~~(1) to execute or adopt a tangible symbol; or~~

~~(2) to attach to or logically associate with the record an electronic symbol, sound or process;~~

~~JJ. "spouse" does not include an individual from whom the respondent or other person is legally separated or~~

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~~from whom there is a pending petition for annulment, divorce, dissolution of marriage or legal separation and includes a domestic partner;~~

~~KK. "standby guardian" means a person appointed by the court under Section 207 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~LL. "state":~~

~~(1) means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and~~

~~(2) includes an Indian tribe, nation, pueblo or band located within the United States and recognized by federal law or formally acknowledged by a state of the United States; and~~

~~MM. "supported decision making" means assistance:~~

~~(1) from one or more persons of an individual's choosing;~~

~~(2) in understanding the nature and consequences of potential personal and financial decisions;~~

~~(3) that enables the individual to make the decisions; and~~

~~(4) in communicating a decision once made if consistent with the individual's wishes.~~

~~SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF~~

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~~LAW AND EQUITY APPLICABLE.--Unless displaced by a particular provision of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the principles of law and equity supplement that act's provisions.~~

~~SECTION 104. [NEW MATERIAL] SUBJECT-MATTER JURISDICTION.--~~

~~A. Except to the extent jurisdiction is precluded by the Uniform Child-Custody Jurisdiction and Enforcement Act, the district court has jurisdiction over a guardianship for a minor domiciled or present in New Mexico. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled or having property in New Mexico.~~

~~B. The district court has jurisdiction over a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.~~

~~C. After notice is given in a proceeding for a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and until termination of the proceeding, the court in which the petition is filed has:~~

~~(1) exclusive jurisdiction to determine the need for the guardianship, conservatorship or protective arrangement;~~

~~(2) exclusive jurisdiction to determine how~~

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~~property of the respondent must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or another claimant;~~

~~(3) nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and~~

~~(4) if a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.~~

~~D. A court that appoints a guardian or conservator, or authorizes a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.~~

~~SECTION 105. [NEW MATERIAL] TRANSFER OF PROCEEDING.--~~

~~A. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.~~

~~B. After appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in New Mexico or another state if transfer is in the best interest of the individual subject to~~

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~~the guardianship or conservatorship.~~

~~C. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship for the same individual is filed in a court in New Mexico, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.~~

~~D. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in New Mexico for the same individual if jurisdiction in New Mexico is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in New Mexico.~~

~~E. Notice of hearing on a petition under Subsection D of this section, together with a copy of the petition, shall be given to the respondent, if the respondent is at least twelve years of age at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act were applicable. The court shall make the appointment unless it determines the appointment would not be in the best interest of the respondent.~~

~~F. Not later than fourteen days after appointment~~

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~~under Subsection E of this section, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is at least twelve years of age, and to all persons given notice of the hearing on the petition.~~

~~SECTION 106. [NEW MATERIAL] VENUE.--~~

~~A. Venue for a guardianship proceeding for a minor is in:~~

~~(1) the county in which the minor resides or is present at the time the proceeding commences; or~~

~~(2) the county in which another proceeding concerning the custody or parental rights of the minor is pending.~~

~~B. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:~~

~~(1) the county in which the respondent resides;~~

~~(2) if the respondent has been admitted to an institution by court order, the county in which the court is located; or~~

~~(3) if the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present.~~

~~C. Venue for a conservatorship proceeding or~~

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~~protective arrangement instead of conservatorship is in:~~

~~(1) the county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or~~

~~(2) if the respondent does not reside in New Mexico, in any county in which property of the respondent is located.~~

~~D. If proceedings under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act are brought in more than one county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.~~

~~SECTION 107. [NEW MATERIAL] PRACTICE IN COURT.--~~

~~A. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or the Uniform Probate Code, the New Mexico Rules of Evidence, Rules of Civil Procedure for the District Courts and Rules of Appellate Procedure govern a proceeding under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and appellate review of the proceeding.~~

~~B. If proceedings for a guardianship, conservatorship or protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.~~

~~C. A respondent may demand a jury trial in a~~

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~~proceeding under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act on the issue of whether a basis exists for appointment of a guardian or conservator.~~

~~SECTION 108. [NEW MATERIAL] LETTERS OF OFFICE.--~~

~~A. The court shall issue letters of office to a guardian on filing by the guardian of an acceptance of appointment.~~

~~B. The court shall issue letters of office to a conservator on filing by the conservator of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court.~~

~~C. Limitations on the powers of a guardian or conservator or on the property subject to conservatorship shall be stated on the letters of office.~~

~~D. The court at any time may limit the powers conferred on a guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or conservator, individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person the court determines.~~

~~SECTION 109. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF APPOINTMENT.--On acceptance of appointment, a guardian or conservator submits to personal jurisdiction of the court in New Mexico in any proceeding relating to the guardianship or~~

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~~conservatorship.~~

~~SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-  
CONSERVATOR.--~~

~~A. The court at any time may appoint a co-guardian  
or co-conservator to serve immediately or when a designated  
event occurs.~~

~~B. A co-guardian or co-conservator appointed to  
serve immediately may act when that co-guardian or  
co-conservator complies with Section 108 of the Uniform  
Guardianship, Conservatorship and Other Protective Arrangements  
Act.~~

~~C. A co-guardian or co-conservator appointed to  
serve when a designated event occurs may act when:~~

~~(1) the event occurs; and~~

~~(2) that co-guardian or co-conservator  
complies with Section 108 of the Uniform Guardianship,  
Conservatorship and Other Protective Arrangements Act.~~

~~D. Unless an order of appointment under Subsection  
A of this section or subsequent order states otherwise,  
co-guardians or co-conservators shall make decisions jointly.~~

~~SECTION 111. [NEW MATERIAL] JUDICIAL APPOINTMENT OF  
SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.--~~

~~A. The court at any time may appoint a successor  
guardian or successor conservator to serve immediately or when  
a designated event occurs.~~

~~B. A person entitled under Section 202 or 302 of  
the Uniform Guardianship, Conservatorship and Other Protective  
Arrangements Act to petition the court to appoint a guardian~~

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~~may petition the court to appoint a successor guardian. A person entitled under Section 402 of that act to petition the court to appoint a conservator may petition the court to appoint a successor conservator.~~

~~C. A successor guardian or successor conservator appointed to serve when a designated event occurs may act as guardian or conservator when:~~

~~(1) the event occurs; and~~

~~(2) the successor complies with Section 108 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~D. A successor guardian or successor conservator has the predecessor's powers unless otherwise provided by the court.~~

~~SECTION 112. [NEW MATERIAL] EFFECT OF DEATH, REMOVAL OR RESIGNATION OF GUARDIAN OR CONSERVATOR.--~~

~~A. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court under Subsection B of this section approves a resignation of the guardian or conservator.~~

~~B. To resign, a guardian or conservator shall petition the court. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.~~

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~~C. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for:~~

~~(1) an action taken on behalf of the individual subject to guardianship or conservatorship; or~~

~~(2) the individual's funds or other property.~~

~~SECTION 113. [NEW MATERIAL] NOTICE AND HEARING GENERALLY.--~~

~~A. Except as otherwise provided in Sections 203, 207, 303, 403 and 505 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, if notice of a hearing under that act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in that act, notice shall be given as provided in Section 45-1-401 NMSA 1978 at least fourteen days before the hearing.~~

~~B. Proof of notice of a hearing under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be made before or at the hearing and filed in the proceeding.~~

~~C. Notice of a hearing under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be in at least sixteen-point font, in plain language and, to the extent feasible, in a language in which the person to be notified is proficient.~~

~~D. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements~~

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~~Act, a court shall not issue an order or grant authorization, approval or other relief pursuant to that act without notice and a hearing. This provision shall not affect the court's authority to issue temporary relief to prevent immediate and irreparable injury, loss or damage pursuant to the Rules of Civil Procedure for the District Courts or similar rules.~~

~~E. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, a hearing pursuant to that act shall be held in open court like other hearings are held, subject to the control of the court. The supreme court may adopt more specific rules for the conduct of hearings.~~

~~SECTION 114. [NEW MATERIAL] WAIVER OF NOTICE.--~~

~~A. Except as otherwise provided in Subsection B of this section, a person may waive notice under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act in a record signed by the person or person's attorney and filed in the proceeding.~~

~~B. A respondent, individual subject to guardianship, individual subject to conservatorship or individual subject to a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall not waive notice under that act.~~

~~SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court~~

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~~at any time may appoint a guardian ad litem for an individual if the court determines the individual's interest otherwise would not be adequately represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem shall not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment.~~

~~SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--~~

~~A. A person may file with the court a request for notice under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act if the person is:~~

- ~~(1) not otherwise entitled to notice; and~~
- ~~(2) interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement under Article 5 of that act.~~

~~B. A request under Subsection A of this section shall include a statement showing the interest of the person making the request and the address of the person or an attorney for the person to whom notice is to be given.~~

~~C. If the court approves a request under Subsection A of this section, the court shall give notice of the approval to the guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been appointed.~~

~~SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.--~~

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~~A. Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:~~

~~(1) is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or~~

~~(2) has been convicted of:~~

~~(a) a felony;~~

~~(b) a crime involving dishonesty, neglect, violence or the use of physical force; or~~

~~(c) another crime relevant to the functions the individual would assume as guardian or conservator.~~

~~B. A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or the use of physical force or another crime relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.~~

~~C. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.~~

~~SECTION 118. [NEW MATERIAL] MULTIPLE NOMINATIONS.---If a~~

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~~respondent or other person makes more than one nomination of a guardian or conservator, the latest in time governs.~~

~~SECTION 119. [NEW MATERIAL] COMPENSATION AND EXPENSES--IN GENERAL.--~~

~~A. Unless otherwise compensated or reimbursed, an attorney for a respondent in a proceeding under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent.~~

~~B. Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective arrangement under Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.~~

~~C. The court shall approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.~~

~~D. If the court dismisses a petition under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner.~~

~~E. Unless otherwise compensated or reimbursed and~~

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~~except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, a court-ordered visitor, a person appointed to conduct a court-ordered professional evaluation, a guardian ad litem appointed by the court for a respondent, an individual subject to guardianship, an individual subject to conservatorship or an individual subject to a protective arrangement pursuant to Article 5 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.~~

~~SECTION 120. [NEW MATERIAL] COMPENSATION AND EXPENSES.--~~

~~A. Subject to court approval, a guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, clothing and other appropriate expenses advanced for the benefit of the individual subject to guardianship. If a conservator, other than the guardian or a person affiliated with the guardian, is appointed for the individual, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without court approval.~~

~~B. Subject to court approval, a conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the property of the individual subject to conservatorship.~~

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~~C. In determining reasonable compensation for a guardian or conservator, the court, or a conservator in determining reasonable compensation for a guardian as provided in Subsection A of this section, shall consider:~~

~~(1) the necessity and quality of the services provided;~~

~~(2) the experience, training, professional standing and skills of the guardian or conservator;~~

~~(3) the difficulty of the services performed, including the degree of skill and care required;~~

~~(4) the conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;~~

~~(5) the effect of the services on the individual subject to guardianship or conservatorship;~~

~~(6) the extent to which the services provided were or were not consistent with the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or conservator's plan under Section 419 of that act; and~~

~~(7) the fees customarily paid to a person that performs a like service in the community.~~

~~D. A guardian or conservator need not use personal funds of the guardian or conservator for the expenses of the individual subject to guardianship or conservatorship.~~

~~E. If an individual subject to guardianship or conservatorship seeks to modify or terminate the guardianship~~

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~~or conservatorship or remove the guardian or conservator, the court may order compensation to the guardian or conservator for time spent opposing modification, termination or removal only to the extent the court determines the opposition was reasonably necessary to protect the interest of the individual subject to guardianship or conservatorship.~~

~~SECTION 121. [NEW MATERIAL] LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.--A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship.~~

~~SECTION 122. [NEW MATERIAL] PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.--~~

~~A. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.~~

~~B. On notice and hearing on a petition under Subsection A of this section, the court may give an instruction and issue an appropriate order.~~

~~SECTION 123. [NEW MATERIAL] THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSERVATOR.--~~

~~A. A person shall not recognize the authority of a guardian or conservator to act on behalf of an individual~~

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~~subject to guardianship or conservatorship if:~~

~~————— (1) the person has actual knowledge or a reasonable belief that the letters of office of the guardian or conservator are invalid or the conservator or guardian is exceeding or improperly exercising authority granted by the court; or~~

~~————— (2) the person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.~~

~~————— B. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:~~

~~————— (1) the guardian's or conservator's proposed action would be inconsistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or~~

~~————— (2) the person makes, or has actual knowledge that another person has made, a report to the children, youth and families department or the aging and long-term services department stating a good-faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.~~

~~————— C. A person that refuses to accept the authority of a guardian or conservator in accordance with Subsection B of this section may report the refusal and the reason for refusal~~

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~~to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.~~

~~D. A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.~~

~~SECTION 124. [NEW MATERIAL] USE OF AGENT BY GUARDIAN OR CONSERVATOR.--~~

~~A. Except as otherwise provided in Subsection C of this section, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could delegate prudently under the circumstances if the delegation is consistent with the guardian's or conservator's fiduciary duties and the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or the conservator's plan under Section 419 of that act.~~

~~B. In delegating a power under Subsection A of this section, the guardian or conservator shall exercise reasonable care, skill and caution in:~~

- ~~(1) selecting the agent;~~
- ~~(2) establishing the scope and terms of the agent's work in accordance with the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and~~

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~~Other Protective Arrangements Act or conservator's plan under Section 419 of that act;~~

~~(3) monitoring the agent's performance and compliance with the delegation; and~~

~~(4) redressing an act or omission of the agent that would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator.~~

~~C. A guardian or conservator shall not delegate all powers to an agent.~~

~~D. In performing a power delegated under this section, an agent shall:~~

~~(1) exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the power; and~~

~~(2) if the guardian or conservator has delegated to the agent the power to make a decision on behalf of the individual subject to guardianship or conservatorship, use the same decision-making standard the guardian or conservator would be required to use.~~

~~E. By accepting a delegation of a power under Subsection A of this section from a guardian or conservator, an agent submits to the personal jurisdiction of the courts of New Mexico in an action involving the agent's performance as agent.~~

~~F. A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decision, act or omission of the agent.~~

~~SECTION 125. [NEW MATERIAL] TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.--~~

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~~A. The court may appoint a temporary substitute guardian for an individual subject to guardianship for a period not exceeding six months if:~~

~~(1) a proceeding to remove a guardian for the individual is pending; or~~

~~(2) the court finds a guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.~~

~~B. The court may appoint a temporary substitute conservator for an individual subject to conservatorship for a period not exceeding six months if:~~

~~(1) a proceeding to remove a conservator for the individual is pending; or~~

~~(2) the court finds that a conservator for the individual is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.~~

~~C. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator.~~

~~The authority of the existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.~~

~~D. The court shall give notice of appointment of a~~

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~~temporary substitute guardian or temporary substitute conservator, not later than five days after the appointment, to:~~

~~\_\_\_\_\_ (1) the individual subject to guardianship or conservatorship;~~

~~\_\_\_\_\_ (2) the affected guardian or conservator; and~~

~~\_\_\_\_\_ (3) in the case of a minor, each parent of the minor and any person currently having care or custody of the minor.~~

~~\_\_\_\_\_ E. The court may remove a temporary substitute guardian or temporary substitute conservator at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.~~

~~\_\_\_\_\_ SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER-- EFFECT.--~~

~~\_\_\_\_\_ A. If a guardian has been appointed in another state for an individual and a petition for guardianship for the individual is not pending in New Mexico, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in New Mexico by filing as a foreign judgment, in a court of an appropriate county of New Mexico, certified copies of the order and letters of office.~~

~~\_\_\_\_\_ B. If a conservator has been appointed in another state for an individual and a petition for conservatorship for the individual is not pending in New Mexico, the conservator appointed for the individual in the other state, after giving notice to the appointing court, may register the~~

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~~conservatorship in New Mexico by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.~~

~~C. On registration under this section of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in New Mexico all powers authorized in the order except as prohibited by the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or other law of New Mexico. If the guardian or conservator is not a resident of New Mexico, the guardian or conservator may maintain an action or proceeding in New Mexico subject to any condition imposed by New Mexico on an action or proceeding by a nonresident party.~~

~~D. The court may grant any relief available under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or other law of New Mexico to enforce an order registered under this section.~~

~~SECTION 127. [NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.---~~

~~A. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, that~~

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~~reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may file a grievance in a record with the court.~~

~~————— B. Subject to Subsection C of this section, after receiving a grievance under Subsection A of this section, the court:~~

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

~~————— (2) shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:~~

~~————— (a) removal of the guardian and appointment of a successor may be appropriate under Section 318 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~————— (b) termination or modification of the guardianship may be appropriate under Section 319 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~————— (c) removal of the conservator and appointment of a successor may be appropriate under Section 430 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or~~

~~————— (d) termination or modification of the conservatorship may be appropriate under Section 431 of the~~

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~~Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and~~

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

~~(a) ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan or other information;~~

~~(b) appointing a guardian ad litem;~~

~~(c) appointing an attorney for the individual subject to guardianship or conservatorship; or~~

~~(d) holding a hearing.~~

~~C. The court may decline to act under Subsection B of this section if a similar grievance was filed within the six months preceding the filing of the current grievance and the court followed the procedures of that subsection in considering the earlier grievance.~~

~~SECTION 128. [NEW MATERIAL] DELEGATION BY PARENT.--A parent of a minor, by a power of attorney, may delegate to another person for a period not exceeding six months any of the parent's powers regarding care, custody or property of the minor, other than power to consent to marriage or adoption.~~

~~SECTION 129. [NEW MATERIAL] SEPARATE ACCOUNTS AND RECORDS.--~~

~~A. A guardian or conservator shall not commingle the guardian's or conservator's funds or investments with those~~

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~~held by the guardian or conservator as a fiduciary for a minor or an adult. Funds and any investments held by the guardian or conservator as a fiduciary for the minor or the adult shall be held in accounts that are separate from those of the guardian or conservator. If a guardian or conservator serves as fiduciary for one or more individuals subject to guardianship or conservatorship, the guardian or conservator shall hold the funds and any investments held as a fiduciary in a separate account for each individual subject to guardianship or conservatorship. Except as otherwise provided in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, and to the extent that is reasonable and customary, any other property held by the guardian or conservator as a fiduciary for one or more individuals subject to guardianship or conservatorship shall be titled separately:~~

~~————— (1) from the guardian's or conservator's property; and~~

~~————— (2) for each individual subject to guardianship or conservatorship.~~

~~————— B. A court at any time may require a guardian to bring a proceeding for a conservatorship, or a protective arrangement instead of conservatorship, if necessary or advisable to:~~

~~————— (1) protect property of a minor or an adult, including any property held by the guardian as a fiduciary for the minor or the adult;~~

~~————— (2) conserve funds of the minor not expended pursuant to Paragraph (3) of Subsection B of Section 209 of the~~

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~~Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the minor's future needs; or~~  
~~(3) conserve funds of the adult not expended pursuant to Paragraph (2) of Subsection C of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the adult's future needs.~~

~~C. By accepting appointment by a court as guardian or conservator, the guardian or conservator consents to review and examination at any time by the court or its designee of all:~~

~~(1) accounts with financial institutions and other third parties holding funds or investments held by the guardian or conservator as a fiduciary for persons under guardianship or conservatorship;~~

~~(2) other property held by the guardian or conservator as a fiduciary for persons under guardianship or conservatorship; and~~

~~(3) books and records in the possession, custody or control of the guardian or conservator relating to those accounts and that other property.~~

~~D. The guardian or conservator shall cooperate fully to facilitate the review and examination of accounts, property, books and records as set forth in Subsection C of this section.~~

~~E. The guardian or conservator shall maintain those~~

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~~books and records described in Paragraph (3) of Subsection C of this section for no less than seven years, or for such other period as may be provided by the supreme court.~~

## ~~ARTICLE 2~~

### ~~GUARDIANSHIP OF MINOR~~

~~SECTION 201. [NEW MATERIAL] BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.--~~

~~A. A person becomes a guardian for a minor only on appointment by the court.~~

~~B. The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest and:~~

~~(1) each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;~~

~~(2) all parental rights have been terminated;~~  
~~or~~

~~(3) there is clear and convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian.~~

~~SECTION 202. [NEW MATERIAL] PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.--~~

~~A. A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.~~

~~B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the minor,~~

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~~interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:~~

~~(1) the minor's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the minor will reside if the appointment is made;~~

~~(2) the name and current street address of the minor's parents;~~

~~(3) the name and address, if known, of each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;~~

~~(4) the name and address of any attorney for the minor and any attorney for each parent of the minor;~~

~~(5) the reason guardianship is sought and would be in the best interest of the minor;~~

~~(6) the name and address of any proposed guardian and the reason the proposed guardian should be selected;~~

~~(7) if the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value;~~

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~~(8) whether the minor needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;~~

~~(9) whether any parent of the minor needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and~~

~~(10) whether any other proceeding concerning the care or custody of the minor is pending in any court in New Mexico or another jurisdiction.~~

~~SECTION 203. [NEW MATERIAL] NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--~~

~~A. If a petition is filed under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall schedule a hearing and the petitioner shall:~~

~~(1) serve notice of the date, time and place of the hearing, together with a copy of the petition, personally on each of the following that is not the petitioner:~~

~~(a) the minor, if the minor will be twelve years of age or older at the time of the hearing;~~

~~(b) each parent of the minor or, if there is none, the adult nearest in kinship who can be found with reasonable diligence;~~

~~(c) any adult with whom the minor resides;~~

~~(d) each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at~~

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~~least seven hundred thirty days during the five years immediately before the filing of the petition; and~~

~~(e) any other person the court determines should receive personal service of notice; and~~

~~(2) give notice under Section 113 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of the date, time and place of the hearing, together with a copy of the petition, to:~~

~~(a) any person nominated as guardian by the minor, if the minor is twelve years of age or older;~~

~~(b) any nominee of a parent;~~

~~(c) each grandparent and adult sibling of the minor;~~

~~(d) any guardian or conservator acting for the minor in any jurisdiction; and~~

~~(e) any other person the court determines.~~

~~B. Notice required by Subsection A of this section shall include a statement of the right to request appointment of an attorney for the minor or object to appointment of a guardian and a description of the nature, purpose and consequences of appointment of a guardian.~~

~~C. The court shall not grant a petition for guardianship of a minor if notice substantially complying with Paragraph (1) of Subsection A of this section is not served on:~~

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~~(1) the minor, if the minor is twelve years of age or older; and~~

~~(2) each parent of the minor, unless the court finds by clear and convincing evidence that the parent cannot with due diligence be located and served or the parent waived, in a record, the right to notice.~~

~~D. If a petitioner is unable to serve notice under Paragraph (1) of Subsection A of this section on a parent of a minor or alleges that the parent waived, in a record, the right to notice under this section, the court shall appoint a visitor who shall:~~

~~(1) interview the petitioner and the minor;~~

~~(2) if the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located with due diligence; and~~

~~(3) investigate any other matter relating to the petition the court directs.~~

~~SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR PARENT.--~~

~~A. Unless a minor already has an attorney, the court shall appoint an attorney to represent a minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act if:~~

~~(1) requested by the minor and the minor is twelve years of age or older;~~

~~(2) recommended by a guardian ad litem; or~~

~~(3) the court determines the minor needs~~

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~~representation.~~

~~B. An attorney appointed under Subsection A of this section shall:~~

~~(1) make a reasonable effort to ascertain the minor's wishes;~~

~~(2) advocate for the minor's wishes to the extent reasonably ascertainable; and~~

~~(3) if the minor's wishes are not reasonably ascertainable, advocate for the minor's best interest.~~

~~C. A minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may retain an attorney to represent the minor in the proceeding.~~

~~D. A parent of a minor who is the subject of a proceeding under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may retain an attorney to represent the parent in the proceeding.~~

~~SECTION 205. [NEW MATERIAL] ATTENDANCE AND PARTICIPATION AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--~~

~~A. The court shall require a minor who is the subject of a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act to attend the hearing and allow the minor to participate in the hearing unless the court determines, by clear and convincing evidence presented at the hearing or a separate~~

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~~hearing, that:~~

~~(1) the minor consistently and repeatedly refused to attend the hearing after being fully informed of the right to attend and, if the minor is twelve years of age or older, the potential consequences of failing to do so;~~

~~(2) there is no practicable way for the minor to attend the hearing;~~

~~(3) the minor lacks the ability or maturity to participate meaningfully in the hearing; or~~

~~(4) attendance would be harmful to the minor.~~

~~B. Unless excused by the court for good cause, the person proposed to be appointed as guardian for a minor shall attend a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~C. Each parent of a minor who is the subject of a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act has the right to attend the hearing.~~

~~D. A person may request permission to participate in a hearing under Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court may grant the request, with or without hearing, on determining that it is in the best interest of the minor who is the subject of the hearing. The court may impose appropriate conditions on the person's participation.~~

~~E. A hearing pursuant to Section 203 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed at the request of the minor or the minor's~~

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~~attorney and a showing of good cause.~~

~~SECTION 206. [NEW MATERIAL] ORDER OF APPOINTMENT--  
PRIORITY OF NOMINEE--LIMITED GUARDIANSHIP FOR MINOR.--~~

~~A. After a hearing under Section 203 of the Uniform  
Guardianship, Conservatorship and Other Protective Arrangements  
Act, the court may appoint a guardian for a minor, if  
appointment is proper under Section 201 of that act, dismiss  
the proceeding or take other appropriate action consistent with  
that act or other law of New Mexico.~~

~~B. In appointing a guardian under Subsection A of  
this section:~~

~~(1) the court shall appoint a person nominated  
as guardian by a parent of the minor in a will or other record  
unless the court finds the appointment is contrary to the best  
interest of the minor;~~

~~(2) if multiple parents have nominated  
different persons to serve as guardian, the court shall appoint  
the nominee whose appointment is in the best interest of the  
minor, unless the court finds that appointment of none of the  
nominees is in the best interest of the minor; and~~

~~(3) if a guardian is not appointed under  
Paragraph (1) or (2) of this subsection, the court shall  
appoint the person nominated by the minor if the minor is  
twelve years of age or older unless the court finds that  
appointment is contrary to the best interest of the minor. In~~

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~~that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.~~

~~C. In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.~~

~~D. The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which may include contact or visitation with the minor, decision making regarding the minor's health care, education or other matter or access to a record regarding the minor.~~

~~E. An order granting a guardianship for a minor shall state that each parent of the minor is entitled to notice that:~~

~~(1) the guardian has delegated custody of the minor subject to guardianship;~~

~~(2) the court has modified or limited the powers of the guardian; or~~

~~(3) the court has removed the guardian.~~

~~F. An order granting a guardianship for a minor shall identify any person in addition to a parent of the minor that is entitled to notice of the events listed in Subsection E~~

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~~of this section.~~

~~SECTION 207. [NEW MATERIAL] STANDBY GUARDIAN FOR MINOR.--~~

~~A. A standby guardian appointed under this section may act as guardian, with all duties and powers of a guardian under Sections 209 and 210 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, when no parent of the minor is willing or able to exercise the duties and powers granted to the guardian.~~

~~B. A parent of a minor, in a signed record, may nominate a person to be appointed by the court as standby guardian for the minor. The parent, in a signed record, may state desired limitations on the powers to be granted the standby guardian. The parent, in a signed record, may revoke or amend the nomination at any time before the court appoints a standby guardian.~~

~~C. The court may appoint a standby guardian for a minor on:~~

~~(1) petition by a parent of the minor or a person nominated under Subsection B of this section; and~~

~~(2) finding that no parent of the minor likely will be able or willing to care for or make decisions with respect to the minor not later than two years after the appointment.~~

~~D. A petition under Paragraph (1) of Subsection C of this section shall include the same information required~~

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~~under Section 202 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for the appointment of a guardian for a minor.~~

~~E. On filing a petition under Paragraph (1) of Subsection C of this section, the petitioner shall:~~

~~(1) serve a copy of the petition personally on:~~

~~(a) the minor, if the minor is twelve years of age or older, and the minor's attorney, if any;~~

~~(b) each parent of the minor;~~

~~(c) the person nominated as standby guardian; and~~

~~(d) any other person the court determines; and~~

~~(2) include with the copy of the petition served under Paragraph (1) of this subsection a statement of the right to request appointment of an attorney for the minor or to object to appointment of the standby guardian and a description of the nature, purpose and consequences of appointment of a standby guardian.~~

~~F. A person entitled to notice under Subsection E of this section, not later than sixty days after service of the petition and statement, may object to appointment of the standby guardian by filing an objection with the court and giving notice of the objection to each other person entitled to notice under Subsection E of this section.~~

~~G. If an objection is filed under Subsection F of this section, the court shall hold a hearing to determine~~

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~~whether a standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the court may make the appointment.~~

~~H. The court shall not grant a petition for a standby guardian for the minor if notice substantially complying with Subsection E of this section is not served on:~~

~~(1) the minor, if the minor is twelve years of age or older; and~~

~~(2) each parent of the minor, unless the court finds by clear and convincing evidence that the parent, in a record, waived the right to notice or cannot be located and served with due diligence.~~

~~I. If a petitioner is unable to serve notice under Subsection E of this section on a parent of the minor or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a visitor who shall:~~

~~(1) interview the petitioner and the minor;~~

~~(2) if the petitioner alleges the parent cannot be located and served, ascertain whether the parent cannot be located with due diligence; and~~

~~(3) investigate any other matter relating to the petition the court directs.~~

~~J. If the court finds under Subsection C of this section that a standby guardian should be appointed:~~

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~~(1) the court shall appoint the person nominated under Subsection B of this section unless the court finds the appointment is contrary to the best interest of the minor; and~~

~~(2) if the parents have nominated different persons to serve as standby guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.~~

~~K. An order appointing a standby guardian under this section shall state that each parent of the minor is entitled to notice, and identify any other person entitled to notice, if:~~

~~(1) the standby guardian assumes the duties and powers of the guardian;~~

~~(2) the guardian delegates custody of the minor;~~

~~(3) the court modifies or limits the powers of the guardian; or~~

~~(4) the court removes the guardian.~~

~~L. Before assuming the duties and powers of a guardian, a standby guardian shall file with the court an acceptance of appointment as guardian and give notice of the acceptance to:~~

~~(1) each parent of the minor, unless the parent, in a record, waived the right to notice or cannot be located and served with due diligence;~~

~~(2) the minor, if the minor is twelve years of~~

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~~age or older; and~~

~~(3) any person, other than the parent, having care or custody of the minor.~~

~~M. A person that receives notice under Subsection L of this section or any other person interested in the welfare of the minor may file with the court an objection to the standby guardian's assumption of duties and powers of a guardian. The court shall hold a hearing if the objection supports a reasonable belief that the conditions for assumption of duties and powers have not been satisfied.~~

~~SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR MINOR.--~~

~~A. On its own, or on petition by a person interested in a minor's welfare, the court may appoint an emergency guardian for the minor if the court finds:~~

~~(1) appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety or welfare; and~~

~~(2) no other person appears to have authority and willingness to act in the circumstances.~~

~~B. The duration of authority of an emergency guardian for a minor shall not exceed sixty days and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than thirty days if the court~~

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~~finds that the conditions for appointment of an emergency~~

~~guardian in Subsection A of this section continue.~~

~~C. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on a petition for appointment of an emergency guardian for a minor shall be given to:~~

~~(1) the minor, if the minor is twelve years of age or older;~~

~~(2) any attorney appointed under Section 204 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~(3) each parent of the minor;~~

~~(4) any person, other than a parent, having care or custody of the minor; and~~

~~(5) any other person the court determines.~~

~~D. The court may appoint an emergency guardian for a minor without notice under Subsection C of this section and a hearing only if the court finds from an affidavit or testimony that the minor's health, safety or welfare will be~~

~~substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without notice to an unrepresented minor or the~~

~~attorney for a represented minor, notice of the appointment~~

~~shall be given not later than forty-eight hours after the~~

~~appointment to the individuals listed in Subsection C of this~~

~~section. Not later than fourteen days after the appointment,~~

~~the court shall hold a hearing on the appropriateness of the~~

~~appointment. On two days' notice to the party who obtained the~~

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~~appointment of an emergency guardian without notice or on such shorter notice to that party as the court may prescribe, the minor or the minor's attorney may appear and move dissolution or modification of the court's order, and in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.~~

~~E. Appointment of an emergency guardian under this section, with or without notice, is not a determination that a basis exists for appointment of a guardian under Section 201 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~F. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.~~

~~SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR MINOR.--~~

~~A. A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety and welfare. A guardian shall act in the minor's best interest and exercise reasonable care, diligence and prudence.~~

~~B. A guardian for a minor shall:~~

~~(1) be personally acquainted with the minor and maintain sufficient contact with the minor to know the~~

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~~minor's abilities, limitations, needs, opportunities and physical and mental health;~~

~~————— (2) take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect other property of the minor;~~

~~————— (3) expend funds of the minor that have been received by the guardian for the minor's current needs for support, care, education, health, safety and welfare;~~

~~————— (4) conserve any funds of the minor not expended under Paragraph (3) of this subsection for the minor's future needs, but if a conservator is appointed for the minor, pay the funds at least quarterly to the conservator to be conserved for the minor's future needs;~~

~~————— (5) report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the minor's welfare;~~

~~————— (6) inform the court of any change in the minor's dwelling or address; and~~

~~————— (7) in determining what is in the minor's best interest, take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.~~

~~————— SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR MINOR.---~~

~~————— A. Except as otherwise limited by court order, a~~

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~~guardian for a minor has the powers a parent otherwise would have regarding the minor's support, care, education, health, safety and welfare.~~

~~B. Except as otherwise limited by court order, a guardian for a minor may:~~

~~(1) apply for and receive funds and benefits otherwise payable for the support of the minor to the minor's parent, guardian or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship;~~

~~(2) unless inconsistent with a court order entitled to recognition in New Mexico, take custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside New Mexico;~~

~~(3) if the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the benefit of the minor;~~

~~(4) consent to health or other care, treatment or service for the minor; or~~

~~(5) to the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.~~

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~~C. The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor does not have a parent.~~

~~D. A guardian for a minor may consent to the marriage of the minor.~~

~~SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--~~

~~A. Guardianship under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a minor terminates:~~

~~(1) on the minor's death, adoption, emancipation or attainment of majority; or~~

~~(2) when the court finds that the standard in Section 201 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian is not satisfied, unless the court finds that:~~

~~(a) termination of the guardianship would be harmful to the minor; and~~

~~(b) the minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.~~

~~B. A minor subject to guardianship or a person interested in the welfare of the minor may petition the court to terminate the guardianship, modify the guardianship or remove the guardian and appoint a successor guardian or remove a standby guardian and appoint a different standby guardian.~~

~~C. A petitioner under Subsection B of this section~~

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~~shall give notice of the hearing on the petition to the minor, if the minor is twelve years of age or older and is not the petitioner, the guardian, each parent of the minor and any other person the court determines.~~

~~D. The court shall follow the priorities in Subsection B of Section 206 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act when selecting a successor guardian for a minor.~~

~~E. Not later than thirty days after appointment of a successor guardian for a minor, the court shall give notice of the appointment to the minor subject to guardianship, if the minor is twelve years of age or older, each parent of the minor and any other person the court determines.~~

~~F. When terminating a guardianship for a minor under this section, the court may issue an order providing for transitional arrangements that will assist the minor with a transition of custody and is in the best interest of the minor.~~

~~G. A guardian for a minor that is removed shall cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor.~~

~~ARTICLE 3~~

~~GUARDIANSHIP OF ADULT~~

~~SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.--~~

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~~A. On petition and after notice and hearing, the court may:~~

~~(1) appoint a guardian for an adult if the court finds by clear and convincing evidence that:~~

~~(a) the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and~~

~~(b) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative; or~~

~~(2) with appropriate findings, treat the petition as one for a conservatorship under Article 4 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or protective arrangement under Article 5 of that act, issue any appropriate order or dismiss the proceeding.~~

~~B. The court shall grant a guardian appointed under Subsection A of this section only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court shall not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of the respondent.~~

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~~SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF  
GUARDIAN FOR ADULT.--~~

~~A. A person interested in an adult's welfare,  
including the adult for whom the order is sought, may petition  
for appointment of a guardian for the adult.~~

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

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

~~(2) the name and address of the respondent's:~~

~~(a) spouse or, if the respondent has  
none, an adult with whom the respondent has shared household  
responsibilities for more than six months in the twelve-month  
period immediately before the filing of the petition;~~

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

~~(c) adult stepchildren whom the~~

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~~respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;~~

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

~~(a) a person responsible for care of the respondent;~~

~~(b) any attorney currently representing the respondent;~~

~~(c) any representative payee appointed by the federal social security administration for the respondent;~~

~~(d) a guardian or conservator acting for the respondent in New Mexico or in another jurisdiction;~~

~~(e) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;~~

~~(f) any fiduciary for the respondent appointed by the federal department of veterans affairs;~~

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

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

~~(i) a person nominated as guardian by the respondent;~~

~~(j) a person nominated as guardian by~~

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~~the respondent's parent or spouse in a will or other signed record;~~

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

~~(l) a person known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the petition;~~

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

~~(a) the nature and extent of the respondent's alleged need;~~

~~(b) any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;~~

~~(c) if no protective arrangement instead of guardianship or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and~~

~~(d) the reason a protective arrangement instead of guardianship or other less restrictive alternative is insufficient to meet the respondent's alleged need;~~

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

~~(6) if the petitioner seeks a full~~

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~~guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;~~

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

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

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

~~(10) whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.~~

~~SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR ADULT.--~~

~~A. On filing of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian for an adult, the court shall set a date, time and place for hearing the petition.~~

~~B. A copy of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the~~

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~~hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the respondent.~~

~~C. In a proceeding on a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Paragraphs (1) through (3) of Subsection B of Section 302 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a guardian.~~

~~D. After the appointment of a guardian, notice of a hearing on a petition for an order under this article together with a copy of the petition shall be given to:~~

- ~~(1) the adult subject to guardianship;~~
- ~~(2) the guardian; and~~
- ~~(3) any other person the court determines.~~

~~SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--~~

~~A. On receipt of a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a guardian for an adult, the court shall appoint a visitor. The visitor shall be an~~

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~~individual with training or experience in the type of abilities, limitations and needs alleged in the petition.~~

~~B. A visitor appointed under Subsection A of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:~~

~~(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing on the petition and the general powers and duties of a guardian;~~

~~(2) determine the respondent's views about the appointment sought by the petitioner, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship;~~

~~(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and~~

~~(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets.~~

~~C. The visitor appointed under Subsection A of this section shall:~~

~~(1) interview the petitioner and proposed guardian, if any;~~

~~(2) visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;~~

~~(3) obtain information from any physician or~~

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~~other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and~~  
~~(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.~~

~~D. A visitor appointed under Subsection A of this section promptly shall file a report in a record with the court that includes:~~

~~(1) a summary of self-care and independent-living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;~~

~~(2) a recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and;~~

~~(a) if a guardianship is recommended, whether it should be full or limited; and~~

~~(b) if a limited guardianship is recommended, the powers to be granted to the guardian;~~

~~(3) a statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;~~

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~~(4) a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;~~

~~(5) a recommendation whether a professional evaluation under Section 306 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;~~

~~(6) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;~~

~~(7) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and~~

~~(8) any other matter the court directs.~~

~~SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.--~~

~~A. Unless the respondent in a proceeding for appointment of a guardian for an adult is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.~~

~~B. An attorney representing the respondent in a proceeding for appointment of a guardian for an adult shall:~~

~~(1) make reasonable efforts to ascertain the respondent's wishes;~~

~~(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and~~

~~(3) if the respondent's wishes are not~~

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~~reasonably ascertainable, advocate for the result that is the least restrictive in type, duration and scope, consistent with the respondent's interests.~~

~~SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.~~

~~A. At or before a hearing on a petition for a guardianship for an adult, the court shall order a professional evaluation of the respondent:~~

~~(1) if the respondent requests the evaluation;~~

~~or~~

~~(2) in other cases, unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.~~

~~B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file report in a record with the court. Unless otherwise directed by the court, the report shall contain:~~

~~(1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;~~

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~~(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;~~

~~(3) a prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and~~

~~(4) the date of the examination on which the report is based.~~

~~C. The respondent may decline to participate in an evaluation ordered under Subsection A of this section.~~

~~SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.---~~

~~A. Except as otherwise provided in Subsection B of this section, a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location more convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology, if available.~~

~~B. A hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:~~

~~(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully~~

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~~informed of the right to attend and the potential consequences of failing to do so; or~~

~~(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.~~

~~C. The respondent may be assisted in a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.~~

~~D. The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~E. At a hearing held under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the respondent may:~~

~~(1) present evidence and subpoena witnesses and documents;~~

~~(2) examine witnesses, including any court-appointed evaluator and the visitor; and~~

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~~(3) otherwise participate in the hearing.~~

~~F. Unless excused by the court for good cause, a proposed guardian shall attend a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~G. A hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed on request of the respondent and a showing of good cause.~~

~~H. Any person may request to participate in a hearing under Section 303 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.~~

~~SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--~~

~~A. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:~~

~~(1) the respondent or individual subject to guardianship requests the record be sealed; and~~

~~(2) either:~~

~~(a) the petition for guardianship is dismissed; or~~

~~(b) the guardianship is terminated.~~

~~B. An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an~~

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~~attorney designated by the adult and a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under Section 316 of that act and report under Section 317 of that act. 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, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.~~

~~C. A report under Section 304 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of a visitor or a professional evaluation under Section 306 of that act is confidential and shall be sealed on filing, but is available to:~~

- ~~(1) the court;~~
- ~~(2) the individual who is the subject of the report or evaluation, without limitation as to use;~~
- ~~(3) the petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;~~
- ~~(4) unless the court orders otherwise, an~~

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~~agent appointed under a power of attorney for health care or power of attorney for finances in which the respondent is the principal; and~~

~~(5) any other person if it is in the public interest or for a purpose the court orders for good cause.~~

~~SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN FOR ADULT--ORDER OF PRIORITY.--~~

~~A. Except as otherwise provided in Subsection C of this section, the court in appointing a guardian for an adult shall consider persons qualified to be guardian in the following order of priority:~~

~~(1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;~~

~~(2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;~~

~~(3) an agent appointed by the respondent under a power of attorney for health care;~~

~~(4) a spouse of the respondent; and~~

~~(5) a family member or other individual who has shown special care and concern for the respondent.~~

~~B. If two or more persons have equal priority under Subsection A of this section, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to~~

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~~which the person and the respondent have similar values and preferences and the likelihood the person will be able to perform the duties of a guardian successfully.~~

~~C. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under Subsection A of this section and appoint a person having a lower priority or no priority.~~

~~D. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, shall not be appointed as guardian unless:~~

~~(1) the individual is related to the respondent by blood, marriage or adoption; or~~

~~(2) the court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.~~

~~E. An owner, operator or employee of a long-term care facility at which the respondent is receiving care shall not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.~~

~~SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF~~

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~~GUARDIAN FOR ADULT.--~~

~~A. A court order appointing a guardian for an adult shall:~~

~~(1) include a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative, including use of appropriate supportive services, technological assistance or supported decision making;~~

~~(2) include a specific finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition; and~~

~~(3) state whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right.~~

~~B. An adult subject to guardianship retains the right to marry unless the order under Subsection A of this section includes the findings required by Paragraph (3) of Subsection A of this section.~~

~~C. A court order establishing a full guardianship for an adult shall state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.~~

~~D. A court order establishing a limited guardianship for an adult shall state the specific powers granted to the guardian.~~

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~~E. The court, as part of an order establishing a guardianship for an adult, shall identify any person that subsequently is entitled to:~~

~~(1) notice of the rights of the adult under Subsection B of Section 311 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~(2) notice of a change in the primary dwelling of the adult;~~

~~(3) notice that the guardian has delegated:~~

~~(a) the power to manage the care of the adult;~~

~~(b) the power to make decisions about where the adult lives;~~

~~(c) the power to make major medical decisions on behalf of the adult;~~

~~(d) a power that requires court approval under Section 315 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; or~~

~~(e) substantially all powers of the guardian;~~

~~(4) notice that the guardian will be unavailable to visit the adult for more than two months or unavailable to perform the guardian's duties for more than one month;~~

~~(5) a copy of the guardian's plan under~~

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~~Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the guardian's report under Section 317 of that act;~~

~~(6) access to court records relating to the guardianship;~~

~~(7) notice of the death or significant change in the condition of the adult;~~

~~(8) notice that the court has limited or modified the powers of the guardian; and~~

~~(9) notice of the removal of the guardian.~~

~~F. A spouse and adult children of an adult subject to guardianship are entitled to notice under Subsection E of this section unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.~~

~~G. The voting rights of a respondent shall not be abridged or restricted except pursuant to Article 7, Section 1 of the constitution of New Mexico.~~

~~SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF APPOINTMENT--RIGHTS.--~~

~~A. A guardian appointed under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall give the adult subject to guardianship and all other persons given notice under Section 303 of that act a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice shall be given not later than fourteen days after~~

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~~the appointment.~~

~~B. Not later than thirty days after appointment of a guardian under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall give to the adult subject to guardianship, the guardian and any other person entitled to notice under Subsection E of Section 310 of that act or a subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if the adult is denied those rights. The statement shall be in at least sixteen-point font, in plain language and, to the extent feasible, in a language in which the adult subject to guardianship is proficient. The statement shall notify the adult subject to guardianship of the right to:~~

~~(1) seek termination or modification of the guardianship, or removal of the guardian and choose an attorney to represent the adult in these matters;~~

~~(2) be involved in decisions affecting the adult, including decisions about the adult's care, dwelling, activities or social interactions, to the extent reasonably feasible;~~

~~(3) be involved in health care decision making to the extent reasonably feasible and supported in understanding the risks and benefits of health care options to the extent reasonably feasible;~~

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~~(4) be notified at least fourteen days before a change in the adult's primary dwelling or permanent move to a nursing home, mental health treatment facility or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or authorized by the court by specific order;~~

~~(5) object to a change or move described in Paragraph (4) of this subsection and the process for objecting;~~

~~(6) communicate, visit or interact with others, including receiving visitors and making or receiving telephone calls, personal mail or electronic communications, including through social media, unless:~~

~~(a) the guardian has been authorized by the court by specific order to restrict communications, visits or interactions;~~

~~(b) a protective order or protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or~~

~~(c) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm to the adult and the restriction is: 1) for a period of not more than seven business days if the person has a family or preexisting social relationship with the adult; or 2) for a period of not more than sixty days if the person does not have a family or~~

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~~preexisting social relationship with the adult;~~

~~(7) receive a copy of the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the guardian's report under Section 317 of that act; and~~

~~(8) object to the guardian's plan or report.~~

~~SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN FOR ADULT.--~~

~~A. On its own after a petition has been filed under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, or on petition by a person interested in an adult's welfare, the court may appoint an emergency guardian for the adult if the court finds:~~

~~(1) appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;~~

~~(2) no other person appears to have authority and willingness to act in the circumstances; and~~

~~(3) there is reason to believe that a basis for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.~~

~~B. The duration of authority of an emergency guardian for an adult shall not exceed sixty days, and the emergency guardian may exercise only the powers specified in~~

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~~the order of appointment. The emergency guardian's authority may be extended once for not more than thirty days if the court finds that the conditions for appointment of an emergency guardian in Subsection A of this section continue.~~

~~C. Immediately on filing of a petition for appointment of an emergency guardian for an adult, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on the petition shall be given to the respondent, the respondent's attorney and any other person the court determines.~~

~~D. The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without giving notice under Subsection C of this section, the court shall:~~

~~(1) give notice of the appointment not later than forty-eight hours after the appointment to:~~

- ~~(a) the respondent;~~
- ~~(b) the respondent's attorney; and~~
- ~~(c) any other person the court determines; and~~

~~(2) hold a hearing on the appropriateness of the appointment not later than fourteen days after the~~

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~~appointment. On two days' notice to the party who obtained the appointment of an emergency guardian without notice, or on such shorter notice to that party as the court may prescribe, the respondent or the respondent's attorney may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.~~

~~E. Appointment of an emergency guardian under this section is not a determination that a basis exists for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~F. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.~~

~~SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR ADULT.--~~

~~A. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.~~

~~B. A guardian for an adult shall promote the self-determination of the adult and, to the extent reasonably feasible, encourage the adult to participate in decisions, act~~

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~~on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:~~

~~(1) become or remain personally acquainted with the adult and maintain sufficient contact with the adult, including through regular visitation, to know the adult's abilities, limitations, needs, opportunities and physical and mental health;~~

~~(2) to the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities or social interactions; and~~

~~(3) make reasonable efforts to identify and facilitate supportive relationships and services for the adult.~~

~~C. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:~~

~~(1) take reasonable care of the personal effects, pets and service or support animals of the adult and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;~~

~~(2) expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health and welfare;~~

~~(3) conserve any funds and other property of~~

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~~the adult not expended under Paragraph (2) of this subsection for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly to the conservator to be conserved for the adult's future needs; and~~

~~(4) monitor the quality of services, including long-term care services, provided to the adult.~~

~~D. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's previous or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.~~

~~E. If a guardian for an adult cannot make a decision under Subsection D of this section because the guardian does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining~~

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~~the best interest of the adult, the guardian shall consider:~~

~~(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;~~

~~(2) other information the guardian believes the adult would have considered if the adult were able to act; and~~

~~(3) other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.~~

~~F. A guardian for an adult immediately shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed.~~

~~SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR ADULT.--~~

~~A. Except as limited by court order, a guardian for an adult may:~~

~~(1) apply for and receive funds and benefits for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;~~

~~(2) unless inconsistent with a court order, establish the adult's place of dwelling;~~

~~(3) consent to health or other care, treatment or service for the adult;~~

~~(4) if a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to~~

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~~compel another person to support the adult or pay funds for the adult's benefit;~~

~~(5) to the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and~~

~~(6) receive personally identifiable health care information regarding the adult.~~

~~B. The court by specific order may authorize a guardian for an adult to consent to the adoption of the adult.~~

~~C. The court by specific order may authorize a guardian for an adult to:~~

~~(1) consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed under Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~(2) petition for divorce, dissolution or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage; or~~

~~(3) support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage.~~

~~D. In determining whether to authorize a power under Subsection B of this section, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether~~

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~~the underlying act would be in the adult's best interest.~~

~~E. In exercising a guardian's power under Paragraph (2) of Subsection A of this section to establish the adult's place of dwelling, the guardian shall:~~

~~(1) select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in Subsections D and E of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with Subsection E of that section a residential setting that is consistent with the adult's best interest;~~

~~(2) in selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in Subsections D and E of Section 313 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~(3) not later than thirty days after a change in the dwelling of the adult:~~

~~(a) give notice of the change to the~~

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~~court, the adult and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order; and~~

~~(b) include in the notice the address and nature of the new dwelling and state whether the adult received advance notice of the change and whether the adult objected to the change;~~

~~(4) establish or move the permanent place of dwelling of the adult to a nursing home, mental health treatment facility or other facility that places restrictions on the adult's ability to leave or have visitors only if:~~

~~(a) the establishment or move is in the guardian's plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~(b) the court authorizes the establishment or move; or~~

~~(c) the guardian gives notice of the establishment or move at least fourteen days before the establishment or move to the adult and all persons entitled to notice under Paragraph (2) of Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and no objection is filed;~~

~~(5) establish or move the place of dwelling of the adult outside New Mexico only if consistent with the~~

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~~guardian's plan and authorized by the court by specific order;  
and~~

~~\_\_\_\_\_ (6) take action that would result in the sale  
of or surrender of the lease to the primary dwelling of the  
adult only if:~~

~~\_\_\_\_\_ (a) the action is specifically included  
in the guardian's plan under Section 316 of the Uniform  
Guardianship, Conservatorship and Other Protective Arrangements  
Act;~~

~~\_\_\_\_\_ (b) the court authorizes the action by  
specific order; or~~

~~\_\_\_\_\_ (c) notice of the action was given at  
least fourteen days before the action to the adult and all  
persons entitled to the notice under Paragraph (2) of  
Subsection E of Section 310 of the Uniform Guardianship,  
Conservatorship and Other Protective Arrangements Act or a  
subsequent order and no objection has been filed.~~

~~\_\_\_\_\_ F. In exercising a guardian's power under Paragraph  
(3) of Subsection A of this section to make health care  
decisions, the guardian shall:~~

~~\_\_\_\_\_ (1) involve the adult in decision making to  
the extent reasonably feasible, including, when practicable, by  
encouraging and supporting the adult in understanding the risks  
and benefits of health care options;~~

~~\_\_\_\_\_ (2) defer to a decision by an agent under a  
power of attorney for health care signed by the adult and  
cooperate to the extent feasible with the agent making the  
decision; and~~

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~~(3) take into account:~~

~~(a) the risks and benefits of treatment options; and~~

~~(b) the current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.~~

~~G. If, thirty days after the death of an individual subject to guardianship, no personal representative has been appointed and no application or petition for appointment is before any court, the guardian may apply to the district court to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The guardian shall give notice to a person nominated as personal representative by a will of the decedent of which the guardian is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to guardianship is deceased and the guardian has acquired the powers and duties of a personal representative.~~

~~H. Issuance of an order under this section has 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 re-transfer to the guardian as personal~~

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~~representative.~~

~~SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON  
GUARDIAN'S POWER.--~~

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

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

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

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

~~(2) a protective order or a protective~~

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~~arrangement instead of guardianship is in effect that limits contact between the adult and a person; or~~

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

~~(a) for a period of not more than seven business days if the person has a family or preexisting social relationship with the adult; or~~

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

~~SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--~~

~~A. A guardian for an adult, not later than sixty days after appointment and when there is a significant change in circumstances, or the guardian seeks to deviate significantly from the guardian's plan, shall file with the court a plan for the care of the adult. The plan shall be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The guardian shall include in the plan:~~

~~(1) the living arrangement, services and supports the guardian expects to arrange, facilitate or~~

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~~continue for the adult;~~

~~(2) social and educational activities the guardian expects to facilitate on behalf of the adult;~~

~~(3) any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;~~

~~(4) the anticipated nature and frequency of the guardian's visits and communication with the adult;~~

~~(5) goals for the adult, including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;~~

~~(6) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and~~

~~(7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.~~

~~B. A guardian shall give notice of the filing of the guardian's plan under Subsection A of this section, together with a copy of the plan, to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall include a statement of the right to object to the plan and be given not later than fourteen days after the filing.~~

~~C. An adult subject to guardianship and any person~~

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~~entitled under Subsection B of this section to receive notice and a copy of the guardian's plan may object to the plan.~~

~~D. The court shall review a plan and determine whether to approve it or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under Subsection C of this section and whether the plan is consistent with a guardian's duties and powers under Sections 313 and 314 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall not approve the plan until thirty days after its filing. The court may then approve the plan or require a new plan with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the guardian, the adult subject to guardianship or any person entitled to notice pursuant to Subsection B of this section requests a hearing in connection with the plan, the court shall not approve the plan without:~~

~~(1) notice to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines; and~~

~~(2) a hearing.~~

~~E. After the guardian's plan filed under this section is approved by the court, the guardian shall provide a~~

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~~copy of the plan to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines.~~

~~SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING OF GUARDIANSHIP.--~~

~~A. A guardian for an adult, not later than sixty days after appointment and at least annually thereafter, shall file with the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control.~~

~~B. A report under Subsection A of this section shall state or contain:~~

~~(1) the mental, physical and social condition of the adult;~~

~~(2) the living arrangements of the adult during the reporting period;~~

~~(3) a summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;~~

~~(4) a summary of the guardian's visits with the adult, including the dates of the visits;~~

~~(5) action taken on behalf of the adult;~~

~~(6) the extent to which the adult has~~

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~~participated in decision making;~~

~~(7) if the adult is living in a mental health treatment facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest;~~

~~(8) anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult;~~

~~(9) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;~~

~~(10) any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;~~

~~(11) a copy of the guardian's most recently approved plan under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;~~

~~(12) plans for future care and support of the adult;~~

~~(13) a recommendation as to the need for~~

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~~continued guardianship and any recommended change in the scope of the guardianship; and~~

~~(14) whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve.~~

~~C. The court may appoint a visitor to review a report submitted under this section or a guardian's plan submitted under Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.~~

~~D. Notice of the filing under this section of a guardian's report, together with a copy of the report, shall be given to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice and report shall be given not later than fourteen days after the filing.~~

~~E. The court shall establish procedures for monitoring a report submitted under this section and shall review each report at least annually to determine whether:~~

~~(1) the report provides sufficient information to establish the guardian has complied with the guardian's duties;~~

~~(2) the guardianship should continue; and~~

~~(3) the guardian's requested fees, if any, should be approved.~~

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~~F. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:~~

~~(1) shall notify the adult, the guardian, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines;~~

~~(2) may require additional information from the guardian;~~

~~(3) may appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and~~

~~(4) consistent with Sections 318 and 319 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, may hold a hearing to consider removal of the guardian, termination of the guardianship or a change in the powers granted to the guardian or terms of the guardianship.~~

~~G. If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees and give notice of the hearing to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship,~~

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~~Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines.~~

~~H. A guardian for an adult may petition the court for approval of a report filed under this section. The guardian shall send a copy of the petition to the adult subject to guardianship and to a person entitled to notice pursuant to Subsection G of this section and shall file proof of the sending of the petition with the court. The court shall not approve the report until the later of thirty days after its filing and fourteen days after the petition was sent to the persons entitled to notice. The court may then approve the report with or without a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the guardian, the person subject to guardianship or a person entitled to notice pursuant to Subsection C of this section requests a hearing in connection with the report, the court shall not approve the report without:~~

~~(1) notice to the adult subject to guardianship, a person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines; and~~

~~(2) a hearing.~~

~~SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR ADULT--APPOINTMENT OF SUCCESSOR.--~~

~~A. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good~~

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~~cause and appoint a successor guardian to assume the duties of guardian.~~

~~B. The court shall hold a hearing to determine whether to remove a guardian for an adult and appoint a successor guardian on:~~

~~(1) petition of the adult, guardian or person interested in the welfare of the adult, that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;~~

~~(2) communication from the adult, guardian or person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate; or~~

~~(3) determination by the court that a hearing would be in the best interest of the adult.~~

~~C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the adult subject to guardianship, the guardian and any other person the court determines.~~

~~D. An adult subject to guardianship who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney to represent the adult in this~~

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~~matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 119 of that act.~~

~~E. In selecting a successor guardian for an adult, the court shall follow the priorities under Section 309 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~F. Not later than thirty days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship, any person entitled to notice under Subsection E of Section 310 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines.~~

~~SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION OF GUARDIANSHIP FOR ADULT.--~~

~~A. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:~~

~~(1) termination of the guardianship on the ground that a basis for appointment under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not exist or termination would be in the best interest of the adult or for other good cause; or~~

~~(2) modification of the guardianship on the~~

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~~ground that the extent of protection or assistance granted is not appropriate or for other good cause.~~

~~B. The court shall hold a hearing to determine whether termination or modification of a guardianship for an adult is appropriate on:~~

~~(1) petition under Subsection A of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;~~

~~(2) communication from the adult, guardian or person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because the functional needs of the adult or supports or services available to the adult have changed;~~

~~(3) a report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternative for meeting the adult's needs is available; or~~

~~(4) a determination by the court that a~~

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~~hearing would be in the best interest of the adult.~~

~~C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the adult subject to guardianship, the guardian and any other person the court determines.~~

~~D. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that a basis for appointment of a guardian under Section 301 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.~~

~~E. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports or other circumstances.~~

~~F. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.~~

~~G. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney to represent the adult in the matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney for the adult as provided in~~

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~~Section 119 of that act.~~

~~ARTICLE 4~~

~~CONSERVATORSHIP~~

~~SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF  
CONSERVATOR.~~

~~A. On petition and after notice and hearing, the  
court may appoint a conservator for the property or financial  
affairs of a minor if the court finds by a preponderance of  
evidence that appointment of a conservator is in the minor's  
best interest and:~~

~~(1) if the minor has a parent, the court gives  
weight to any recommendation of the parent whether an  
appointment is in the minor's best interest; and~~

~~(2) either:~~

~~(a) the minor owns funds or other  
property requiring management or protection that otherwise  
cannot be provided;~~

~~(b) the minor has or may have financial  
affairs that may be put at unreasonable risk or hindered  
because of the minor's age; or~~

~~(c) appointment is necessary or  
desirable to obtain or provide funds or other property needed  
for the support, care, education, health or welfare of the  
minor.~~

~~B. On petition and after notice and hearing, the~~

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~~court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:~~

~~(1) the adult is unable to manage property or financial affairs because:~~

~~(a) of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance or supported decision making; or~~

~~(b) the adult is missing, detained or unable to return to the United States;~~

~~(2) appointment is necessary to:~~

~~(a) avoid harm to the adult or significant dissipation of the property of the adult; or~~

~~(b) obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or of an individual entitled to the adult's support; and~~

~~(3) the respondent's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative.~~

~~C. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court shall not establish a full conservatorship if a limited conservatorship, protective~~

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~~arrangement instead of conservatorship or other less restrictive alternative would meet the needs of the respondent.~~

~~SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF CONSERVATOR.--~~

~~A. The following may petition for the appointment of a conservator:~~

~~(1) the individual for whom the order is sought;~~

~~(2) a person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; or~~

~~(3) the guardian for the individual.~~

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

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

~~(2) the name and address of the respondent's:~~

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~~(a) spouse or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;~~

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

~~(c) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship during the two years immediately before the filing of the petition;~~

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

~~(a) a person responsible for the care or custody of the respondent;~~

~~(b) any attorney currently representing the respondent;~~

~~(c) the representative payee appointed by the federal social security administration for the respondent;~~

~~(d) a guardian or conservator acting for the respondent in New Mexico or another jurisdiction;~~

~~(e) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;~~

~~(f) the fiduciary appointed for the respondent by the federal department of veterans affairs;~~

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

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

~~(i) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition;~~

~~(j) any proposed conservator, including a person nominated by the respondent, if the respondent is twelve years of age or older; and~~

~~(k) if the individual for whom a conservator is sought is a minor: 1) an adult not otherwise listed with whom the minor resides; and 2) each person not otherwise listed that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;~~

~~(4) a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts;~~

~~(5) the reason conservatorship is necessary;~~

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~~including a brief description of:~~

~~\_\_\_\_\_ (a) the nature and extent of the respondent's alleged need;~~

~~\_\_\_\_\_ (b) if the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;~~

~~\_\_\_\_\_ (c) any protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's alleged need that has been considered or implemented;~~

~~\_\_\_\_\_ (d) if no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and~~

~~\_\_\_\_\_ (e) the reason a protective arrangement or other less restrictive alternative is insufficient to meet the respondent's need;~~

~~\_\_\_\_\_ (6) whether the petitioner seeks a limited conservatorship or a full conservatorship;~~

~~\_\_\_\_\_ (7) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;~~

~~\_\_\_\_\_ (8) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;~~

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~~(9) if the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;~~

~~(10) whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and~~

~~(11) the name and address of an attorney representing the petitioner, if any.~~

~~SECTION 403. [NEW MATERIAL] NOTICE AND HEARING FOR APPOINTMENT OF CONSERVATOR.--~~

~~A. On filing of a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for appointment of a conservator, the court shall set a date, time and place for a hearing on the petition.~~

~~B. A copy of a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent shall be made as provided in Section 45-1-401 NMSA 1978. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice also shall include a description of the nature, purpose and consequences~~

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~~of granting the petition. The court shall not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the respondent.~~

~~C. In a proceeding on a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Paragraphs (1) through (3) of Subsection B of Section 402 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.~~

~~D. After the appointment of a conservator, notice of a hearing on a petition for an order under this article, together with a copy of the petition, shall be given to:~~

~~(1) the individual subject to conservatorship, if the individual is twelve years of age or older and not missing, detained or unable to return to the United States;~~

~~(2) the conservator; and~~

~~(3) any other person the court determines.~~

~~SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY PROPERTY WHILE PROCEEDING PENDING.--While a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent. The court may appoint~~

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~~a special master to assist in implementing the order.~~

~~SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--~~

~~A. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.~~

~~B. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney appointed by the court. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor shall be an individual with training or experience in the type of abilities, limitations and needs alleged in the petition.~~

~~C. A visitor appointed under Subsection B of this section for an adult shall interview the respondent in person and, in a manner the respondent is best able to understand:~~

~~(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing on the petition and the general powers and duties of a conservator;~~

~~(2) determine the respondent's views about the appointment sought by the petitioner, including views about a~~

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~~proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship;~~

~~(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and~~

~~(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets.~~

~~D. A visitor appointed under Subsection B of this section for an adult shall:~~

~~(1) interview the petitioner and proposed conservator, if any;~~

~~(2) review financial records of the respondent, if relevant to the visitor's recommendation under Paragraph (1) of Subsection E of this section;~~

~~(3) investigate whether the respondent's needs could be met by a protective arrangement instead of conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive alternative; and~~

~~(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.~~

~~E. A visitor appointed under Subsection B of this section for an adult promptly shall file a report in a record with the court that includes:~~

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~~(1) a recommendation:~~

~~(a) regarding the appropriateness of conservatorship or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;~~

~~(b) if a conservatorship is recommended, whether it should be full or limited; and~~

~~(c) if a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control;~~

~~(2) a statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;~~

~~(3) a recommendation whether a professional evaluation under Section 407 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;~~

~~(4) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;~~

~~(5) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and~~

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~~(6) any other matter the court directs.~~

~~SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY.--~~

~~A. Unless the respondent in a proceeding for appointment of a conservator is represented by an attorney, the court shall appoint an attorney to represent the respondent.~~

~~B. An attorney representing the respondent in a proceeding for appointment of a conservator shall:~~

~~(1) make reasonable efforts to ascertain the respondent's wishes;~~

~~(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and~~

~~(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration and scope, consistent with the respondent's interests.~~

~~SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--~~

~~A. At or before a hearing on a petition for conservatorship for an adult, the court shall order a professional evaluation of the respondent:~~

~~(1) if the respondent requests the evaluation;~~

~~or~~

~~(2) in other cases, unless the court finds it has sufficient information to determine the respondent's needs and abilities without the evaluation.~~

~~B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other~~

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~~individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report shall contain:~~

~~(1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;~~

~~(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;~~

~~(3) a prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and~~

~~(4) the date of the examination on which the report is based.~~

~~C. A respondent may decline to participate in an evaluation ordered under Subsection A of this section.~~

~~SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.~~

~~A. Except as otherwise provided in Subsection B of this section, a hearing under Section 403 of the Uniform~~

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~~Guardianship, Conservatorship and Other Protective Arrangements Act shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location more convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology, if available.~~

~~B. A hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:~~

~~(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;~~

~~(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services or technological assistance; or~~

~~(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.~~

~~C. The respondent may be assisted in a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the~~

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~~respondent, the court shall make reasonable efforts to provide it.~~

~~D. The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~E. At a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the respondent may:~~

~~(1) present evidence and subpoena witnesses and documents;~~

~~(2) examine witnesses, including any court-appointed evaluator and the visitor; and~~

~~(3) otherwise participate in the hearing.~~

~~F. Unless excused by the court for good cause, a proposed conservator shall attend a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~G. A hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall be closed on request of the respondent and a showing of good cause.~~

~~H. Any person may request to participate in a hearing under Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The~~

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~~court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.~~

~~SECTION 409. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--~~

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

~~(1) the respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and~~

~~(2) either:~~

~~(a) the petition for conservatorship is dismissed; or~~

~~(b) the conservatorship is terminated.~~

~~B. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice pursuant to Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under Section 419 of that act and the conservator's report under Section 423 of that act. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the~~

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~~conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.~~

~~C. A report under Section 405 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of a visitor or professional evaluation under Section 407 of that act is confidential and shall be sealed on filing, but is available to:~~

- ~~(1) the court;~~
- ~~(2) the individual who is the subject of the report or evaluation, without limitation as to use;~~
- ~~(3) the petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;~~
- ~~(4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; and~~
- ~~(5) any other person if it is in the public interest or for a purpose the court orders for good cause.~~

~~SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER OF PRIORITY.--~~

~~A. Except as otherwise provided in Subsection C of this section, the court in appointing a conservator shall consider persons qualified to be a conservator in the following~~

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~~order of priority:~~

~~(1) a conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;~~

~~(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;~~

~~(3) an agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;~~

~~(4) a spouse of the respondent; and~~

~~(5) a family member or other individual who has shown special care and concern for the respondent.~~

~~B. If two or more persons have equal priority under Subsection A of this section, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences and the likelihood the person will be able to perform the duties of a conservator successfully.~~

~~C. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under Subsection A of this section and appoint a person having a lower priority or no priority.~~

~~D. A person that provides paid services to the respondent, or an individual who is employed by a person that~~

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~~provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, shall not be appointed as conservator unless:~~

~~(1) the individual is related to the respondent by blood, marriage or adoption; or~~

~~(2) the court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.~~

~~E. An owner, operator or employee of a long-term care facility at which the respondent is receiving care shall not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.~~

~~SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT OF CONSERVATOR.--~~

~~A. A court order appointing a conservator for a minor shall include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.~~

~~B. A court order appointing a conservator for an adult shall:~~

~~(1) include a specific finding that clear and~~

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~~convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative, including use of appropriate supportive services, technological assistance or supported decision making; and~~

~~\_\_\_\_\_ (2) include a specific finding that clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.~~

~~\_\_\_\_\_ C. A court order establishing a full conservatorship for an adult shall state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.~~

~~\_\_\_\_\_ D. A court order establishing a limited conservatorship shall state the specific property placed under the control of the conservator and the powers granted to the conservator.~~

~~\_\_\_\_\_ E. The court, as part of an order establishing a conservatorship, shall identify any person that subsequently is entitled to:~~

~~\_\_\_\_\_ (1) notice of the rights of the individual subject to conservatorship under Subsection B of Section 412 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~\_\_\_\_\_ (2) notice of a sale of or surrender of a lease to the primary dwelling of the individual;~~

~~\_\_\_\_\_ (3) notice that the conservator has delegated a power that requires court approval under Section 414 of the~~

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~~Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or substantially all powers of the conservator;~~

~~(4) notice that the conservator will be unavailable to perform the conservator's duties for more than one month;~~

~~(5) a copy of the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the conservator's report under Section 423 of that act;~~

~~(6) access to court records relating to the conservatorship;~~

~~(7) notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;~~

~~(8) notice of the death or significant change in the condition of the individual;~~

~~(9) notice that the court has limited or modified the powers of the conservator; and~~

~~(10) notice of the removal of the conservator.~~

~~F. If an individual subject to conservatorship is an adult, the spouse and adult children of the adult subject to conservatorship are entitled under Subsection E of this section to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to~~

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~~conservatorship or not in the best interest of the adult.~~

~~G. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under Subsection E of this section to notice unless the court determines notice would not be in the best interest of the minor.~~

~~SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF APPOINTMENT--RIGHTS.--~~

~~A. A conservator appointed under Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act shall give to the individual subject to conservatorship and to all other persons given notice under Section 403 of that act a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice shall be given not later than fourteen days after the appointment.~~

~~B. Not later than thirty days after appointment of a conservator under Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall give to the individual subject to conservatorship, the conservator and any other person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the individual is denied those rights. The statement shall be in plain language, in at least sixteen-point font and, to the extent feasible, in a language in which the individual subject to~~

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~~conservatorship is proficient. The statement shall notify the individual subject to conservatorship of the right to:~~

~~(1) seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;~~

~~(2) participate in decision making to the extent reasonably feasible;~~

~~(3) receive a copy of the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the conservator's inventory under Section 420 of that act and the conservator's report under Section 423 of that act; and~~

~~(4) object to the conservator's inventory, plan or report.~~

~~C. If a conservator is appointed for the reasons stated in Subparagraph (b) of Paragraph (1) of Subsection B of Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and the individual subject to conservatorship is missing, notice under this section to the individual is not required.~~

~~SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.~~

~~A. On its own or on petition by a person interested in an individual's welfare after a petition has been filed under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court may appoint an~~

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~~emergency conservator for the individual if the court finds:~~

~~(1) appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;~~

~~(2) no other person appears to have authority and willingness to act in the circumstances; and~~

~~(3) there is reason to believe that a basis for appointment of a conservator under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.~~

~~B. The duration of authority of an emergency conservator shall not exceed sixty days, and the emergency conservator may exercise only the powers specified in the order of appointment. The emergency conservator's authority may be extended once for not more than thirty days if the court finds that the conditions for appointment of an emergency conservator under Subsection A of this section continue.~~

~~C. Immediately on filing of a petition for an emergency conservator, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in Subsection D of this section, reasonable notice of the date, time and place of a hearing on the petition shall be given to the respondent, the respondent's attorney and any other person the court determines.~~

~~D. The court may appoint an emergency conservator without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial interests~~

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~~will be substantially and irreparably harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency conservator without giving notice under Subsection C of this section, the court shall give notice of the appointment not later than forty-eight hours after the appointment to:~~

- ~~\_\_\_\_\_ (1) the respondent;~~
- ~~\_\_\_\_\_ (2) the respondent's attorney; and~~
- ~~\_\_\_\_\_ (3) any other person the court determines.~~

~~E. Not later than fourteen days after the appointment, the court shall hold a hearing on the appropriateness of the appointment. On two days' notice to the party who obtained the appointment of an emergency conservator without notice or on such shorter notice to that party as the court may prescribe, the respondent or the respondent's attorney may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.~~

~~F. Appointment of an emergency conservator under this section is not a determination that a basis exists for appointment of a conservator under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~G. The court may remove an emergency conservator~~

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~~appointed under this section at any time. The emergency conservator shall make any report the court requires.~~

~~SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR REQUIRING COURT APPROVAL.--~~

~~A. Except as otherwise ordered by the court for good cause, a conservator shall give notice to persons entitled to notice under Subsection D of Section 403 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:~~

~~(1) make a gift, except a gift of de minimis value;~~

~~(2) sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;~~

~~(3) convey, release or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entirety;~~

~~(4) exercise or release a power of appointment;~~

~~(5) create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;~~

~~(6) exercise a right to elect an option or~~

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~~change a beneficiary under an insurance policy or annuity or  
surrender the policy or annuity for its cash value;~~

~~(7) exercise a right to an elective share in  
the estate of a deceased spouse of the individual subject to  
conservatorship or renounce or disclaim a property interest;~~

~~(8) grant a creditor priority for payment over  
creditors of the same or higher class if the creditor is  
providing property or services used to meet the basic living  
and care needs of the individual subject to conservatorship and  
preferential treatment otherwise would be impermissible under  
Subsection E of Section 428 of the Uniform Guardianship,  
Conservatorship and Other Protective Arrangements Act; and~~

~~(9) make, modify, amend or revoke the will of  
the individual subject to conservatorship in compliance with  
the Uniform Probate Code.~~

~~B. In approving a conservator's exercise of a power  
listed in Subsection A of this section, the court shall  
consider primarily the decision the individual subject to  
conservatorship would make if able, to the extent the decision  
can be ascertained.~~

~~C. To determine under Subsection B of this section  
the decision the individual subject to conservatorship would  
make if able, the court shall consider the individual's prior  
or current directions, preferences, opinions, values and  
actions, to the extent actually known or reasonably~~

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~~ascertainable by the conservator. The court also shall consider:~~

- ~~(1) the financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support and the interests of creditors of the individual;~~
- ~~(2) possible reduction of income, estate, inheritance or other tax liabilities;~~
- ~~(3) eligibility for governmental assistance;~~
- ~~(4) the previous pattern of giving or level of support provided by the individual;~~
- ~~(5) any existing estate plan or lack of estate plan of the individual;~~
- ~~(6) the life expectancy of the individual and the probability the conservatorship will terminate before the individual's death; and~~
- ~~(7) any other relevant factor.~~

~~D. A conservator shall not revoke or amend a power of attorney for finances signed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless the court orders otherwise.~~

~~SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER APPOINTMENT.--An individual subject to conservatorship or a person interested in the welfare of the individual may petition for an order:~~

~~A. requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a~~

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~~reduction in a bond or collateral previously furnished;~~

~~B. requiring an accounting for the administration of the conservatorship estate;~~

~~C. directing distribution;~~

~~D. removing the conservator and appointing a temporary or successor conservator;~~

~~E. modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;~~

~~F. rejecting or modifying the conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the conservator's inventory under Section 420 of that act or the conservator's report under Section 423 of that act; or~~

~~G. granting other appropriate relief.~~

~~SECTION 416. [NEW MATERIAL] BOND--ALTERNATIVE ASSET-PROTECTION ARRANGEMENT.--~~

~~A. Except as otherwise provided in Subsection C of this section, the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond~~

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~~or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in Subsection C of this section, the court shall not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.~~

~~B. Unless the court directs otherwise, the bond required under this section shall be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.~~

~~C. A financial institution that possesses and is exercising general trust powers in New Mexico is not required to give a bond under this section. As used in this subsection, "financial institution" means a state- or federally chartered, federally insured depository bank or trust company.~~

~~SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF BOND.--~~

~~A. The following rules apply to the bond required under Section 416 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act:~~

~~(1) except as otherwise provided by the bond, the surety and the conservator are jointly and severally~~

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liable;

~~(2) by executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding shall be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice;~~

~~(3) on petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond; and~~

~~(4) a proceeding against the bond may be brought until liability under the bond is exhausted.~~

~~B. A proceeding shall not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.~~

~~C. If a bond under Section 416 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the individual subject to conservatorship.~~

~~SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--~~

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~~A. A conservator is a fiduciary and has duties of prudence and loyalty to the individual subject to conservatorship.~~

~~B. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.~~

~~C. In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the conservator.~~

~~D. If a conservator cannot make a decision under Subsection C of this section because the conservator does not know and cannot reasonably determine the decision the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal~~

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~~or financial interests of the individual, the conservator shall act in accordance with the best interest of the individual.~~

~~In determining the best interest of the individual, the conservator shall consider:~~

~~(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;~~

~~(2) other information the conservator believes the individual would have considered if the individual were able to act; and~~

~~(3) other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.~~

~~E. Except when inconsistent with the conservator's duties under Subsections A through D of this section, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:~~

~~(1) the circumstances of the individual subject to conservatorship and the conservatorship estate;~~

~~(2) general economic conditions;~~

~~(3) the possible effect of inflation or deflation;~~

~~(4) the expected tax consequences of an investment decision or strategy;~~

~~(5) the role of each investment or course of~~

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~~action in relation to the conservatorship estate as a whole;~~  
~~(6) the expected total return from income and appreciation of capital;~~  
~~(7) the need for liquidity, regularity of income and preservation or appreciation of capital; and~~  
~~(8) the special relationship or value, if any, of specific property to the individual subject to conservatorship.~~

~~F. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.~~

~~G. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.~~

~~H. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.~~

~~I. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or appointive instrument of the individual.~~

~~J. A conservator shall maintain insurance on the~~

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~~insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:~~

- ~~(1) the property lacks sufficient equity; or~~
- ~~(2) insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual.~~

~~K. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.~~

~~L. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or court order.~~

~~M. A conservator for an adult shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed. The notice shall be given immediately upon learning of the change.~~

~~SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--~~

~~A. A conservator, not later than sixty days after appointment and when there is a significant change in circumstances or the conservator seeks to deviate significantly from the conservator's plan, shall file with the court a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan shall be based on the~~

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~~needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator.~~

~~The conservator shall include in the plan:~~

~~(1) a budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;~~

~~(2) how the conservator will involve the individual in decisions about management of the conservatorship estate;~~

~~(3) any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and~~

~~(4) an estimate of the duration of the conservatorship.~~

~~B. A conservator shall give notice of the filing of the conservator's plan under Subsection A of this section, together with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall include a statement of the right to object to the plan and be given not later than fourteen days after the filing.~~

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~~C. An individual subject to conservatorship and any person entitled under Subsection B of this section to receive notice and a copy of the conservator's plan may object to the plan.~~

~~D. The court shall review a plan and determine whether to approve it or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under Subsection C of this section and whether the plan is consistent with a conservator's duties and powers. The court shall not approve the plan until thirty days after its filing. The court may then approve the plan or require a new plan with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the conservator, the adult subject to conservatorship or any person entitled to notice pursuant to Subsection B of this section requests a hearing in connection with the plan, the court shall not approve the plan without:~~

~~(1) notice to the adult subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines; and~~

~~(2) a hearing.~~

~~E. After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of~~

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~~the plan to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines.~~

~~SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--~~

~~A. Not later than sixty days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.~~

~~B. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice shall be given not later than fourteen days after the filing.~~

~~C. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual or any other person the conservator or the court determines.~~

~~SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL.--~~

~~A. Except as otherwise provided in Section 414 of the Uniform Guardianship, Conservatorship and Other Protective~~

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~~Arrangements Act or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional power granted to a trustee by law of New Mexico other than that act.~~

~~B. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:~~

~~(1) collect, hold and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;~~

~~(2) receive additions to the conservatorship estate;~~

~~(3) continue or participate in the operation of a business or other enterprise;~~

~~(4) acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;~~

~~(5) invest assets;~~

~~(6) deposit funds or other property in a financial institution, including one operated by the~~

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~~conservator;~~

~~(7) acquire or dispose of property, including real property in another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of or abandon property;~~

~~(8) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement or raze an existing or erect a new party wall or building;~~

~~(9) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;~~

~~(10) enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;~~

~~(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;~~

~~(12) grant an option involving disposition of property or accept or exercise an option for the acquisition of property;~~

~~(13) vote a security, in person or by general or limited proxy;~~

~~(14) pay a call, assessment or other sum chargeable or accruing against or on account of a security;~~

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~~(15) sell or exercise a stock subscription or conversion right;~~

~~(16) consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;~~

~~(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;~~

~~(18) insure:~~

~~(a) the conservatorship estate, in whole or in part, against damage or loss in accordance with Subsection J of Section 418 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and~~

~~(b) the conservator against liability with respect to a third person;~~

~~(19) borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;~~

~~(20) advance funds for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;~~

~~(21) pay or contest a claim, settle a claim by~~

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~~or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;~~

~~(22) pay a tax, assessment, compensation of the conservator or any guardian and other expense incurred in the collection, care, administration and protection of the conservatorship estate;~~

~~(23) pay a sum distributable to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:~~

~~(a) to the guardian for the distributee;~~

~~(b) to the custodian of the distributee under the Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act; or~~

~~(c) if there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;~~

~~(24) bring or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;~~

~~(25) structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the~~

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~~individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and~~

~~(26) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator.~~

~~SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM CONSERVATORSHIP ESTATE.--Except as otherwise provided in Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or qualified or limited in the court's order of appointment and stated in the letters of office and unless contrary to a conservator's plan under Section 419 of that act, the conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules:~~

~~A. the conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship or individual who is dependent on the~~

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~~individual subject to conservatorship, made by a guardian for  
the individual subject to conservatorship, if any, and, if the  
individual subject to conservatorship is a minor, a  
recommendation made by a parent of the minor;~~

~~B. the conservator acting in compliance with the  
conservator's duties under Section 418 of the Uniform  
Guardianship, Conservatorship and Other Protective Arrangements  
Act is not liable for an expenditure or distribution made based  
on a recommendation under Subsection A of this section unless  
the conservator knows the expenditure or distribution is not in  
the best interest of the individual subject to conservatorship;~~

~~C. in making an expenditure or distribution under  
this section, the conservator shall consider:~~

~~(1) the size of the conservatorship estate,  
the estimated duration of the conservatorship and the  
likelihood the individual subject to conservatorship, at some  
future time, may be fully self-sufficient and able to manage  
the individual's financial affairs and the conservatorship  
estate;~~

~~(2) the accustomed standard of living of the  
individual subject to conservatorship and individual who is  
dependent on the individual subject to conservatorship;~~

~~(3) other funds or source used for the support  
of the individual subject to conservatorship; and~~

~~(4) the preferences, values and prior  
directions of the individual subject to conservatorship; and~~

~~D. funds expended or distributed under this section  
may be paid by the conservator to any person, including the~~

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~~individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be provided to the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.~~

~~SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND ACCOUNTING--MONITORING.--~~

~~A. A conservator shall file with the court a report in a record regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time the court directs.~~

~~B. A report under Subsection A of this section shall state or contain:~~

~~(1) an accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities and distributions during the period for which the report is made;~~

~~(2) a list of the services provided to the individual subject to conservatorship;~~

~~(3) a copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how the conservator has~~

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~~deviated and why;~~

~~————— (4) a recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;~~

~~————— (5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship with all but the last four digits of the account numbers and social security number redacted;~~

~~————— (6) anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;~~

~~————— (7) any business relation the conservator has with a person the conservator has paid or that has benefited from the property of the individual subject to conservatorship; and~~

~~————— (8) whether any co-conservator or successor conservator appointed to serve when a designated event occurs is alive and able to serve.~~

~~————— C. The court may appoint a visitor to review a report under this section or conservator's plan under Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, interview the individual subject to conservatorship or conservator or investigate any other matter involving the conservatorship. In connection with the~~

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~~report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.~~

~~D. Notice of the filing under this section of a conservator's report, together with a copy of the report, shall be provided to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. The notice and report shall be given not later than fourteen days after filing.~~

~~E. The court shall establish procedures for monitoring a report submitted under this section and shall review each report at least annually to determine whether:~~

~~(1) the reports provide sufficient information to establish the conservator has complied with the conservator's duties;~~

~~(2) the conservatorship should continue; and~~

~~(3) the conservator's requested fees, if any, should be approved.~~

~~F. If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:~~

~~(1) shall notify the individual subject to conservatorship, the conservator, any other person entitled to~~

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~~notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines;~~

~~\_\_\_\_\_ (2) may require additional information from the conservator;~~

~~\_\_\_\_\_ (3) may appoint a visitor to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and~~

~~\_\_\_\_\_ (4) consistent with Sections 430 and 431 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, may hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.~~

~~\_\_\_\_\_ C. If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees and give notice of the hearing to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines.~~

~~\_\_\_\_\_ H. A conservator may petition the court for approval of a report filed under this section. The conservator shall send a copy of the petition to the adult subject to conservatorship and to a person entitled to notice pursuant to Subsection D of this section and shall file proof of the~~

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~~sending of the petition with the court. The court shall not approve the report until the later of thirty days after its filing and fourteen days after the petition was sent to the persons entitled to notice. The court may then approve the report with or without holding a hearing as the court determines is appropriate unless a hearing is requested as provided in this subsection. If the conservator, the person subject to conservatorship or a person entitled to notice pursuant to Subsection D of this section requests a hearing in connection with the report, the court after review shall not approve the report without:~~

~~\_\_\_\_\_ (1) notice to the individual subject to conservatorship, a person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or under a subsequent order and any other person the court determines; and~~

~~\_\_\_\_\_ (2) a hearing.~~

~~\_\_\_\_\_ I. An order, after timely notice and hearing, approving an interim report of a conservator filed under this section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the report or accounting and the hearing.~~

~~\_\_\_\_\_ J. An order, after timely notice and hearing, approving a final report filed under this section discharges the conservator from all liabilities, claims and causes of~~

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~~action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.~~

~~K. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator or an agent or affiliate of a conservator:~~

~~(1) concerning any matter not adequately disclosed in a report or accounting filed pursuant to Subsection I or J of this section; or~~

~~(2) from a person who was not given, in a timely manner, a copy of the report or accounting and a notice of the hearing pursuant to Subsection I or J of this section.~~

~~L. A release or waiver of liability that is requested, procured or received contrary to the provisions of Subsection K of this section is void.~~

~~SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--~~

~~A. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferrable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under Section 428 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~B. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.~~

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~~C. A person other than the conservator that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of New Mexico other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING CONFLICT OF INTEREST.--A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by court order after notice to the individual subject to conservatorship, persons entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines. A transaction affected by a substantial conflict includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, descendant, sibling, agent or attorney of the conservator or a corporation or other enterprise in which the conservator has a substantial beneficial interest.~~

~~SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING WITH CONSERVATOR.--~~

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~~A. A person that assists or deals with a conservator in good faith and for value in any transaction, other than a transaction requiring a court order under Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, is protected as though the conservator properly exercised any power in question. Knowledge by a person that the person is dealing with a conservator alone does not require the person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority stated in letters of office, or otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.~~

~~B. Protection under Subsection A of this section extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and does not substitute for protection for a person that assists or deals with a conservator provided by comparable provisions in law of New Mexico other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act relating to a commercial transaction or simplifying a transfer of securities by a fiduciary.~~

~~SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--~~

~~A. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's~~

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~~possession and inform the personal representative named in the will, if feasible, or, if not feasible, a beneficiary named in the will, of the delivery.~~

~~B. If, thirty days after the death of an individual subject to conservatorship, no personal representative has been appointed and no application or petition for appointment is before any court, the conservator may apply to the district court to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.~~

~~C. Issuance of an order under this section has 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 re-transfer to the conservator as personal representative.~~

~~D. On the death of an individual subject to conservatorship, the conservator shall conclude the~~

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~~administration of the conservatorship estate as provided in  
Section 431 of the Uniform Guardianship, Conservatorship and  
Other Protective Arrangements Act.~~

~~SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF  
CLAIM.--~~

~~A. A conservator may pay, or secure by encumbering  
property included in the conservatorship estate, a claim  
against the conservatorship estate or the individual subject to  
conservatorship arising before or during the conservatorship,  
on presentation and allowance in accordance with the priorities  
under Subsection D of this section. A claimant may present a  
claim by:~~

~~(1) sending or delivering to the conservator a  
statement in a record of the claim, indicating its basis, the  
name and address of the claimant and the amount claimed; or~~

~~(2) filing the claim with the court, in a form  
acceptable to the court, and sending or delivering a copy of  
the claim to the conservator.~~

~~B. A claim under Subsection A of this section is  
presented on receipt by the conservator of the statement of the  
claim or the filing with the court of the claim, whichever  
first occurs. A presented claim is allowed if it is not  
disallowed in whole or in part by the conservator in a record  
sent or delivered to the claimant not later than sixty days  
after its presentation. Before payment, the conservator may  
change an allowance of the claim to a disallowance in whole or  
in part, but not after allowance under a court order or order  
directing payment of the claim. Presentation of a claim tolls~~

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~~until thirty days after disallowance of the claim the running of a statute of limitations that has not expired relating to the claim.~~

~~C. A claimant whose claim under Subsection A of this section has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.~~

~~D. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:~~

- ~~(1) costs and expenses of administration;~~
- ~~(2) a claim of the federal or state government having priority under law other than the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~
- ~~(3) a claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual~~

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~~who is in fact dependent on the individual subject to conservatorship;~~

~~\_\_\_\_\_ (4) a claim arising before the conservatorship; and~~

~~\_\_\_\_\_ (5) all other claims.~~

~~\_\_\_\_\_ E. Preference shall not be given in the payment of a claim under Subsection D of this section over another claim of the same class. A claim due and payable shall not be preferred over a claim not due unless:~~

~~\_\_\_\_\_ (1) doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and~~

~~\_\_\_\_\_ (2) the court authorizes the preference under Paragraph (8) of Subsection A of Section 414 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~\_\_\_\_\_ F. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.~~

~~\_\_\_\_\_ SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF CONSERVATOR.--~~

~~\_\_\_\_\_ A. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the~~

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~~conservator fails to reveal the conservator's representative capacity in the contract or before entering into the contract.~~

~~B. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.~~

~~C. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.~~

~~D. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.~~

~~SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--  
APPOINTMENT OF SUCCESSOR.--~~

~~A. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.~~

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~~B. The court shall hold a hearing to determine whether to remove a conservator and appoint a successor on:~~

~~(1) petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;~~

~~(2) communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or~~

~~(3) determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.~~

~~C. Notice of a petition under Paragraph (1) of Subsection B of this section shall be given to the individual subject to conservatorship, the conservator and any other person the court determines.~~

~~D. An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the individual in this matter. If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406 of the Uniform Guardianship,~~

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~~Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney as provided in Section 119 of that act.~~

~~E. In selecting a successor conservator, the court shall follow the priorities under Section 410 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~F. Not later than thirty days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship, any person entitled to notice under Subsection E of Section 411 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or a subsequent order and any other person the court determines.~~

~~SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION OF CONSERVATORSHIP.--~~

~~A. A conservatorship for a minor terminates on the earliest of:~~

~~(1) a court order terminating the conservatorship;~~

~~(2) the minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining twenty-one years of age;~~

~~(3) emancipation of the minor; or~~

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~~(4) death of the minor.~~

~~B. A conservatorship for an adult terminates on order of the court or when the adult dies.~~

~~C. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:~~

~~(1) termination of the conservatorship on the ground that a basis for appointment under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not exist or termination would be in the best interest of the individual or for other good cause; or~~

~~(2) modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.~~

~~D. The court shall hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:~~

~~(1) petition under Subsection C of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;~~

~~(2) a communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be~~

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~~appropriate, including because the functional needs of the individual or supports or services available to the individual have changed;~~

~~(3) a report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual have changed or a protective arrangement instead of conservatorship or other less restrictive alternative is available; or~~

~~(4) a determination by the court that a hearing would be in the best interest of the individual.~~

~~E. Notice of a petition under Subsection C of this section shall be given to the individual subject to conservatorship, the conservator and any such other person the court determines.~~

~~F. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless it is proven that a basis for appointment of a conservator under Section 401 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act exists.~~

~~G. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.~~

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~~H. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.~~

~~I. An individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the individual in this matter. If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The court shall award reasonable attorney's fees to the attorney as provided in Section 119 of that act.~~

~~J. On termination of a conservatorship other than by reason of the death of the individual subject to conservatorship, property of the conservatorship estate passes to the individual. The order of termination shall direct the conservator to file a final report and petition for discharge on approval by the court of the final report.~~

~~K. On termination of a conservatorship by reason of the death of the individual subject to conservatorship, the conservator promptly shall file a final report and petition for discharge on approval by the court of the final report. On approval of the final report, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or as otherwise ordered by the court. The conservator may take reasonable measures necessary to preserve~~

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~~the conservatorship estate until distribution can be made.~~

~~L. The court shall issue a final order of discharge on the approval by the court of the final report and satisfaction by the conservator of any other condition the court imposed on the conservator's discharge.~~

~~SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CONSERVATOR.--~~

~~A. Unless a person required to transfer funds or other property to a minor knows that a conservator for the minor has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value not exceeding fifteen thousand dollars (\$15,000) in a twelve-month period to:~~

~~(1) a person that has care or custody of the minor and with whom the minor resides;~~

~~(2) a guardian for the minor;~~

~~(3) a custodian under the Uniform Transfers to Minors Act; or~~

~~(4) a financial institution as a deposit in an interest-bearing account or certificate solely in the name of the minor and shall give notice to the minor of the deposit.~~

~~B. A person that transfers funds or other property under this section is not responsible for its proper application.~~

~~C. A person that receives funds or other property~~

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~~for a minor under Paragraph (1) or (2) of Subsection A of this section may apply it only to the support, care, education, health or welfare of the minor and shall not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes shall be preserved for the future support, care, education, health or welfare of the minor and the balance, if any, transferred to the minor when the minor becomes an adult or otherwise is emancipated.~~

## ~~ARTICLE 5~~

### ~~OTHER PROTECTIVE ARRANGEMENTS~~

~~SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE ARRANGEMENT.--~~

~~A. Under this article, a court:~~

~~(1) on receiving a petition for a guardianship for an adult may order a protective arrangement instead of guardianship as a less restrictive alternative to guardianship; and~~

~~(2) on receiving a petition for a conservatorship for an individual may order a protective arrangement instead of conservatorship as a less restrictive alternative to conservatorship.~~

~~B. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this article for a protective arrangement instead of guardianship.~~

~~C. The following persons may petition under this article for a protective arrangement instead of~~

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~~conservatorship:~~

~~(1) the individual for whom the protective arrangement is sought;~~

~~(2) a person interested in the property, financial affairs or welfare of the individual, including a person that would be affected adversely by lack of effective management of property or financial affairs of the individual; and~~

~~(3) the guardian for the individual.~~

~~SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--~~

~~A. After the hearing on a petition under Section 302 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a guardianship or under Subsection B of Section 501 of that act for a protective arrangement instead of guardianship, the court may issue an order under Subsection B of this section for a protective arrangement instead of guardianship if the court finds by clear and convincing evidence that:~~

~~(1) the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and~~

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~~(2) the respondent's identified needs cannot be met by a less restrictive alternative.~~

~~B. If the court makes the findings under Subsection A of this section, the court, instead of appointing a guardian, may:~~

~~(1) authorize or direct a transaction necessary to meet the respondent's need for health, safety or care, including:~~

~~(a) a particular medical treatment or refusal of a particular medical treatment;~~

~~(b) a move to a specified place of dwelling; or~~

~~(c) visitation or supervised visitation between the respondent and another person;~~

~~(2) restrict access to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological or financial harm; and~~

~~(3) order other arrangements on a limited basis that are appropriate.~~

~~C. In deciding whether to issue an order under this section, the court shall consider the factors under Sections 313 and 314 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act that a guardian shall consider when making a decision on behalf of an adult subject to guardianship.~~

~~SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--~~

~~A. After the hearing on a petition under Section~~

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~~402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for conservatorship for an adult or under Subsection C of Section 501 of that act for a protective arrangement instead of conservatorship for an adult, the court may issue an order under Subsection C of this section for a protective arrangement instead of conservatorship for the adult if the court finds by clear and convincing evidence that:~~

~~(1) the adult is unable to manage property or financial affairs because:~~

~~(a) of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; or~~

~~(b) the adult is missing, detained or unable to return to the United States;~~

~~(2) an order pursuant to Subsection C of this section is necessary to:~~

~~(a) avoid harm to the adult or significant dissipation of the property of the adult; or~~

~~(b) obtain or provide funds or other property needed for the support, care, education, health or welfare of the adult or an individual entitled to the adult's support; and~~

~~(3) the respondent's identified needs cannot be met by a less restrictive alternative.~~

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~~B. After the hearing on a petition under Section 402 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for conservatorship for a minor or under Subsection C of Section 501 of that act for a protective arrangement instead of conservatorship for a minor, the court may issue an order under Subsection C of this section for a protective arrangement instead of conservatorship for the respondent if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest and:~~

~~(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;~~

~~(2) either:~~

~~(a) the minor owns money or property requiring management or protection that otherwise cannot be provided;~~

~~(b) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or~~

~~(c) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health or welfare of the minor; and~~

~~(3) the order under Subsection C of this section is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.~~

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~~C. If the court makes the findings under Subsection A or B of this section, the court, instead of appointing a conservator, may:~~

~~(1) authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:~~

~~(a) an action to establish eligibility for benefits;~~

~~(b) payment, delivery, deposit or retention of funds or property;~~

~~(c) sale, mortgage, lease or other transfer of property;~~

~~(d) purchase of an annuity;~~

~~(e) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;~~

~~(f) addition to or establishment of a trust;~~

~~(g) ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or~~

~~(h) settlement of a claim; or~~

~~(2) restrict access to the respondent's property by a specified person whose access to the property~~

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~~places the respondent at serious risk of financial harm.~~

~~D. After the hearing on a petition under Paragraph (2) of Subsection A of Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act or Subsection C of that section, whether or not the court makes the findings under Subsection A or B of this section, the court may issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear and convincing evidence:~~

~~(1) through fraud, coercion, duress or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and~~

~~(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.~~

~~E. Before issuing an order under Subsection C or D of this section, the court shall consider the factors under Section 418 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act that a conservator shall consider when making a decision on behalf of an individual subject to conservatorship.~~

~~F. Before issuing an order under Subsection C or D of this section for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor and the preference of the minor, if the minor is twelve years of age or older.~~

~~SECTION 504. [NEW MATERIAL] PETITION FOR PROTECTIVE ARRANGEMENT.--A petition for a protective arrangement instead~~

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~~of guardianship or conservatorship shall state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the protective arrangement, the name and address of any attorney representing the petitioner and, to the extent known, the following:~~

~~A. the respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;~~

~~B. the name and address of the respondent's:~~

~~(1) spouse or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;~~

~~(2) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and~~

~~(3) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;~~

~~C. the name and current address of each of the following, if applicable:~~

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- ~~(1) a person responsible for the care or custody of the respondent;~~
- ~~(2) any attorney currently representing the respondent;~~
- ~~(3) the representative payee appointed by the federal social security administration for the respondent;~~
- ~~(4) a guardian or conservator acting for the respondent in New Mexico or another jurisdiction;~~
- ~~(5) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;~~
- ~~(6) the fiduciary appointed for the respondent by the federal department of veterans affairs;~~
- ~~(7) an agent designated under a power of attorney for health care in which the respondent is identified as the principal;~~
- ~~(8) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;~~
- ~~(9) a person nominated as guardian or conservator by the respondent if the respondent is twelve years of age or older;~~
- ~~(10) a person nominated as guardian by the respondent's parent or spouse in a will or other signed record;~~
- ~~(11) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition; and~~
- ~~(12) if the respondent is a minor:
  - ~~(a) an adult not otherwise listed with~~~~

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~~whom the respondent resides; and~~

~~(b) each person not otherwise listed that had primary care or custody of the respondent for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;~~

~~D. the nature of the protective arrangement sought;~~

~~E. the reason the protective arrangement sought is necessary, including a brief description of:~~

~~(1) the nature and extent of the respondent's alleged need;~~

~~(2) any less restrictive alternative for meeting the respondent's alleged need that has been considered or implemented;~~

~~(3) if no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and~~

~~(4) the reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;~~

~~F. the name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;~~

~~G. whether the respondent needs an interpreter,~~

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~~translator or other form of support to communicate effectively with the court or understand court proceedings;~~

~~H. if a protective arrangement instead of guardianship is sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of any other anticipated income or receipts; and~~

~~I. if a protective arrangement instead of conservatorship is sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts.~~

~~SECTION 505. [NEW MATERIAL] NOTICE AND HEARING FOR PROTECTIVE ARRANGEMENT.--~~

~~A. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the court shall set a date, time and place for a hearing on the petition.~~

~~B. A copy of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and notice of a hearing on the petition shall be served personally on the respondent. The notice shall inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying~~

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~~with this subsection is not served on the respondent.~~

~~C. In a proceeding on a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Subsections A through C of Section 504 of that act and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.~~

~~D. After the court has ordered a protective arrangement under this article, notice of a hearing on a petition filed under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, together with a copy of the petition, shall be given to the respondent and any other person the court determines.~~

~~SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF VISITOR.--~~

~~A. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of guardianship, the court shall appoint a visitor. The visitor shall be an individual with training or experience in the type of abilities, limitations and needs alleged in the petition.~~

~~B. On filing of a petition under Section 501 of the~~

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~~Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of conservatorship for a minor, the court may appoint a visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.~~

~~C. On filing of a petition under Section 501 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act for a protective arrangement instead of conservatorship for an adult, the court shall appoint a visitor unless the respondent is represented by an attorney appointed by the court. The visitor shall be an individual with training or experience in the types of abilities, limitations and needs alleged in the petition.~~

~~D. A visitor appointed under Subsection A or C of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:~~

~~(1) explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding and the respondent's rights at the hearing on the petition;~~

~~(2) determine the respondent's views with respect to the order sought;~~

~~(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney;~~

~~(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's~~

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~~fees, may be paid from the respondent's assets;~~

~~(5) if the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;~~

~~(6) if a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;~~

~~(7) if a protective arrangement instead of conservatorship is sought, review financial records of the respondent, if relevant to the visitor's recommendation under Paragraph (2) of Subsection E of this section; and~~

~~(8) investigate the allegations in the petition and any other matter relating to the petition the court directs.~~

~~E. A visitor under this section promptly shall file a report in a record with the court that includes:~~

~~(1) to the extent relevant to the order sought, a summary of self-care, independent-living tasks and financial-management tasks that the respondent:~~

~~(a) can manage without assistance or with existing supports;~~

~~(b) could manage with the assistance of appropriate supportive services, technological assistance or~~

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~~supported decision making; and~~

~~(c) cannot manage;~~

~~(2) a recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the respondent's needs is available;~~

~~(3) if the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;~~

~~(4) a recommendation whether a professional evaluation under Section 508 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is necessary;~~

~~(5) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;~~

~~(6) a statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and~~

~~(7) any other matter the court directs.~~

~~SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF ATTORNEY.--~~

~~A. Unless the respondent in a proceeding under this article is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the~~

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~~respondent's ability to pay.~~

~~B. An attorney representing the respondent in a proceeding under this article shall:~~

~~(1) make reasonable efforts to ascertain the respondent's wishes;~~

~~(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and~~

~~(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive alternative in type, duration and scope, consistent with the respondent's interests.~~

~~SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--~~

~~A. At or before a hearing on a petition under this article for a protective arrangement, the court shall order a professional evaluation of the respondent:~~

~~(1) if the respondent requests the evaluation;~~  
~~or~~

~~(2) or in other cases, unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.~~

~~B. If the court orders an evaluation under Subsection A of this section, the respondent shall be examined by a licensed physician, psychologist, social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and~~

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~~limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report shall contain:~~

~~————— (1) a description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;~~

~~————— (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;~~

~~————— (3) a prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged and recommendation for the appropriate treatment, support or habilitation plan; and~~

~~————— (4) the date of the examination on which the report is based.~~

~~————— C. The respondent may decline to participate in an evaluation ordered under Subsection A of this section.~~

~~SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT HEARING.---~~

~~————— A. Except as otherwise provided in Subsection B of this section, a hearing under this article shall not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an~~

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~~alternative location more convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology, if available.~~

~~B. A hearing under this article may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:~~

~~(1) the respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;~~

~~(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or~~

~~(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.~~

~~C. The respondent may be assisted in a hearing under this article by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.~~

~~D. The respondent has a right to choose an attorney to represent the respondent at a hearing under this article.~~

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~~E. At a hearing under this article, the respondent may:~~

~~(1) present evidence and subpoena witnesses and documents;~~

~~(2) examine witnesses, including any court-appointed evaluator and the visitor; and~~

~~(3) otherwise participate in the hearing.~~

~~F. A hearing under this article shall be closed on request of the respondent and a showing of good cause.~~

~~G. Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.~~

~~SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court shall give notice of an order under this article to the individual who is subject to the protective arrangement instead of guardianship or conservatorship, a person whose access to the individual is restricted by the order and any other person the court determines.~~

~~SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.---~~

~~A. The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:~~

~~(1) the respondent, the individual subject to the protective arrangement or the parent of a minor subject to~~

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~~the protective arrangement requests the record be sealed; and~~

~~(2) either:~~

~~(a) the proceeding is dismissed;~~

~~(b) the protective arrangement is no longer in effect; or~~

~~(c) an act authorized by the order granting the protective arrangement has been completed.~~

~~B. A respondent, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a protective arrangement and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.~~

~~C. A report of a visitor or professional evaluation generated in the course of a proceeding under this article shall be sealed on filing, but is available to:~~

~~(1) the court;~~

~~(2) the individual who is the subject of the~~

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~~report or evaluation, without limitation as to use;~~

~~(3) the petitioner, visitor and petitioner's  
and respondent's attorneys, for purposes of the proceeding;~~

~~(4) unless the court orders otherwise, an  
agent appointed under a power of attorney for finances in which  
the respondent is the principal;~~

~~(5) if the order is for a protective  
arrangement instead of guardianship and unless the court orders  
otherwise, an agent appointed under a power of attorney for  
health care in which the respondent is identified as the  
principal; and~~

~~(6) any other person if it is in the public  
interest or for a purpose the court orders for good cause.~~

~~SECTION 512. [NEW MATERIAL] APPOINTMENT OF SPECIAL  
MASTER.--The court may appoint a special master to assist in  
implementing a protective arrangement under this article. The  
special master has the authority conferred by the order of  
appointment and serves until discharged by court order.~~

#### ~~ARTICLE 6~~

#### ~~MISCELLANEOUS PROVISIONS~~

~~SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION  
AND CONSTRUCTION.--In applying and construing the Uniform  
Guardianship, Conservatorship and Other Protective Arrangements  
Act, consideration shall be given to the need to promote  
uniformity of the law with respect to its subject matter among  
states that enact it.~~

~~SECTION 602. [NEW MATERIAL] RELATION TO ELECTRONIC  
SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform~~

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~~Guardianship, Conservatorship and Other Protective Arrangements Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).~~

~~SECTION 603. [NEW MATERIAL] TRANSITION PROVISIONS.~~

~~A. A guardian for an adult appointed before July 1, 2020 shall file a guardian's plan on or before December 31, 2025 pursuant to Section 316 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. A conservator appointed before July 1, 2020 shall file a conservator's plan on or before December 31, 2025 pursuant to Section 419 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. The conservator's plan shall be accompanied by a petition pursuant to Section 416 of that act to approve a bond and surety or an alternative asset-protection arrangement or to waive the requirement of the bond or alternative arrangement. A court may provide from time to time for the orderly filing according to a schedule or plan of the plans, reports and inventories.~~

~~B. These transition provisions for guardians of adults and for conservators do not imply any decision whether a report should be required by a court from a guardian of a~~

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~~minor. That matter is left to the discretion of the court.~~

~~C. If a guardian was granted authority before July 1, 2020 to make financial decisions on behalf of an individual in an order of appointment or letters of guardianship issued pursuant to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978 as that section existed on or before June 30, 2020, which authority is greater than that authorized for guardians under the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, the guardian shall petition the court for the appointment of a conservator for the individual on or before December 31, 2025. The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act does not prohibit the same person from serving as both the guardian and the conservator for the same individual, subject to the approval of the court. A court may provide from time to time for the orderly filing according to a schedule or plan of the petitions. On or after July 1, 2020, a court shall not grant a guardian authority to make such financial decisions. That authority is limited to conservators pursuant to the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.~~

~~SECTION 604. [NEW MATERIAL] REPORTING REQUIREMENTS.--On or before November 1, 2018 and November 1, 2019, the administrative office of the courts shall report to the legislative finance committee on the following topics:~~

~~A. the progress of the judiciary in formulating rules and forms necessary to implement the Uniform Guardianship, Conservatorship and Other Protective Arrangements~~

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~~Act on July 1, 2020;~~

~~B. the progress of the judiciary in acquiring or developing the computer software necessary to implement the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act;~~

~~C. the feasibility of an earlier implementation date for the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and~~

~~D. an estimate of the financial cost to the judiciary to fully implement the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act on July 1, 2020.~~

~~SECTION 605. DELAYED REPEAL.--~~

~~A. Sections 45-5-101 through 45-5-105, 45-5-201 through 45-5-205, 45-5-206 through 45-5-301.1, 45-5-302 through 45-5-411, 45-5-413 through 45-5-418, 45-5-420 through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210, Section 54, Laws 1975, Chapter 257, Sections 5-210 through 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975, Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5 through 7, Laws 1975, Chapter 257, Sections 5-305 through 5-307, Laws 1989, Chapter~~

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~~252, Section 9, Laws 1975, Chapter 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252, Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975, Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975, Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as amended) are repealed effective July 1, 2020.~~

~~----- B. Sections 45-5-107 through 45-5-109, 45-5-409.1 and 45-5-701 through 45-5-704 NMSA 1978 (being Sections 2 through 4, 11 and 13 through 16 of this act) are repealed effective July 1, 2020.~~

~~----- SECTION 606. APPLICABILITY.-----~~

~~----- A. The provisions of Sections 1 through 16 of this act apply to:~~

~~----- (1) a proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced on or after July 1, 2018; and~~

~~----- (2) a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship in existence on June 30, 2018 unless the court~~

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~~finds application of a particular provision of this act would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of this act does not apply and the superseded law applies.~~

~~B. The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act applies to:~~

~~(1) a proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced on or after July 1, 2020; and~~

~~(2) except as provided in Section 603 of this Act, a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship in existence on June 30, 2020 unless the court finds application of a particular provision of that act would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of that act does not apply and the superseded law applies.~~

~~SECTION 607. EFFECTIVE DATE.--~~

~~A. The effective date of the provisions of Sections 1 through 16 and 604 of this act is July 1, 2018.~~

~~B. The effective date of the provisions of Sections 101 through 603 and 605 of this act is July 1, 2020.~~ ←HJC

HJC → SECTION 15. TEMPORARY PROVISION--REPORTING REQUIREMENTS.-

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-On or before November 1, 2018, and again on or before November 1, 2019, the administrative office of the courts shall report to the legislative finance committee on the following topics:

A. the status of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act as approved by the national conference of commissioners on uniform state laws, including publication of official commentary and introduction and enactment by state legislatures;

B. the feasibility of the implementation in New Mexico of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act; and

C. an estimate of the financial cost to the judiciary to implement the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

SECTION 16. APPLICABILITY.--The provisions of this act apply to:

A. a proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced on or after July 1, 2018; and

B. a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship in existence on June 30, 2018 unless the court finds application of a particular provision of this act would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of this act does not apply and the superseded law applies.

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**SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.** ←HJC

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