

AN ACT

RELATING TO GUARDIANSHIP; CREATING THE OFFICE OF GUARDIANSHIP IN THE
DEVELOPMENTAL DISABILITIES PLANNING COUNCIL; PROVIDING POWERS AND
DUTIES; TRANSFERRING FUNCTIONS, PROPERTY, CONTRACTUAL OBLIGATIONS
AND STATUTORY REFERENCES FROM THE OFFICE OF THE ATTORNEY
GENERAL.

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

Section 1. SHORT TITLE.--This act may be cited as the "Office of
Guardianship Act".

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Section 2. OFFICE OF GUARDIANSHIP--CREATED--STAFF.--

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

B. The director of the developmental disabilities planning council shall
employ a head of the office who shall be hired on the basis of ability, experience and
knowledge of guardianship issues under the Uniform Probate Code. The position shall
be classified pursuant to the Personnel Act.

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

Section 3. OFFICE--POWERS AND DUTIES.--

A. The office of guardianship may:

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

(2) enter into agreements with other state or federal agencies

to provide guardianship services and to provide or receive payment for such services.

B. The office of guardianship shall:

(1) contract for the provision of probate guardianship services to income-eligible incapacitated persons, including temporary guardianship as provided in Section 45-5-310 NMSA 1978;

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

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

(4) establish procedures for the investigation and resolution of complaints against contractors;

(5) contract for attorneys to petition the district court for guardianship of persons believed to be incapacitated or to seek amendment or termination of existing guardianship orders if the needs or situation of wards have changed; provided that the selection of persons to be served under such contracts shall be made by the office based on selection criteria established by rule; and

(6) serve as an interested person as defined in Subsection I of Section 45-5-101 NMSA 1978.

Section 4. CONTRACT MONITORING AND ENFORCEMENT.--

A. The office of guardianship shall monitor and enforce all guardianship contracts. In carrying out this duty, the office may:

(1) have access to case records, copies of court filings and reports, financial records and other records maintained by contractors related to

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contract services provided unless specifically sequestered by the court;

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

(3) arrange visits with wards who are served by contract guardians; and

(4) pursue legal and other remedies against contractors for noncompliance with contract provisions.

B. The office shall protect and maintain the confidentiality of all client-specific information and records obtained to the same extent as required for the contractor and to any extent otherwise required by state or federal law.

Section 5. CONTRACTS.--A contract for guardianship services shall include:

A. a requirement that contractors and their staff meet nationally recognized standards for guardianship services;

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

C. the maximum caseload for guardians;

D. the fee schedule for services provided;

E. assurance that the civil rights of wards served by the contractor shall be met, including the right to be served in the most integrated setting appropriate to the needs of the ward;

F. provisions for access by the office of guardianship to records, wards and contractor staff as needed to monitor and enforce contract compliance and for quality assurance purposes; and

G. minimum financial accounting and reporting requirements.

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Section 6. RESOLUTION OF COMPLAINTS.--

A. The office of guardianship shall establish by rule for the filing, investigation and resolution of complaints about guardianship services provided by contractors.

B. The office shall acknowledge receipt of the complaint, notify all parties involved and initiate an investigation within fifteen working days of the filing of the complaint.

C. A determination shall be made and a decision rendered on the complaint within sixty working days unless mutually agreed upon by all parties or unless a shorter time is required to protect the ward.

D. The office may refer complaints to other agencies for investigation or prosecution, as appropriate.

E. Complaints against the office or a staff member of the office shall be investigated by the human services department.

Section 7. TEMPORARY PROVISION--TRANSFERS.--

A. On the effective date of this act, all functions, appropriations, money, records, files, furniture, equipment, supplies and other property of the office of guardianship services of the office of the attorney general shall be transferred to the office of guardianship of the developmental disabilities planning council.

B. On the effective date of this act, all contractual obligations of the office of guardianship services of the office of the attorney general shall be binding on the office of guardianship of the developmental disabilities planning council.

C. On the effective date of this act, all references in the law to the office of guardianship services of the office of the attorney general shall be deemed to

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be references to the office of guardianship of the developmental disabilities planning council.

Section 8. REPEAL.--Section 8-5-16 NMSA 1978 (being Laws 1995, Chapter 140, Section 1) is repealed.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, ~~2003~~ HB 416