

1 A MEMORIAL

2 REQUESTING THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL TO
3 CONVENE A WORKING GROUP TO EVALUATE CHANGING THE UNIFORM
4 PROBATE CODE TO PROVIDE FOR GREATER TRANSPARENCY AND
5 ACCOUNTABILITY ON THE PART OF GUARDIANS AND CONSERVATORS IN
6 THE MANAGEMENT OF A PROTECTED PERSON'S ESTATE AND TO REQUIRE
7 GREATER NOTICE TO AND CONSULTATION WITH A PROTECTED PERSON'S
8 FAMILY UPON THE DEATH OF THE PROTECTED PERSON UNDER THE
9 SUPERVISION OF A GUARDIAN OR CONSERVATOR.

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11 WHEREAS, conservatorship and guardianship are becoming
12 more common due to the aging of the baby boomer population;
13 and

14 WHEREAS, the appointment of a guardian or conservator
15 can be a very complex and emotionally charged event for
16 families and for the individual who is the subject of the
17 proceeding; and

18 WHEREAS, in New Mexico, there is limited regulation of
19 what is known as "corporate guardianship", which involves the
20 appointment by a court of a for-profit or nonprofit entity to
21 serve, with compensation, as the legal guardian of a
22 protected person in New Mexico; and

23 WHEREAS, the family of a protected person for whom a
24 guardian or conservator has been appointed may not be in
25 regular contact with the protected person and often

1 experiences difficulty in acquiring information regarding
2 activities of the guardian or conservator that might not be
3 in the best interest of the protected person or the protected
4 person's estate; and

5 WHEREAS, there is a need for transparency and
6 accountability in the conduct of a guardian or conservator in
7 the management of the affairs of a protected person,
8 particularly when the protected person's family poses no
9 threat to the well-being of the protected person; and

10 WHEREAS, a guardian or conservator may fail to provide
11 notice to, and consult with, the family upon the death of a
12 protected person on matters such as the performance of an
13 autopsy, burial and the windup of the protected person's
14 estate; and

15 WHEREAS, challenging a guardianship or conservatorship
16 can be an extremely costly and intimidating process for a
17 protected person or for the family of a protected person;

18 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE
19 STATE OF NEW MEXICO that the developmental disabilities
20 planning council be requested to convene, no later than
21 August 1, 2013, a working group to develop recommended
22 changes to the Uniform Probate Code that would provide:

23 A. greater transparency in a guardian's or
24 conservator's management of a protected person's affairs to
25 provide families with accurate and timely information on

1 which to evaluate the guardian's or conservator's
2 performance;

3 B. greater accountability on the part of a
4 guardian or conservator for the management of a protected
5 person's affairs; and

6 C. requirements for greater notice to, and
7 consultation with, the family of a protected person upon that
8 person's death, particularly in matters involving autopsy,
9 funeral arrangements and the extent and disposition of the
10 protected person's estate; and

11 BE IT FURTHER RESOLVED that the working group include
12 representatives from the administrative office of the courts,
13 the office of the attorney general, the office of
14 guardianship of the developmental disabilities planning
15 council, the aging and long-term services department, the
16 national alliance on mental illness New Mexico, disability
17 rights New Mexico, the arc of New Mexico, ayudando guardians,
18 an attorney licensed to practice law in New Mexico with
19 expertise in probate matters and advocates of families of
20 protected persons; and

21 BE IT FURTHER RESOLVED that the working group report its
22 findings and recommendations to the legislative health and
23 human services committee, the legislative finance committee
24 and the appropriate interim legislative committee that
25 studies courts and corrections by October 31, 2013; and

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BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the administrative office of the courts, the executive director of the developmental disabilities planning council, the attorney general, the secretary of aging and long-term services and the president of the national alliance on mental illness New Mexico.
