

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 19

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

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; ENACTING THE UNIFORM  
GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS  
ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA  
1978.

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

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

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1 conferred in a will;

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

4 (3) other devisees of the decedent;

5 (4) the surviving spouse of the decedent;

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

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

10 [~~(6)~~] (7) forty-five days after the death of  
11 the decedent, any creditor.

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

15 (1) if the estate appears to be more than  
16 adequate to meet allowances and costs of administration but  
17 inadequate to discharge anticipated unsecured claims, the  
18 court, on petition of creditors, may appoint any qualified  
19 person; and

20 (2) in case of objection to appointment of a  
21 person other than one whose priority is determined by will by  
22 an heir or devisee appearing to have a substantial interest in  
23 the estate, the court may appoint a person who is acceptable to  
24 heirs and devisees whose interests in the estate appear to be  
25 worth in total more than half of the probable distributable

1 value of the estate or, in default of this accord, any suitable  
2 person.

3 C. A person entitled to letters under Paragraphs  
4 (2) through [~~(5)~~] (6) of Subsection A of this section or a  
5 person who has not reached the age of majority and who would be  
6 entitled to letters but for the person's age may nominate a  
7 qualified person to act as personal representative by an  
8 appropriate writing filed with the court and thereby confer the  
9 person's relative priority for appointment on the person's  
10 nominee. Any person who has reached the age of majority may  
11 renounce the right to nominate or to an appointment by an  
12 appropriate writing filed with the court. When two or more  
13 persons entitled to letters under Paragraphs (2) through [~~(5)~~]  
14 (6) of Subsection A of this section share a priority, all those  
15 who do not renounce must concur in nominating another to act  
16 for them or in applying for appointment by an appropriate  
17 writing filed with the court. The person so nominated shall  
18 have the same priority as those who nominated the person. A  
19 nomination or renunciation shall be signed by each person  
20 making it, the person's attorney or the person's representative  
21 authorized by Subsection D of this section.

22 D. Conservators of the estates of protected persons  
23 or, if there is no conservator, any guardian except a guardian  
24 ad litem of a minor or incapacitated person may exercise the  
25 same right to nominate, to object to another's appointment or

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1 to participate in determining the preference of a majority in  
2 interest of the heirs and devisees that the protected person  
3 would have if qualified for appointment.

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

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

14 (1) under the age of majority; or

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

17 G. A personal representative appointed by a court  
18 of the decedent's domicile has priority over all other persons  
19 except where the decedent's will nominates different persons to  
20 be personal representatives in New Mexico and in the state of  
21 domicile. The domiciliary personal representative may nominate  
22 another, who shall have the same priority as the domiciliary  
23 personal representative.

24 H. This section governs priority for appointment of  
25 a successor personal representative but does not apply to the

1 selection of a special administrator."

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

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

7 A. A guardian or conservator shall not commingle  
8 the guardian's or conservator's funds or investments with those  
9 held by the guardian or conservator as a fiduciary for a minor  
10 or an adult. Funds and any investments held by the guardian or  
11 conservator as a fiduciary for the minor or the adult shall be  
12 held in accounts that are separate from those of the guardian  
13 or conservator. If a guardian or conservator serves as  
14 fiduciary for one or more individuals subject to guardianship  
15 or conservatorship, the guardian or conservator shall hold the  
16 funds and any investments held as a fiduciary in a separate  
17 account for each individual subject to guardianship or  
18 conservatorship. Except as otherwise provided in the Uniform  
19 Probate Code, and to the extent that is reasonable and  
20 customary, any other property held by the guardian or  
21 conservator as a fiduciary for one or more individuals subject  
22 to guardianship or conservatorship shall be titled separately:

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

25 (2) for each individual subject to

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1 guardianship or conservatorship.

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

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

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

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

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

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

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

24 (3) books and records in the possession,  
25 custody or control of the guardian or conservator relating to

1 those accounts and that other property.

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

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

10 SECTION 3. A new section of Part 1 of Article 5 of the  
11 Uniform Probate Code, Section 45-5-108 NMSA 1978, is enacted to  
12 read:

13 "45-5-108. [NEW MATERIAL] LIABILITY OF GUARDIAN OR  
14 CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR  
15 CONSERVATORSHIP.--A guardian or conservator is not personally  
16 liable to another person solely because of the guardianship or  
17 conservatorship for an act or omission of the individual  
18 subject to guardianship or conservatorship."

19 SECTION 4. A new section of Part 1 of Article 5 of the  
20 Uniform Probate Code, Section 45-5-109 NMSA 1978, is enacted to  
21 read:

22 "45-5-109. [NEW MATERIAL] VOTING RIGHTS.--The voting  
23 rights of a protected person shall not be abridged or  
24 restricted except pursuant to Article 7, Section 1 of the  
25 constitution of New Mexico."

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

3           "45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN  
4 OF AN INCAPACITATED PERSON.--

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

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

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

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

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

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

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

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

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

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

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

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

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

20                   ~~(13) the qualifications of the proposed~~  
 21 ~~guardian, including whether the guardian has ever been~~  
 22 ~~convicted of a felony.]~~

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

25                   B. A petition under Subsection A of this section

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

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

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

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

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

23 (c) adult stepchildren whom the alleged  
24 incapacitated person actively parented during the  
25 stepchildren's minor years and with whom the alleged

1 incapacitated person had an ongoing relationship in the two-  
2 year period immediately preceding the filing of the petition;

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

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

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

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

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

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

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

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

24 (h) an agent designated under a power of  
25 attorney for finances in which the alleged incapacitated person

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1 is identified as the principal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23                   ~~[C.]~~ D. After the filing of a petition, the court  
24 shall set a date for hearing on the issues raised by the  
25 petition. Unless an alleged incapacitated person already has

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1 an attorney of the alleged incapacitated person's own choice,  
2 the court shall appoint an attorney to represent the alleged  
3 incapacitated person. [~~The court-appointed attorney in the~~  
4 ~~proceeding shall have the duties of a guardian ad litem, as set~~  
5 ~~forth in Section 45-5-303.1 NMSA 1978.~~

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

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

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

18 [~~E.]~~ F. The court shall appoint a visitor who shall  
19 interview the person seeking appointment as guardian and the  
20 person alleged to be incapacitated. The visitor shall also  
21 visit the present place of abode of the person alleged to be  
22 incapacitated and the place where it is proposed the alleged  
23 incapacitated person will be detained or reside if the  
24 requested appointment is made. The visitor shall evaluate the  
25 needs of the person alleged to be incapacitated and shall

1 submit a written report to the court. The report shall include  
2 a recommendation regarding the appropriateness of the  
3 appointment of the proposed guardian. The report to the court  
4 shall also include recommendations regarding:

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

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

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

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

18 [~~F.~~] G. A person alleged to be incapacitated shall  
19 be present at the hearing on the issues raised by the petition  
20 and any response to the petition unless the court determines by  
21 evidence that it is not in the alleged incapacitated person's  
22 best interest to be present because of a threat to the health  
23 or safety of the alleged incapacitated person or others as  
24 determined by the court.

25 [~~G.~~] H. The court upon request or its own motion

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1 may conduct hearings at the location of the alleged  
2 incapacitated person who is unable to be present in court.

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

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

- 16 (1) ~~docket entries;~~  
17 (2) ~~date of the proceeding, appointment and~~  
18 ~~termination;~~  
19 (3) ~~duration of the guardianship; and~~  
20 (4) ~~the name and other information necessary~~  
21 ~~to identify the alleged incapacitated person.]~~

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

- 25 (1) the alleged incapacitated person or

1 individual subject to guardianship requests that the record be  
2 sealed; and

3 (2) either:

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

6 (b) the guardianship is terminated.

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

21 L. A report pursuant to Subsections E and F of this  
22 section or a written report filed pursuant to Section  
23 45-5-303.1 NMSA 1978 is confidential and shall be sealed on  
24 filing, but is available to:

25 (1) the court;

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

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

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

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

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

16                   ~~[K.]~~ N. The issue of whether a guardian shall be  
17 appointed for the alleged incapacitated person shall be  
18 determined by the court at a closed hearing unless the alleged  
19 incapacitated person requests otherwise.

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

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

24                   "45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

25                   ~~[A. In a proceeding for the appointment or removal~~

1 ~~of a guardian of an incapacitated person, other than the~~  
2 ~~appointment of a temporary guardian or temporary suspension of~~  
3 ~~a guardian, notice of hearing and a copy of the petition and~~  
4 ~~any interim orders that may have been entered shall be given to~~  
5 ~~each of the following:~~

6 ~~(1) the person alleged to be incapacitated;~~

7 ~~(2) the person's spouse, parents and adult~~  
8 ~~children, or if there are no adult children, at least one of~~  
9 ~~the person's closest adult relatives if any can be found;~~

10 ~~(3) the proposed guardian; and~~

11 ~~(4) a person, as far as known or as can~~  
12 ~~reasonably be ascertained, previously nominated or designated~~  
13 ~~in a writing signed by the incapacitated person prior to~~  
14 ~~incapacity that has not been revoked by the incapacitated~~  
15 ~~person or terminated by a court. This includes but is not~~  
16 ~~limited to writings executed under the Uniform Health-Care~~  
17 ~~Decisions Act, the Mental Health Care Treatment Decisions Act,~~  
18 ~~the Uniform Power of Attorney Act, the Uniform Probate Code and~~  
19 ~~the Uniform Trust Code.~~

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

24 ~~B. Notice shall be served personally on the alleged~~  
25 ~~incapacitated person and the person's spouse if they can be~~

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1 ~~found within New Mexico. Notice to an out-of-state spouse, the~~  
2 ~~parents and to all other persons, except the alleged~~  
3 ~~incapacitated person, shall be given as provided in Section~~  
4 ~~45-1-401 NMSA 1978.~~

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

9 ~~"NOTICE~~

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

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

18 ~~At the hearing, the court will determine whether (name of~~  
19 ~~alleged incapacitated person) is an incapacitated person under~~  
20 ~~New Mexico law.~~

21 ~~If the court finds that (name of alleged incapacitated~~  
22 ~~person) is incapacitated, the court at the hearing shall also~~  
23 ~~consider whether (name of proposed guardian, if any) should be~~  
24 ~~appointed as guardian of (name of alleged incapacitated~~  
25 ~~person). The court may, in its discretion, appoint some other~~

1 ~~qualified person as guardian. The court may also, in its~~  
 2 ~~discretion, limit the powers and duties of the guardian to~~  
 3 ~~allow (name of alleged incapacitated person) to retain control~~  
 4 ~~over certain activities.~~

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

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

16 \_\_\_\_\_

17 ~~(signature of petitioner)]~~

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

22 B. A copy of a petition under Section 45-5-303 NMSA  
 23 1978 and notice of a hearing on the petition shall be served  
 24 personally on the alleged incapacitated person. The notice  
 25 shall inform the alleged incapacitated person of the alleged

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1 incapacitated person's rights at the hearing and the right to  
2 attend the hearing. The notice shall include a description of  
3 the nature, purpose and consequences of granting the petition.  
4 The court shall not grant the petition if notice substantially  
5 complying with this subsection is not served on the alleged  
6 incapacitated person.

7 C. In a proceeding on a petition under Section  
8 45-5-303 NMSA 1978, the notice required under Subsection B of  
9 this section shall be given to the persons required to be  
10 listed in the petition under Section 45-5-303 NMSA 1978 and any  
11 other person interested in the alleged incapacitated person's  
12 welfare that the court determines. Failure to give notice  
13 under this subsection does not preclude the court from  
14 appointing a guardian.

15 D. After the appointment of a guardian, notice of a  
16 hearing on a petition for an order under Part 3 of Chapter 45,  
17 Article 5 NMSA 1978, together with a copy of the petition,  
18 shall be given to:

19 (1) the protected person subject to  
20 guardianship;

21 (2) the guardian; and

22 (3) any other person the court determines."

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

25 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED

1 GUARDIAN AND GUARDIAN.--

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

17 B. A guardian of an incapacitated person has the  
18 same powers, rights and duties respecting the incapacitated  
19 person that a parent has respecting an unemancipated minor  
20 child, except that a guardian is not legally obligated to  
21 provide from the guardian's own funds for the incapacitated  
22 person and is not liable to third persons for acts of the  
23 incapacitated person solely by reason of the guardianship. In  
24 particular and without qualifying the foregoing, a guardian or  
25 the guardian's replacement has the following powers and duties,

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1 except as modified by order of the court:

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

8 (2) if entitled to custody of the  
9 incapacitated person, a guardian shall make provision for the  
10 care, comfort and maintenance of the incapacitated person and,  
11 whenever appropriate, arrange for training and education. The  
12 guardian shall take reasonable care of the incapacitated  
13 person's clothing, furniture, vehicles and other personal  
14 effects and commence conservatorship proceedings if other  
15 property of the incapacitated person is in need of protection;

16 (3) if no agent is entitled to make [~~health-~~  
17 ~~care~~] health care decisions for the incapacitated person under  
18 the provisions of the Uniform Health-Care Decisions Act, then  
19 the guardian shall make [~~health-care~~] health care decisions for  
20 the incapacitated person in accordance with the provisions of  
21 that act. In exercising [~~health-care~~] health care powers, a  
22 guardian may consent or withhold consent that may be necessary  
23 to enable the incapacitated person to receive or refuse medical  
24 or other professional care, counsel, treatment or service.  
25 That decision shall be made in accordance with the values of

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1 the incapacitated person, if known, or the best interests of  
2 the incapacitated person if the values are not known;

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

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

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

25 (c) to serve as advocate and decision-

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1 maker for the protected person in any disputes with persons or  
2 organizations, including financial institutions, regarding the  
3 protected person's finances;

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

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

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

15 (5) the guardian shall exercise the  
16 guardian's supervisory powers over the incapacitated person in  
17 a manner that is least restrictive of the incapacitated  
18 person's personal freedom and consistent with the need for  
19 supervision.

20 C. A guardian of an incapacitated person for whom a  
21 conservator also has been appointed shall control the care and  
22 custody of the incapacitated person and is entitled to receive  
23 reasonable sums for services and for room and board furnished  
24 to the incapacitated person. The guardian may request the  
25 conservator to expend the incapacitated person's estate by

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1 payment to third persons or institutions for the incapacitated  
2 person's care and maintenance.

3 D. Unless authorized by the court by specific  
4 order, a guardian for an adult shall not revoke or amend a  
5 power of attorney for health care or power of attorney for  
6 finances signed by the adult. If a power of attorney for  
7 health care is in effect, unless there is a court order to the  
8 contrary, a health care decision of an agent takes precedence  
9 over that of the guardian, and the guardian shall cooperate  
10 with the agent to the extent feasible. If a power of attorney  
11 for finances is in effect, unless there is a court order to the  
12 contrary, a decision by the agent that the agent is authorized  
13 to make under the power of attorney for finances takes  
14 precedence over that of the guardian, and the guardian shall  
15 cooperate with the agent to the extent feasible.

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

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

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

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

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

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

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

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

17               "45-5-404. ORIGINAL PETITION FOR APPOINTMENT OF  
18 CONSERVATOR.--

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

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

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

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

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

24                   ~~(7) the name and address of the person or~~  
25 ~~institution, if any, having the care and custody of the person~~

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1 ~~for whom a conservator is sought;~~

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

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

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

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

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

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

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

20 (2) the guardian for an individual.

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

1 extent known, the following:

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

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

9 (a) spouse or, if the alleged  
10 incapacitated person has none, an adult with whom the alleged  
11 incapacitated person has shared household responsibilities for  
12 more than six months in the twelve-month period before the  
13 filing of the petition;

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

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

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

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

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

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

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

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

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

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

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

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

1 petition; and

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

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

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

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

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

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

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

24 (e) the reason a less restrictive  
25 alternative is insufficient to meet the alleged incapacitated

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1 person's need;

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

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

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

10 (9) if the petition is for a limited  
11 conservatorship, a description of the property to be placed  
12 under the conservator's control and any requested limitation on  
13 the authority of the conservator;

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

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

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

22 "45-5-405. NOTICE IN CONSERVATORSHIP PROCEEDINGS.--

23 ~~[A. In a proceeding for the appointment or removal~~  
24 ~~of a conservator of an incapacitated person or a person to be~~  
25 ~~protected, other than the appointment of a temporary~~

1 ~~conservator or the temporary suspension of a conservator,~~  
 2 ~~notice of hearing and a copy of the petition and any interim~~  
 3 ~~orders that may have been entered shall be given to each of the~~  
 4 ~~following:~~

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

6 ~~(2) his spouse, parents and adult children, or~~  
 7 ~~if there are no adult children, at least one of his closest~~  
 8 ~~adult relatives if any can be found.~~

9 ~~Notice of hearing shall be given to any person who is~~  
 10 ~~serving as the guardian or conservator of the person to be~~  
 11 ~~protected or who has primary responsibility for his care.~~

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

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

21 ~~"NOTICE~~

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

23 ~~On (date of hearing) at (time of hearing) in (place of~~  
 24 ~~hearing) at (city), New Mexico, the (name and address of court)~~  
 25 ~~will hold a hearing to determine whether a conservator should~~

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1 ~~be appointed for (name of the person to be protected). The~~  
2 ~~purpose of this proceeding is to appoint a conservator. A copy~~  
3 ~~of the petition requesting appointment of a conservator is~~  
4 ~~attached to this notice.~~

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

8 ~~If the court finds that (name of the person to be~~  
9 ~~protected) is in need of a conservator, the court at the~~  
10 ~~hearing shall also consider whether (name of proposed~~  
11 ~~conservator, if any) should be appointed as conservator of~~  
12 ~~(name of person to be protected). The court may, in its~~  
13 ~~discretion, appoint some other qualified person as conservator.~~  
14 ~~The court may also, in its discretion, limit the powers and~~  
15 ~~duties of the conservator to allow (name of person to be~~  
16 ~~protected) to retain control over certain activities.~~

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

25 \_\_\_\_\_

1           ~~(signature of petitioner)".~~

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

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

12           B. A copy of a petition under Section 45-5-404 NMSA  
13 1978 and notice of a hearing on the petition shall be served  
14 personally on the alleged incapacitated person. If the alleged  
15 incapacitated person's whereabouts are unknown or personal  
16 service cannot be made, service on the alleged incapacitated  
17 person shall be made as provided in Section 45-1-401 NMSA 1978.  
18 The notice shall inform the alleged incapacitated person of the  
19 alleged incapacitated person's rights at the hearing and the  
20 right to attend the hearing. The notice also shall include a  
21 description of the nature, purpose and consequences of granting  
22 the petition. The court shall not grant a petition for  
23 appointment of a conservator if notice substantially complying  
24 with this subsection is not served on the alleged incapacitated  
25 person.

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1           C. In a proceeding on a petition under Subsection B  
2 of this section, the notice required shall be given to the  
3 persons required to be listed in the petition under Section  
4 45-5-404 NMSA 1978 and any other person interested in the  
5 alleged incapacitated person's welfare the court determines.  
6 Failure to give notice under this subsection does not preclude  
7 the court from appointing a conservator.

8           D. After the appointment of a conservator, notice  
9 of a hearing on a petition for an order under Part 4 of Chapter  
10 45, Article 5 NMSA 1978, together with a copy of the petition,  
11 shall be given to:

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

15                   (2) the conservator; and

16                   (3) any other person the court determines."

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

19           "45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A  
20 CONSERVATOR.--

21           A. Upon receipt of a petition for appointment of a  
22 conservator or other protective order because of minority, the  
23 court shall set a date for hearing on the matters alleged in  
24 the petition. If at any time in the proceeding the court finds  
25 the minor is or may be inadequately represented, it may appoint

1 an attorney to represent the minor, giving consideration to the  
2 choice of the minor if the minor is fourteen years of age or  
3 older. An attorney appointed by the court to represent a minor  
4 shall represent and protect the interests of the minor.

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

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

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

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

25 D. The court shall also appoint a visitor who shall

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

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

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

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

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

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

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

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

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

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

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

18 H. If it is determined that the person to be  
19 protected possesses the capacity to manage ~~[his]~~ the person's  
20 estate or financial affairs, or both, the court shall dismiss  
21 the petition.

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

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1 that:

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

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

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

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

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

16 J. After hearing, upon finding that a basis for the  
17 appointment of a conservator has been established, the court  
18 shall make an appointment of a conservator. The court shall  
19 appoint a limited conservator if it determines that the  
20 incapacitated person is able to manage some but not all aspects  
21 of [~~his~~] the incapacitated person's estate and financial  
22 affairs. The court shall specify those powers that the limited  
23 conservator shall have and may further restrict each power so  
24 as to permit the incapacitated person to care for [~~his~~] the  
25 incapacitated person's estate and financial affairs

1 commensurate with ~~[his]~~ the incapacitated person's ability to  
2 do so.

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

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

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

- 20 (1) ~~docket entries;~~  
21 (2) ~~date of the proceeding, appointment and~~  
22 ~~termination;~~  
23 (3) ~~duration of the conservatorship and~~  
24 ~~whether limited or unlimited;~~  
25 (4) ~~for a limited conservatorship, the nature~~

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1 ~~of the limitation; and~~

2 ~~(5) the name and other information necessary~~  
3 ~~to identify the alleged incapacitated person.]~~

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

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

11 (2) either:

12 (a) the petition for conservatorship is  
13 dismissed; or

14 (b) the conservatorship is terminated.

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

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

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

7 (1) the court;

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

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

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

17 (5) any other person if it is in the public  
18 interest or for a purpose the court orders for good cause.

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

23 [O.] Q. The issue of whether a conservator shall be  
24 appointed shall be determined by the court at a closed hearing  
25 unless the person to be protected requests otherwise.

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

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

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

14           "45-5-409.1. [NEW MATERIAL] CONSERVATOR'S REPORT AND  
15 ACCOUNTING--NOTICE AND HEARING--WAIVER OF LIABILITY.--

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

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

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underscoring material = new  
[bracketed material] = delete

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

5 (2) may require additional information from  
6 the conservator;

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

10 (4) consistent with Section 45-5-416 NMSA  
11 1978, may hold a hearing to consider removal of the  
12 conservator, termination of the conservatorship or a change in  
13 the powers granted to the conservator or terms of the  
14 conservatorship.

15 C. If the court has reason to believe fees  
16 requested by a conservator are not reasonable, the court shall  
17 hold a hearing to determine whether to adjust the requested  
18 fees and give notice of the hearing to the individual under  
19 conservatorship, a person entitled to notice under Section  
20 45-5-405 NMSA 1978 or under a subsequent order and any other  
21 person the court determines.

22 D. A conservator may petition the court for  
23 approval of a report filed under this section. The conservator  
24 shall send a copy of the petition to the adult subject to  
25 conservatorship and to a person entitled to notice pursuant to

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1 Subsection A of this section and shall file proof of the  
2 sending of the petition with the court. The court shall not  
3 approve the report until the later of thirty days after its  
4 filing and fourteen days after the petition was sent to the  
5 persons entitled to notice. The court may then approve the  
6 report with or without holding a hearing as the court  
7 determines is appropriate unless a hearing is requested as  
8 provided in this subsection. If the conservator, the person  
9 under conservatorship or a person entitled to notice pursuant  
10 to Subsection A of this section requests a hearing in  
11 connection with the report, the court after review shall not  
12 approve the report without:

13 (1) notice to the individual subject to  
14 conservatorship, a person entitled to notice under Section  
15 45-5-405 NMSA 1978 or under a subsequent order and any other  
16 person the court determines; and

17 (2) a hearing.

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

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

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

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

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

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

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

15 SECTION 12. Section 45-5-411 NMSA 1978 (being Laws 1975,  
16 Chapter 257, Section 5-411) is amended to read:

17 "45-5-411. BOND AND TERMS--REQUIREMENTS OF BONDS.--

18 ~~[A. The court may require a conservator to furnish~~  
19 ~~a bond conditioned upon faithful discharge of all duties of the~~  
20 ~~trust according to law, with sureties as it shall specify~~  
21 ~~specifies. Unless otherwise directed, the bond shall be in the~~  
22 ~~amount of the total value of the property of the estate in his~~  
23 ~~control plus one year's estimated income less the value of~~  
24 ~~securities deposited under arrangements requiring an order of~~  
25 ~~the court for their removal less the value of property which~~

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1 ~~may not be sold or conveyed without an order of the court. The~~  
2 ~~court, in lieu of sureties on a bond, may accept other security~~  
3 ~~for the performance of the bond.~~

4 ~~B. If the veterans administration is paying or~~  
5 ~~planning to pay benefits to a person to be protected, the court~~  
6 ~~may, upon the request of the veterans administration, require a~~  
7 ~~bond conditioned upon faithful discharge of all duties of the~~  
8 ~~trust according to law, with sureties as it shall specify.]~~

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

21 B. Unless the court directs otherwise, the bond  
22 required under this section shall be in the amount of the  
23 aggregate capital value of the conservatorship estate, plus one  
24 year's estimated income, less the value of property deposited  
25 under an arrangement requiring a court order for its removal

1 and real property the conservator lacks power to sell or convey  
2 without specific court authorization. The court, in place of  
3 surety on a bond, may accept collateral for the performance of  
4 the bond, including a pledge of securities or a mortgage of  
5 real property.

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

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

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

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

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

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

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

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

10                   "45-5-701. [NEW MATERIAL] PETITION FOR PROTECTIVE  
11 ARRANGEMENT.--A petition for a protective arrangement instead  
12 of guardianship or conservatorship shall state the petitioner's  
13 name, principal residence, current street address, if  
14 different, relationship to the protected person, interest in  
15 the protective arrangement, the name and address of any  
16 attorney representing the petitioner and, to the extent known,  
17 the following:

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

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

23                                   (1) spouse or, if the protected person has  
24 none, an adult with whom the protected person has shared  
25 household responsibilities for more than six months in the

1 twelve-month period before the filing of the petition;

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

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

11 C. the name and current address of each of the  
12 following, if applicable:

13 (1) a person responsible for the care or  
14 custody of the protected person;

15 (2) any attorney currently representing the  
16 protected person;

17 (3) the representative payee appointed by the  
18 federal social security administration for the protected  
19 person;

20 (4) a guardian or conservator acting for the  
21 protected person in New Mexico or another jurisdiction;

22 (5) a trustee or custodian of a trust or  
23 custodianship of which the protected person is a beneficiary;

24 (6) the fiduciary appointed for the protected  
25 person by the federal department of veterans affairs;

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1 (7) an agent designated under a power of  
2 attorney for health care in which the protected person is  
3 identified as the principal;

4 (8) an agent designated under a power of  
5 attorney for finances in which the protected person is  
6 identified as the principal;

7 (9) a person nominated as guardian or  
8 conservator by the protected person if the protected person is  
9 twelve years of age or older;

10 (10) a person nominated as guardian by the  
11 protected person's parent or spouse in a will or other signed  
12 record;

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

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

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

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

25 D. the nature of the protective arrangement sought;

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

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

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

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

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

14           F. the name and current address, if known, of any  
15 person with whom the petitioner seeks to limit the protected  
16 person's contact;

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

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

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

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

9 "45-5-702. [NEW MATERIAL] NOTICE AND HEARING FOR  
10 PROTECTIVE ARRANGEMENT.--

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

14 B. A copy of a petition under Section 45-5-701 NMSA  
15 1978 and notice of a hearing on the petition shall be served  
16 personally on the protected person. The notice shall inform  
17 the protected person of the protected person's rights at the  
18 hearing, including the right to an attorney and to attend the  
19 hearing. The notice shall include a description of the nature,  
20 purpose and consequences of granting the petition. The court  
21 shall not grant the petition if notice substantially complying  
22 with this subsection is not served on the protected person.

23 C. In a proceeding on a petition under Section  
24 45-5-701 NMSA 1978, the notice required under Subsection B of  
25 this section shall be given to the persons required to be

1 listed in the petition under Subsections A through C of Section  
2 45-5-701 NMSA 1978 and any other person interested in the  
3 protected person's welfare as the court determines. Failure to  
4 give notice under this subsection does not preclude the court  
5 from granting the petition.

6 D. After the court has ordered a protective  
7 arrangement pursuant to Part 7 of Chapter 45, Article 5 NMSA  
8 1978, notice of a hearing on a petition filed under the Uniform  
9 Probate Code, together with a copy of the petition, shall be  
10 given to the protected person and any other person the court  
11 determines."

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

15 "45-5-703. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
16 HEARING.--

17 A. Except as otherwise provided in Subsection B of  
18 this section, a hearing pursuant to Part 7 of Chapter 45,  
19 Article 5 NMSA 1978 shall not proceed unless the protected  
20 person attends the hearing. If it is not reasonably feasible  
21 for the protected person to attend a hearing at the location  
22 that court proceedings typically are held, the court shall make  
23 reasonable efforts to hold the hearing at an alternative  
24 location more convenient to the protected person or allow the  
25 protected person to attend the hearing using real-time audio-

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1 visual technology, if available.

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

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

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

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

17 C. The protected person may be assisted in a  
18 hearing pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978  
19 by a person or persons of the protected person's choosing;  
20 assistive technology; an interpreter or translator; or a  
21 combination of these supports. If assistance would facilitate  
22 the protected person's participation in the hearing but is not  
23 otherwise available to the protected person, the court shall  
24 make reasonable efforts to provide it.

25 D. The protected person has a right to choose an

1 attorney to represent the protected person at a hearing  
2 pursuant to Part 7 of Chapter 45, Article 5 NMSA 1978.

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

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

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

9 (3) otherwise participate in the hearing.

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

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

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

22 "45-5-704. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

23 A. The existence of a proceeding for or the  
24 existence of a protective arrangement instead of guardianship  
25 or conservatorship is a matter of public record unless the

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1 court seals the record after:

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

6 (2) either:

- 7 (a) the proceeding is dismissed;  
8 (b) the protective arrangement is no  
9 longer in effect; or  
10 (c) an act authorized by the order  
11 granting the protective arrangement has been completed.

12 B. A protected person, an individual subject to a  
13 protective arrangement instead of guardianship or  
14 conservatorship, an attorney designated by the protected person  
15 or individual, a parent of a minor subject to a protective  
16 arrangement and any other person the court determines are  
17 entitled to access court records of the proceeding and  
18 resulting protective arrangement. A person not otherwise  
19 entitled to access to court records under this subsection for  
20 good cause may petition the court for access. The court shall  
21 grant access if access is in the best interest of the protected  
22 person or individual subject to a protective arrangement or  
23 furthers the public interest and does not endanger the welfare  
24 or financial interests of the protected person or individual.

25 C. A report of a visitor or professional evaluation

1 generated in the course of a proceeding pursuant to Part 7 of  
2 Chapter 45, Article 5 NMSA 1978 shall be sealed on filing, but  
3 is available to:

- 4 (1) the court;
- 5 (2) the individual who is the subject of the  
6 report or evaluation, without limitation as to use;
- 7 (3) the petitioner, the visitor and the  
8 petitioner's and protected person's attorneys, for purposes of  
9 the proceeding;
- 10 (4) unless the court orders otherwise, an  
11 agent appointed under a power of attorney for finances in which  
12 the protected person is the principal;
- 13 (5) if the order is for a protective  
14 arrangement instead of guardianship and unless the court orders  
15 otherwise, an agent appointed under a power of attorney for  
16 health care in which the protected person is identified as the  
17 principal; and
- 18 (6) any other person if it is in the public  
19 interest or for a purpose the court orders for good cause."

20 ARTICLE 1

21 GENERAL PROVISIONS

22 SECTION 101. [NEW MATERIAL] SHORT TITLE.--Sections 101  
23 through 604 of this act may be cited as the "Uniform  
24 Guardianship, Conservatorship and Other Protective Arrangements  
25 Act".

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1           SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act:

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

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

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

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

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

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

25           E. "affirmation" means a written, dated and signed

underscored material = new  
[bracketed material] = delete

1 affirmation under penalty of perjury pursuant to the laws of  
2 the state of New Mexico that a statement or other record is  
3 true and correct;

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

7 G. "conservator":

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

11 (2) includes a co-conservator;

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

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

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

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1           K. "full guardianship" means a guardianship that  
2 grants the guardian all powers available to a guardian under  
3 the Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act;

5           L. "guardian":

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

9                 (2) includes a co-guardian; and

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

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

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

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

22           P. "less restrictive alternative":

23                 (1) means an approach to meeting an  
24 individual's needs that restricts fewer rights of the  
25 individual than would the appointment of a guardian or

1 conservator; and

2 (2) includes supported decision making,  
3 appropriate technological assistance, appointment of a  
4 representative payee and appointment of an agent by the  
5 individual, including appointment under a power of attorney for  
6 health care or power of attorney for finances;

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

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

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

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

24 U. "mental health treatment facility" means an  
25 institution, facility or agency licensed, certified or

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1 otherwise authorized or permitted by law to provide mental  
2 health treatment in the ordinary course of business;

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

5 W. "minor subject to conservatorship" means a minor  
6 for whom a conservator has been appointed under the Uniform  
7 Guardianship, Conservatorship and Other Protective Arrangements  
8 Act;

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

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

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

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

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

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

25 (2) a record signed under the Mental Health

1 Care Treatment Decisions Act; and

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

5 CC. "property" includes tangible and intangible  
6 property;

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

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

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

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

23 HH. "respondent" means an individual for whom  
24 appointment of a guardian or conservator or a protective  
25 arrangement instead of guardianship or conservatorship is

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1 sought;

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

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

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

7 JJ. "spouse" does not include an individual from  
8 whom the respondent or other person is legally separated or  
9 from whom there is a pending petition for annulment, divorce,  
10 dissolution of marriage or legal separation and includes a  
11 domestic partner;

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

15 LL. "state":

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

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

24 MM. "supported decision making" means assistance:

25 (1) from one or more persons of an

1 individual's choosing;

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

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

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

8 SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF  
9 LAW AND EQUITY APPLICABLE.--Unless displaced by a particular  
10 provision of the Uniform Guardianship, Conservatorship and  
11 Other Protective Arrangements Act, the principles of law and  
12 equity supplement that act's provisions.

13 SECTION 104. [NEW MATERIAL] SUBJECT-MATTER  
14 JURISDICTION.--

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

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

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1 the Uniform Adult Guardianship and Protective Proceedings  
2 Jurisdiction Act.

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

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

11 (2) exclusive jurisdiction to determine how  
12 property of the respondent must be managed, expended or  
13 distributed to or for the use of the respondent, an individual  
14 who is dependent in fact on the respondent or another claimant;

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

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

21 D. A court that appoints a guardian or conservator,  
22 or authorizes a protective arrangement under Article 5 of the  
23 Uniform Guardianship, Conservatorship and Other Protective  
24 Arrangements Act, has exclusive and continuing jurisdiction  
25 over the proceeding until the court terminates the proceeding

1 or the appointment or protective arrangement expires by its  
2 terms.

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

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

8 B. After appointment of a guardian or conservator,  
9 the court that made the appointment may transfer the proceeding  
10 to a court in another county in New Mexico or another state if  
11 transfer is in the best interest of the individual subject to  
12 the guardianship or conservatorship.

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

21 D. A guardian or conservator appointed in another  
22 state or country may petition the court for appointment as a  
23 guardian or conservator in New Mexico for the same individual  
24 if jurisdiction in New Mexico is or will be established. The  
25 appointment may be made on proof of appointment in the other

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1 state or foreign country and presentation of a certified copy  
2 of the part of the court record in the other state or country  
3 specified by the court in New Mexico.

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

14 F. Not later than fourteen days after appointment  
15 under Subsection E of this section, the guardian or conservator  
16 shall give a copy of the order of appointment to the individual  
17 subject to guardianship or conservatorship, if the individual  
18 is at least twelve years of age, and to all persons given  
19 notice of the hearing on the petition.

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

21 A. Venue for a guardianship proceeding for a minor  
22 is in:

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

25 (2) the county in which another proceeding

1 concerning the custody or parental rights of the minor is  
2 pending.

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

6 (1) the county in which the respondent  
7 resides;

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

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

14 C. Venue for a conservatorship proceeding or  
15 protective arrangement instead of conservatorship is in:

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

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

22 D. If proceedings under the Uniform Guardianship,  
23 Conservatorship and Other Protective Arrangements Act are  
24 brought in more than one county, the court of the county in  
25 which the first proceeding is brought has the exclusive right

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1 to proceed unless the court determines venue is properly in  
2 another court or the interest of justice otherwise requires  
3 transfer of the proceeding.

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

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

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

17 C. A respondent may demand a jury trial in a  
18 proceeding under the Uniform Guardianship, Conservatorship and  
19 Other Protective Arrangements Act on the issue of whether a  
20 basis exists for appointment of a guardian or conservator.

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

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

25 B. The court shall issue letters of office to a

1 conservator on filing by the conservator of an acceptance of  
2 appointment and filing of any required bond or compliance with  
3 any other asset-protection arrangement required by the court.

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

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

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

19 SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-  
20 CONSERVATOR.--

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

24 B. A co-guardian or co-conservator appointed to  
25 serve immediately may act when that co-guardian or

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1 co-conservator complies with Section 108 of the Uniform  
2 Guardianship, Conservatorship and Other Protective Arrangements  
3 Act.

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

6 (1) the event occurs; and

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

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

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

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

18 B. A person entitled under Section 202 or 302 of  
19 the Uniform Guardianship, Conservatorship and Other Protective  
20 Arrangements Act to petition the court to appoint a guardian  
21 may petition the court to appoint a successor guardian. A  
22 person entitled under Section 402 of that act to petition the  
23 court to appoint a conservator may petition the court to  
24 appoint a successor conservator.

25 C. A successor guardian or successor conservator

1 appointed to serve when a designated event occurs may act as  
2 guardian or conservator when:

3 (1) the event occurs; and

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

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

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

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

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

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

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

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

2 SECTION 113. [NEW MATERIAL] NOTICE AND HEARING

3 GENERALLY.--

4 A. Except as otherwise provided in Sections 203,  
5 207, 303, 403 and 505 of the Uniform Guardianship,  
6 Conservatorship and Other Protective Arrangements Act, if  
7 notice of a hearing under that act is required, the movant  
8 shall give notice of the date, time and place of the hearing to  
9 the person to be notified unless otherwise ordered by the court  
10 for good cause. Except as otherwise provided in that act,  
11 notice shall be given as provided in Section 45-1-401 NMSA 1978  
12 at least fourteen days before the hearing.

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

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

22 D. Except as otherwise provided in the Uniform  
23 Guardianship, Conservatorship and Other Protective Arrangements  
24 Act, a court shall not issue an order or grant authorization,  
25 approval or other relief pursuant to that act without notice

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underscored material = new  
[bracketed material] = delete

1 and a hearing. This provision shall not affect the court's  
2 authority to issue temporary relief to prevent immediate and  
3 irreparable injury, loss or damage pursuant to the Rules of  
4 Civil Procedure for the District Courts or similar rules.

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

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

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

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

23 SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court  
24 at any time may appoint a guardian ad litem for an individual  
25 if the court determines the individual's interest otherwise

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1 would not be adequately represented. If no conflict of  
2 interest exists, a guardian ad litem may be appointed to  
3 represent multiple individuals or interests. The guardian ad  
4 litem shall not be the same individual as the attorney  
5 representing the respondent. The court shall state the duties  
6 of the guardian ad litem and the reasons for the appointment.

7 **SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--**

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

11 (1) not otherwise entitled to notice; and

12 (2) interested in the welfare of a respondent,  
13 individual subject to guardianship or conservatorship or  
14 individual subject to a protective arrangement under Article 5  
15 of that act.

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

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

25 **SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR**

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1 CRIMINAL HISTORY.--

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

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

7 (2) has been convicted of:

8 (a) a felony;

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

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

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

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

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1           SECTION 118. [NEW MATERIAL] MULTIPLE NOMINATIONS.--If a  
2 respondent or other person makes more than one nomination of a  
3 guardian or conservator, the latest in time governs.

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

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

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

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

24           D. If the court dismisses a petition under the  
25 Uniform Guardianship, Conservatorship and Other Protective

1 Arrangements Act and determines the petition was filed in bad  
2 faith, the court may assess the cost of any court-ordered  
3 professional evaluation or visitor against the petitioner.

4 E. Unless otherwise compensated or reimbursed and  
5 except as otherwise provided in the Uniform Guardianship,  
6 Conservatorship and Other Protective Arrangements Act, a  
7 court-ordered visitor, a person appointed to conduct a  
8 court-ordered professional evaluation, a guardian ad litem  
9 appointed by the court for a respondent, an individual subject  
10 to guardianship, an individual subject to conservatorship or an  
11 individual subject to a protective arrangement pursuant to  
12 Article 5 of the Uniform Guardianship, Conservatorship and  
13 Other Protective Arrangements Act is entitled to reasonable  
14 compensation for services and reimbursement of reasonable  
15 expenses from the property of the individual.

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

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

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

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

9                   (1) the necessity and quality of the services  
10 provided;

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

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

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

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

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

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

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

6 E. If an individual subject to guardianship or  
7 conservatorship seeks to modify or terminate the guardianship  
8 or conservatorship or remove the guardian or conservator, the  
9 court may order compensation to the guardian or conservator for  
10 time spent opposing modification, termination or removal only  
11 to the extent the court determines the opposition was  
12 reasonably necessary to protect the interest of the individual  
13 subject to guardianship or conservatorship.

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

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

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

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

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

6           A. A person shall not recognize the authority of a  
7 guardian or conservator to act on behalf of an individual  
8 subject to guardianship or conservatorship if:

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

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

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

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

25                   (2) the person makes, or has actual knowledge

1 that another person has made, a report to the children, youth  
2 and families department or the aging and long-term services  
3 department stating a good-faith belief that the individual  
4 subject to guardianship or conservatorship is subject to  
5 physical or financial abuse, neglect, exploitation or  
6 abandonment by the guardian or conservator or a person acting  
7 for or with the guardian or conservator.

8 C. A person that refuses to accept the authority of  
9 a guardian or conservator in accordance with Subsection B of  
10 this section may report the refusal and the reason for refusal  
11 to the court. The court on receiving the report shall consider  
12 whether removal of the guardian or conservator or other action  
13 is appropriate.

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

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

20 A. Except as otherwise provided in Subsection C of  
21 this section, a guardian or conservator may delegate a power to  
22 an agent that a prudent guardian or conservator of comparable  
23 skills could delegate prudently under the circumstances if the  
24 delegation is consistent with the guardian's or conservator's  
25 fiduciary duties and the guardian's plan under Section 316 of

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1 the Uniform Guardianship, Conservatorship and Other Protective  
2 Arrangements Act or the conservator's plan under Section 419 of  
3 that act.

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

7 (1) selecting the agent;

8 (2) establishing the scope and terms of the  
9 agent's work in accordance with the guardian's plan under  
10 Section 316 of the Uniform Guardianship, Conservatorship and  
11 Other Protective Arrangements Act or conservator's plan under  
12 Section 419 of that act;

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

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

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

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

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

25 (2) if the guardian or conservator has

1 delegated to the agent the power to make a decision on behalf  
2 of the individual subject to guardianship or conservatorship,  
3 use the same decision-making standard the guardian or  
4 conservator would be required to use.

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

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

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

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

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

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

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

25 (1) a proceeding to remove a conservator for

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1 the individual is pending; or

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

6 C. Except as otherwise ordered by the court, a  
7 temporary substitute guardian or temporary substitute  
8 conservator appointed under this section has the powers stated  
9 in the order of appointment of the guardian or conservator.  
10 The authority of the existing guardian or conservator is  
11 suspended for as long as the temporary substitute guardian or  
12 conservator has authority.

13 D. The court shall give notice of appointment of a  
14 temporary substitute guardian or temporary substitute  
15 conservator, not later than five days after the appointment,  
16 to:

17 (1) the individual subject to guardianship or  
18 conservatorship;

19 (2) the affected guardian or conservator; and

20 (3) in the case of a minor, each parent of the  
21 minor and any person currently having care or custody of the  
22 minor.

23 E. The court may remove a temporary substitute  
24 guardian or temporary substitute conservator at any time. The  
25 temporary substitute guardian or temporary substitute

1 conservator shall make any report the court requires.

2 SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER--  
3 EFFECT.--

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

12 B. If a conservator has been appointed in another  
13 state for an individual and a petition for conservatorship for  
14 the individual is not pending in New Mexico, the conservator  
15 appointed for the individual in the other state, after giving  
16 notice to the appointing court, may register the  
17 conservatorship in New Mexico by filing as a foreign judgment,  
18 in a court of a county in which property belonging to the  
19 individual subject to conservatorship is located, certified  
20 copies of the order of conservatorship, letters of office and  
21 any bond or other asset-protection arrangement required by the  
22 court.

23 C. On registration under this section of a  
24 guardianship or conservatorship order from another state, the  
25 guardian or conservator may exercise in New Mexico all powers

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1 authorized in the order except as prohibited by the Uniform  
2 Guardianship, Conservatorship and Other Protective Arrangements  
3 Act or other law of New Mexico. If the guardian or conservator  
4 is not a resident of New Mexico, the guardian or conservator  
5 may maintain an action or proceeding in New Mexico subject to  
6 any condition imposed by New Mexico on an action or proceeding  
7 by a nonresident party.

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

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

14 A. An individual who is subject to guardianship or  
15 conservatorship, or a person interested in the welfare of an  
16 individual subject to guardianship or conservatorship, that  
17 reasonably believes the guardian or conservator is breaching  
18 the guardian's or conservator's fiduciary duty or otherwise  
19 acting in a manner inconsistent with the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act may file  
21 a grievance in a record with the court.

22 B. Subject to Subsection C of this section, after  
23 receiving a grievance under Subsection A of this section, the  
24 court:

- 25 (1) shall review the grievance and, if

1 necessary to determine the appropriate response, court records  
2 related to the guardianship or conservatorship;

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

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

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

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

18 (d) termination or modification of the  
19 conservatorship may be appropriate under Section 431 of the  
20 Uniform Guardianship, Conservatorship and Other Protective  
21 Arrangements Act; and

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

24 (a) ordering the guardian or conservator  
25 to provide the court a report, accounting, inventory, updated

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1 plan or other information;

2 (b) appointing a guardian ad litem;

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

5 (d) holding a hearing.

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

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

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

18 A. A guardian or conservator shall not commingle  
19 the guardian's or conservator's funds or investments with those  
20 held by the guardian or conservator as a fiduciary for a minor  
21 or an adult. Funds and any investments held by the guardian or  
22 conservator as a fiduciary for the minor or the adult shall be  
23 held in accounts that are separate from those of the guardian  
24 or conservator. If a guardian or conservator serves as  
25 fiduciary for one or more individuals subject to guardianship

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1 or conservatorship, the guardian or conservator shall hold the  
2 funds and any investments held as a fiduciary in a separate  
3 account for each individual subject to guardianship or  
4 conservatorship. Except as otherwise provided in the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act, and to the extent that is reasonable and customary, any  
7 other property held by the guardian or conservator as a  
8 fiduciary for one or more individuals subject to guardianship  
9 or conservatorship shall be titled separately:

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

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

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

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

21 (2) conserve funds of the minor not expended  
22 pursuant to Paragraph (3) of Subsection B of Section 209 of the  
23 Uniform Guardianship, Conservatorship and Other Protective  
24 Arrangements Act for the minor's future needs; or

25 (3) conserve funds of the adult not expended

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1 pursuant to Paragraph (2) of Subsection C of Section 313 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act for the adult's future needs.

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

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

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

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

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

22 E. The guardian or conservator shall maintain those  
23 books and records described in Paragraph (3) of Subsection C of  
24 this section for no less than seven years, or for such other  
25 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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1 interest in the appointment, the name and address of any  
2 attorney representing the petitioner and, to the extent known,  
3 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) any adult with whom the minor  
25 resides;

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1 (d) each person that had primary care or  
2 custody of the minor for at least sixty days during the two  
3 years immediately before the filing of the petition or for at  
4 least seven hundred thirty days during the five years  
5 immediately before the filing of the petition; and

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

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

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

14 (b) any nominee of a parent;

15 (c) each grandparent and adult sibling  
16 of the minor;

17 (d) any guardian or conservator acting  
18 for the minor in any jurisdiction; and

19 (e) any other person the court  
20 determines.

21 B. Notice required by Subsection A of this section  
22 shall include a statement of the right to request appointment  
23 of an attorney for the minor or object to appointment of a  
24 guardian and a description of the nature, purpose and  
25 consequences of appointment of a guardian.

1 C. The court shall not grant a petition for  
2 guardianship of a minor if notice substantially complying with  
3 Paragraph (1) of Subsection A of this section is not served on:

4 (1) the minor, if the minor is twelve years of  
5 age or older; and

6 (2) each parent of the minor, unless the court  
7 finds by clear and convincing evidence that the parent cannot  
8 with due diligence be located and served or the parent waived,  
9 in a record, the right to notice.

10 D. If a petitioner is unable to serve notice under  
11 Paragraph (1) of Subsection A of this section on a parent of a  
12 minor or alleges that the parent waived, in a record, the right  
13 to notice under this section, the court shall appoint a visitor  
14 who shall:

15 (1) interview the petitioner and the minor;

16 (2) if the petitioner alleges the parent  
17 cannot be located, ascertain whether the parent cannot be  
18 located with due diligence; and

19 (3) investigate any other matter relating to  
20 the petition the court directs.

21 SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR  
22 PARENT.--

23 A. Unless a minor already has an attorney, the  
24 court shall appoint an attorney to represent a minor who is the  
25 subject of a proceeding under Section 202 of the Uniform

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2 Act if:

3 (1) requested by the minor and the minor is  
4 twelve years of age or older;

5 (2) recommended by a guardian ad litem; or

6 (3) the court determines the minor needs  
7 representation.

8 B. An attorney appointed under Subsection A of this  
9 section shall:

10 (1) make a reasonable effort to ascertain the  
11 minor's wishes;

12 (2) advocate for the minor's wishes to the  
13 extent reasonably ascertainable; and

14 (3) if the minor's wishes are not reasonably  
15 ascertainable, advocate for the minor's best interest.

16 C. A minor who is the subject of a proceeding under  
17 Section 202 of the Uniform Guardianship, Conservatorship and  
18 Other Protective Arrangements Act may retain an attorney to  
19 represent the minor in the proceeding.

20 D. A parent of a minor who is the subject of a  
21 proceeding under Section 202 of the Uniform Guardianship,  
22 Conservatorship and Other Protective Arrangements Act may  
23 retain an attorney to represent the parent in the proceeding.

24 SECTION 205. [NEW MATERIAL] ATTENDANCE AND PARTICIPATION  
25 AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

1           A. The court shall require a minor who is the  
2 subject of a hearing under Section 203 of the Uniform  
3 Guardianship, Conservatorship and Other Protective Arrangements  
4 Act to attend the hearing and allow the minor to participate in  
5 the hearing unless the court determines, by clear and  
6 convincing evidence presented at the hearing or a separate  
7 hearing, that:

8                   (1) the minor consistently and repeatedly  
9 refused to attend the hearing after being fully informed of the  
10 right to attend and, if the minor is twelve years of age or  
11 older, the potential consequences of failing to do so;

12                   (2) there is no practicable way for the minor  
13 to attend the hearing;

14                   (3) the minor lacks the ability or maturity to  
15 participate meaningfully in the hearing; or

16                   (4) attendance would be harmful to the minor.

17           B. Unless excused by the court for good cause, the  
18 person proposed to be appointed as guardian for a minor shall  
19 attend a hearing under Section 203 of the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act.

21           C. Each parent of a minor who is the subject of a  
22 hearing under Section 203 of the Uniform Guardianship,  
23 Conservatorship and Other Protective Arrangements Act has the  
24 right to attend the hearing.

25           D. A person may request permission to participate

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1 in a hearing under Section 203 of the Uniform Guardianship,  
2 Conservatorship and Other Protective Arrangements Act. The  
3 court may grant the request, with or without hearing, on  
4 determining that it is in the best interest of the minor who is  
5 the subject of the hearing. The court may impose appropriate  
6 conditions on the person's participation.

7 E. A hearing pursuant to Section 203 of the Uniform  
8 Guardianship, Conservatorship and Other Protective Arrangements  
9 Act shall be closed at the request of the minor or the minor's  
10 attorney and a showing of good cause.

11 SECTION 206. [NEW MATERIAL] ORDER OF APPOINTMENT--  
12 PRIORITY OF NOMINEE--LIMITED GUARDIANSHIP FOR MINOR.--

13 A. After a hearing under Section 203 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act, the court may appoint a guardian for a minor, if  
16 appointment is proper under Section 201 of that act, dismiss  
17 the proceeding or take other appropriate action consistent with  
18 that act or other law of New Mexico.

19 B. In appointing a guardian under Subsection A of  
20 this section:

21 (1) the court shall appoint a person nominated  
22 as guardian by a parent of the minor in a will or other record  
23 unless the court finds the appointment is contrary to the best  
24 interest of the minor;

25 (2) if multiple parents have nominated

1 different persons to serve as guardian, the court shall appoint  
2 the nominee whose appointment is in the best interest of the  
3 minor, unless the court finds that appointment of none of the  
4 nominees is in the best interest of the minor; and

5 (3) if a guardian is not appointed under  
6 Paragraph (1) or (2) of this subsection, the court shall  
7 appoint the person nominated by the minor if the minor is  
8 twelve years of age or older unless the court finds that  
9 appointment is contrary to the best interest of the minor. In  
10 that case, the court shall appoint as guardian a person whose  
11 appointment is in the best interest of the minor.

12 C. In the interest of maintaining or encouraging  
13 involvement by a minor's parent in the minor's life, developing  
14 self-reliance of the minor or for other good cause, the court,  
15 at the time of appointment of a guardian for the minor or  
16 later, on its own or on motion of the minor or other interested  
17 person, may create a limited guardianship by limiting the  
18 powers otherwise granted by this article to the guardian.  
19 Following the same procedure, the court may grant additional  
20 powers or withdraw powers previously granted.

21 D. The court, as part of an order appointing a  
22 guardian for a minor, shall state rights retained by any parent  
23 of the minor, which may include contact or visitation with the  
24 minor, decision making regarding the minor's health care,  
25 education or other matter or access to a record regarding the

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1 minor.

2 E. An order granting a guardianship for a minor  
3 shall state that each parent of the minor is entitled to notice  
4 that:

5 (1) the guardian has delegated custody of the  
6 minor subject to guardianship;

7 (2) the court has modified or limited the  
8 powers of the guardian; or

9 (3) the court has removed the guardian.

10 F. An order granting a guardianship for a minor  
11 shall identify any person in addition to a parent of the minor  
12 that is entitled to notice of the events listed in Subsection E  
13 of this section.

14 SECTION 207. [NEW MATERIAL] STANDBY GUARDIAN FOR MINOR.--

15 A. A standby guardian appointed under this section  
16 may act as guardian, with all duties and powers of a guardian  
17 under Sections 209 and 210 of the Uniform Guardianship,  
18 Conservatorship and Other Protective Arrangements Act, when no  
19 parent of the minor is willing or able to exercise the duties  
20 and powers granted to the guardian.

21 B. A parent of a minor, in a signed record, may  
22 nominate a person to be appointed by the court as standby  
23 guardian for the minor. The parent, in a signed record, may  
24 state desired limitations on the powers to be granted the  
25 standby guardian. The parent, in a signed record, may revoke

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1 or amend the nomination at any time before the court appoints a  
2 standby guardian.

3 C. The court may appoint a standby guardian for a  
4 minor on:

5 (1) petition by a parent of the minor or a  
6 person nominated under Subsection B of this section; and

7 (2) finding that no parent of the minor likely  
8 will be able or willing to care for or make decisions with  
9 respect to the minor not later than two years after the  
10 appointment.

11 D. A petition under Paragraph (1) of Subsection C  
12 of this section shall include the same information required  
13 under Section 202 of the Uniform Guardianship, Conservatorship  
14 and Other Protective Arrangements Act for the appointment of a  
15 guardian for a minor.

16 E. On filing a petition under Paragraph (1) of  
17 Subsection C of this section, the petitioner shall:

18 (1) serve a copy of the petition personally  
19 on:

20 (a) the minor, if the minor is twelve  
21 years of age or older, and the minor's attorney, if any;

22 (b) each parent of the minor;

23 (c) the person nominated as standby  
24 guardian; and

25 (d) any other person the court

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1 determines; and

2 (2) include with the copy of the petition  
3 served under Paragraph (1) of this subsection a statement of  
4 the right to request appointment of an attorney for the minor  
5 or to object to appointment of the standby guardian and a  
6 description of the nature, purpose and consequences of  
7 appointment of a standby guardian.

8 F. A person entitled to notice under Subsection E  
9 of this section, not later than sixty days after service of the  
10 petition and statement, may object to appointment of the  
11 standby guardian by filing an objection with the court and  
12 giving notice of the objection to each other person entitled to  
13 notice under Subsection E of this section.

14 G. If an objection is filed under Subsection F of  
15 this section, the court shall hold a hearing to determine  
16 whether a standby guardian should be appointed and, if so, the  
17 person that should be appointed. If no objection is filed, the  
18 court may make the appointment.

19 H. The court shall not grant a petition for a  
20 standby guardian for the minor if notice substantially  
21 complying with Subsection E of this section is not served on:

22 (1) the minor, if the minor is twelve years of  
23 age or older; and

24 (2) each parent of the minor, unless the court  
25 finds by clear and convincing evidence that the parent, in a

1 record, waived the right to notice or cannot be located and  
2 served with due diligence.

3 I. If a petitioner is unable to serve notice under  
4 Subsection E of this section on a parent of the minor or  
5 alleges that a parent of the minor waived the right to notice  
6 under this section, the court shall appoint a visitor who  
7 shall:

8 (1) interview the petitioner and the minor;

9 (2) if the petitioner alleges the parent  
10 cannot be located and served, ascertain whether the parent  
11 cannot be located with due diligence; and

12 (3) investigate any other matter relating to  
13 the petition the court directs.

14 J. If the court finds under Subsection C of this  
15 section that a standby guardian should be appointed:

16 (1) the court shall appoint the person  
17 nominated under Subsection B of this section unless the court  
18 finds the appointment is contrary to the best interest of the  
19 minor; and

20 (2) if the parents have nominated different  
21 persons to serve as standby guardian, the court shall appoint  
22 the nominee whose appointment is in the best interest of the  
23 minor, unless the court finds that appointment of none of the  
24 nominees is in the best interest of the minor.

25 K. An order appointing a standby guardian under

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1 this section shall state that each parent of the minor is  
2 entitled to notice, and identify any other person entitled to  
3 notice, if:

4 (1) the standby guardian assumes the duties  
5 and powers of the guardian;

6 (2) the guardian delegates custody of the  
7 minor;

8 (3) the court modifies or limits the powers of  
9 the guardian; or

10 (4) the court removes the guardian.

11 L. Before assuming the duties and powers of a  
12 guardian, a standby guardian shall file with the court an  
13 acceptance of appointment as guardian and give notice of the  
14 acceptance to:

15 (1) each parent of the minor, unless the  
16 parent, in a record, waived the right to notice or cannot be  
17 located and served with due diligence;

18 (2) the minor, if the minor is twelve years of  
19 age or older; and

20 (3) any person, other than the parent, having  
21 care or custody of the minor.

22 M. A person that receives notice under Subsection L  
23 of this section or any other person interested in the welfare  
24 of the minor may file with the court an objection to the  
25 standby guardian's assumption of duties and powers of a

1 guardian. The court shall hold a hearing if the objection  
2 supports a reasonable belief that the conditions for assumption  
3 of duties and powers have not been satisfied.

4 SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR  
5 MINOR.--

6 A. On its own, or on petition by a person  
7 interested in a minor's welfare, the court may appoint an  
8 emergency guardian for the minor if the court finds:

9 (1) appointment of an emergency guardian is  
10 likely to prevent substantial harm to the minor's health,  
11 safety or welfare; and

12 (2) no other person appears to have authority  
13 and willingness to act in the circumstances.

14 B. The duration of authority of an emergency  
15 guardian for a minor shall not exceed sixty days and the  
16 emergency guardian may exercise only the powers specified in  
17 the order of appointment. The emergency guardian's authority  
18 may be extended once for not more than thirty days if the court  
19 finds that the conditions for appointment of an emergency  
20 guardian in Subsection A of this section continue.

21 C. Except as otherwise provided in Subsection D of  
22 this section, reasonable notice of the date, time and place of  
23 a hearing on a petition for appointment of an emergency  
24 guardian for a minor shall be given to:

25 (1) the minor, if the minor is twelve years of

1 age or older;

2 (2) any attorney appointed under Section 204  
3 of the Uniform Guardianship, Conservatorship and Other  
4 Protective Arrangements Act;

5 (3) each parent of the minor;

6 (4) any person, other than a parent, having  
7 care or custody of the minor; and

8 (5) any other person the court determines.

9 D. The court may appoint an emergency guardian for  
10 a minor without notice under Subsection C of this section and a  
11 hearing only if the court finds from an affidavit or testimony  
12 that the minor's health, safety or welfare will be  
13 substantially harmed before a hearing with notice on the  
14 appointment can be held. If the court appoints an emergency  
15 guardian without notice to an unrepresented minor or the  
16 attorney for a represented minor, notice of the appointment  
17 shall be given not later than forty-eight hours after the  
18 appointment to the individuals listed in Subsection C of this  
19 section. Not later than fourteen days after the appointment,  
20 the court shall hold a hearing on the appropriateness of the  
21 appointment. On two days' notice to the party who obtained the  
22 appointment of an emergency guardian without notice or on such  
23 shorter notice to that party as the court may prescribe, the  
24 minor or the minor's attorney may appear and move dissolution  
25 or modification of the court's order, and in that event, the

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1 court shall proceed to hear and determine the motion as  
2 expeditiously as the ends of justice require.

3 E. Appointment of an emergency guardian under this  
4 section, with or without notice, is not a determination that a  
5 basis exists for appointment of a guardian under Section 201 of  
6 the Uniform Guardianship, Conservatorship and Other Protective  
7 Arrangements Act.

8 F. The court may remove an emergency guardian  
9 appointed under this section at any time. The emergency  
10 guardian shall make any report the court requires.

11 SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR  
12 MINOR.--

13 A. A guardian for a minor is a fiduciary. Except  
14 as otherwise limited by the court, a guardian for a minor has  
15 the duties and responsibilities of a parent regarding the  
16 minor's support, care, education, health, safety and welfare.  
17 A guardian shall act in the minor's best interest and exercise  
18 reasonable care, diligence and prudence.

19 B. A guardian for a minor shall:

20 (1) be personally acquainted with the minor  
21 and maintain sufficient contact with the minor to know the  
22 minor's abilities, limitations, needs, opportunities and  
23 physical and mental health;

24 (2) take reasonable care of the minor's  
25 personal effects and bring a proceeding for a conservatorship

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1 or protective arrangement instead of conservatorship if  
2 necessary to protect other property of the minor;

3 (3) expend funds of the minor that have been  
4 received by the guardian for the minor's current needs for  
5 support, care, education, health, safety and welfare;

6 (4) conserve any funds of the minor not  
7 expended under Paragraph (3) of this subsection for the minor's  
8 future needs, but if a conservator is appointed for the minor,  
9 pay the funds at least quarterly to the conservator to be  
10 conserved for the minor's future needs;

11 (5) report the condition of the minor and  
12 account for funds and other property of the minor in the  
13 guardian's possession or subject to the guardian's control, as  
14 required by court rule or ordered by the court on application  
15 of a person interested in the minor's welfare;

16 (6) inform the court of any change in the  
17 minor's dwelling or address; and

18 (7) in determining what is in the minor's best  
19 interest, take into account the minor's preferences to the  
20 extent actually known or reasonably ascertainable by the  
21 guardian.

22 SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR  
23 MINOR.--

24 A. Except as otherwise limited by court order, a  
25 guardian for a minor has the powers a parent otherwise would

1 have regarding the minor's support, care, education, health,  
2 safety and welfare.

3 B. Except as otherwise limited by court order, a  
4 guardian for a minor may:

5 (1) apply for and receive funds and benefits  
6 otherwise payable for the support of the minor to the minor's  
7 parent, guardian or custodian under a statutory system of  
8 benefits or insurance or any private contract, devise, trust,  
9 conservatorship or custodianship;

10 (2) unless inconsistent with a court order  
11 entitled to recognition in New Mexico, take custody of the  
12 minor and establish the minor's place of dwelling and, on  
13 authorization of the court, establish or move the minor's  
14 dwelling outside New Mexico;

15 (3) if the minor is not subject to  
16 conservatorship, commence a proceeding, including an  
17 administrative proceeding, or take other appropriate action to  
18 compel a person to support the minor or make a payment for the  
19 benefit of the minor;

20 (4) consent to health or other care, treatment  
21 or service for the minor; or

22 (5) to the extent reasonable, delegate to the  
23 minor responsibility for a decision affecting the minor's  
24 well-being.

25 C. The court may authorize a guardian for a minor

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1 to consent to the adoption of the minor if the minor does not  
2 have a parent.

3 D. A guardian for a minor may consent to the  
4 marriage of the minor.

5 SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR  
6 MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--

7 A. Guardianship under the Uniform Guardianship,  
8 Conservatorship and Other Protective Arrangements Act for a  
9 minor terminates:

10 (1) on the minor's death, adoption,  
11 emancipation or attainment of majority; or

12 (2) when the court finds that the standard in  
13 Section 201 of the Uniform Guardianship, Conservatorship and  
14 Other Protective Arrangements Act for appointment of a guardian  
15 is not satisfied, unless the court finds that:

16 (a) termination of the guardianship  
17 would be harmful to the minor; and

18 (b) the minor's interest in the  
19 continuation of the guardianship outweighs the interest of any  
20 parent of the minor in restoration of the parent's right to  
21 make decisions for the minor.

22 B. A minor subject to guardianship or a person  
23 interested in the welfare of the minor may petition the court  
24 to terminate the guardianship, modify the guardianship or  
25 remove the guardian and appoint a successor guardian or remove

1 a standby guardian and appoint a different standby guardian.

2 C. A petitioner under Subsection B of this section  
3 shall give notice of the hearing on the petition to the minor,  
4 if the minor is twelve years of age or older and is not the  
5 petitioner, the guardian, each parent of the minor and any  
6 other person the court determines.

7 D. The court shall follow the priorities in  
8 Subsection B of Section 206 of the Uniform Guardianship,  
9 Conservatorship and Other Protective Arrangements Act when  
10 selecting a successor guardian for a minor.

11 E. Not later than thirty days after appointment of  
12 a successor guardian for a minor, the court shall give notice  
13 of the appointment to the minor subject to guardianship, if the  
14 minor is twelve years of age or older, each parent of the minor  
15 and any other person the court determines.

16 F. When terminating a guardianship for a minor  
17 under this section, the court may issue an order providing for  
18 transitional arrangements that will assist the minor with a  
19 transition of custody and is in the best interest of the minor.

20 G. A guardian for a minor that is removed shall  
21 cooperate with a successor guardian to facilitate transition of  
22 the guardian's responsibilities and protect the best interest  
23 of the minor.

### 24 ARTICLE 3

### 25 GUARDIANSHIP OF ADULT

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1           SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF  
2 GUARDIAN FOR ADULT.--

3           A. On petition and after notice and hearing, the  
4 court may:

5                   (1) appoint a guardian for an adult if the  
6 court finds by clear and convincing evidence that:

7                           (a) the respondent lacks the ability to  
8 meet essential requirements for physical health, safety or  
9 self-care because the respondent is unable to receive and  
10 evaluate information or make or communicate decisions, even  
11 with appropriate supportive services, technological assistance  
12 or supported decision making; and

13                           (b) the respondent's identified needs  
14 cannot be met by a protective arrangement instead of  
15 guardianship or other less restrictive alternative; or

16                   (2) with appropriate findings, treat the  
17 petition as one for a conservatorship under Article 4 of the  
18 Uniform Guardianship, Conservatorship and Other Protective  
19 Arrangements Act or protective arrangement under Article 5 of  
20 that act, issue any appropriate order or dismiss the  
21 proceeding.

22           B. The court shall grant a guardian appointed under  
23 Subsection A of this section only those powers necessitated by  
24 the demonstrated needs and limitations of the respondent and  
25 issue orders that will encourage development of the

1 respondent's maximum self-determination and independence. The  
2 court shall not establish a full guardianship if a limited  
3 guardianship, protective arrangement instead of guardianship or  
4 other less restrictive alternatives would meet the needs of the  
5 respondent.

6 SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF  
7 GUARDIAN FOR ADULT.--

8 A. A person interested in an adult's welfare,  
9 including the adult for whom the order is sought, may petition  
10 for appointment of a guardian for the adult.

11 B. A petition under Subsection A of this section  
12 shall state the petitioner's name, principal residence, current  
13 street address, if different, relationship to the respondent,  
14 interest in the appointment, the name and address of any  
15 attorney representing the petitioner and, to the extent known,  
16 the following:

17 (1) the respondent's name, age, principal  
18 residence, current street address, if different, and, if  
19 different, address of the dwelling in which it is proposed the  
20 respondent will reside if the petition is granted;

21 (2) the name and address of the respondent's:  
22 (a) spouse or, if the respondent has  
23 none, an adult with whom the respondent has shared household  
24 responsibilities for more than six months in the twelve-month  
25 period immediately before the filing of the petition;

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1 (b) adult children or, if none, each  
2 parent and adult sibling of the respondent or, if none, at  
3 least one adult nearest in kinship to the respondent who can be  
4 found with reasonable diligence; and

5 (c) adult stepchildren whom the  
6 respondent actively parented during the stepchildren's minor  
7 years and with whom the respondent had an ongoing relationship  
8 in the two-year period immediately before the filing of the  
9 petition;

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

12 (a) a person responsible for care of the  
13 respondent;

14 (b) any attorney currently representing  
15 the respondent;

16 (c) any representative payee appointed  
17 by the federal social security administration for the  
18 respondent;

19 (d) a guardian or conservator acting for  
20 the respondent in New Mexico or in another jurisdiction;

21 (e) a trustee or custodian of a trust or  
22 custodianship of which the respondent is a beneficiary;

23 (f) any fiduciary for the respondent  
24 appointed by the federal department of veterans affairs;

25 (g) an agent designated under a power of

1 attorney for health care in which the respondent is identified  
2 as the principal;

3 (h) an agent designated under a power of  
4 attorney for finances in which the respondent is identified as  
5 the principal;

6 (i) a person nominated as guardian by  
7 the respondent;

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

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

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

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

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

20 (b) any protective arrangement instead  
21 of guardianship or other less restrictive alternatives for  
22 meeting the respondent's alleged need that have been considered  
23 or implemented;

24 (c) if no protective arrangement instead  
25 of guardianship or other less restrictive alternatives have

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1 been considered or implemented, the reason they have not been  
2 considered or implemented; and

3 (d) the reason a protective arrangement  
4 instead of guardianship or other less restrictive alternative  
5 is insufficient to meet the respondent's alleged need;

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

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

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

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

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

21 (10) whether the respondent needs an  
22 interpreter, translator or other form of support to communicate  
23 effectively with the court or understand court proceedings.

24 SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR  
25 APPOINTMENT OF GUARDIAN FOR ADULT.--

1           A. On filing of a petition under Section 302 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act for appointment of a guardian for an adult,  
4 the court shall set a date, time and place for hearing the  
5 petition.

6           B. A copy of a petition under Section 302 of the  
7 Uniform Guardianship, Conservatorship and Other Protective  
8 Arrangements Act and notice of a hearing on the petition shall  
9 be served personally on the respondent. The notice shall  
10 inform the respondent of the respondent's rights at the  
11 hearing, including the right to an attorney and to attend the  
12 hearing. The notice shall include a description of the nature,  
13 purpose and consequences of granting the petition. The court  
14 shall not grant the petition if notice substantially complying  
15 with this subsection is not served on the respondent.

16           C. In a proceeding on a petition under Section 302  
17 of the Uniform Guardianship, Conservatorship and Other  
18 Protective Arrangements Act, the notice required under  
19 Subsection B of this section shall be given to the persons  
20 required to be listed in the petition under Paragraphs (1)  
21 through (3) of Subsection B of Section 302 of that act and any  
22 other person interested in the respondent's welfare the court  
23 determines. Failure to give notice under this subsection does  
24 not preclude the court from appointing a guardian.

25           D. After the appointment of a guardian, notice of a

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1 hearing on a petition for an order under this article together  
2 with a copy of the petition shall be given to:

- 3 (1) the adult subject to guardianship;
- 4 (2) the guardian; and
- 5 (3) any other person the court determines.

6 SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
7 VISITOR.--

8 A. On receipt of a petition under Section 302 of  
9 the Uniform Guardianship, Conservatorship and Other Protective  
10 Arrangements Act for appointment of a guardian for an adult,  
11 the court shall appoint a visitor. The visitor shall be an  
12 individual with training or experience in the type of  
13 abilities, limitations and needs alleged in the petition.

14 B. A visitor appointed under Subsection A of this  
15 section shall interview the respondent in person and, in a  
16 manner the respondent is best able to understand:

17 (1) explain to the respondent the substance of  
18 the petition, the nature, purpose and effect of the proceeding,  
19 the respondent's rights at the hearing on the petition and the  
20 general powers and duties of a guardian;

21 (2) determine the respondent's views about the  
22 appointment sought by the petitioner, including views about a  
23 proposed guardian, the guardian's proposed powers and duties  
24 and the scope and duration of the proposed guardianship;

- 25 (3) inform the respondent of the respondent's

1 right to employ and consult with an attorney at the  
2 respondent's expense and the right to request a court-appointed  
3 attorney; and

4 (4) inform the respondent that all costs and  
5 expenses of the proceeding, including respondent's attorney's  
6 fees, may be paid from the respondent's assets.

7 C. The visitor appointed under Subsection A of this  
8 section shall:

9 (1) interview the petitioner and proposed  
10 guardian, if any;

11 (2) visit the respondent's present dwelling  
12 and any dwelling in which it is reasonably believed the  
13 respondent will live if the appointment is made;

14 (3) obtain information from any physician or  
15 other person known to have treated, advised or assessed the  
16 respondent's relevant physical or mental condition; and

17 (4) investigate the allegations in the  
18 petition and any other matter relating to the petition the  
19 court directs.

20 D. A visitor appointed under Subsection A of this  
21 section promptly shall file a report in a record with the court  
22 that includes:

23 (1) a summary of self-care and independent-  
24 living tasks the respondent can manage without assistance or  
25 with existing supports, could manage with the assistance of

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1 appropriate supportive services, technological assistance or  
2 supported decision making and cannot manage;

3 (2) a recommendation regarding the  
4 appropriateness of guardianship, including whether a protective  
5 arrangement instead of guardianship or other less restrictive  
6 alternative for meeting the respondent's needs is available  
7 and:

8 (a) if a guardianship is recommended,  
9 whether it should be full or limited; and

10 (b) if a limited guardianship is  
11 recommended, the powers to be granted to the guardian;

12 (3) a statement of the qualifications of the  
13 proposed guardian and whether the respondent approves or  
14 disapproves of the proposed guardian;

15 (4) a statement whether the proposed dwelling  
16 meets the respondent's needs and whether the respondent has  
17 expressed a preference as to residence;

18 (5) a recommendation whether a professional  
19 evaluation under Section 306 of the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act is  
21 necessary;

22 (6) a statement whether the respondent is able  
23 to attend a hearing at the location court proceedings typically  
24 are held;

25 (7) a statement whether the respondent is able

1 to participate in a hearing and that identifies any technology  
2 or other form of support that would enhance the respondent's  
3 ability to participate; and

4 (8) any other matter the court directs.

5 SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
6 ATTORNEY FOR ADULT.--

7 A. Unless the respondent in a proceeding for  
8 appointment of a guardian for an adult is represented by an  
9 attorney, the court shall appoint an attorney to represent the  
10 respondent, regardless of the respondent's ability to pay.

11 B. An attorney representing the respondent in a  
12 proceeding for appointment of a guardian for an adult shall:

13 (1) make reasonable efforts to ascertain the  
14 respondent's wishes;

15 (2) advocate for the respondent's wishes to  
16 the extent reasonably ascertainable; and

17 (3) if the respondent's wishes are not  
18 reasonably ascertainable, advocate for the result that is the  
19 least restrictive in type, duration and scope, consistent with  
20 the respondent's interests.

21 SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

22 A. At or before a hearing on a petition for a  
23 guardianship for an adult, the court shall order a professional  
24 evaluation of the respondent:

25 (1) if the respondent requests the evaluation;

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1 or

2 (2) in other cases, unless the court finds  
3 that it has sufficient information to determine the  
4 respondent's needs and abilities without the evaluation.

5 B. If the court orders an evaluation under  
6 Subsection A of this section, the respondent shall be examined  
7 by a licensed physician, psychologist, social worker or other  
8 individual appointed by the court who is qualified to evaluate  
9 the respondent's alleged cognitive and functional abilities and  
10 limitations and will not be advantaged or disadvantaged by a  
11 decision to grant the petition or otherwise have a conflict of  
12 interest. The individual conducting the evaluation promptly  
13 shall file report in a record with the court. Unless otherwise  
14 directed by the court, the report shall contain:

15 (1) a description of the nature, type and  
16 extent of the respondent's cognitive and functional abilities  
17 and limitations;

18 (2) an evaluation of the respondent's mental  
19 and physical condition and, if appropriate, educational  
20 potential, adaptive behavior and social skills;

21 (3) a prognosis for improvement and  
22 recommendation for the appropriate treatment, support or  
23 habilitation plan; and

24 (4) the date of the examination on which the  
25 report is based.

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1 C. The respondent may decline to participate in an  
2 evaluation ordered under Subsection A of this section.

3 SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
4 HEARING.--

5 A. Except as otherwise provided in Subsection B of  
6 this section, a hearing under Section 303 of the Uniform  
7 Guardianship, Conservatorship and Other Protective Arrangements  
8 Act shall not proceed unless the respondent attends the  
9 hearing. If it is not reasonably feasible for the respondent  
10 to attend a hearing at the location court proceedings typically  
11 are held, the court shall make reasonable efforts to hold the  
12 hearing at an alternative location more convenient to the  
13 respondent or allow the respondent to attend the hearing using  
14 real-time audio-visual technology, if available.

15 B. A hearing under Section 303 of the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act may proceed without the respondent in attendance if the  
18 court finds by clear and convincing evidence that:

19 (1) the respondent consistently and repeatedly  
20 has refused to attend the hearing after having been fully  
21 informed of the right to attend and the potential consequences  
22 of failing to do so; or

23 (2) there is no practicable way for the  
24 respondent to attend and participate in the hearing even with  
25 appropriate supportive services and technological assistance.

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1           C. The respondent may be assisted in a hearing  
2 under Section 303 of the Uniform Guardianship, Conservatorship  
3 and Other Protective Arrangements Act by a person or persons of  
4 the respondent's choosing, assistive technology or an  
5 interpreter or translator or a combination of these supports.  
6 If assistance would facilitate the respondent's participation  
7 in the hearing, but is not otherwise available to the  
8 respondent, the court shall make reasonable efforts to provide  
9 it.

10           D. The respondent has a right to choose an attorney  
11 to represent the respondent at a hearing under Section 303 of  
12 the Uniform Guardianship, Conservatorship and Other Protective  
13 Arrangements Act.

14           E. At a hearing held under Section 303 of the  
15 Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act, the respondent may:

17                   (1) present evidence and subpoena witnesses  
18 and documents;

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

21                   (3) otherwise participate in the hearing.

22           F. Unless excused by the court for good cause, a  
23 proposed guardian shall attend a hearing under Section 303 of  
24 the Uniform Guardianship, Conservatorship and Other Protective  
25 Arrangements Act.

1           G. A hearing under Section 303 of the Uniform  
2 Guardianship, Conservatorship and Other Protective Arrangements  
3 Act shall be closed on request of the respondent and a showing  
4 of good cause.

5           H. Any person may request to participate in a  
6 hearing under Section 303 of the Uniform Guardianship,  
7 Conservatorship and Other Protective Arrangements Act. The  
8 court may grant the request, with or without a hearing, on  
9 determining that the best interest of the respondent will be  
10 served. The court may impose appropriate conditions on the  
11 person's participation.

12           **SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--**

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

16                   (1) the respondent or individual subject to  
17 guardianship requests the record be sealed; and

18                   (2) either:

19                           (a) the petition for guardianship is  
20 dismissed; or

21                           (b) the guardianship is terminated.

22           B. An adult subject to a proceeding for a  
23 guardianship, whether or not a guardian is appointed, an  
24 attorney designated by the adult and a person entitled to  
25 notice under Subsection E of Section 310 of the Uniform

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1 Guardianship, Conservatorship and Other Protective Arrangements  
2 Act or a subsequent order are entitled to access court records  
3 of the proceeding and resulting guardianship, including the  
4 guardian's plan under Section 316 of that act and report under  
5 Section 317 of that act. A person not otherwise entitled to  
6 access court records under this subsection for good cause may  
7 petition the court for access to court records of the  
8 guardianship, including the guardian's report and plan. The  
9 court shall grant access if access is in the best interest of  
10 the respondent or adult subject to guardianship or furthers the  
11 public interest and does not endanger the welfare or financial  
12 interests of the adult.

13 C. A report under Section 304 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act of a visitor or a professional evaluation under Section 306  
16 of that act is confidential and shall be sealed on filing, but  
17 is available to:

- 18 (1) the court;  
19 (2) the individual who is the subject of the  
20 report or evaluation, without limitation as to use;  
21 (3) the petitioner, visitor and petitioner's  
22 and respondent's attorneys, for purposes of the proceeding;  
23 (4) unless the court orders otherwise, an  
24 agent appointed under a power of attorney for health care or  
25 power of attorney for finances in which the respondent is the

1 principal; and

2 (5) any other person if it is in the public  
3 interest or for a purpose the court orders for good cause.

4 SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN FOR  
5 ADULT--ORDER OF PRIORITY.--

6 A. Except as otherwise provided in Subsection C of  
7 this section, the court in appointing a guardian for an adult  
8 shall consider persons qualified to be guardian in the  
9 following order of priority:

10 (1) a guardian, other than a temporary or  
11 emergency guardian, currently acting for the respondent in  
12 another jurisdiction;

13 (2) a person nominated as guardian by the  
14 respondent, including the respondent's most recent nomination  
15 made in a power of attorney;

16 (3) an agent appointed by the respondent under  
17 a power of attorney for health care;

18 (4) a spouse of the respondent; and

19 (5) a family member or other individual who  
20 has shown special care and concern for the respondent.

21 B. If two or more persons have equal priority under  
22 Subsection A of this section, the court shall select as  
23 guardian the person the court considers best qualified. In  
24 determining the best qualified person, the court shall consider  
25 the person's relationship with the respondent, the person's

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1 skills, the expressed wishes of the respondent, the extent to  
2 which the person and the respondent have similar values and  
3 preferences and the likelihood the person will be able to  
4 perform the duties of a guardian successfully.

5 C. The court, acting in the best interest of the  
6 respondent, may decline to appoint as guardian a person having  
7 priority under Subsection A of this section and appoint a  
8 person having a lower priority or no priority.

9 D. A person that provides paid services to the  
10 respondent, or an individual who is employed by a person that  
11 provides paid services to the respondent or is the spouse,  
12 domestic partner, parent or child of an individual who provides  
13 or is employed to provide paid services to the respondent,  
14 shall not be appointed as guardian unless:

15 (1) the individual is related to the  
16 respondent by blood, marriage or adoption; or

17 (2) the court finds by clear and convincing  
18 evidence that the person is the best qualified person available  
19 for appointment and the appointment is in the best interest of  
20 the respondent.

21 E. An owner, operator or employee of a long-term  
22 care facility at which the respondent is receiving care shall  
23 not be appointed as guardian unless the owner, operator or  
24 employee is related to the respondent by blood, marriage or  
25 adoption.

1           SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF  
2 GUARDIAN FOR ADULT.--

3           A. A court order appointing a guardian for an adult  
4 shall:

5                       (1) include a specific finding that clear and  
6 convincing evidence established that the identified needs of  
7 the respondent cannot be met by a protective arrangement  
8 instead of guardianship or other less restrictive alternative,  
9 including use of appropriate supportive services, technological  
10 assistance or supported decision making;

11                      (2) include a specific finding that clear and  
12 convincing evidence established that the respondent was given  
13 proper notice of the hearing on the petition; and

14                      (3) state whether the adult subject to  
15 guardianship retains the right to marry and, if the adult does  
16 not retain the right to marry, include findings that support  
17 removing that right.

18           B. An adult subject to guardianship retains the  
19 right to marry unless the order under Subsection A of this  
20 section includes the findings required by Paragraph (3) of  
21 Subsection A of this section.

22           C. A court order establishing a full guardianship  
23 for an adult shall state the basis for granting a full  
24 guardianship and include specific findings that support the  
25 conclusion that a limited guardianship would not meet the

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

1 functional needs of the adult subject to guardianship.

2 D. A court order establishing a limited  
3 guardianship for an adult shall state the specific powers  
4 granted to the guardian.

5 E. The court, as part of an order establishing a  
6 guardianship for an adult, shall identify any person that  
7 subsequently is entitled to:

8 (1) notice of the rights of the adult under  
9 Subsection B of Section 311 of the Uniform Guardianship,  
10 Conservatorship and Other Protective Arrangements Act;

11 (2) notice of a change in the primary dwelling  
12 of the adult;

13 (3) notice that the guardian has delegated:

14 (a) the power to manage the care of the  
15 adult;

16 (b) the power to make decisions about  
17 where the adult lives;

18 (c) the power to make major medical  
19 decisions on behalf of the adult;

20 (d) a power that requires court approval  
21 under Section 315 of the Uniform Guardianship, Conservatorship  
22 and Other Protective Arrangements Act; or

23 (e) substantially all powers of the  
24 guardian;

25 (4) notice that the guardian will be

1 unavailable to visit the adult for more than two months or  
 2 unavailable to perform the guardian's duties for more than one  
 3 month;

4 (5) a copy of the guardian's plan under  
 5 Section 316 of the Uniform Guardianship, Conservatorship and  
 6 Other Protective Arrangements Act and the guardian's report  
 7 under Section 317 of that act;

8 (6) access to court records relating to the  
 9 guardianship;

10 (7) notice of the death or significant change  
 11 in the condition of the adult;

12 (8) notice that the court has limited or  
 13 modified the powers of the guardian; and

14 (9) notice of the removal of the guardian.

15 F. A spouse and adult children of an adult subject  
 16 to guardianship are entitled to notice under Subsection E of  
 17 this section unless the court determines notice would be  
 18 contrary to the preferences or prior directions of the adult  
 19 subject to guardianship or not in the best interest of the  
 20 adult.

21 G. The voting rights of a respondent shall not be  
 22 abridged or restricted except pursuant to Article 7, Section 1  
 23 of the constitution of New Mexico.

24 SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF  
 25 APPOINTMENT--RIGHTS.--

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1           A. A guardian appointed under Section 309 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act shall give the adult subject to guardianship  
4 and all other persons given notice under Section 303 of that  
5 act a copy of the order of appointment, together with notice of  
6 the right to request termination or modification. The order  
7 and notice shall be given not later than fourteen days after  
8 the appointment.

9           B. Not later than thirty days after appointment of  
10 a guardian under Section 309 of the Uniform Guardianship,  
11 Conservatorship and Other Protective Arrangements Act, the  
12 court shall give to the adult subject to guardianship, the  
13 guardian and any other person entitled to notice under  
14 Subsection E of Section 310 of that act or a subsequent order a  
15 statement of the rights of the adult subject to guardianship  
16 and procedures to seek relief if the adult is denied those  
17 rights. The statement shall be in at least sixteen-point font,  
18 in plain language and, to the extent feasible, in a language in  
19 which the adult subject to guardianship is proficient. The  
20 statement shall notify the adult subject to guardianship of the  
21 right to:

22                   (1) seek termination or modification of the  
23 guardianship, or removal of the guardian and choose an attorney  
24 to represent the adult in these matters;

25                   (2) be involved in decisions affecting the

1 adult, including decisions about the adult's care, dwelling,  
2 activities or social interactions, to the extent reasonably  
3 feasible;

4 (3) be involved in health care decision making  
5 to the extent reasonably feasible and supported in  
6 understanding the risks and benefits of health care options to  
7 the extent reasonably feasible;

8 (4) be notified at least fourteen days before  
9 a change in the adult's primary dwelling or permanent move to a  
10 nursing home, mental health treatment facility or other  
11 facility that places restrictions on the individual's ability  
12 to leave or have visitors unless the change or move is proposed  
13 in the guardian's plan under Section 316 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act or authorized by the court by specific order;

16 (5) object to a change or move described in  
17 Paragraph (4) of this subsection and the process for objecting;

18 (6) communicate, visit or interact with  
19 others, including receiving visitors and making or receiving  
20 telephone calls, personal mail or electronic communications,  
21 including through social media, unless:

22 (a) the guardian has been authorized by  
23 the court by specific order to restrict communications, visits  
24 or interactions;

25 (b) a protective order or protective

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1 arrangement instead of guardianship is in effect that limits  
2 contact between the adult and a person; or

3 (c) the guardian has good cause to  
4 believe restriction is necessary because interaction with a  
5 specified person poses a risk of significant physical,  
6 psychological or financial harm to the adult and the  
7 restriction is: 1) for a period of not more than seven  
8 business days if the person has a family or preexisting social  
9 relationship with the adult; or 2) for a period of not more  
10 than sixty days if the person does not have a family or  
11 preexisting social relationship with the adult;

12 (7) receive a copy of the guardian's plan  
13 under Section 316 of the Uniform Guardianship, Conservatorship  
14 and Other Protective Arrangements Act and the guardian's report  
15 under Section 317 of that act; and

16 (8) object to the guardian's plan or report.

17 SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN FOR  
18 ADULT.--

19 A. On its own after a petition has been filed under  
20 Section 302 of the Uniform Guardianship, Conservatorship and  
21 Other Protective Arrangements Act, or on petition by a person  
22 interested in an adult's welfare, the court may appoint an  
23 emergency guardian for the adult if the court finds:

24 (1) appointment of an emergency guardian is  
25 likely to prevent substantial harm to the adult's physical

1 health, safety or welfare;

2 (2) no other person appears to have authority  
3 and willingness to act in the circumstances; and

4 (3) there is reason to believe that a basis  
5 for appointment of a guardian under Section 301 of the Uniform  
6 Guardianship, Conservatorship and Other Protective Arrangements  
7 Act exists.

8 B. The duration of authority of an emergency  
9 guardian for an adult shall not exceed sixty days, and the  
10 emergency guardian may exercise only the powers specified in  
11 the order of appointment. The emergency guardian's authority  
12 may be extended once for not more than thirty days if the court  
13 finds that the conditions for appointment of an emergency  
14 guardian in Subsection A of this section continue.

15 C. Immediately on filing of a petition for  
16 appointment of an emergency guardian for an adult, the court  
17 shall appoint an attorney to represent the respondent in the  
18 proceeding. Except as otherwise provided in Subsection D of  
19 this section, reasonable notice of the date, time and place of  
20 a hearing on the petition shall be given to the respondent, the  
21 respondent's attorney and any other person the court  
22 determines.

23 D. The court may appoint an emergency guardian for  
24 an adult without notice to the adult and any attorney for the  
25 adult only if the court finds from an affidavit or testimony

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1 that the respondent's physical health, safety or welfare will  
2 be substantially harmed before a hearing with notice on the  
3 appointment can be held. If the court appoints an emergency  
4 guardian without giving notice under Subsection C of this  
5 section, the court shall:

6 (1) give notice of the appointment not later  
7 than forty-eight hours after the appointment to:

- 8 (a) the respondent;  
9 (b) the respondent's attorney; and  
10 (c) any other person the court  
11 determines; and

12 (2) hold a hearing on the appropriateness of  
13 the appointment not later than fourteen days after the  
14 appointment. On two days' notice to the party who obtained the  
15 appointment of an emergency guardian without notice, or on such  
16 shorter notice to that party as the court may prescribe, the  
17 respondent or the respondent's attorney may appear and move  
18 dissolution or modification of the court's order, and, in that  
19 event, the court shall proceed to hear and determine the motion  
20 as expeditiously as the ends of justice require.

21 E. Appointment of an emergency guardian under this  
22 section is not a determination that a basis exists for  
23 appointment of a guardian under Section 301 of the Uniform  
24 Guardianship, Conservatorship and Other Protective Arrangements  
25 Act.

1 F. The court may remove an emergency guardian  
2 appointed under this section at any time. The emergency  
3 guardian shall make any report the court requires.

4 SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR  
5 ADULT.--

6 A. A guardian for an adult is a fiduciary. Except  
7 as otherwise limited by the court, a guardian for an adult  
8 shall make decisions regarding the support, care, education,  
9 health and welfare of the adult subject to guardianship to the  
10 extent necessitated by the adult's limitations.

11 B. A guardian for an adult shall promote the self-  
12 determination of the adult and, to the extent reasonably  
13 feasible, encourage the adult to participate in decisions, act  
14 on the adult's own behalf and develop or regain the capacity to  
15 manage the adult's personal affairs. In furtherance of this  
16 duty, the guardian shall:

17 (1) become or remain personally acquainted  
18 with the adult and maintain sufficient contact with the adult,  
19 including through regular visitation, to know the adult's  
20 abilities, limitations, needs, opportunities and physical and  
21 mental health;

22 (2) to the extent reasonably feasible,  
23 identify the values and preferences of the adult and involve  
24 the adult in decisions affecting the adult, including decisions  
25 about the adult's care, dwelling, activities or social

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1 interactions; and

2 (3) make reasonable efforts to identify and  
3 facilitate supportive relationships and services for the adult.

4 C. A guardian for an adult at all times shall  
5 exercise reasonable care, diligence and prudence when acting on  
6 behalf of or making decisions for the adult. In furtherance of  
7 this duty, the guardian shall:

8 (1) take reasonable care of the personal  
9 effects, pets and service or support animals of the adult and  
10 bring a proceeding for a conservatorship or protective  
11 arrangement instead of conservatorship if necessary to protect  
12 the adult's property;

13 (2) expend funds and other property of the  
14 adult received by the guardian for the adult's current needs  
15 for support, care, education, health and welfare;

16 (3) conserve any funds and other property of  
17 the adult not expended under Paragraph (2) of this subsection  
18 for the adult's future needs, but if a conservator has been  
19 appointed for the adult, pay the funds and other property at  
20 least quarterly to the conservator to be conserved for the  
21 adult's future needs; and

22 (4) monitor the quality of services, including  
23 long-term care services, provided to the adult.

24 D. In making a decision for an adult subject to  
25 guardianship, the guardian shall make the decision the guardian

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1 reasonably believes the adult would make if the adult were able  
2 unless doing so would unreasonably harm or endanger the welfare  
3 or personal or financial interests of the adult. To determine  
4 the decision the adult subject to guardianship would make if  
5 able, the guardian shall consider the adult's previous or  
6 current directions, preferences, opinions, values and actions,  
7 to the extent actually known or reasonably ascertainable by the  
8 guardian.

9 E. If a guardian for an adult cannot make a  
10 decision under Subsection D of this section because the  
11 guardian does not know and cannot reasonably determine the  
12 decision the adult probably would make if able, or the guardian  
13 reasonably believes the decision the adult would make would  
14 unreasonably harm or endanger the welfare or personal or  
15 financial interests of the adult, the guardian shall act in  
16 accordance with the best interest of the adult. In determining  
17 the best interest of the adult, the guardian shall consider:

18 (1) information received from professionals  
19 and persons that demonstrate sufficient interest in the welfare  
20 of the adult;

21 (2) other information the guardian believes  
22 the adult would have considered if the adult were able to act;  
23 and

24 (3) other factors a reasonable person in the  
25 circumstances of the adult would consider, including

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1 consequences for others.

2 F. A guardian for an adult immediately shall notify  
3 the court if the condition of the adult has changed so that the  
4 adult is capable of exercising rights previously removed.

5 SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR  
6 ADULT.--

7 A. Except as limited by court order, a guardian for  
8 an adult may:

9 (1) apply for and receive funds and benefits  
10 for the support of the adult, unless a conservator is appointed  
11 for the adult and the application or receipt is within the  
12 powers of the conservator;

13 (2) unless inconsistent with a court order,  
14 establish the adult's place of dwelling;

15 (3) consent to health or other care, treatment  
16 or service for the adult;

17 (4) if a conservator for the adult has not  
18 been appointed, commence a proceeding, including an  
19 administrative proceeding, or take other appropriate action to  
20 compel another person to support the adult or pay funds for the  
21 adult's benefit;

22 (5) to the extent reasonable, delegate to the  
23 adult responsibility for a decision affecting the adult's well-  
24 being; and

25 (6) receive personally identifiable health

1 care information regarding the adult.

2 B. The court by specific order may authorize a  
3 guardian for an adult to consent to the adoption of the adult.

4 C. The court by specific order may authorize a  
5 guardian for an adult to:

6 (1) consent or withhold consent to the  
7 marriage of the adult if the adult's right to marry has been  
8 removed under Section 310 of the Uniform Guardianship,  
9 Conservatorship and Other Protective Arrangements Act;

10 (2) petition for divorce, dissolution or  
11 annulment of marriage of the adult or a declaration of  
12 invalidity of the adult's marriage; or

13 (3) support or oppose a petition for divorce,  
14 dissolution or annulment of marriage of the adult or a  
15 declaration of invalidity of the adult's marriage.

16 D. In determining whether to authorize a power  
17 under Subsection B of this section, the court shall consider  
18 whether the underlying act would be in accordance with the  
19 adult's preferences, values and prior directions and whether  
20 the underlying act would be in the adult's best interest.

21 E. In exercising a guardian's power under Paragraph  
22 (2) of Subsection A of this section to establish the adult's  
23 place of dwelling, the guardian shall:

24 (1) select a residential setting the guardian  
25 believes the adult would select if the adult were able, in

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1 accordance with the decision-making standard in Subsections D  
2 and E of Section 313 of the Uniform Guardianship,  
3 Conservatorship and Other Protective Arrangements Act. If the  
4 guardian does not know and cannot reasonably determine what  
5 setting the adult subject to guardianship probably would choose  
6 if able, or the guardian reasonably believes the decision the  
7 adult would make would unreasonably harm or endanger the  
8 welfare or personal or financial interests of the adult, the  
9 guardian shall choose in accordance with Subsection E of that  
10 section a residential setting that is consistent with the  
11 adult's best interest;

12 (2) in selecting among residential settings,  
13 give priority to a residential setting in a location that will  
14 allow the adult to interact with persons important to the adult  
15 and meet the adult's needs in the least restrictive manner  
16 reasonably feasible unless to do so would be inconsistent with  
17 the decision-making standard in Subsections D and E of Section  
18 313 of the Uniform Guardianship, Conservatorship and Other  
19 Protective Arrangements Act;

20 (3) not later than thirty days after a change  
21 in the dwelling of the adult:

22 (a) give notice of the change to the  
23 court, the adult and any person identified as entitled to the  
24 notice in the court order appointing the guardian or a  
25 subsequent order; and

1 (b) include in the notice the address  
2 and nature of the new dwelling and state whether the adult  
3 received advance notice of the change and whether the adult  
4 objected to the change;

5 (4) establish or move the permanent place of  
6 dwelling of the adult to a nursing home, mental health  
7 treatment facility or other facility that places restrictions  
8 on the adult's ability to leave or have visitors only if:

9 (a) the establishment or move is in the  
10 guardian's plan under Section 316 of the Uniform Guardianship,  
11 Conservatorship and Other Protective Arrangements Act;

12 (b) the court authorizes the  
13 establishment or move; or

14 (c) the guardian gives notice of the  
15 establishment or move at least fourteen days before the  
16 establishment or move to the adult and all persons entitled to  
17 notice under Paragraph (2) of Subsection E of Section 310 of  
18 the Uniform Guardianship, Conservatorship and Other Protective  
19 Arrangements Act or a subsequent order and no objection is  
20 filed;

21 (5) establish or move the place of dwelling of  
22 the adult outside New Mexico only if consistent with the  
23 guardian's plan and authorized by the court by specific order;  
24 and

25 (6) take action that would result in the sale

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1 of or surrender of the lease to the primary dwelling of the  
2 adult only if:

3 (a) the action is specifically included  
4 in the guardian's plan under Section 316 of the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act;

7 (b) the court authorizes the action by  
8 specific order; or

9 (c) notice of the action was given at  
10 least fourteen days before the action to the adult and all  
11 persons entitled to the notice under Paragraph (2) of  
12 Subsection E of Section 310 of the Uniform Guardianship,  
13 Conservatorship and Other Protective Arrangements Act or a  
14 subsequent order and no objection has been filed.

15 F. In exercising a guardian's power under Paragraph  
16 (3) of Subsection A of this section to make health care  
17 decisions, the guardian shall:

18 (1) involve the adult in decision making to  
19 the extent reasonably feasible, including, when practicable, by  
20 encouraging and supporting the adult in understanding the risks  
21 and benefits of health care options;

22 (2) defer to a decision by an agent under a  
23 power of attorney for health care signed by the adult and  
24 cooperate to the extent feasible with the agent making the  
25 decision; and

1 (3) take into account:

2 (a) the risks and benefits of treatment  
3 options; and

4 (b) the current and previous wishes and  
5 values of the adult, if known or reasonably ascertainable by  
6 the guardian.

7 G. If, thirty days after the death of an individual  
8 subject to guardianship, no personal representative has been  
9 appointed and no application or petition for appointment is  
10 before any court, the guardian may apply to the district court  
11 to exercise the powers and duties of a personal representative  
12 to administer and distribute the decedent's estate. The  
13 guardian shall give notice to a person nominated as personal  
14 representative by a will of the decedent of which the guardian  
15 is aware. The court may grant the application if there is no  
16 objection and endorse the letters of office to note that the  
17 individual formerly subject to guardianship is deceased and the  
18 guardian has acquired the powers and duties of a personal  
19 representative.

20 H. Issuance of an order under this section has the  
21 effect of an order of appointment of a personal representative  
22 as provided in Sections 45-3-101 through 45-3-1204 NMSA 1978  
23 except that the estate in the name of the guardian, after  
24 administration, may be distributed to the decedent's successors  
25 without prior re-transfer to the guardian as personal

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1 representative.

2 SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON  
3 GUARDIAN'S POWER.--

4 A. Unless authorized by the court by specific  
5 order, a guardian for an adult shall not revoke or amend a  
6 power of attorney for health care or power of attorney for  
7 finances signed by the adult. If a power of attorney for  
8 health care is in effect, unless there is a court order to the  
9 contrary, a health care decision of an agent takes precedence  
10 over that of the guardian and the guardian shall cooperate with  
11 the agent to the extent feasible. If a power of attorney for  
12 finances is in effect, unless there is a court order to the  
13 contrary, a decision by the agent that the agent is authorized  
14 to make under the power of attorney for finances takes  
15 precedence over that of the guardian and the guardian shall  
16 cooperate with the agent to the extent feasible.

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

21 C. A guardian for an adult shall not restrict the  
22 ability of the adult to communicate, visit or interact with  
23 others, including receiving visitors and making or receiving  
24 telephone calls, personal mail or electronic communications,  
25 including through social media or participating in social

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1 activities, unless:

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

3 (2) a protective order or a protective  
4 arrangement instead of guardianship is in effect that limits  
5 contact between the adult and a person; or

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

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

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

16 SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--

17 A. A guardian for an adult, not later than sixty  
18 days after appointment and when there is a significant change  
19 in circumstances, or the guardian seeks to deviate  
20 significantly from the guardian's plan, shall file with the  
21 court a plan for the care of the adult. The plan shall be  
22 based on the needs of the adult and take into account the best  
23 interest of the adult as well as the adult's preferences,  
24 values and prior directions, to the extent known to or  
25 reasonably ascertainable by the guardian. The guardian shall

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1 include in the plan:

2 (1) the living arrangement, services and  
3 supports the guardian expects to arrange, facilitate or  
4 continue for the adult;

5 (2) social and educational activities the  
6 guardian expects to facilitate on behalf of the adult;

7 (3) any person with whom the adult has a close  
8 personal relationship or relationship involving regular  
9 visitation and any plan the guardian has for facilitating  
10 visits with the person;

11 (4) the anticipated nature and frequency of  
12 the guardian's visits and communication with the adult;

13 (5) goals for the adult, including any goal  
14 related to the restoration of the adult's rights and how the  
15 guardian anticipates achieving the goals;

16 (6) whether the adult has an existing plan  
17 and, if so, whether the guardian's plan is consistent with the  
18 adult's plan; and

19 (7) a statement or list of the amount the  
20 guardian proposes to charge for each service the guardian  
21 anticipates providing to the adult.

22 B. A guardian shall give notice of the filing of  
23 the guardian's plan under Subsection A of this section,  
24 together with a copy of the plan, to the adult subject to  
25 guardianship, a person entitled to notice under Subsection E of

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1 Section 310 of the Uniform Guardianship, Conservatorship and  
2 Other Protective Arrangements Act or a subsequent order and any  
3 other person the court determines. The notice shall include a  
4 statement of the right to object to the plan and be given not  
5 later than fourteen days after the filing.

6 C. An adult subject to guardianship and any person  
7 entitled under Subsection B of this section to receive notice  
8 and a copy of the guardian's plan may object to the plan.

9 D. The court shall review a plan and determine  
10 whether to approve it or require a new plan. In deciding  
11 whether to approve the plan, the court shall consider an  
12 objection under Subsection C of this section and whether the  
13 plan is consistent with a guardian's duties and powers under  
14 Sections 313 and 314 of the Uniform Guardianship,  
15 Conservatorship and Other Protective Arrangements Act. The  
16 court shall not approve the plan until thirty days after its  
17 filing. The court may then approve the plan or require a new  
18 plan with or without holding a hearing as the court determines  
19 is appropriate unless a hearing is requested as provided in  
20 this subsection. If the guardian, the adult subject to  
21 guardianship or any person entitled to notice pursuant to  
22 Subsection B of this section requests a hearing in connection  
23 with the plan, the court shall not approve the plan without:

24 (1) notice to the adult subject to  
25 guardianship, a person entitled to notice under Subsection E of

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1 Section 310 of the Uniform Guardianship, Conservatorship and  
2 Other Protective Arrangements Act or under a subsequent order  
3 and any other person the court determines; and

4 (2) a hearing.

5 E. After the guardian's plan filed under this  
6 section is approved by the court, the guardian shall provide a  
7 copy of the plan to the adult subject to guardianship, a person  
8 entitled to notice under Subsection E of Section 310 of the  
9 Uniform Guardianship, Conservatorship and Other Protective  
10 Arrangements Act or a subsequent order and any other person the  
11 court determines.

12 SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING  
13 OF GUARDIANSHIP.--

14 A. A guardian for an adult, not later than sixty  
15 days after appointment and at least annually thereafter, shall  
16 file with the court a report in a record regarding the  
17 condition of the adult and accounting for funds and other  
18 property in the guardian's possession or subject to the  
19 guardian's control.

20 B. A report under Subsection A of this section  
21 shall state or contain:

22 (1) the mental, physical and social condition  
23 of the adult;

24 (2) the living arrangements of the adult  
25 during the reporting period;

1 (3) a summary of the supported decision  
2 making, technological assistance, medical services, educational  
3 and vocational services and other supports and services  
4 provided to the adult and the guardian's opinion as to the  
5 adequacy of the adult's care;

6 (4) a summary of the guardian's visits with  
7 the adult, including the dates of the visits;

8 (5) action taken on behalf of the adult;

9 (6) the extent to which the adult has  
10 participated in decision making;

11 (7) if the adult is living in a mental health  
12 treatment facility or living in a facility that provides the  
13 adult with health care or other personal services, whether the  
14 guardian considers the facility's current plan for support,  
15 care, treatment or habilitation consistent with the adult's  
16 preferences, values, prior directions and best interest;

17 (8) anything of more than de minimis value  
18 that the guardian, any individual who resides with the guardian  
19 or the spouse, parent, child or sibling of the guardian has  
20 received from an individual providing goods or services to the  
21 adult;

22 (9) if the guardian delegated a power to an  
23 agent, the power delegated and the reason for the delegation;

24 (10) any business relation the guardian has  
25 with a person the guardian has paid or that has benefited from

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1 the property of the adult;

2 (11) a copy of the guardian's most recently  
3 approved plan under Section 316 of the Uniform Guardianship,  
4 Conservatorship and Other Protective Arrangements Act and a  
5 statement whether the guardian has deviated from the plan and,  
6 if so, how the guardian has deviated and why;

7 (12) plans for future care and support of the  
8 adult;

9 (13) a recommendation as to the need for  
10 continued guardianship and any recommended change in the scope  
11 of the guardianship; and

12 (14) whether any co-guardian or successor  
13 guardian appointed to serve when a designated event occurs is  
14 alive and able to serve.

15 C. The court may appoint a visitor to review a  
16 report submitted under this section or a guardian's plan  
17 submitted under Section 316 of the Uniform Guardianship,  
18 Conservatorship and Other Protective Arrangements Act,  
19 interview the guardian or adult subject to guardianship or  
20 investigate any other matter involving the guardianship.

21 D. Notice of the filing under this section of a  
22 guardian's report, together with a copy of the report, shall be  
23 given to the adult subject to guardianship, a person entitled  
24 to notice under Subsection E of Section 310 of the Uniform  
25 Guardianship, Conservatorship and Other Protective Arrangements

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1 Act or a subsequent order and any other person the court  
2 determines. The notice and report shall be given not later  
3 than fourteen days after the filing.

4 E. The court shall establish procedures for  
5 monitoring a report submitted under this section and shall  
6 review each report at least annually to determine whether:

7 (1) the report provides sufficient information  
8 to establish the guardian has complied with the guardian's  
9 duties;

10 (2) the guardianship should continue; and

11 (3) the guardian's requested fees, if any,  
12 should be approved.

13 F. If the court determines there is reason to  
14 believe a guardian for an adult has not complied with the  
15 guardian's duties or the guardianship should be modified or  
16 terminated, the court:

17 (1) shall notify the adult, the guardian, a  
18 person entitled to notice under Subsection E of Section 310 of  
19 the Uniform Guardianship, Conservatorship and Other Protective  
20 Arrangements Act or a subsequent order and any other person the  
21 court determines;

22 (2) may require additional information from  
23 the guardian;

24 (3) may appoint a visitor to interview the  
25 adult or guardian or investigate any matter involving the

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1 guardianship; and

2 (4) consistent with Sections 318 and 319 of  
3 the Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act, may hold a hearing to consider removal of the  
5 guardian, termination of the guardianship or a change in the  
6 powers granted to the guardian or terms of the guardianship.

7 G. If the court has reason to believe fees  
8 requested by a guardian for an adult are not reasonable, the  
9 court shall hold a hearing to determine whether to adjust the  
10 requested fees and give notice of the hearing to the adult  
11 subject to guardianship, a person entitled to notice under  
12 Subsection E of Section 310 of the Uniform Guardianship,  
13 Conservatorship and Other Protective Arrangements Act or under  
14 a subsequent order and any other person the court determines.

15 H. A guardian for an adult may petition the court  
16 for approval of a report filed under this section. The  
17 guardian shall send a copy of the petition to the adult subject  
18 to guardianship and to a person entitled to notice pursuant to  
19 Subsection G of this section and shall file proof of the  
20 sending of the petition with the court. The court shall not  
21 approve the report until the later of thirty days after its  
22 filing and fourteen days after the petition was sent to the  
23 persons entitled to notice. The court may then approve the  
24 report with or without a hearing as the court determines is  
25 appropriate unless a hearing is requested as provided in this

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1 subsection. If the guardian, the person subject to  
 2 guardianship or a person entitled to notice pursuant to  
 3 Subsection G of this section requests a hearing in connection  
 4 with the report, the court shall not approve the report  
 5 without:

6 (1) notice to the adult subject to  
 7 guardianship, a person entitled to notice under Subsection E of  
 8 Section 310 of the Uniform Guardianship, Conservatorship and  
 9 Other Protective Arrangements Act or under a subsequent order  
 10 and any other person the court determines; and

11 (2) a hearing.

12 SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR  
 13 ADULT--APPOINTMENT OF SUCCESSOR.--

14 A. The court may remove a guardian for an adult for  
 15 failure to perform the guardian's duties or for other good  
 16 cause and appoint a successor guardian to assume the duties of  
 17 guardian.

18 B. The court shall hold a hearing to determine  
 19 whether to remove a guardian for an adult and appoint a  
 20 successor guardian on:

21 (1) petition of the adult, guardian or person  
 22 interested in the welfare of the adult, that contains  
 23 allegations that, if true, would support a reasonable belief  
 24 that removal of the guardian and appointment of a successor  
 25 guardian may be appropriate, but the court may decline to hold

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1 a hearing if a petition based on the same or substantially  
2 similar facts was filed during the preceding six months;

3 (2) communication from the adult, guardian or  
4 person interested in the welfare of the adult that supports a  
5 reasonable belief that removal of the guardian and appointment  
6 of a successor guardian may be appropriate; or

7 (3) determination by the court that a hearing  
8 would be in the best interest of the adult.

9 C. Notice of a petition under Paragraph (1) of  
10 Subsection B of this section shall be given to the adult  
11 subject to guardianship, the guardian and any other person the  
12 court determines.

13 D. An adult subject to guardianship who seeks to  
14 remove the guardian and have a successor guardian appointed has  
15 the right to choose an attorney to represent the adult in this  
16 matter. If the adult is not represented by an attorney, the  
17 court shall appoint an attorney under the same conditions as in  
18 Section 305 of the Uniform Guardianship, Conservatorship and  
19 Other Protective Arrangements Act. The court shall award  
20 reasonable attorney's fees to the attorney for the adult as  
21 provided in Section 119 of that act.

22 E. In selecting a successor guardian for an adult,  
23 the court shall follow the priorities under Section 309 of the  
24 Uniform Guardianship, Conservatorship and Other Protective  
25 Arrangements Act.

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1 F. Not later than thirty days after appointing a  
2 successor guardian, the court shall give notice of the  
3 appointment to the adult subject to guardianship, any person  
4 entitled to notice under Subsection E of Section 310 of the  
5 Uniform Guardianship, Conservatorship and Other Protective  
6 Arrangements Act or a subsequent order and any other person the  
7 court determines.

8 SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION  
9 OF GUARDIANSHIP FOR ADULT.--

10 A. An adult subject to guardianship, the guardian  
11 for the adult or a person interested in the welfare of the  
12 adult may petition for:

13 (1) termination of the guardianship on the  
14 ground that a basis for appointment under Section 301 of the  
15 Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act does not exist or termination would be in the  
17 best interest of the adult or for other good cause; or

18 (2) modification of the guardianship on the  
19 ground that the extent of protection or assistance granted is  
20 not appropriate or for other good cause.

21 B. The court shall hold a hearing to determine  
22 whether termination or modification of a guardianship for an  
23 adult is appropriate on:

24 (1) petition under Subsection A of this  
25 section that contains allegations that, if true, would support

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1 a reasonable belief that termination or modification of the  
2 guardianship may be appropriate, but the court may decline to  
3 hold a hearing if a petition based on the same or substantially  
4 similar facts was filed during the preceding six months;

5 (2) communication from the adult, guardian or  
6 person interested in the welfare of the adult that supports a  
7 reasonable belief that termination or modification of the  
8 guardianship may be appropriate, including because the  
9 functional needs of the adult or supports or services available  
10 to the adult have changed;

11 (3) a report from a guardian or conservator  
12 that indicates that termination or modification may be  
13 appropriate because the functional needs of the adult or  
14 supports or services available to the adult have changed or a  
15 protective arrangement instead of guardianship or other less  
16 restrictive alternative for meeting the adult's needs is  
17 available; or

18 (4) a determination by the court that a  
19 hearing would be in the best interest of the adult.

20 C. Notice of a petition under Paragraph (1) of  
21 Subsection B of this section shall be given to the adult  
22 subject to guardianship, the guardian and any other person the  
23 court determines.

24 D. On presentation of prima facie evidence for  
25 termination of a guardianship for an adult, the court shall

1 order termination unless it is proven that a basis for  
2 appointment of a guardian under Section 301 of the Uniform  
3 Guardianship, Conservatorship and Other Protective Arrangements  
4 Act exists.

5 E. The court shall modify the powers granted to a  
6 guardian for an adult if the powers are excessive or inadequate  
7 due to a change in the abilities or limitations of the adult,  
8 the adult's supports or other circumstances.

9 F. Unless the court otherwise orders for good  
10 cause, before terminating or modifying a guardianship for an  
11 adult, the court shall follow the same procedures to safeguard  
12 the rights of the adult that apply to a petition for  
13 guardianship.

14 G. An adult subject to guardianship who seeks to  
15 terminate or modify the terms of the guardianship has the right  
16 to choose an attorney to represent the adult in the matter. If  
17 the adult is not represented by an attorney, the court shall  
18 appoint an attorney under the same conditions as in Section 305  
19 of the Uniform Guardianship, Conservatorship and Other  
20 Protective Arrangements Act. The court shall award reasonable  
21 attorney's fees to the attorney for the adult as provided in  
22 Section 119 of that act.

#### 23 ARTICLE 4

#### 24 CONSERVATORSHIP

#### 25 SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF

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1 CONSERVATOR.--

2 A. On petition and after notice and hearing, the  
3 court may appoint a conservator for the property or financial  
4 affairs of a minor if the court finds by a preponderance of  
5 evidence that appointment of a conservator is in the minor's  
6 best interest and:

7 (1) if the minor has a parent, the court gives  
8 weight to any recommendation of the parent whether an  
9 appointment is in the minor's best interest; and

10 (2) either:

11 (a) the minor owns funds or other  
12 property requiring management or protection that otherwise  
13 cannot be provided;

14 (b) the minor has or may have financial  
15 affairs that may be put at unreasonable risk or hindered  
16 because of the minor's age; or

17 (c) appointment is necessary or  
18 desirable to obtain or provide funds or other property needed  
19 for the support, care, education, health or welfare of the  
20 minor.

21 B. On petition and after notice and hearing, the  
22 court may appoint a conservator for the property or financial  
23 affairs of an adult if the court finds by clear and convincing  
24 evidence that:

25 (1) the adult is unable to manage property or

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1 financial affairs because:

2 (a) of a limitation in the adult's  
3 ability to receive and evaluate information or make or  
4 communicate decisions, even with the use of appropriate  
5 supportive services, technological assistance or supported  
6 decision making; or

7 (b) the adult is missing, detained or  
8 unable to return to the United States;

9 (2) appointment is necessary to:

10 (a) avoid harm to the adult or  
11 significant dissipation of the property of the adult; or

12 (b) obtain or provide funds or other  
13 property needed for the support, care, education, health or  
14 welfare of the adult or of an individual entitled to the  
15 adult's support; and

16 (3) the respondent's identified needs cannot  
17 be met by a protective arrangement instead of conservatorship  
18 or other less restrictive alternative.

19 C. The court shall grant a conservator only those  
20 powers necessitated by demonstrated limitations and needs of  
21 the respondent and issue orders that will encourage development  
22 of the respondent's maximum self-determination and  
23 independence. The court shall not establish a full  
24 conservatorship if a limited conservatorship, protective  
25 arrangement instead of conservatorship or other less

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1 restrictive alternative would meet the needs of the respondent.

2 SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF  
3 CONSERVATOR.--

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

6 (1) the individual for whom the order is  
7 sought;

8 (2) a person interested in the estate,  
9 financial affairs or welfare of the individual, including a  
10 person that would be adversely affected by lack of effective  
11 management of property or financial affairs of the individual;  
12 or

13 (3) the guardian for the individual.

14 B. A petition under Subsection A of this section  
15 shall state the petitioner's name, principal residence, current  
16 street address, if different, relationship to the respondent,  
17 interest in the appointment, the name and address of any  
18 attorney representing the petitioner and, to the extent known,  
19 the following:

20 (1) the respondent's name, age, principal  
21 residence, current street address, if different, and, if  
22 different, address of the dwelling in which it is proposed the  
23 respondent will reside if the petition is granted;

24 (2) the name and address of the respondent's:

25 (a) spouse or, if the respondent has

1 none, an adult with whom the respondent has shared household  
2 responsibilities for more than six months in the twelve-month  
3 period before the filing of the petition;

4 (b) adult children or, if none, each  
5 parent and adult sibling of the respondent or, if none, at  
6 least one adult nearest in kinship to the respondent who can be  
7 found with reasonable diligence; and

8 (c) adult stepchildren whom the  
9 respondent actively parented during the stepchildren's minor  
10 years and with whom the respondent had an ongoing relationship  
11 during the two years immediately before the filing of the  
12 petition;

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

15 (a) a person responsible for the care or  
16 custody of the respondent;

17 (b) any attorney currently representing  
18 the respondent;

19 (c) the representative payee appointed  
20 by the federal social security administration for the  
21 respondent;

22 (d) a guardian or conservator acting for  
23 the respondent in New Mexico or another jurisdiction;

24 (e) a trustee or custodian of a trust or  
25 custodianship of which the respondent is a beneficiary;

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1 (f) the fiduciary appointed for the  
2 respondent by the federal department of veterans affairs;

3 (g) an agent designated under a power of  
4 attorney for health care in which the respondent is identified  
5 as the principal;

6 (h) an agent designated under a power of  
7 attorney for finances in which the respondent is identified as  
8 the principal;

9 (i) a person known to have routinely  
10 assisted the respondent with decision making in the six-month  
11 period immediately before the filing of the petition;

12 (j) any proposed conservator, including  
13 a person nominated by the respondent, if the respondent is  
14 twelve years of age or older; and

15 (k) if the individual for whom a  
16 conservator is sought is a minor: 1) an adult not otherwise  
17 listed with whom the minor resides; and 2) each person not  
18 otherwise listed that had primary care or custody of the minor  
19 for at least sixty days during the two years immediately before  
20 the filing of the petition or for at least seven hundred thirty  
21 days during the five years immediately before the filing of the  
22 petition;

23 (4) a general statement of the respondent's  
24 property with an estimate of its value, including any insurance  
25 or pension and the source and amount of other anticipated

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1 income or receipts;

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

4 (a) the nature and extent of the  
5 respondent's alleged need;

6 (b) if the petition alleges the  
7 respondent is missing, detained or unable to return to the  
8 United States, the relevant circumstances, including the time  
9 and nature of the disappearance or detention and any search or  
10 inquiry concerning the respondent's whereabouts;

11 (c) any protective arrangement instead  
12 of conservatorship or other less restrictive alternative for  
13 meeting the respondent's alleged need that has been considered  
14 or implemented;

15 (d) if no protective arrangement or  
16 other less restrictive alternatives have been considered or  
17 implemented, the reason it has not been considered or  
18 implemented; and

19 (e) the reason a protective arrangement  
20 or other less restrictive alternative is insufficient to meet  
21 the respondent's need;

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

24 (7) if the petitioner seeks a full  
25 conservatorship, the reason a limited conservatorship or

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1 protective arrangement instead of conservatorship is not  
2 appropriate;

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

6 (9) if the petition is for a limited  
7 conservatorship, a description of the property to be placed  
8 under the conservator's control and any requested limitation on  
9 the authority of the conservator;

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

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

15 SECTION 403. [NEW MATERIAL] NOTICE AND HEARING FOR  
16 APPOINTMENT OF CONSERVATOR.--

17 A. On filing of a petition under Section 402 of the  
18 Uniform Guardianship, Conservatorship and Other Protective  
19 Arrangements Act for appointment of a conservator, the court  
20 shall set a date, time and place for a hearing on the petition.

21 B. A copy of a petition under Section 402 of the  
22 Uniform Guardianship, Conservatorship and Other Protective  
23 Arrangements Act and notice of a hearing on the petition shall  
24 be served personally on the respondent. If the respondent's  
25 whereabouts are unknown or personal service cannot be made,

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1 service on the respondent shall be made as provided in Section  
2 45-1-401 NMSA 1978. The notice shall inform the respondent of  
3 the respondent's rights at the hearing, including the right to  
4 an attorney and to attend the hearing. The notice also shall  
5 include a description of the nature, purpose and consequences  
6 of granting the petition. The court shall not grant a petition  
7 for appointment of a conservator if notice substantially  
8 complying with this subsection is not served on the respondent.

9 C. In a proceeding on a petition under Section 402  
10 of the Uniform Guardianship, Conservatorship and Other  
11 Protective Arrangements Act, the notice required under  
12 Subsection B of this section shall be given to the persons  
13 required to be listed in the petition under Paragraphs (1)  
14 through (3) of Subsection B of Section 402 of that act and any  
15 other person interested in the respondent's welfare the court  
16 determines. Failure to give notice under this subsection does  
17 not preclude the court from appointing a conservator.

18 D. After the appointment of a conservator, notice  
19 of a hearing on a petition for an order under this article,  
20 together with a copy of the petition, shall be given to:

21 (1) the individual subject to conservatorship,  
22 if the individual is twelve years of age or older and not  
23 missing, detained or unable to return to the United States;

24 (2) the conservator; and

25 (3) any other person the court determines.

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1           SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY  
2 PROPERTY WHILE PROCEEDING PENDING.--While a petition under  
3 Section 402 of the Uniform Guardianship, Conservatorship and  
4 Other Protective Arrangements Act is pending, after preliminary  
5 hearing and without notice to others, the court may issue an  
6 order to preserve and apply property of the respondent as  
7 required for the support of the respondent or an individual who  
8 is in fact dependent on the respondent. The court may appoint  
9 a special master to assist in implementing the order.

10           SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
11 VISITOR.--

12           A. If the respondent in a proceeding to appoint a  
13 conservator is a minor, the court may appoint a visitor to  
14 investigate a matter related to the petition or inform the  
15 minor or a parent of the minor about the petition or a related  
16 matter.

17           B. If the respondent in a proceeding to appoint a  
18 conservator is an adult, the court shall appoint a visitor  
19 unless the adult is represented by an attorney appointed by the  
20 court. The duties and reporting requirements of the visitor  
21 are limited to the relief requested in the petition. The  
22 visitor shall be an individual with training or experience in  
23 the type of abilities, limitations and needs alleged in the  
24 petition.

25           C. A visitor appointed under Subsection B of this

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1 section for an adult shall interview the respondent in person  
2 and, in a manner the respondent is best able to understand:

3 (1) explain to the respondent the substance of  
4 the petition, the nature, purpose and effect of the proceeding,  
5 the respondent's rights at the hearing on the petition and the  
6 general powers and duties of a conservator;

7 (2) determine the respondent's views about the  
8 appointment sought by the petitioner, including views about a  
9 proposed conservator, the conservator's proposed powers and  
10 duties and the scope and duration of the proposed  
11 conservatorship;

12 (3) inform the respondent of the respondent's  
13 right to employ and consult with an attorney at the  
14 respondent's expense and the right to request a court-appointed  
15 attorney; and

16 (4) inform the respondent that all costs and  
17 expenses of the proceeding, including respondent's attorney's  
18 fees, may be paid from the respondent's assets.

19 D. A visitor appointed under Subsection B of this  
20 section for an adult shall:

21 (1) interview the petitioner and proposed  
22 conservator, if any;

23 (2) review financial records of the  
24 respondent, if relevant to the visitor's recommendation under  
25 Paragraph (1) of Subsection E of this section;

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1                   (3) investigate whether the respondent's needs  
2 could be met by a protective arrangement instead of  
3 conservatorship or other less restrictive alternative and, if  
4 so, identify the arrangement or other less restrictive  
5 alternative; and

6                   (4) investigate the allegations in the  
7 petition and any other matter relating to the petition the  
8 court directs.

9                   E. A visitor appointed under Subsection B of this  
10 section for an adult promptly shall file a report in a record  
11 with the court that includes:

12                   (1) a recommendation:

13                   (a) regarding the appropriateness of  
14 conservatorship or whether a protective arrangement instead of  
15 conservatorship or other less restrictive alternative for  
16 meeting the respondent's needs is available;

17                   (b) if a conservatorship is recommended,  
18 whether it should be full or limited; and

19                   (c) if a limited conservatorship is  
20 recommended, the powers to be granted to the conservator and  
21 the property that should be placed under the conservator's  
22 control;

23                   (2) a statement of the qualifications of the  
24 proposed conservator and whether the respondent approves or  
25 disapproves of the proposed conservator;

1 (3) a recommendation whether a professional  
2 evaluation under Section 407 of the Uniform Guardianship,  
3 Conservatorship and Other Protective Arrangements Act is  
4 necessary;

5 (4) a statement whether the respondent is able  
6 to attend a hearing at the location court proceedings typically  
7 are held;

8 (5) a statement whether the respondent is able  
9 to participate in a hearing and that identifies any technology  
10 or other form of support that would enhance the respondent's  
11 ability to participate; and

12 (6) any other matter the court directs.

13 SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
14 ATTORNEY.--

15 A. Unless the respondent in a proceeding for  
16 appointment of a conservator is represented by an attorney, the  
17 court shall appoint an attorney to represent the respondent.

18 B. An attorney representing the respondent in a  
19 proceeding for appointment of a conservator shall:

20 (1) make reasonable efforts to ascertain the  
21 respondent's wishes;

22 (2) advocate for the respondent's wishes to  
23 the extent reasonably ascertainable; and

24 (3) if the respondent's wishes are not  
25 reasonably ascertainable, advocate for the result that is the

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1 least restrictive in type, duration and scope, consistent with  
2 the respondent's interests.

3 SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

4 A. At or before a hearing on a petition for  
5 conservatorship for an adult, the court shall order a  
6 professional evaluation of the respondent:

7 (1) if the respondent requests the evaluation;  
8 or

9 (2) in other cases, unless the court finds it  
10 has sufficient information to determine the respondent's needs  
11 and abilities without the evaluation.

12 B. If the court orders an evaluation under  
13 Subsection A of this section, the respondent shall be examined  
14 by a licensed physician, psychologist, social worker or other  
15 individual appointed by the court who is qualified to evaluate  
16 the respondent's alleged cognitive and functional abilities and  
17 limitations and will not be advantaged or disadvantaged by a  
18 decision to grant the petition or otherwise have a conflict of  
19 interest. The individual conducting the evaluation promptly  
20 shall file a report in a record with the court. Unless  
21 otherwise directed by the court, the report shall contain:

22 (1) a description of the nature, type and  
23 extent of the respondent's cognitive and functional abilities  
24 and limitations with regard to the management of the  
25 respondent's property and financial affairs;

1 (2) an evaluation of the respondent's mental  
2 and physical condition and, if appropriate, educational  
3 potential, adaptive behavior and social skills;

4 (3) a prognosis for improvement with regard to  
5 the ability to manage the respondent's property and financial  
6 affairs; and

7 (4) the date of the examination on which the  
8 report is based.

9 C. A respondent may decline to participate in an  
10 evaluation ordered under Subsection A of this section.

11 SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
12 HEARING.--

13 A. Except as otherwise provided in Subsection B of  
14 this section, a hearing under Section 403 of the Uniform  
15 Guardianship, Conservatorship and Other Protective Arrangements  
16 Act shall not proceed unless the respondent attends the  
17 hearing. If it is not reasonably feasible for the respondent  
18 to attend a hearing at the location court proceedings typically  
19 are held, the court shall make reasonable efforts to hold the  
20 hearing at an alternative location more convenient to the  
21 respondent or allow the respondent to attend the hearing using  
22 real-time audio-visual technology, if available.

23 B. A hearing under Section 403 of the Uniform  
24 Guardianship, Conservatorship and Other Protective Arrangements  
25 Act may proceed without the respondent in attendance if the

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1 court finds by clear and convincing evidence that:

2 (1) the respondent consistently and repeatedly  
3 has refused to attend the hearing after having been fully  
4 informed of the right to attend and the potential consequences  
5 of failing to do so;

6 (2) there is no practicable way for the  
7 respondent to attend and participate in the hearing even with  
8 appropriate supportive services or technological assistance; or

9 (3) the respondent is a minor who has received  
10 proper notice and attendance would be harmful to the minor.

11 C. The respondent may be assisted in a hearing  
12 under Section 403 of the Uniform Guardianship, Conservatorship  
13 and Other Protective Arrangements Act by a person or persons of  
14 the respondent's choosing, assistive technology or an  
15 interpreter or translator or a combination of these supports.  
16 If assistance would facilitate the respondent's participation  
17 in the hearing, but is not otherwise available to the  
18 respondent, the court shall make reasonable efforts to provide  
19 it.

20 D. The respondent has a right to choose an attorney  
21 to represent the respondent at a hearing under Section 403 of  
22 the Uniform Guardianship, Conservatorship and Other Protective  
23 Arrangements Act.

24 E. At a hearing under Section 403 of the Uniform  
25 Guardianship, Conservatorship and Other Protective Arrangements

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1 Act, the respondent may:

2 (1) present evidence and subpoena witnesses  
3 and documents;

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

6 (3) otherwise participate in the hearing.

7 F. Unless excused by the court for good cause, a  
8 proposed conservator shall attend a hearing under Section 403  
9 of the Uniform Guardianship, Conservatorship and Other  
10 Protective Arrangements Act.

11 G. A hearing under Section 403 of the Uniform  
12 Guardianship, Conservatorship and Other Protective Arrangements  
13 Act shall be closed on request of the respondent and a showing  
14 of good cause.

15 H. Any person may request to participate in a  
16 hearing under Section 403 of the Uniform Guardianship,  
17 Conservatorship and Other Protective Arrangements Act. The  
18 court may grant the request, with or without a hearing, on  
19 determining that the best interest of the respondent will be  
20 served. The court may impose appropriate conditions on the  
21 person's participation.

22 SECTION 409. [NEW MATERIAL] CONFIDENTIALITY OF  
23 RECORDS.--

24 A. The existence of a proceeding for or the  
25 existence of conservatorship is a matter of public record

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1 unless the court seals the record after:

2 (1) the respondent, the individual subject to  
3 conservatorship or the parent of a minor subject to  
4 conservatorship requests the record be sealed; and

5 (2) either:

6 (a) the petition for conservatorship is  
7 dismissed; or

8 (b) the conservatorship is terminated.

9 B. An individual subject to a proceeding for a  
10 conservatorship, whether or not a conservator is appointed, an  
11 attorney designated by the individual and a person entitled to  
12 notice pursuant to Subsection E of Section 411 of the Uniform  
13 Guardianship, Conservatorship and Other Protective Arrangements  
14 Act or a subsequent order may access court records of the  
15 proceeding and resulting conservatorship, including the  
16 conservator's plan under Section 419 of that act and the  
17 conservator's report under Section 423 of that act. A person  
18 not otherwise entitled to access to court records under this  
19 section for good cause may petition the court for access to  
20 court records of the conservatorship, including the  
21 conservator's plan and report. The court shall grant access  
22 if access is in the best interest of the respondent or  
23 individual subject to conservatorship or furthers the public  
24 interest and does not endanger the welfare or financial  
25 interests of the respondent or individual.

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1 C. A report under Section 405 of the Uniform  
2 Guardianship, Conservatorship and Other Protective Arrangements  
3 Act of a visitor or professional evaluation under Section 407  
4 of that act is confidential and shall be sealed on filing, but  
5 is available to:

- 6 (1) the court;
- 7 (2) the individual who is the subject of the  
8 report or evaluation, without limitation as to use;
- 9 (3) the petitioner, visitor and petitioner's  
10 and respondent's attorneys, for purposes of the proceeding;
- 11 (4) unless the court directs otherwise, an  
12 agent appointed under a power of attorney for finances in which  
13 the respondent is identified as the principal; and
- 14 (5) any other person if it is in the public  
15 interest or for a purpose the court orders for good cause.

16 SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER  
17 OF PRIORITY.--

18 A. Except as otherwise provided in Subsection C of  
19 this section, the court in appointing a conservator shall  
20 consider persons qualified to be a conservator in the following  
21 order of priority:

- 22 (1) a conservator, other than a temporary or  
23 emergency conservator, currently acting for the respondent in  
24 another jurisdiction;
- 25 (2) a person nominated as conservator by the

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1 respondent, including the respondent's most recent nomination  
2 made in a power of attorney for finances;

3 (3) an agent appointed by the respondent to  
4 manage the respondent's property under a power of attorney for  
5 finances;

6 (4) a spouse of the respondent; and

7 (5) a family member or other individual who  
8 has shown special care and concern for the respondent.

9 B. If two or more persons have equal priority under  
10 Subsection A of this section, the court shall select as  
11 conservator the person the court considers best qualified. In  
12 determining the best qualified person, the court shall consider  
13 the person's relationship with the respondent, the person's  
14 skills, the expressed wishes of the respondent, the extent to  
15 which the person and the respondent have similar values and  
16 preferences and the likelihood the person will be able to  
17 perform the duties of a conservator successfully.

18 C. The court, acting in the best interest of the  
19 respondent, may decline to appoint as conservator a person  
20 having priority under Subsection A of this section and appoint  
21 a person having a lower priority or no priority.

22 D. A person that provides paid services to the  
23 respondent, or an individual who is employed by a person that  
24 provides paid services to the respondent or is the spouse,  
25 domestic partner, parent or child of an individual who provides

1 or is employed to provide paid services to the respondent,  
2 shall not be appointed as conservator unless:

3 (1) the individual is related to the  
4 respondent by blood, marriage or adoption; or

5 (2) the court finds by clear and convincing  
6 evidence that the person is the best qualified person available  
7 for appointment and the appointment is in the best interest of  
8 the respondent.

9 E. An owner, operator or employee of a long-term  
10 care facility at which the respondent is receiving care shall  
11 not be appointed as conservator unless the owner, operator or  
12 employee is related to the respondent by blood, marriage or  
13 adoption.

14 SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT OF  
15 CONSERVATOR.--

16 A. A court order appointing a conservator for a  
17 minor shall include findings to support appointment of a  
18 conservator and, if a full conservatorship is granted, the  
19 reason a limited conservatorship would not meet the identified  
20 needs of the minor.

21 B. A court order appointing a conservator for an  
22 adult shall:

23 (1) include a specific finding that clear and  
24 convincing evidence has established that the identified needs  
25 of the respondent cannot be met by a protective arrangement

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1 instead of conservatorship or other less restrictive  
2 alternative, including use of appropriate supportive services,  
3 technological assistance or supported decision making; and

4 (2) include a specific finding that clear and  
5 convincing evidence established the respondent was given proper  
6 notice of the hearing on the petition.

7 C. A court order establishing a full  
8 conservatorship for an adult shall state the basis for granting  
9 a full conservatorship and include specific findings to support  
10 the conclusion that a limited conservatorship would not meet  
11 the functional needs of the adult.

12 D. A court order establishing a limited  
13 conservatorship shall state the specific property placed under  
14 the control of the conservator and the powers granted to the  
15 conservator.

16 E. The court, as part of an order establishing a  
17 conservatorship, shall identify any person that subsequently is  
18 entitled to:

19 (1) notice of the rights of the individual  
20 subject to conservatorship under Subsection B of Section 412 of  
21 the Uniform Guardianship, Conservatorship and Other Protective  
22 Arrangements Act;

23 (2) notice of a sale of or surrender of a  
24 lease to the primary dwelling of the individual;

25 (3) notice that the conservator has delegated

1 a power that requires court approval under Section 414 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act or substantially all powers of the  
4 conservator;

5 (4) notice that the conservator will be  
6 unavailable to perform the conservator's duties for more than  
7 one month;

8 (5) a copy of the conservator's plan under  
9 Section 419 of the Uniform Guardianship, Conservatorship and  
10 Other Protective Arrangements Act and the conservator's report  
11 under Section 423 of that act;

12 (6) access to court records relating to the  
13 conservatorship;

14 (7) notice of a transaction involving a  
15 substantial conflict between the conservator's fiduciary duties  
16 and personal interests;

17 (8) notice of the death or significant change  
18 in the condition of the individual;

19 (9) notice that the court has limited or  
20 modified the powers of the conservator; and

21 (10) notice of the removal of the conservator.

22 F. If an individual subject to conservatorship is  
23 an adult, the spouse and adult children of the adult subject to  
24 conservatorship are entitled under Subsection E of this section  
25 to notice unless the court determines notice would be contrary

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1 to the preferences or prior directions of the adult subject to  
2 conservatorship or not in the best interest of the adult.

3 G. If an individual subject to conservatorship is a  
4 minor, each parent and adult sibling of the minor is entitled  
5 under Subsection E of this section to notice unless the court  
6 determines notice would not be in the best interest of the  
7 minor.

8 SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF  
9 APPOINTMENT--RIGHTS.--

10 A. A conservator appointed under Section 411 of the  
11 Uniform Guardianship, Conservatorship and Other Protective  
12 Arrangements Act shall give to the individual subject to  
13 conservatorship and to all other persons given notice under  
14 Section 403 of that act a copy of the order of appointment,  
15 together with notice of the right to request termination or  
16 modification. The order and notice shall be given not later  
17 than fourteen days after the appointment.

18 B. Not later than thirty days after appointment of  
19 a conservator under Section 411 of the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act, the  
21 court shall give to the individual subject to conservatorship,  
22 the conservator and any other person entitled to notice under  
23 Subsection E of Section 411 of the Uniform Guardianship,  
24 Conservatorship and Other Protective Arrangements Act a  
25 statement of the rights of the individual subject to

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1 conservatorship and procedures to seek relief if the individual  
 2 is denied those rights. The statement shall be in plain  
 3 language, in at least sixteen-point font and, to the extent  
 4 feasible, in a language in which the individual subject to  
 5 conservatorship is proficient. The statement shall notify the  
 6 individual subject to conservatorship of the right to:

7 (1) seek termination or modification of the  
 8 conservatorship, or removal of the conservator, and choose an  
 9 attorney to represent the individual in these matters;

10 (2) participate in decision making to the  
 11 extent reasonably feasible;

12 (3) receive a copy of the conservator's plan  
 13 under Section 419 of the Uniform Guardianship, Conservatorship  
 14 and Other Protective Arrangements Act, the conservator's  
 15 inventory under Section 420 of that act and the conservator's  
 16 report under Section 423 of that act; and

17 (4) object to the conservator's inventory,  
 18 plan or report.

19 C. If a conservator is appointed for the reasons  
 20 stated in Subparagraph (b) of Paragraph (1) of Subsection B of  
 21 Section 401 of the Uniform Guardianship, Conservatorship and  
 22 Other Protective Arrangements Act and the individual subject to  
 23 conservatorship is missing, notice under this section to the  
 24 individual is not required.

25 SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

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1           A. On its own or on petition by a person interested  
2 in an individual's welfare after a petition has been filed  
3 under Section 402 of the Uniform Guardianship, Conservatorship  
4 and Other Protective Arrangements Act, the court may appoint an  
5 emergency conservator for the individual if the court finds:

6                   (1) appointment of an emergency conservator is  
7 likely to prevent substantial and irreparable harm to the  
8 individual's property or financial interests;

9                   (2) no other person appears to have authority  
10 and willingness to act in the circumstances; and

11                   (3) there is reason to believe that a basis  
12 for appointment of a conservator under Section 401 of the  
13 Uniform Guardianship, Conservatorship and Other Protective  
14 Arrangements Act exists.

15           B. The duration of authority of an emergency  
16 conservator shall not exceed sixty days, and the emergency  
17 conservator may exercise only the powers specified in the order  
18 of appointment. The emergency conservator's authority may be  
19 extended once for not more than thirty days if the court finds  
20 that the conditions for appointment of an emergency conservator  
21 under Subsection A of this section continue.

22           C. Immediately on filing of a petition for an  
23 emergency conservator, the court shall appoint an attorney to  
24 represent the respondent in the proceeding. Except as  
25 otherwise provided in Subsection D of this section, reasonable

1 notice of the date, time and place of a hearing on the petition  
2 shall be given to the respondent, the respondent's attorney and  
3 any other person the court determines.

4 D. The court may appoint an emergency conservator  
5 without notice to the respondent and any attorney for the  
6 respondent only if the court finds from an affidavit or  
7 testimony that the respondent's property or financial interests  
8 will be substantially and irreparably harmed before a hearing  
9 with notice on the appointment can be held. If the court  
10 appoints an emergency conservator without giving notice under  
11 Subsection C of this section, the court shall give notice of  
12 the appointment not later than forty-eight hours after the  
13 appointment to:

- 14 (1) the respondent;
- 15 (2) the respondent's attorney; and
- 16 (3) any other person the court determines.

17 E. Not later than fourteen days after the  
18 appointment, the court shall hold a hearing on the  
19 appropriateness of the appointment. On two days' notice to the  
20 party who obtained the appointment of an emergency conservator  
21 without notice or on such shorter notice to that party as the  
22 court may prescribe, the respondent or the respondent's  
23 attorney may appear and move dissolution or modification of the  
24 court's order, and, in that event, the court shall proceed to  
25 hear and determine the motion as expeditiously as the ends of

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1 justice require.

2 F. Appointment of an emergency conservator under  
3 this section is not a determination that a basis exists for  
4 appointment of a conservator under Section 401 of the Uniform  
5 Guardianship, Conservatorship and Other Protective Arrangements  
6 Act.

7 G. The court may remove an emergency conservator  
8 appointed under this section at any time. The emergency  
9 conservator shall make any report the court requires.

10 SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR  
11 REQUIRING COURT APPROVAL.--

12 A. Except as otherwise ordered by the court for  
13 good cause, a conservator shall give notice to persons entitled  
14 to notice under Subsection D of Section 403 of the Uniform  
15 Guardianship, Conservatorship and Other Protective Arrangements  
16 Act and receive specific authorization by the court before the  
17 conservator may exercise with respect to the conservatorship  
18 the power to:

19 (1) make a gift, except a gift of de minimis  
20 value;

21 (2) sell, encumber an interest in or surrender  
22 a lease to the primary dwelling of the individual subject to  
23 conservatorship;

24 (3) convey, release or disclaim a contingent  
25 or expectant interest in property, including marital property

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1 and any right of survivorship incident to joint tenancy or  
2 tenancy by the entireties;

3 (4) exercise or release a power of  
4 appointment;

5 (5) create a revocable or irrevocable trust of  
6 property of the conservatorship estate, whether or not the  
7 trust extends beyond the duration of the conservatorship, or  
8 revoke or amend a trust revocable by the individual subject to  
9 conservatorship;

10 (6) exercise a right to elect an option or  
11 change a beneficiary under an insurance policy or annuity or  
12 surrender the policy or annuity for its cash value;

13 (7) exercise a right to an elective share in  
14 the estate of a deceased spouse of the individual subject to  
15 conservatorship or renounce or disclaim a property interest;

16 (8) grant a creditor priority for payment over  
17 creditors of the same or higher class if the creditor is  
18 providing property or services used to meet the basic living  
19 and care needs of the individual subject to conservatorship and  
20 preferential treatment otherwise would be impermissible under  
21 Subsection E of Section 428 of the Uniform Guardianship,  
22 Conservatorship and Other Protective Arrangements Act; and

23 (9) make, modify, amend or revoke the will of  
24 the individual subject to conservatorship in compliance with  
25 the Uniform Probate Code.

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1           B. In approving a conservator's exercise of a power  
2 listed in Subsection A of this section, the court shall  
3 consider primarily the decision the individual subject to  
4 conservatorship would make if able, to the extent the decision  
5 can be ascertained.

6           C. To determine under Subsection B of this section  
7 the decision the individual subject to conservatorship would  
8 make if able, the court shall consider the individual's prior  
9 or current directions, preferences, opinions, values and  
10 actions, to the extent actually known or reasonably  
11 ascertainable by the conservator. The court also shall  
12 consider:

13                   (1) the financial needs of the individual  
14 subject to conservatorship and individuals who are in fact  
15 dependent on the individual subject to conservatorship for  
16 support and the interests of creditors of the individual;

17                   (2) possible reduction of income, estate,  
18 inheritance or other tax liabilities;

19                   (3) eligibility for governmental assistance;

20                   (4) the previous pattern of giving or level of  
21 support provided by the individual;

22                   (5) any existing estate plan or lack of estate  
23 plan of the individual;

24                   (6) the life expectancy of the individual and  
25 the probability the conservatorship will terminate before the

1 individual's death; and

2 (7) any other relevant factor.

3 D. A conservator shall not revoke or amend a power  
4 of attorney for finances signed by the individual subject to  
5 conservatorship. If a power of attorney for finances is in  
6 effect, a decision of the agent takes precedence over that of  
7 the conservator, unless the court orders otherwise.

8 SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER  
9 APPOINTMENT.--An individual subject to conservatorship or a  
10 person interested in the welfare of the individual may petition  
11 for an order:

12 A. requiring the conservator to furnish a bond or  
13 collateral or additional bond or collateral or allowing a  
14 reduction in a bond or collateral previously furnished;

15 B. requiring an accounting for the administration  
16 of the conservatorship estate;

17 C. directing distribution;

18 D. removing the conservator and appointing a  
19 temporary or successor conservator;

20 E. modifying the type of appointment or powers  
21 granted to the conservator, if the extent of protection or  
22 management previously granted is excessive or insufficient to  
23 meet the individual's needs, including because the individual's  
24 abilities or supports have changed;

25 F. rejecting or modifying the conservator's plan

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1 under Section 419 of the Uniform Guardianship, Conservatorship  
2 and Other Protective Arrangements Act, the conservator's  
3 inventory under Section 420 of that act or the conservator's  
4 report under Section 423 of that act; or

5 G. granting other appropriate relief.

6 SECTION 416. [NEW MATERIAL] BOND--ALTERNATIVE ASSET-  
7 PROTECTION ARRANGEMENT.--

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

20 B. Unless the court directs otherwise, the bond  
21 required under this section shall be in the amount of the  
22 aggregate capital value of the conservatorship estate, plus one  
23 year's estimated income, less the value of property deposited  
24 under an arrangement requiring a court order for its removal  
25 and real property the conservator lacks power to sell or convey

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1 without specific court authorization. The court, in place of  
 2 surety on a bond, may accept collateral for the performance of  
 3 the bond, including a pledge of securities or a mortgage of  
 4 real property.

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

10 SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF  
 11 BOND.--

12 A. The following rules apply to the bond required  
 13 under Section 416 of the Uniform Guardianship, Conservatorship  
 14 and Other Protective Arrangements Act:

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

18 (2) by executing a bond provided by a  
 19 conservator, the surety submits to the personal jurisdiction of  
 20 the court that issued letters of office to the conservator in a  
 21 proceeding relating to the duties of the conservator in which  
 22 the surety is named as a party. Notice of the proceeding shall  
 23 be given to the surety at the address shown in the records of  
 24 the court in which the bond is filed and any other address of  
 25 the surety then known to the person required to provide the

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1 notice;

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

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

8 B. A proceeding shall not be brought under this  
9 section against a surety of a bond on a matter as to which a  
10 proceeding against the conservator is barred.

11 C. If a bond under Section 416 of the Uniform  
12 Guardianship, Conservatorship and Other Protective Arrangements  
13 Act is not renewed by the conservator, the surety or sureties  
14 immediately shall give notice to the court and the individual  
15 subject to conservatorship.

16 SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

17 A. A conservator is a fiduciary and has duties of  
18 prudence and loyalty to the individual subject to  
19 conservatorship.

20 B. A conservator shall promote the self-  
21 determination of the individual subject to conservatorship and,  
22 to the extent feasible, encourage the individual to participate  
23 in decisions, act on the individual's own behalf and develop or  
24 regain the capacity to manage the individual's personal  
25 affairs.

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1 C. In making a decision for an individual subject  
2 to conservatorship, the conservator shall make the decision the  
3 conservator reasonably believes the individual would make if  
4 able, unless doing so would fail to preserve the resources  
5 needed to maintain the individual's well-being and lifestyle or  
6 otherwise unreasonably harm or endanger the welfare or personal  
7 or financial interests of the individual. To determine the  
8 decision the individual would make if able, the conservator  
9 shall consider the individual's prior or current directions,  
10 preferences, opinions, values and actions, to the extent  
11 actually known or reasonably ascertainable by the conservator.

12 D. If a conservator cannot make a decision under  
13 Subsection C of this section because the conservator does not  
14 know and cannot reasonably determine the decision the  
15 individual subject to conservatorship probably would make if  
16 able, or the conservator reasonably believes the decision the  
17 individual would make would fail to preserve resources needed  
18 to maintain the individual's well-being and lifestyle or  
19 otherwise unreasonably harm or endanger the welfare or personal  
20 or financial interests of the individual, the conservator shall  
21 act in accordance with the best interest of the individual.  
22 In determining the best interest of the individual, the  
23 conservator shall consider:

24 (1) information received from professionals  
25 and persons that demonstrate sufficient interest in the welfare

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1 of the individual;

2 (2) other information the conservator believes  
3 the individual would have considered if the individual were  
4 able to act; and

5 (3) other factors a reasonable person in the  
6 circumstances of the individual would consider, including  
7 consequences for others.

8 E. Except when inconsistent with the conservator's  
9 duties under Subsections A through D of this section, a  
10 conservator shall invest and manage the conservatorship estate  
11 as a prudent investor would, by considering:

12 (1) the circumstances of the individual  
13 subject to conservatorship and the conservatorship estate;

14 (2) general economic conditions;

15 (3) the possible effect of inflation or  
16 deflation;

17 (4) the expected tax consequences of an  
18 investment decision or strategy;

19 (5) the role of each investment or course of  
20 action in relation to the conservatorship estate as a whole;

21 (6) the expected total return from income and  
22 appreciation of capital;

23 (7) the need for liquidity, regularity of  
24 income and preservation or appreciation of capital; and

25 (8) the special relationship or value, if any,

1 of specific property to the individual subject to  
2 conservatorship.

3 F. The propriety of a conservator's investment and  
4 management of the conservatorship estate is determined in light  
5 of the facts and circumstances existing when the conservator  
6 decides or acts and not by hindsight.

7 G. A conservator shall make a reasonable effort to  
8 verify facts relevant to the investment and management of the  
9 conservatorship estate.

10 H. A conservator that has special skills or  
11 expertise, or is named conservator in reliance on the  
12 conservator's representation of special skills or expertise,  
13 has a duty to use the special skills or expertise in carrying  
14 out the conservator's duties.

15 I. In investing, selecting specific property for  
16 distribution and invoking a power of revocation or withdrawal  
17 for the use or benefit of the individual subject to  
18 conservatorship, a conservator shall consider any estate plan  
19 of the individual known or reasonably ascertainable to the  
20 conservator and may examine the will or other donative,  
21 nominative or appointive instrument of the individual.

22 J. A conservator shall maintain insurance on the  
23 insurable real and personal property of the individual subject  
24 to conservatorship, unless the conservatorship estate lacks  
25 sufficient funds to pay for insurance or the court finds:

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- 1 (1) the property lacks sufficient equity; or
- 2 (2) insuring the property would unreasonably
- 3 dissipate the conservatorship estate or otherwise not be in the
- 4 best interest of the individual.

5 K. If a power of attorney for finances is in  
6 effect, a conservator shall cooperate with the agent to the  
7 extent feasible.

8 L. A conservator has access to and authority over a  
9 digital asset of the individual subject to conservatorship to  
10 the extent provided by the Revised Uniform Fiduciary Access to  
11 Digital Assets Act or court order.

12 M. A conservator for an adult shall notify the  
13 court if the condition of the adult has changed so that the  
14 adult is capable of exercising rights previously removed. The  
15 notice shall be given immediately upon learning of the change.

16 SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

17 A. A conservator, not later than sixty days after  
18 appointment and when there is a significant change in  
19 circumstances or the conservator seeks to deviate significantly  
20 from the conservator's plan, shall file with the court a plan  
21 for protecting, managing, expending and distributing the assets  
22 of the conservatorship estate. The plan shall be based on the  
23 needs of the individual subject to conservatorship and take  
24 into account the best interest of the individual as well as the  
25 individual's preferences, values and prior directions, to the

1 extent known to or reasonably ascertainable by the conservator.

2 The conservator shall include in the plan:

3 (1) a budget containing projected expenses and  
4 resources, including an estimate of the total amount of fees  
5 the conservator anticipates charging per year and a statement  
6 or list of the amount the conservator proposes to charge for  
7 each service the conservator anticipates providing to the  
8 individual;

9 (2) how the conservator will involve the  
10 individual in decisions about management of the conservatorship  
11 estate;

12 (3) any step the conservator plans to take to  
13 develop or restore the ability of the individual to manage the  
14 conservatorship estate; and

15 (4) an estimate of the duration of the  
16 conservatorship.

17 B. A conservator shall give notice of the filing of  
18 the conservator's plan under Subsection A of this section,  
19 together with a copy of the plan, to the individual subject to  
20 conservatorship, a person entitled to notice under Subsection E  
21 of Section 411 of the Uniform Guardianship, Conservatorship and  
22 Other Protective Arrangements Act or a subsequent order and any  
23 other person the court determines. The notice shall include a  
24 statement of the right to object to the plan and be given not  
25 later than fourteen days after the filing.

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1           C. An individual subject to conservatorship and any  
2 person entitled under Subsection B of this section to receive  
3 notice and a copy of the conservator's plan may object to the  
4 plan.

5           D. The court shall review a plan and determine  
6 whether to approve it or require a new plan. In deciding  
7 whether to approve the plan, the court shall consider an  
8 objection under Subsection C of this section and whether the  
9 plan is consistent with a conservator's duties and powers. The  
10 court shall not approve the plan until thirty days after its  
11 filing. The court may then approve the plan or require a new  
12 plan with or without holding a hearing as the court determines  
13 is appropriate unless a hearing is requested as provided in  
14 this subsection. If the conservator, the adult subject to  
15 conservatorship or any person entitled to notice pursuant to  
16 Subsection B of this section requests a hearing in connection  
17 with the plan, the court shall not approve the plan without:

18                   (1) notice to the adult subject to  
19 conservatorship, a person entitled to notice under Subsection E  
20 of Section 411 of the Uniform Guardianship, Conservatorship and  
21 Other Protective Arrangements Act or under a subsequent order  
22 and any other person the court determines; and

23                   (2) a hearing.

24           E. After a conservator's plan under this section is  
25 approved by the court, the conservator shall provide a copy of

1 the plan to the individual subject to conservatorship, a person  
2 entitled to notice under Subsection E of Section 411 of the  
3 Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act or a subsequent order and any other person the  
5 court determines.

6 SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

7 A. Not later than sixty days after appointment, a  
8 conservator shall prepare and file with the appointing court a  
9 detailed inventory of the conservatorship estate, together with  
10 an oath or affirmation that the inventory is believed to be  
11 complete and accurate as far as information permits.

12 B. A conservator shall give notice of the filing of  
13 an inventory to the individual subject to conservatorship, a  
14 person entitled to notice under Subsection E of Section 411 of  
15 the Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act or a subsequent order and any other person the  
17 court determines. The notice shall be given not later than  
18 fourteen days after the filing.

19 C. A conservator shall keep records of the  
20 administration of the conservatorship estate and make them  
21 available for examination on reasonable request of the  
22 individual subject to conservatorship, a guardian for the  
23 individual or any other person the conservator or the court  
24 determines.

25 SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF

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1 CONSERVATOR NOT REQUIRING COURT APPROVAL.--

2 A. Except as otherwise provided in Section 414 of  
3 the Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act or qualified or limited in the court's order  
5 of appointment and stated in the letters of office, a  
6 conservator has all powers granted in this section and any  
7 additional power granted to a trustee by law of New Mexico  
8 other than that act.

9 B. A conservator, acting reasonably and consistent  
10 with the fiduciary duties of the conservator to accomplish the  
11 purpose of the conservatorship, without specific court  
12 authorization or confirmation, may with respect to the  
13 conservatorship estate:

14 (1) collect, hold and retain property,  
15 including property in which the conservator has a personal  
16 interest and real property in another state, until the  
17 conservator determines disposition of the property should be  
18 made;

19 (2) receive additions to the conservatorship  
20 estate;

21 (3) continue or participate in the operation  
22 of a business or other enterprise;

23 (4) acquire an undivided interest in property  
24 in which the conservator, in a fiduciary capacity, holds an  
25 undivided interest;

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1 (5) invest assets;

2 (6) deposit funds or other property in a  
3 financial institution, including one operated by the  
4 conservator;

5 (7) acquire or dispose of property, including  
6 real property in another state, for cash or on credit, at  
7 public or private sale and manage, develop, improve, exchange,  
8 partition, change the character of or abandon property;

9 (8) make ordinary or extraordinary repairs or  
10 alterations in a building or other structure, demolish any  
11 improvement or raze an existing or erect a new party wall or  
12 building;

13 (9) subdivide or develop land, dedicate land  
14 to public use, make or obtain the vacation of a plat and adjust  
15 a boundary, adjust a difference in valuation of land, exchange  
16 or partition land by giving or receiving consideration and  
17 dedicate an easement to public use without consideration;

18 (10) enter for any purpose into a lease of  
19 property as lessor or lessee, with or without an option to  
20 purchase or renew, for a term within or extending beyond the  
21 term of the conservatorship;

22 (11) enter into a lease or arrangement for  
23 exploration and removal of minerals or other natural resources  
24 or a pooling or unitization agreement;

25 (12) grant an option involving disposition of

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1 property or accept or exercise an option for the acquisition of  
2 property;

3 (13) vote a security, in person or by general  
4 or limited proxy;

5 (14) pay a call, assessment or other sum  
6 chargeable or accruing against or on account of a security;

7 (15) sell or exercise a stock subscription or  
8 conversion right;

9 (16) consent, directly or through a committee  
10 or agent, to the reorganization, consolidation, merger,  
11 dissolution or liquidation of a corporation or other business  
12 enterprise;

13 (17) hold a security in the name of a nominee  
14 or in other form without disclosure of the conservatorship so  
15 that title to the security may pass by delivery;

16 (18) insure:

17 (a) the conservatorship estate, in whole  
18 or in part, against damage or loss in accordance with  
19 Subsection J of Section 418 of the Uniform Guardianship,  
20 Conservatorship and Other Protective Arrangements Act; and

21 (b) the conservator against liability  
22 with respect to a third person;

23 (19) borrow funds, with or without security,  
24 to be repaid from the conservatorship estate or otherwise;

25 (20) advance funds for the protection of the

1 conservatorship estate or the individual subject to  
2 conservatorship and all expenses, losses and liability  
3 sustained in the administration of the conservatorship estate  
4 or because of holding any property for which the conservator  
5 has a lien on the conservatorship estate;

6 (21) pay or contest a claim, settle a claim by  
7 or against the conservatorship estate or the individual subject  
8 to conservatorship by compromise, arbitration or otherwise or  
9 release, in whole or in part, a claim belonging to the  
10 conservatorship estate to the extent the claim is  
11 uncollectible;

12 (22) pay a tax, assessment, compensation of  
13 the conservator or any guardian and other expense incurred in  
14 the collection, care, administration and protection of the  
15 conservatorship estate;

16 (23) pay a sum distributable to the individual  
17 subject to conservatorship or an individual who is in fact  
18 dependent on the individual subject to conservatorship by  
19 paying the sum to the distributee or for the use of the  
20 distributee:

21 (a) to the guardian for the distributee;  
22 (b) to the custodian of the distributee  
23 under the Uniform Transfers to Minors Act or custodial trustee  
24 under the Uniform Custodial Trust Act; or  
25 (c) if there is no guardian, custodian

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1 or custodial trustee, to a relative or other person having  
2 physical custody of the distributee;

3 (24) bring or defend an action, claim or  
4 proceeding in any jurisdiction for the protection of the  
5 conservatorship estate or the conservator in the performance of  
6 the conservator's duties;

7 (25) structure the finances of the individual  
8 subject to conservatorship to establish eligibility for a  
9 public benefit, including by making gifts consistent with the  
10 individual's preferences, values and prior directions, if the  
11 conservator's action does not jeopardize the individual's  
12 welfare and otherwise is consistent with the conservator's  
13 duties; and

14 (26) execute and deliver any instrument that  
15 will accomplish or facilitate the exercise of a power of the  
16 conservator.

17 SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM  
18 CONSERVATORSHIP ESTATE.--Except as otherwise provided in  
19 Section 414 of the Uniform Guardianship, Conservatorship and  
20 Other Protective Arrangements Act or qualified or limited in  
21 the court's order of appointment and stated in the letters of  
22 office and unless contrary to a conservator's plan under  
23 Section 419 of that act, the conservator may expend or  
24 distribute income or principal of the conservatorship estate  
25 without specific court authorization or confirmation for the

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1 support, care, education, health or welfare of the individual  
2 subject to conservatorship or an individual who is in fact  
3 dependent on the individual subject to conservatorship,  
4 including the payment of child or spousal support, in  
5 accordance with the following rules:

6 A. the conservator shall consider a recommendation  
7 relating to the appropriate standard of support, care,  
8 education, health or welfare for the individual subject to  
9 conservatorship or individual who is dependent on the  
10 individual subject to conservatorship, made by a guardian for  
11 the individual subject to conservatorship, if any, and, if the  
12 individual subject to conservatorship is a minor, a  
13 recommendation made by a parent of the minor;

14 B. the conservator acting in compliance with the  
15 conservator's duties under Section 418 of the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act is not liable for an expenditure or distribution made based  
18 on a recommendation under Subsection A of this section unless  
19 the conservator knows the expenditure or distribution is not in  
20 the best interest of the individual subject to conservatorship;

21 C. in making an expenditure or distribution under  
22 this section, the conservator shall consider:

23 (1) the size of the conservatorship estate,  
24 the estimated duration of the conservatorship and the  
25 likelihood the individual subject to conservatorship, at some

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1 future time, may be fully self-sufficient and able to manage  
2 the individual's financial affairs and the conservatorship  
3 estate;

4 (2) the accustomed standard of living of the  
5 individual subject to conservatorship and individual who is  
6 dependent on the individual subject to conservatorship;

7 (3) other funds or source used for the support  
8 of the individual subject to conservatorship; and

9 (4) the preferences, values and prior  
10 directions of the individual subject to conservatorship; and

11 D. funds expended or distributed under this section  
12 may be paid by the conservator to any person, including the  
13 individual subject to conservatorship, as reimbursement for  
14 expenditures the conservator might have made, or in advance for  
15 services to be provided to the individual subject to  
16 conservatorship or individual who is dependent on the  
17 individual subject to conservatorship if it is reasonable to  
18 expect the services will be performed and advance payment is  
19 customary or reasonably necessary under the circumstances.

20 SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND  
21 ACCOUNTING--MONITORING.--

22 A. A conservator shall file with the court a report  
23 in a record regarding the administration of the conservatorship  
24 estate annually unless the court otherwise directs, on  
25 resignation or removal, on termination of the conservatorship

1 and at any other time the court directs.

2 B. A report under Subsection A of this section  
3 shall state or contain:

4 (1) an accounting that lists property included  
5 in the conservatorship estate and the receipts, disbursements,  
6 liabilities and distributions during the period for which the  
7 report is made;

8 (2) a list of the services provided to the  
9 individual subject to conservatorship;

10 (3) a copy of the conservator's most recently  
11 approved plan and a statement whether the conservator has  
12 deviated from the plan and, if so, how the conservator has  
13 deviated and why;

14 (4) a recommendation as to the need for  
15 continued conservatorship and any recommended change in the  
16 scope of the conservatorship;

17 (5) to the extent feasible, a copy of the most  
18 recent reasonably available financial statements evidencing the  
19 status of bank accounts, investment accounts and mortgages or  
20 other debts of the individual subject to conservatorship with  
21 all but the last four digits of the account numbers and social  
22 security number redacted;

23 (6) anything of more than de minimis value  
24 that the conservator, any individual who resides with the  
25 conservator or the spouse, parent, child or sibling of the

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1 conservator has received from a person providing goods or  
2 services to the individual subject to conservatorship;

3 (7) any business relation the conservator has  
4 with a person the conservator has paid or that has benefited  
5 from the property of the individual subject to conservatorship;  
6 and

7 (8) whether any co-conservator or successor  
8 conservator appointed to serve when a designated event occurs  
9 is alive and able to serve.

10 C. The court may appoint a visitor to review a  
11 report under this section or conservator's plan under Section  
12 419 of the Uniform Guardianship, Conservatorship and Other  
13 Protective Arrangements Act, interview the individual subject  
14 to conservatorship or conservator or investigate any other  
15 matter involving the conservatorship. In connection with the  
16 report, the court may order the conservator to submit the  
17 conservatorship estate to appropriate examination in a manner  
18 the court directs.

19 D. Notice of the filing under this section of a  
20 conservator's report, together with a copy of the report, shall  
21 be provided to the individual subject to conservatorship, a  
22 person entitled to notice under Subsection E of Section 411 of  
23 the Uniform Guardianship, Conservatorship and Other Protective  
24 Arrangements Act or a subsequent order and any other person the  
25 court determines. The notice and report shall be given not

1 later than fourteen days after filing.

2 E. The court shall establish procedures for  
3 monitoring a report submitted under this section and shall  
4 review each report at least annually to determine whether:

5 (1) the reports provide sufficient information  
6 to establish the conservator has complied with the  
7 conservator's duties;

8 (2) the conservatorship should continue; and

9 (3) the conservator's requested fees, if any,  
10 should be approved.

11 F. If the court determines there is reason to  
12 believe a conservator has not complied with the conservator's  
13 duties or the conservatorship should not continue, the court:

14 (1) shall notify the individual subject to  
15 conservatorship, the conservator, any other person entitled to  
16 notice under Subsection E of Section 411 of the Uniform  
17 Guardianship, Conservatorship and Other Protective Arrangements  
18 Act or a subsequent order and any other person the court  
19 determines;

20 (2) may require additional information from  
21 the conservator;

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

25 (4) consistent with Sections 430 and 431 of

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1 the Uniform Guardianship, Conservatorship and Other Protective  
2 Arrangements Act, may hold a hearing to consider removal of the  
3 conservator, termination of the conservatorship or a change in  
4 the powers granted to the conservator or terms of the  
5 conservatorship.

6 G. If the court has reason to believe fees  
7 requested by a conservator are not reasonable, the court shall  
8 hold a hearing to determine whether to adjust the requested  
9 fees and give notice of the hearing to the individual subject  
10 to conservatorship, a person entitled to notice under  
11 Subsection E of Section 411 of the Uniform Guardianship,  
12 Conservatorship and Other Protective Arrangements Act or under  
13 a subsequent order and any other person the court determines.

14 H. A conservator may petition the court for  
15 approval of a report filed under this section. The conservator  
16 shall send a copy of the petition to the adult subject to  
17 conservatorship and to a person entitled to notice pursuant to  
18 Subsection D of this section and shall file proof of the  
19 sending of the petition with the court. The court shall not  
20 approve the report until the later of thirty days after its  
21 filing and fourteen days after the petition was sent to the  
22 persons entitled to notice. The court may then approve the  
23 report with or without holding a hearing as the court  
24 determines is appropriate unless a hearing is requested as  
25 provided in this subsection. If the conservator, the person

1 subject to conservatorship or a person entitled to notice  
2 pursuant to Subsection D of this section requests a hearing in  
3 connection with the report, the court after review shall not  
4 approve the report without:

5 (1) notice to the individual subject to  
6 conservatorship, a person entitled to notice under Subsection E  
7 of Section 411 of the Uniform Guardianship, Conservatorship and  
8 Other Protective Arrangements Act or under a subsequent order  
9 and any other person the court determines; and

10 (2) a hearing.

11 I. An order, after timely notice and hearing,  
12 approving an interim report of a conservator filed under this  
13 section adjudicates liabilities concerning a matter adequately  
14 disclosed in the report, as to a person given notice of the  
15 report or accounting and the hearing.

16 J. An order, after timely notice and hearing,  
17 approving a final report filed under this section discharges  
18 the conservator from all liabilities, claims and causes of  
19 action by a person given notice of the report and the hearing  
20 as to a matter adequately disclosed in the report.

21 K. No person shall request, procure or receive a  
22 release or waiver of liability, however denominated, of a  
23 conservator or an agent or affiliate of a conservator:

24 (1) concerning any matter not adequately  
25 disclosed in a report or accounting filed pursuant to

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1 Subsection I or J of this section; or

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

5 L. A release or waiver of liability that is  
6 requested, procured or received contrary to the provisions of  
7 Subsection K of this section is void.

8 **SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF**  
9 **PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--**

10 A. The interest of an individual subject to  
11 conservatorship in property included in the conservatorship  
12 estate is not transferrable or assignable by the individual and  
13 is not subject to levy, garnishment or similar process for  
14 claims against the individual unless allowed under Section 428  
15 of the Uniform Guardianship, Conservatorship and Other  
16 Protective Arrangements Act.

17 B. If an individual subject to conservatorship  
18 enters into a contract after having the right to enter the  
19 contract removed by the court, the contract is void against the  
20 individual and the individual's property but is enforceable  
21 against the person that contracted with the individual.

22 C. A person other than the conservator that deals  
23 with an individual subject to conservatorship with respect to  
24 property included in the conservatorship estate is entitled to  
25 protection provided by law of New Mexico other than the Uniform

1 Guardianship, Conservatorship and Other Protective Arrangements  
2 Act.

3 SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING  
4 CONFLICT OF INTEREST.--A transaction involving a  
5 conservatorship estate that is affected by a substantial  
6 conflict between the conservator's fiduciary duties and  
7 personal interests is voidable unless the transaction is  
8 authorized by court order after notice to the individual  
9 subject to conservatorship, persons entitled to notice under  
10 Subsection E of Section 411 of the Uniform Guardianship,  
11 Conservatorship and Other Protective Arrangements Act or a  
12 subsequent order and any other person the court determines. A  
13 transaction affected by a substantial conflict includes a sale,  
14 encumbrance or other transaction involving the conservatorship  
15 estate entered into by the conservator, an individual with whom  
16 the conservator resides, the spouse, descendant, sibling, agent  
17 or attorney of the conservator or a corporation or other  
18 enterprise in which the conservator has a substantial  
19 beneficial interest.

20 SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING  
21 WITH CONSERVATOR.--

22 A. A person that assists or deals with a  
23 conservator in good faith and for value in any transaction,  
24 other than a transaction requiring a court order under Section  
25 414 of the Uniform Guardianship, Conservatorship and Other

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1 Protective Arrangements Act, is protected as though the  
2 conservator properly exercised any power in question.  
3 Knowledge by a person that the person is dealing with a  
4 conservator alone does not require the person to inquire into  
5 the existence of authority of the conservator or the propriety  
6 of the conservator's exercise of authority, but restrictions on  
7 authority stated in letters of office, or otherwise provided by  
8 law, are effective as to the person. A person that pays or  
9 delivers property to a conservator is not responsible for  
10 proper application of the property.

11 B. Protection under Subsection A of this section  
12 extends to a procedural irregularity or jurisdictional defect  
13 in the proceeding leading to the issuance of letters of office  
14 and does not substitute for protection for a person that  
15 assists or deals with a conservator provided by comparable  
16 provisions in law of New Mexico other than the Uniform  
17 Guardianship, Conservatorship and Other Protective Arrangements  
18 Act relating to a commercial transaction or simplifying a  
19 transfer of securities by a fiduciary.

20 SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT  
21 TO CONSERVATORSHIP.--

22 A. If an individual subject to conservatorship  
23 dies, the conservator shall deliver to the court for  
24 safekeeping any will of the individual in the conservator's  
25 possession and inform the personal representative named in the

1 will, if feasible, or, if not feasible, a beneficiary named in  
2 the will, of the delivery.

3 B. If, thirty days after the death of an individual  
4 subject to conservatorship, no personal representative has been  
5 appointed and no application or petition for appointment is  
6 before any court, the conservator may apply to the district  
7 court to exercise the powers and duties of a personal  
8 representative to administer and distribute the decedent's  
9 estate. The conservator shall give notice to a person  
10 nominated as personal representative by a will of the decedent  
11 of which the conservator is aware. The court may grant the  
12 application if there is no objection and endorse the letters of  
13 office to note that the individual formerly subject to  
14 conservatorship is deceased and the conservator has acquired  
15 the powers and duties of a personal representative.

16 C. Issuance of an order under this section has the  
17 effect of an order of appointment of a personal representative  
18 as provided in Sections 45-3-101 through 45-3-1204 NMSA 1978  
19 except that the estate in the name of the conservator, after  
20 administration, may be distributed to the decedent's successors  
21 without prior re-transfer to the conservator as personal  
22 representative.

23 D. On the death of an individual subject to  
24 conservatorship, the conservator shall conclude the  
25 administration of the conservatorship estate as provided in

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1 Section 431 of the Uniform Guardianship, Conservatorship and  
2 Other Protective Arrangements Act.

3 SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF  
4 CLAIM.--

5 A. A conservator may pay, or secure by encumbering  
6 property included in the conservatorship estate, a claim  
7 against the conservatorship estate or the individual subject to  
8 conservatorship arising before or during the conservatorship,  
9 on presentation and allowance in accordance with the priorities  
10 under Subsection D of this section. A claimant may present a  
11 claim by:

12 (1) sending or delivering to the conservator a  
13 statement in a record of the claim, indicating its basis, the  
14 name and address of the claimant and the amount claimed; or

15 (2) filing the claim with the court, in a form  
16 acceptable to the court, and sending or delivering a copy of  
17 the claim to the conservator.

18 B. A claim under Subsection A of this section is  
19 presented on receipt by the conservator of the statement of the  
20 claim or the filing with the court of the claim, whichever  
21 first occurs. A presented claim is allowed if it is not  
22 disallowed in whole or in part by the conservator in a record  
23 sent or delivered to the claimant not later than sixty days  
24 after its presentation. Before payment, the conservator may  
25 change an allowance of the claim to a disallowance in whole or

1 in part, but not after allowance under a court order or order  
2 directing payment of the claim. Presentation of a claim tolls  
3 until thirty days after disallowance of the claim the running  
4 of a statute of limitations that has not expired relating to  
5 the claim.

6 C. A claimant whose claim under Subsection A of  
7 this section has not been paid may petition the court to  
8 determine the claim at any time before it is barred by a  
9 statute of limitations, and the court may order its allowance,  
10 payment or security by encumbering property included in the  
11 conservatorship estate. If a proceeding is pending against the  
12 individual subject to conservatorship at the time of  
13 appointment of the conservator or is initiated thereafter, the  
14 moving party shall give the conservator notice of the  
15 proceeding if it could result in creating a claim against the  
16 conservatorship estate.

17 D. If a conservatorship estate is likely to be  
18 exhausted before all existing claims are paid, the conservator  
19 shall distribute the estate in money or in kind in payment of  
20 claims in the following order:

- 21 (1) costs and expenses of administration;  
22 (2) a claim of the federal or state government  
23 having priority under law other than the Uniform Guardianship,  
24 Conservatorship and Other Protective Arrangements Act;  
25 (3) a claim incurred by the conservator for

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1 support, care, education, health or welfare previously provided  
2 to the individual subject to conservatorship or an individual  
3 who is in fact dependent on the individual subject to  
4 conservatorship;

5 (4) a claim arising before the  
6 conservatorship; and

7 (5) all other claims.

8 E. Preference shall not be given in the payment of  
9 a claim under Subsection D of this section over another claim  
10 of the same class. A claim due and payable shall not be  
11 preferred over a claim not due unless:

12 (1) doing so would leave the conservatorship  
13 estate without sufficient funds to pay the basic living and  
14 health care expenses of the individual subject to  
15 conservatorship; and

16 (2) the court authorizes the preference under  
17 Paragraph (8) of Subsection A of Section 414 of the Uniform  
18 Guardianship, Conservatorship and Other Protective Arrangements  
19 Act.

20 F. If assets of a conservatorship estate are  
21 adequate to meet all existing claims, the court, acting in the  
22 best interest of the individual subject to conservatorship, may  
23 order the conservator to grant a security interest in the  
24 conservatorship estate for payment of a claim at a future date.

25 SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF

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1 CONSERVATOR.--

2 A. Except as otherwise agreed by a conservator, the  
3 conservator is not personally liable on a contract properly  
4 entered into in a fiduciary capacity in the course of  
5 administration of the conservatorship estate unless the  
6 conservator fails to reveal the conservator's representative  
7 capacity in the contract or before entering into the contract.

8 B. A conservator is personally liable for an  
9 obligation arising from control of property of the  
10 conservatorship estate or an act or omission occurring in the  
11 course of administration of the conservatorship estate only if  
12 the conservator is personally at fault.

13 C. A claim based on a contract entered into by a  
14 conservator in a fiduciary capacity, an obligation arising from  
15 control of property included in the conservatorship estate or a  
16 tort committed in the course of administration of the  
17 conservatorship estate may be asserted against the  
18 conservatorship estate in a proceeding against the conservator  
19 in a fiduciary capacity, whether or not the conservator is  
20 personally liable for the claim.

21 D. A question of liability between a  
22 conservatorship estate and the conservator personally may be  
23 determined in a proceeding for accounting, surcharge or  
24 indemnification or another appropriate proceeding or action.

25 SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--

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1 APPOINTMENT OF SUCCESSOR.--

2 A. The court may remove a conservator for failure  
3 to perform the conservator's duties or other good cause and  
4 appoint a successor conservator to assume the duties of the  
5 conservator.

6 B. The court shall hold a hearing to determine  
7 whether to remove a conservator and appoint a successor on:

8 (1) petition of the individual subject to  
9 conservatorship, conservator or person interested in the  
10 welfare of the individual that contains allegations that, if  
11 true, would support a reasonable belief that removal of the  
12 conservator and appointment of a successor may be appropriate,  
13 but the court may decline to hold a hearing if a petition based  
14 on the same or substantially similar facts was filed during the  
15 preceding six months;

16 (2) communication from the individual subject  
17 to conservatorship, conservator or person interested in the  
18 welfare of the individual that supports a reasonable belief  
19 that removal of the conservator and appointment of a successor  
20 may be appropriate; or

21 (3) determination by the court that a hearing  
22 would be in the best interest of the individual subject to  
23 conservatorship.

24 C. Notice of a petition under Paragraph (1) of  
25 Subsection B of this section shall be given to the individual

1 subject to conservatorship, the conservator and any other  
2 person the court determines.

3 D. An individual subject to conservatorship who  
4 seeks to remove the conservator and have a successor appointed  
5 has the right to choose an attorney to represent the individual  
6 in this matter. If the individual is not represented by an  
7 attorney, the court shall appoint an attorney under the same  
8 conditions as in Section 406 of the Uniform Guardianship,  
9 Conservatorship and Other Protective Arrangements Act. The  
10 court shall award reasonable attorney's fees to the attorney as  
11 provided in Section 119 of that act.

12 E. In selecting a successor conservator, the court  
13 shall follow the priorities under Section 410 of the Uniform  
14 Guardianship, Conservatorship and Other Protective Arrangements  
15 Act.

16 F. Not later than thirty days after appointing a  
17 successor conservator, the court shall give notice of the  
18 appointment to the individual subject to conservatorship, any  
19 person entitled to notice under Subsection E of Section 411 of  
20 the Uniform Guardianship, Conservatorship and Other Protective  
21 Arrangements Act or a subsequent order and any other person the  
22 court determines.

23 SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION  
24 OF CONSERVATORSHIP.--

25 A. A conservatorship for a minor terminates on the  
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underscored material = new  
[bracketed material] = delete

1 earliest of:

2 (1) a court order terminating the  
3 conservatorship;

4 (2) the minor becoming an adult or, if the  
5 minor consents or the court finds by clear and convincing  
6 evidence that substantial harm to the minor's interests is  
7 otherwise likely, attaining twenty-one years of age;

8 (3) emancipation of the minor; or

9 (4) death of the minor.

10 B. A conservatorship for an adult terminates on  
11 order of the court or when the adult dies.

12 C. An individual subject to conservatorship, the  
13 conservator or a person interested in the welfare of the  
14 individual may petition for:

15 (1) termination of the conservatorship on the  
16 ground that a basis for appointment under Section 401 of the  
17 Uniform Guardianship, Conservatorship and Other Protective  
18 Arrangements Act does not exist or termination would be in the  
19 best interest of the individual or for other good cause; or

20 (2) modification of the conservatorship on the  
21 ground that the extent of protection or assistance granted is  
22 not appropriate or for other good cause.

23 D. The court shall hold a hearing to determine  
24 whether termination or modification of a conservatorship is  
25 appropriate on:

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1                   (1) petition under Subsection C of this  
2 section that contains allegations that, if true, would support  
3 a reasonable belief that termination or modification of the  
4 conservatorship may be appropriate, but the court may decline  
5 to hold a hearing if a petition based on the same or  
6 substantially similar facts was filed within the preceding six  
7 months;

8                   (2) a communication from the individual  
9 subject to conservatorship, conservator or person interested in  
10 the welfare of the individual that supports a reasonable belief  
11 that termination or modification of the conservatorship may be  
12 appropriate, including because the functional needs of the  
13 individual or supports or services available to the individual  
14 have changed;

15                   (3) a report from a guardian or conservator  
16 that indicates that termination or modification may be  
17 appropriate because the functional needs or supports or  
18 services available to the individual have changed or a  
19 protective arrangement instead of conservatorship or other less  
20 restrictive alternative is available; or

21                   (4) a determination by the court that a  
22 hearing would be in the best interest of the individual.

23                   E. Notice of a petition under Subsection C of this  
24 section shall be given to the individual subject to  
25 conservatorship, the conservator and any such other person the

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1 court determines.

2 F. On presentation of prima facie evidence for  
3 termination of a conservatorship, the court shall order  
4 termination unless it is proven that a basis for appointment of  
5 a conservator under Section 401 of the Uniform Guardianship,  
6 Conservatorship and Other Protective Arrangements Act exists.

7 G. The court shall modify the powers granted to a  
8 conservator if the powers are excessive or inadequate due to a  
9 change in the abilities or limitations of the individual  
10 subject to conservatorship, the individual's supports or other  
11 circumstances.

12 H. Unless the court otherwise orders for good  
13 cause, before terminating a conservatorship, the court shall  
14 follow the same procedures to safeguard the rights of the  
15 individual subject to conservatorship that apply to a petition  
16 for conservatorship.

17 I. An individual subject to conservatorship who  
18 seeks to terminate or modify the terms of the conservatorship  
19 has the right to choose an attorney to represent the individual  
20 in this matter. If the individual is not represented by an  
21 attorney, the court shall appoint an attorney under the same  
22 conditions as in Section 406 of the Uniform Guardianship,  
23 Conservatorship and Other Protective Arrangements Act. The  
24 court shall award reasonable attorney's fees to the attorney as  
25 provided in Section 119 of that act.

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1 J. On termination of a conservatorship other than  
2 by reason of the death of the individual subject to  
3 conservatorship, property of the conservatorship estate passes  
4 to the individual. The order of termination shall direct the  
5 conservator to file a final report and petition for discharge  
6 on approval by the court of the final report.

7 K. On termination of a conservatorship by reason of  
8 the death of the individual subject to conservatorship, the  
9 conservator promptly shall file a final report and petition for  
10 discharge on approval by the court of the final report. On  
11 approval of the final report, the conservator shall proceed  
12 expeditiously to distribute the conservatorship estate to the  
13 individual's estate or as otherwise ordered by the court. The  
14 conservator may take reasonable measures necessary to preserve  
15 the conservatorship estate until distribution can be made.

16 L. The court shall issue a final order of discharge  
17 on the approval by the court of the final report and  
18 satisfaction by the conservator of any other condition the  
19 court imposed on the conservator's discharge.

20 SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR  
21 WITHOUT APPOINTMENT OF CONSERVATOR.--

22 A. Unless a person required to transfer funds or  
23 other property to a minor knows that a conservator for the  
24 minor has been appointed or a proceeding is pending for  
25 conservatorship, the person may transfer an amount or value not

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1 exceeding fifteen thousand dollars (\$15,000) in a twelve-month  
2 period to:

3 (1) a person that has care or custody of the  
4 minor and with whom the minor resides;

5 (2) a guardian for the minor;

6 (3) a custodian under the Uniform Transfers to  
7 Minors Act; or

8 (4) a financial institution as a deposit in an  
9 interest-bearing account or certificate solely in the name of  
10 the minor and shall give notice to the minor of the deposit.

11 B. A person that transfers funds or other property  
12 under this section is not responsible for its proper  
13 application.

14 C. A person that receives funds or other property  
15 for a minor under Paragraph (1) or (2) of Subsection A of this  
16 section may apply it only to the support, care, education,  
17 health or welfare of the minor and shall not derive a personal  
18 financial benefit from it, except for reimbursement for  
19 necessary expenses. Funds not applied for these purposes shall  
20 be preserved for the future support, care, education, health or  
21 welfare of the minor and the balance, if any, transferred to  
22 the minor when the minor becomes an adult or otherwise is  
23 emancipated.

24 ARTICLE 5

25 OTHER PROTECTIVE ARRANGEMENTS

1           SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE  
2 ARRANGEMENT.--

3           A. Under this article, a court:

4                   (1) on receiving a petition for a guardianship  
5 for an adult may order a protective arrangement instead of  
6 guardianship as a less restrictive alternative to guardianship;  
7 and

8                   (2) on receiving a petition for a  
9 conservatorship for an individual may order a protective  
10 arrangement instead of conservatorship as a less restrictive  
11 alternative to conservatorship.

12           B. A person interested in an adult's welfare,  
13 including the adult or a conservator for the adult, may  
14 petition under this article for a protective arrangement  
15 instead of guardianship.

16           C. The following persons may petition under this  
17 article for a protective arrangement instead of  
18 conservatorship:

19                   (1) the individual for whom the protective  
20 arrangement is sought;

21                   (2) a person interested in the property,  
22 financial affairs or welfare of the individual, including a  
23 person that would be affected adversely by lack of effective  
24 management of property or financial affairs of the individual;  
25 and

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

1 (3) the guardian for the individual.

2 SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE  
3 ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

4 A. After the hearing on a petition under Section  
5 302 of the Uniform Guardianship, Conservatorship and Other  
6 Protective Arrangements Act for a guardianship or under  
7 Subsection B of Section 501 of that act for a protective  
8 arrangement instead of guardianship, the court may issue an  
9 order under Subsection B of this section for a protective  
10 arrangement instead of guardianship if the court finds by clear  
11 and convincing evidence that:

12 (1) the respondent lacks the ability to meet  
13 essential requirements for physical health, safety or self-care  
14 because the respondent is unable to receive and evaluate  
15 information or make or communicate decisions, even with  
16 appropriate supportive services, technological assistance or  
17 supported decision making; and

18 (2) the respondent's identified needs cannot  
19 be met by a less restrictive alternative.

20 B. If the court makes the findings under Subsection  
21 A of this section, the court, instead of appointing a guardian,  
22 may:

23 (1) authorize or direct a transaction  
24 necessary to meet the respondent's need for health, safety or  
25 care, including:

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1 (a) a particular medical treatment or  
2 refusal of a particular medical treatment;

3 (b) a move to a specified place of  
4 dwelling; or

5 (c) visitation or supervised visitation  
6 between the respondent and another person;

7 (2) restrict access to the respondent by a  
8 specified person whose access places the respondent at serious  
9 risk of physical, psychological or financial harm; and

10 (3) order other arrangements on a limited  
11 basis that are appropriate.

12 C. In deciding whether to issue an order under this  
13 section, the court shall consider the factors under Sections  
14 313 and 314 of the Uniform Guardianship, Conservatorship and  
15 Other Protective Arrangements Act that a guardian shall  
16 consider when making a decision on behalf of an adult subject  
17 to guardianship.

18 SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE  
19 ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

20 A. After the hearing on a petition under Section  
21 402 of the Uniform Guardianship, Conservatorship and Other  
22 Protective Arrangements Act for conservatorship for an adult or  
23 under Subsection C of Section 501 of that act for a protective  
24 arrangement instead of conservatorship for an adult, the court  
25 may issue an order under Subsection C of this section for a

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1 protective arrangement instead of conservatorship for the adult  
2 if the court finds by clear and convincing evidence that:

3 (1) the adult is unable to manage property or  
4 financial affairs because:

5 (a) of a limitation in the ability to  
6 receive and evaluate information or make or communicate  
7 decisions, even with appropriate supportive services,  
8 technological assistance or supported decision making; or

9 (b) the adult is missing, detained or  
10 unable to return to the United States;

11 (2) an order pursuant to Subsection C of this  
12 section is necessary to:

13 (a) avoid harm to the adult or  
14 significant dissipation of the property of the adult; or

15 (b) obtain or provide funds or other  
16 property needed for the support, care, education, health or  
17 welfare of the adult or an individual entitled to the adult's  
18 support; and

19 (3) the respondent's identified needs cannot  
20 be met by a less restrictive alternative.

21 B. After the hearing on a petition under Section  
22 402 of the Uniform Guardianship, Conservatorship and Other  
23 Protective Arrangements Act for conservatorship for a minor or  
24 under Subsection C of Section 501 of that act for a protective  
25 arrangement instead of conservatorship for a minor, the court

1 may issue an order under Subsection C of this section for a  
2 protective arrangement instead of conservatorship for the  
3 respondent if the court finds by a preponderance of the  
4 evidence that the arrangement is in the minor's best interest  
5 and:

6 (1) if the minor has a parent, the court gives  
7 weight to any recommendation of the parent whether an  
8 arrangement is in the minor's best interest;

9 (2) either:

10 (a) the minor owns money or property  
11 requiring management or protection that otherwise cannot be  
12 provided;

13 (b) the minor has or may have financial  
14 affairs that may be put at unreasonable risk or hindered  
15 because of the minor's age; or

16 (c) the arrangement is necessary or  
17 desirable to obtain or provide funds or other property needed  
18 for the support, care, education, health or welfare of the  
19 minor; and

20 (3) the order under Subsection C of this  
21 section is necessary or desirable to obtain or provide money  
22 needed for the support, care, education, health or welfare of  
23 the minor.

24 C. If the court makes the findings under Subsection  
25 A or B of this section, the court, instead of appointing a

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1 conservator, may:

2 (1) authorize or direct a transaction  
3 necessary to protect the financial interest or property of the  
4 respondent, including:

5 (a) an action to establish eligibility  
6 for benefits;

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

9 (c) sale, mortgage, lease or other  
10 transfer of property;

11 (d) purchase of an annuity;

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

15 (f) addition to or establishment of a  
16 trust;

17 (g) ratification or invalidation of a  
18 contract, trust, will or other transaction, including a  
19 transaction related to the property or business affairs of the  
20 respondent; or

21 (h) settlement of a claim; or

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

25 D. After the hearing on a petition under Paragraph

1 (2) of Subsection A of Section 501 of the Uniform Guardianship,  
 2 Conservatorship and Other Protective Arrangements Act or  
 3 Subsection C of that section, whether or not the court makes  
 4 the findings under Subsection A or B of this section, the court  
 5 may issue an order to restrict access to the respondent or the  
 6 respondent's property by a specified person that the court  
 7 finds by clear and convincing evidence:

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

12 (2) poses a serious risk of substantial  
 13 financial harm to the respondent or the respondent's property.

14 E. Before issuing an order under Subsection C or D  
 15 of this section, the court shall consider the factors under  
 16 Section 418 of the Uniform Guardianship, Conservatorship and  
 17 Other Protective Arrangements Act that a conservator shall  
 18 consider when making a decision on behalf of an individual  
 19 subject to conservatorship.

20 F. Before issuing an order under Subsection C or D  
 21 of this section for a respondent who is a minor, the court also  
 22 shall consider the best interest of the minor, the preference  
 23 of the parents of the minor and the preference of the minor, if  
 24 the minor is twelve years of age or older.

25 SECTION 504. [NEW MATERIAL] PETITION FOR PROTECTIVE

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1 ARRANGEMENT.--A petition for a protective arrangement instead  
2 of guardianship or conservatorship shall state the petitioner's  
3 name, principal residence, current street address, if  
4 different, relationship to the respondent, interest in the  
5 protective arrangement, the name and address of any attorney  
6 representing the petitioner and, to the extent known, the  
7 following:

8 A. the respondent's name, age, principal residence,  
9 current street address, if different, and, if different,  
10 address of the dwelling in which it is proposed the respondent  
11 will reside if the petition is granted;

12 B. the name and address of the respondent's:

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

17 (2) adult children or, if none, each parent  
18 and adult sibling of the respondent, or, if none, at least one  
19 adult nearest in kinship to the respondent who can be found  
20 with reasonable diligence; and

21 (3) adult stepchildren whom the respondent  
22 actively parented during the stepchildren's minor years and  
23 with whom the respondent had an ongoing relationship in the  
24 two-year period immediately before the filing of the petition;

25 C. the name and current address of each of the

1 following, if applicable:

2 (1) a person responsible for the care or  
3 custody of the respondent;

4 (2) any attorney currently representing the  
5 respondent;

6 (3) the representative payee appointed by the  
7 federal social security administration for the respondent;

8 (4) a guardian or conservator acting for the  
9 respondent in New Mexico or another jurisdiction;

10 (5) a trustee or custodian of a trust or  
11 custodianship of which the respondent is a beneficiary;

12 (6) the fiduciary appointed for the respondent  
13 by the federal department of veterans affairs;

14 (7) an agent designated under a power of  
15 attorney for health care in which the respondent is identified  
16 as the principal;

17 (8) an agent designated under a power of  
18 attorney for finances in which the respondent is identified as  
19 the principal;

20 (9) a person nominated as guardian or  
21 conservator by the respondent if the respondent is twelve years  
22 of age or older;

23 (10) a person nominated as guardian by the  
24 respondent's parent or spouse in a will or other signed record;

25 (11) a person known to have routinely assisted

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1 the respondent with decision making in the six-month period  
2 immediately before the filing of the petition; and

3 (12) if the respondent is a minor:

4 (a) an adult not otherwise listed with  
5 whom the respondent resides; and

6 (b) each person not otherwise listed  
7 that had primary care or custody of the respondent for at least  
8 sixty days during the two years immediately before the filing  
9 of the petition or for at least seven hundred thirty days  
10 during the five years immediately before the filing of the  
11 petition;

12 D. the nature of the protective arrangement sought;

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

15 (1) the nature and extent of the respondent's  
16 alleged need;

17 (2) any less restrictive alternative for  
18 meeting the respondent's alleged need that has been considered  
19 or implemented;

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

23 (4) the reason other less restrictive  
24 alternatives are insufficient to meet the respondent's alleged  
25 need;

1 F. the name and current address, if known, of any  
2 person with whom the petitioner seeks to limit the respondent's  
3 contact;

4 G. whether the respondent needs an interpreter,  
5 translator or other form of support to communicate effectively  
6 with the court or understand court proceedings;

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

13 I. if a protective arrangement instead of  
14 conservatorship is sought, a general statement of the  
15 respondent's property with an estimate of its value, including  
16 any insurance or pension and the source and amount of other  
17 anticipated income or receipts.

18 SECTION 505. [NEW MATERIAL] NOTICE AND HEARING FOR  
19 PROTECTIVE ARRANGEMENT.--

20 A. On filing of a petition under Section 501 of the  
21 Uniform Guardianship, Conservatorship and Other Protective  
22 Arrangements Act, the court shall set a date, time and place  
23 for a hearing on the petition.

24 B. A copy of a petition under Section 501 of the  
25 Uniform Guardianship, Conservatorship and Other Protective

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1 Arrangements Act and notice of a hearing on the petition shall  
2 be served personally on the respondent. The notice shall  
3 inform the respondent of the respondent's rights at the  
4 hearing, including the right to an attorney and to attend the  
5 hearing. The notice shall include a description of the nature,  
6 purpose and consequences of granting the petition. The court  
7 shall not grant the petition if notice substantially complying  
8 with this subsection is not served on the respondent.

9 C. In a proceeding on a petition under Section 501  
10 of the Uniform Guardianship, Conservatorship and Other  
11 Protective Arrangements Act, the notice required under  
12 Subsection B of this section shall be given to the persons  
13 required to be listed in the petition under Subsections A  
14 through C of Section 504 of that act and any other person  
15 interested in the respondent's welfare the court determines.  
16 Failure to give notice under this subsection does not preclude  
17 the court from granting the petition.

18 D. After the court has ordered a protective  
19 arrangement under this article, notice of a hearing on a  
20 petition filed under the Uniform Guardianship, Conservatorship  
21 and Other Protective Arrangements Act, together with a copy of  
22 the petition, shall be given to the respondent and any other  
23 person the court determines.

24 SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
25 VISITOR.--

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1           A. On filing of a petition under Section 501 of the  
2 Uniform Guardianship, Conservatorship and Other Protective  
3 Arrangements Act for a protective arrangement instead of  
4 guardianship, the court shall appoint a visitor. The visitor  
5 shall be an individual with training or experience in the type  
6 of abilities, limitations and needs alleged in the petition.

7           B. On filing of a petition under Section 501 of the  
8 Uniform Guardianship, Conservatorship and Other Protective  
9 Arrangements Act for a protective arrangement instead of  
10 conservatorship for a minor, the court may appoint a visitor to  
11 investigate a matter related to the petition or inform the  
12 minor or a parent of the minor about the petition or a related  
13 matter.

14           C. On filing of a petition under Section 501 of the  
15 Uniform Guardianship, Conservatorship and Other Protective  
16 Arrangements Act for a protective arrangement instead of  
17 conservatorship for an adult, the court shall appoint a visitor  
18 unless the respondent is represented by an attorney appointed  
19 by the court. The visitor shall be an individual with training  
20 or experience in the types of abilities, limitations and needs  
21 alleged in the petition.

22           D. A visitor appointed under Subsection A or C of  
23 this section shall interview the respondent in person and, in a  
24 manner the respondent is best able to understand:

25           (1) explain to the respondent the substance of

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1 the petition, the nature, purpose and effect of the proceeding  
2 and the respondent's rights at the hearing on the petition;

3 (2) determine the respondent's views with  
4 respect to the order sought;

5 (3) inform the respondent of the respondent's  
6 right to employ and consult with an attorney at the  
7 respondent's expense and the right to request a court-appointed  
8 attorney;

9 (4) inform the respondent that all costs and  
10 expenses of the proceeding, including respondent's attorney's  
11 fees, may be paid from the respondent's assets;

12 (5) if the petitioner seeks an order related  
13 to the dwelling of the respondent, visit the respondent's  
14 present dwelling and any dwelling in which it is reasonably  
15 believed the respondent will live if the order is granted;

16 (6) if a protective arrangement instead of  
17 guardianship is sought, obtain information from any physician  
18 or other person known to have treated, advised or assessed the  
19 respondent's relevant physical or mental condition;

20 (7) if a protective arrangement instead of  
21 conservatorship is sought, review financial records of the  
22 respondent, if relevant to the visitor's recommendation under  
23 Paragraph (2) of Subsection E of this section; and

24 (8) investigate the allegations in the  
25 petition and any other matter relating to the petition the

1 court directs.

2 E. A visitor under this section promptly shall file  
3 a report in a record with the court that includes:

4 (1) to the extent relevant to the order  
5 sought, a summary of self-care, independent-living tasks and  
6 financial-management tasks that the respondent:

7 (a) can manage without assistance or  
8 with existing supports;

9 (b) could manage with the assistance of  
10 appropriate supportive services, technological assistance or  
11 supported decision making; and

12 (c) cannot manage;

13 (2) a recommendation regarding the  
14 appropriateness of the protective arrangement sought and  
15 whether a less restrictive alternative for meeting the  
16 respondent's needs is available;

17 (3) if the petition seeks to change the  
18 physical location of the dwelling of the respondent, a  
19 statement whether the proposed dwelling meets the respondent's  
20 needs and whether the respondent has expressed a preference as  
21 to the respondent's dwelling;

22 (4) a recommendation whether a professional  
23 evaluation under Section 508 of the Uniform Guardianship,  
24 Conservatorship and Other Protective Arrangements Act is  
25 necessary;

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1 (5) a statement whether the respondent is able  
2 to attend a hearing at the location court proceedings typically  
3 are held;

4 (6) a statement whether the respondent is able  
5 to participate in a hearing and that identifies any technology  
6 or other form of support that would enhance the respondent's  
7 ability to participate; and

8 (7) any other matter the court directs.

9 SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF  
10 ATTORNEY.--

11 A. Unless the respondent in a proceeding under this  
12 article is represented by an attorney, the court shall appoint  
13 an attorney to represent the respondent, regardless of the  
14 respondent's ability to pay.

15 B. An attorney representing the respondent in a  
16 proceeding under this article shall:

17 (1) make reasonable efforts to ascertain the  
18 respondent's wishes;

19 (2) advocate for the respondent's wishes to  
20 the extent reasonably ascertainable; and

21 (3) if the respondent's wishes are not  
22 reasonably ascertainable, advocate for the result that is the  
23 least restrictive alternative in type, duration and scope,  
24 consistent with the respondent's interests.

25 SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

1           A. At or before a hearing on a petition under this  
2 article for a protective arrangement, the court shall order a  
3 professional evaluation of the respondent:

4                   (1) if the respondent requests the evaluation;  
5 or

6                   (2) or in other cases, unless the court finds  
7 that it has sufficient information to determine the  
8 respondent's needs and abilities without the evaluation.

9           B. If the court orders an evaluation under  
10 Subsection A of this section, the respondent shall be examined  
11 by a licensed physician, psychologist, social worker or other  
12 individual appointed by the court who is qualified to evaluate  
13 the respondent's alleged cognitive and functional abilities and  
14 limitations and will not be advantaged or disadvantaged by a  
15 decision to grant the petition or otherwise have a conflict of  
16 interest. The individual conducting the evaluation promptly  
17 shall file a report in a record with the court. Unless  
18 otherwise directed by the court, the report shall contain:

19                   (1) a description of the nature, type and  
20 extent of the respondent's cognitive and functional abilities  
21 and limitations;

22                   (2) an evaluation of the respondent's mental  
23 and physical condition and, if appropriate, educational  
24 potential, adaptive behavior and social skills;

25                   (3) a prognosis for improvement, including

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1 with regard to the ability to manage the respondent's property  
2 and financial affairs if a limitation in that ability is  
3 alleged and recommendation for the appropriate treatment,  
4 support or habilitation plan; and

5 (4) the date of the examination on which the  
6 report is based.

7 C. The respondent may decline to participate in an  
8 evaluation ordered under Subsection A of this section.

9 SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT  
10 HEARING.--

11 A. Except as otherwise provided in Subsection B of  
12 this section, a hearing under this article shall not proceed  
13 unless the respondent attends the hearing. If it is not  
14 reasonably feasible for the respondent to attend a hearing at  
15 the location court proceedings typically are held, the court  
16 shall make reasonable efforts to hold the hearing at an  
17 alternative location more convenient to the respondent or allow  
18 the respondent to attend the hearing using real-time audio-  
19 visual technology, if available.

20 B. A hearing under this article may proceed without  
21 the respondent in attendance if the court finds by clear and  
22 convincing evidence that:

23 (1) the respondent consistently and repeatedly  
24 has refused to attend the hearing after having been fully  
25 informed of the right to attend and the potential consequences

1 of failing to do so;

2 (2) there is no practicable way for the  
3 respondent to attend and participate in the hearing even with  
4 appropriate supportive services and technological assistance;  
5 or

6 (3) the respondent is a minor who has received  
7 proper notice and attendance would be harmful to the minor.

8 C. The respondent may be assisted in a hearing  
9 under this article by a person or persons of the respondent's  
10 choosing, assistive technology or an interpreter or translator  
11 or a combination of these supports. If assistance would  
12 facilitate the respondent's participation in the hearing, but  
13 is not otherwise available to the respondent, the court shall  
14 make reasonable efforts to provide it.

15 D. The respondent has a right to choose an attorney  
16 to represent the respondent at a hearing under this article.

17 E. At a hearing under this article, the respondent  
18 may:

19 (1) present evidence and subpoena witnesses  
20 and documents;

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

23 (3) otherwise participate in the hearing.

24 F. A hearing under this article shall be closed on  
25 request of the respondent and a showing of good cause.

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1           G. Any person may request to participate in a  
2 hearing under this article. The court may grant the request,  
3 with or without a hearing, on determining that the best  
4 interest of the respondent will be served. The court may  
5 impose appropriate conditions on the person's participation.

6           SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court  
7 shall give notice of an order under this article to the  
8 individual who is subject to the protective arrangement instead  
9 of guardianship or conservatorship, a person whose access to  
10 the individual is restricted by the order and any other person  
11 the court determines.

12           SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

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

17                   (1) the respondent, the individual subject to  
18 the protective arrangement or the parent of a minor subject to  
19 the protective arrangement requests the record be sealed; and

20                   (2) either:

21                           (a) the proceeding is dismissed;  
22                           (b) the protective arrangement is no  
23 longer in effect; or

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

1           B. A respondent, an individual subject to a  
2 protective arrangement instead of guardianship or  
3 conservatorship, an attorney designated by the respondent or  
4 individual, a parent of a minor subject to a protective  
5 arrangement and any other person the court determines are  
6 entitled to access court records of the proceeding and  
7 resulting protective arrangement. A person not otherwise  
8 entitled to access to court records under this subsection for  
9 good cause may petition the court for access. The court shall  
10 grant access if access is in the best interest of the  
11 respondent or individual subject to the protective arrangement  
12 or furthers the public interest and does not endanger the  
13 welfare or financial interests of the respondent or individual.

14           C. A report of a visitor or professional evaluation  
15 generated in the course of a proceeding under this article  
16 shall be sealed on filing, but is available to:

- 17                   (1) the court;
- 18                   (2) the individual who is the subject of the  
19 report or evaluation, without limitation as to use;
- 20                   (3) the petitioner, visitor and petitioner's  
21 and respondent's attorneys, for purposes of the proceeding;
- 22                   (4) unless the court orders otherwise, an  
23 agent appointed under a power of attorney for finances in which  
24 the respondent is the principal;
- 25                   (5) if the order is for a protective

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1 arrangement instead of guardianship and unless the court orders  
2 otherwise, an agent appointed under a power of attorney for  
3 health care in which the respondent is identified as the  
4 principal; and

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

7 SECTION 512. [NEW MATERIAL] APPOINTMENT OF SPECIAL  
8 MASTER.--The court may appoint a special master to assist in  
9 implementing a protective arrangement under this article. The  
10 special master has the authority conferred by the order of  
11 appointment and serves until discharged by court order.

12 ARTICLE 6

13 MISCELLANEOUS PROVISIONS

14 SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND  
15 CONSTRUCTION.--In applying and construing the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act, consideration shall be given to the need to promote  
18 uniformity of the law with respect to its subject matter among  
19 states that enact it.

20 SECTION 602. [NEW MATERIAL] RELATION TO ELECTRONIC  
21 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform  
22 Guardianship, Conservatorship and Other Protective Arrangements  
23 Act modifies, limits or supersedes the federal Electronic  
24 Signatures in Global and National Commerce Act, 15 U.S.C.  
25 Section 7001 et seq., but does not modify, limit or supersede

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1 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
2 authorize electronic delivery of any of the notices described  
3 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

4 **SECTION 603. [NEW MATERIAL] TRANSITION PROVISIONS.--**

5 A. A guardian for an adult appointed before July 1,  
6 2020 shall file a guardian's plan on or before December 31,  
7 2025 pursuant to Section 316 of the Uniform Guardianship,  
8 Conservatorship and Other Protective Arrangements Act. A  
9 conservator appointed before July 1, 2020 shall file a  
10 conservator's plan on or before December 31, 2025 pursuant to  
11 Section 419 of the Uniform Guardianship, Conservatorship and  
12 Other Protective Arrangements Act. The conservator's plan  
13 shall be accompanied by a petition pursuant to Section 416 of  
14 that act to approve a bond and surety or an alternative asset-  
15 protection arrangement or to waive the requirement of the bond  
16 or alternative arrangement. A court may provide from time to  
17 time for the orderly filing according to a schedule or plan of  
18 the plans, reports and inventories.

19 B. These transition provisions for guardians of  
20 adults and for conservators do not imply any decision whether a  
21 report should be required by a court from a guardian of a  
22 minor. That matter is left to the discretion of the court.

23 C. If a guardian was granted authority before July  
24 1, 2020 to make financial decisions on behalf of an individual  
25 in an order of appointment or letters of guardianship issued

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1 pursuant to Paragraph (4) of Subsection B of Section 45-5-312  
2 NMSA 1978 as that section existed on or before June 30, 2020,  
3 which authority is greater than that authorized for guardians  
4 under the Uniform Guardianship, Conservatorship and Other  
5 Protective Arrangements Act, the guardian shall petition the  
6 court for the appointment of a conservator for the individual  
7 on or before December 31, 2025. The Uniform Guardianship,  
8 Conservatorship and Other Protective Arrangements Act does not  
9 prohibit the same person from serving as both the guardian and  
10 the conservator for the same individual, subject to the  
11 approval of the court. A court may provide from time to time  
12 for the orderly filing according to a schedule or plan of the  
13 petitions. On or after July 1, 2020, a court shall not grant a  
14 guardian authority to make such financial decisions. That  
15 authority is limited to conservators pursuant to the Uniform  
16 Guardianship, Conservatorship and Other Protective Arrangements  
17 Act.

18 SECTION 604. [NEW MATERIAL] REPORTING REQUIREMENTS.--On  
19 or before November 1, 2018 and November 1, 2019, the  
20 administrative office of the courts shall report to the  
21 legislative finance committee on the following topics:

22 A. the progress of the judiciary in formulating  
23 rules and forms necessary to implement the Uniform  
24 Guardianship, Conservatorship and Other Protective Arrangements  
25 Act on July 1, 2020;

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1           B. the progress of the judiciary in acquiring or  
2 developing the computer software necessary to implement the  
3 Uniform Guardianship, Conservatorship and Other Protective  
4 Arrangements Act;

5           C. the feasibility of an earlier implementation  
6 date for the Uniform Guardianship, Conservatorship and Other  
7 Protective Arrangements Act; and

8           D. an estimate of the financial cost to the  
9 judiciary to fully implement the Uniform Guardianship,  
10 Conservatorship and Other Protective Arrangements Act on July  
11 1, 2020.

12           **SECTION 605. DELAYED REPEAL.--**

13           A. Sections 45-5-101 through 45-5-105, 45-5-201  
14 through 45-5-205, 45-5-206 through 45-5-301.1, 45-5-302 through  
15 45-5-411, 45-5-413 through 45-5-418, 45-5-420 through 45-5-431  
16 and 45-5-434 through 45-5-436 NMSA 1978 (being Laws 1975,  
17 Chapter 257, Sections 5-101 through 5-104, Laws 1993, Chapter  
18 301, Section 23, Laws 1975, Chapter 257, Section 5-201, Laws  
19 1995, Chapter 210, Section 51, Laws 1975, Chapter 257, Sections  
20 5-203 through 5-208, Laws 1995, Chapter 210, Section 54, Laws  
21 1975, Chapter 257, Sections 5-210 through 5-212 and 5-301, Laws  
22 1989, Chapter 252, Section 4, Laws 1975, Chapter 257, Section  
23 5-302, Laws 1989, Chapter 252, Sections 5 through 7, Laws 1975,  
24 Chapter 257, Sections 5-305 through 5-307, Laws 1989, Chapter  
25 252, Section 9, Laws 1975, Chapter 257, Sections 5-309 through  
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1 5-313, Laws 1989, Chapter 252, Sections 14 and 15, Laws 1975,  
2 Chapter 257, Sections 5-401 and 5-402, Laws 1993, Chapter 301,  
3 Section 25, Laws 1975, Chapter 257, Sections 5-403 and 5-404,  
4 Laws 1989, Chapter 252, Section 18, Laws 1975, Chapter 257,  
5 Section 5-405, Laws 1993, Chapter 301, Section 26, Laws 1975,  
6 Chapter 257, Sections 5-406 and 5-407, Laws 1989, Chapter 252,  
7 Sections 21 and 22, Laws 1975, Chapter 257, Sections 5-410,  
8 5-411, 5-413 through 5-418, 5-420 and 5-421, Laws 1989, Chapter  
9 252, Section 26, Laws 1975, Chapter 257, Sections 5-422 through  
10 5-425, Laws 1989, Chapter 252, Section 27, Laws 1975, Chapter  
11 257, Sections 5-427 through 5-431 and Laws 2011, Chapter 124,  
12 Sections 59 through 61, as amended) are repealed effective July  
13 1, 2020.

14 B. Sections 45-5-107 through 45-5-109, 45-5-409.1  
15 and 45-5-701 through 45-5-704 NMSA 1978 (being Sections 2  
16 through 4, 11 and 13 through 16 of this act) are repealed  
17 effective July 1, 2020.

18 SECTION 606. APPLICABILITY.--

19 A. The provisions of Sections 1 through 16 of this  
20 act apply to:

21 (1) a proceeding for appointment of a guardian  
22 or conservator or for a protective arrangement instead of  
23 guardianship or conservatorship commenced on or after July 1,  
24 2018; and

25 (2) a guardianship, conservatorship or

1 protective arrangement instead of guardianship or  
2 conservatorship in existence on June 30, 2018 unless the court  
3 finds application of a particular provision of this act would  
4 substantially interfere with the effective conduct of the  
5 proceeding or prejudice the rights of a party, in which case  
6 the particular provision of this act does not apply and the  
7 superseded law applies.

8 B. The Uniform Guardianship, Conservatorship and  
9 Other Protective Arrangements Act applies to:

10 (1) a proceeding for appointment of a guardian  
11 or conservator or for a protective arrangement instead of  
12 guardianship or conservatorship commenced on or after July 1,  
13 2020; and

14 (2) except as provided in Section 603 of this  
15 Act, a guardianship, conservatorship or protective arrangement  
16 instead of guardianship or conservatorship in existence on June  
17 30, 2020 unless the court finds application of a particular  
18 provision of that act would substantially interfere with the  
19 effective conduct of the proceeding or prejudice the rights of  
20 a party, in which case the particular provision of that act  
21 does not apply and the superseded law applies.

22 **SECTION 607. EFFECTIVE DATE.--**

23 A. The effective date of the provisions of Sections  
24 1 through 16 and 604 of this act is July 1, 2018.

25 B. The effective date of the provisions of Sections

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1 101 through 603 and 605 of this act is July 1, 2020.

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