

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM PROBATE CODE; PROVIDING FOR CERTIFICATION OF GUARDIANS AND CONSERVATORS; REVISING PROVISIONS FOR HEARING PROCEDURES, PENALTIES AND LIABILITY WAIVERS; PROVIDING FOR COURT INVESTIGATORS AND GRIEVANCES.

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

SECTION 1. Section 45-5-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-101, as amended) is amended to read:

"45-5-101. DEFINITIONS AND USE OF TERMS.--Unless otherwise apparent from the context or unless otherwise specifically defined in other sections that are applicable to specific articles, parts or sections of the Uniform Probate Code, as used in Chapter 45, Article 5 NMSA 1978:

A. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of a protected person;

B. "court" means the district court or the children's or family division of the district court where such jurisdiction is conferred by the Children's Code;

C. "functional impairment" means an impairment that is measured by a person's inability to manage the person's personal care or the person's inability to manage the person's estate or financial affairs or both;

1           D. "guardian" has the same meaning as set forth in  
2 Section 45-1-201 NMSA 1978;

3           E. "guardian ad litem" has the same meaning as set  
4 forth in Section 45-1-201 NMSA 1978;

5           F. "incapacitated person" means any person who  
6 demonstrates over time either partial or complete functional  
7 impairment by reason of mental illness, mental deficiency,  
8 physical illness or disability, chronic use of drugs, chronic  
9 intoxication or other cause, except minority, to the extent  
10 that the person is unable to manage the person's personal  
11 affairs or the person is unable to manage the person's estate  
12 or financial affairs or both;

13           G. "inability to manage the person's personal  
14 care" means the inability, as evidenced by recent behavior,  
15 to meet one's needs for medical care, nutrition, clothing,  
16 shelter, hygiene or safety so that physical injury, illness  
17 or disease has occurred or is likely to occur in the near  
18 future;

19           H. "inability to manage the person's estate or  
20 financial affairs or both" means gross mismanagement, as  
21 evidenced by recent behavior, of one's income and resources  
22 or medical inability to manage one's income and resources  
23 that has led or is likely in the near future to lead to  
24 financial vulnerability;

25           I. "interested person" means any person who has an SB 395  
Page 2

1 interest in the welfare of the person to be protected  
2 pursuant to Chapter 45, Article 5 NMSA 1978;

3 J. "least restrictive form of intervention" means  
4 that the guardianship or conservatorship imposed on the  
5 incapacitated person or minor protected person represents  
6 only those limitations necessary to provide the needed care  
7 and rehabilitative services and that the incapacitated person  
8 or minor protected person shall enjoy the greatest amount of  
9 personal freedom and civil liberties;

10 K. "letters" has the same meaning as set forth in  
11 Section 45-1-201 NMSA 1978;

12 L. "limited conservator" means any person who is  
13 qualified to manage the estate and financial affairs of an  
14 incapacitated person pursuant to a court appointment in a  
15 limited conservatorship;

16 M. "limited conservatorship" means that an  
17 incapacitated person is subject to a conservator's exercise  
18 of some but not all of the powers enumerated in Sections  
19 45-5-424 and 45-5-425 NMSA 1978;

20 N. "limited guardian" means any person who is  
21 qualified to manage the care, custody and control of an  
22 incapacitated person pursuant to a court appointment of a  
23 limited guardianship;

24 O. "limited guardianship" means that an  
25 incapacitated person is subject to a guardian's exercise of

1 some but not all of the powers enumerated in Section 45-5-312  
2 NMSA 1978;

3 P. "minor" has the same meaning as set forth in  
4 Section 45-1-201 NMSA 1978;

5 Q. "minor protected person" means a minor for whom  
6 a guardian or conservator has been appointed solely because  
7 of minority;

8 R. "parent" means a parent whose parental rights  
9 have not been terminated or relinquished;

10 S. "professional conservator" means an individual  
11 or entity that serves as a conservator for more than two  
12 individuals who are not related to the conservator by  
13 marriage, adoption or third degree of blood or affinity;

14 T. "professional guardian" means an individual or  
15 entity that serves as a guardian for more than two  
16 individuals who are not related to the guardian by marriage,  
17 adoption or third degree of blood or affinity;

18 U. "protective proceeding" means a conservatorship  
19 proceeding under Section 45-5-401 NMSA 1978;

20 V. "protected person" means a minor or other  
21 person for whom a guardian or conservator has been appointed  
22 or other protective order has been made;

23 W. "qualified health care professional" means a  
24 physician, psychologist, physician assistant, nurse  
25 practitioner or other health care practitioner whose training

1 and expertise aid in the assessment of functional impairment;  
2 and

3 X. "visitor" means a person who is an appointee of  
4 the court who has no personal interest in the proceeding and  
5 who has been trained or has the expertise to appropriately  
6 evaluate the needs of the person who is allegedly  
7 incapacitated. A "visitor" may include, but is not limited  
8 to, a psychologist, a social worker, a developmental  
9 incapacity professional, a physical and occupational  
10 therapist, an educator and a rehabilitation worker."

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

13 "45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A  
14 GUARDIAN OF AN INCAPACITATED PERSON.--

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

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

24 (1) the alleged incapacitated person's name,  
25 age, principal residence, current street address, if

1 different, and, if different, address of the dwelling in  
2 which it is proposed that the alleged incapacitated person  
3 will reside if the petition is granted;

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

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

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 in the two-  
23 year period immediately preceding the filing of the petition;

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

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

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

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

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

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

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

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

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

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

25 (j) a person nominated as guardian by

1 the alleged incapacitated person's parent or spouse in a will  
2 or other signed record;

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

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

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

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

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

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

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

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

24 (6) if the petitioner seeks a full  
25 guardianship, the reason a limited guardianship or protective



1 arrangement instead of guardianship is not appropriate;

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

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

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

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

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

20 D. After the filing of a petition, the court shall  
21 set a date for hearing on the issues raised by the petition.  
22 Unless an alleged incapacitated person already has an  
23 attorney of the alleged incapacitated person's own choice,  
24 the court shall appoint an attorney to represent the alleged  
25 incapacitated person. The court-appointed attorney in the

1 proceeding shall have the duties of a guardian ad litem, as  
2 set forth in Section 45-5-303.1 NMSA 1978.

3 E. The person alleged to be incapacitated shall be  
4 examined by a qualified health care professional appointed by  
5 the court who shall submit a report in writing to the court.

6 The report shall:

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

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

15 F. The court shall appoint a visitor who shall  
16 interview the person seeking appointment as guardian and the  
17 person alleged to be incapacitated. The visitor shall also  
18 visit the present place of abode of the person alleged to be  
19 incapacitated and the place where it is proposed the alleged  
20 incapacitated person will be detained or reside if the  
21 requested appointment is made. The visitor shall evaluate  
22 the needs of the person alleged to be incapacitated and shall  
23 submit a written report to the court. The report shall  
24 include a recommendation regarding the appropriateness of the  
25 appointment of the proposed guardian. The report to the

1 court shall also include recommendations regarding:

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

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

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

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

16 G. A person alleged to be incapacitated shall be  
17 present at the hearing on the issues raised by the petition  
18 and any response to the petition unless the court determines  
19 by evidence that it is not in the alleged incapacitated  
20 person's best interest to be present because of a threat to  
21 the health or safety of the alleged incapacitated person or  
22 others as determined by the court. At a hearing conducted  
23 pursuant to this section, the person alleged to be  
24 incapacitated may:

25 (1) present evidence and subpoena witnesses

1 and documents;

2 (2) examine witnesses, including a court-  
3 appointed guardian ad litem, qualified health care  
4 professional and visitor; and

5 (3) otherwise participate in the hearing.

6 H. The court upon request or its own motion may  
7 conduct hearings at the location of the alleged incapacitated  
8 person who is unable to be present in court.

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

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

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

22 (2) either:

23 (a) the petition for guardianship is  
24 dismissed; or

25 (b) the guardianship is terminated.

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

15           L. A report pursuant to Subsections E and F of  
16 this section or a written report filed pursuant to Section  
17 45-5-303.1 or 45-5-314 NMSA 1978 is confidential and shall be  
18 sealed on filing, but is available to:

19                   (1) the court;

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

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

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

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

8 M. Notwithstanding the provisions of Subsection J  
9 of this section, a disclosure of information shall not  
10 include diagnostic information, treatment information or  
11 other medical or psychological information.

12 N. The issue of whether a guardian shall be  
13 appointed for the alleged incapacitated person shall be  
14 determined by the court at an open hearing unless, for good  
15 cause, the court determines otherwise.

16 O. Upon request of the petitioner or alleged  
17 incapacitated person, the court shall schedule a jury trial."

18 SECTION 3. Section 45-5-303.1 NMSA 1978 (being Laws  
19 1989, Chapter 252, Section 6, as amended) is amended to read:

20 "45-5-303.1. DUTIES OF GUARDIAN AD LITEM.--

21 A. The guardian ad litem shall:

22 (1) interview in person the alleged  
23 incapacitated person prior to the hearing;

24 (2) present the alleged incapacitated  
25 person's declared position to the court;

1 (3) interview the qualified health care  
2 professional, the visitor and the proposed guardian;

3 (4) review both the medical report submitted  
4 by the qualified health care professional and the report by  
5 the visitor;

6 (5) obtain independent medical or  
7 psychological assessments, or both, if necessary; and

8 (6) file a written report with the court  
9 prior to the hearing on the petition for appointment.

10 B. Unless otherwise ordered by the court, the  
11 duties of the guardian ad litem terminate and the guardian ad  
12 litem is discharged from duties upon entry of the order  
13 appointing the guardian and acceptance of the appointment by  
14 the guardian."

15 SECTION 4. Section 45-5-307 NMSA 1978 (being Laws 1975,  
16 Chapter 257, Section 5-307, as amended) is amended to read:

17 "45-5-307. DEATH, SUBSTITUTION, REVIEW AND TERMINATION  
18 OF GUARDIANSHIP.--

19 A. On the petition of the incapacitated person or  
20 any person interested in the incapacitated person's welfare  
21 and upon notice and hearing, the court may remove a guardian  
22 and appoint a successor if it is in the best interest of the  
23 incapacitated person.

24 B. Upon death, removal or resignation of a  
25 guardian, the court may appoint another guardian or make any

1 other order that may be appropriate. If a successor guardian  
2 is appointed, the successor guardian succeeds to the title  
3 and powers of the successor guardian's predecessor.

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

12 D. Unless waived by the court upon the filing of a  
13 petition to terminate a guardianship for reasons other than  
14 the death of the incapacitated person, the court shall follow  
15 the same procedures to safeguard the rights of the  
16 incapacitated person as those that apply to a petition for  
17 appointment of a guardian as set forth in Section 45-5-303  
18 NMSA 1978.

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

25 F. Following receipt of a request for review, the



1 court shall hold a status hearing, which may be informal, to  
2 determine the appropriate order to be entered. If the court  
3 finds the incapacitated person is capable of more autonomy  
4 than at the time of the original order, the court may enter  
5 an order removing the guardian, terminating the guardianship  
6 or reducing the powers previously granted to the guardian.  
7 The court has the option to follow all or part of the  
8 procedures that apply for the appointment of a guardian as  
9 set forth in Section 45-5-303 NMSA 1978.

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

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

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

25 H. If the court is unable to contact either the

1 guardian or the protected person and neither appears for the  
2 status hearing held pursuant to Paragraph (1) of Subsection G  
3 of this section, the court shall appoint a guardian ad litem  
4 to investigate and report to the court as to the status of  
5 the protected person and the guardian. Any report shall be  
6 made available to the guardian, the protected person and  
7 appropriate interested persons, if known to the court.

8 I. Following the status hearing or the court's  
9 report from the court investigator or guardian ad litem on  
10 the status of the protected person and the guardian as  
11 provided in Subsection H of this section, the court may enter  
12 an appropriate order; provided that, in entering an order  
13 that increases the guardian's authority or reduces the  
14 autonomy of the protected person, the court shall follow the  
15 same procedures to safeguard the rights of the incapacitated  
16 person as those that apply to a petition for appointment of a  
17 guardian, as set forth in Section 45-5-303 NMSA 1978."

18 SECTION 5. Section 45-5-311 NMSA 1978 (being Laws 1975,  
19 Chapter 257, Section 5-311, as amended) is amended to read:

20 "45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES--  
21 QUALIFICATIONS.--

22 A. Any person deemed to be qualified by the court  
23 may be appointed guardian of an incapacitated person, except  
24 that no individual who operates or is an employee of a  
25 boarding home, residential care home, nursing home, group

1 home or other similar facility in which the incapacitated  
2 person resides may serve as guardian for the incapacitated  
3 person, except an employee may serve in such capacity when  
4 related by affinity or consanguinity.

5 B. Persons who are not disqualified have priority  
6 for appointment as guardian in the following order:

7 (1) a guardian or other like fiduciary  
8 appointed by the appropriate court of any other jurisdiction;

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

18 (3) the spouse of the incapacitated person;

19 (4) an adult child of the incapacitated  
20 person;

21 (5) a parent of the incapacitated person,  
22 including a person nominated by will or other writing signed  
23 by a deceased parent;

24 (6) any relative of the incapacitated person  
25 with whom the incapacitated person has resided for more than

1 six months prior to the filing of the petition;

2 (7) a person nominated by the person who is  
3 caring for the incapacitated person or paying benefits to the  
4 incapacitated person; and

5 (8) any other person.

6 C. With respect to persons having equal priority,  
7 the court shall select the person it considers best qualified  
8 to serve as guardian. The court, acting in the best interest  
9 of the incapacitated person and for good cause shown, may  
10 pass over a person having priority and appoint a person  
11 having a lower priority under this section and shall take  
12 into consideration:

13 (1) the preference of the incapacitated  
14 person, giving weight to preferences expressed in writing by  
15 the person while having capacity;

16 (2) the geographic location of the proposed  
17 guardian;

18 (3) the relationship of the proposed  
19 guardian to the incapacitated person;

20 (4) the ability of the proposed guardian to  
21 carry out the powers and duties of the guardianship; and

22 (5) potential financial conflicts of  
23 interest between the incapacitated person and proposed  
24 guardian.

25 D. A professional guardian shall not serve or be

1 appointed as a guardian of the incapacitated person unless  
2 the professional guardian is certified and is in good  
3 standing with a national or state organization recognized by  
4 the supreme court that provides professional certification  
5 for guardians."

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

8 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED  
9 GUARDIAN AND GUARDIAN.--

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

25 B. A guardian is not legally obligated to provide

1 from the guardian's own funds for the protected person and is  
2 not liable to third persons for acts of the protected person  
3 solely by reason of the guardianship. In particular and  
4 without qualifying the foregoing, a guardian or the  
5 guardian's replacement has the following powers and duties,  
6 except as modified by order of the court:

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

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

21 (3) if no agent is entitled to make health  
22 care decisions for the protected person under the provisions  
23 of the Uniform Health-Care Decisions Act, then the guardian  
24 shall make health care decisions for the protected person in  
25 accordance with the provisions of that act. In exercising

1 health care powers, a guardian may consent or withhold  
2 consent that may be necessary to enable the protected person  
3 to receive or refuse medical or other professional care,  
4 counsel, treatment or service. That decision shall be made  
5 in accordance with the values of the protected person, if  
6 known, or the best interests of the protected person if the  
7 values are not known;

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

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

21 (b) to receive money and tangible  
22 property deliverable to the protected person and apply the  
23 money and property for support, care and education of the  
24 protected person, but the guardian shall not use funds from  
25 the protected person's estate for room and board that the

1 guardian or the guardian's spouse, parent or child has  
2 furnished the protected person, unless a charge for the  
3 service is approved by order of the court made upon notice to  
4 at least one of the next of kin of the protected person, if  
5 notice is possible;

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

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

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

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

21 (5) the guardian shall exercise the  
22 guardian's supervisory powers over the protected person in a  
23 manner that is least restrictive of the protected person's  
24 personal freedom and consistent with the need for  
25 supervision.



1           C. A guardian of a protected person for whom a  
2 conservator also has been appointed shall control the care  
3 and custody of the protected person and is entitled to  
4 receive reasonable sums for services and for room and board  
5 furnished to the protected person. The guardian may request  
6 the conservator to expend the protected person's estate by  
7 payment to third persons or institutions for the protected  
8 person's care and maintenance.

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

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

1 involuntary civil commitment.

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

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

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

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

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

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

24 SECTION 7. Section 45-5-314 NMSA 1978 (being Laws 1989,  
25 Chapter 252, Section 14, as amended) is amended to read:

1 "45-5-314. ANNUAL REPORT--AUDITS.--

2 A. The guardian of an incapacitated person shall  
3 file an initial report with the appointing court within  
4 ninety days of the guardian's appointment. Thereafter, the  
5 guardian shall file an annual report within thirty days of  
6 the anniversary date of the guardian's appointment. A copy  
7 of the report shall also be submitted to the district judge  
8 who appointed the guardian or the judge's successor, to the  
9 incapacitated person and to the incapacitated person's  
10 conservator, if any. The court shall review this report.  
11 The report shall include information concerning the progress  
12 and condition of the incapacitated person, including the  
13 incapacitated person's health, medical and dental care,  
14 residence, education, employment and habitation; a report on  
15 the manner in which the guardian carried out the guardian's  
16 powers and fulfilled the guardian's duties; and the  
17 guardian's opinion regarding the continued need for  
18 guardianship. If the guardian has been provided power  
19 pursuant to Paragraph (4) of Subsection B of Section 45-5-312  
20 NMSA 1978, the report shall contain information on financial  
21 decisions made by the guardian. Only reports that  
22 substantially comply with forms approved by the supreme court  
23 shall be accepted by the court as fulfilling the requirements  
24 of this section.

25 B. Any guardian may rely on a qualified health

1 care professional's current written report to provide  
2 descriptions of the physical and mental conditions required  
3 in the report provided for in Subsection A of this section.

4 C. The guardian may be fined twenty-five dollars  
5 (\$25.00) per day for an overdue interim or annual report.  
6 The fine shall be paid to the current school fund.

7 D. The court shall not waive the requirement of an  
8 annual report under any circumstance but may grant an  
9 extension of time not to exceed sixty days. The court may  
10 require the filing of more than one report annually.

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

14 SECTION 8. Section 45-5-404.1 NMSA 1978 (being Laws  
15 1989, Chapter 252, Section 18, as amended) is amended to read:

16 "45-5-404.1. DUTIES OF GUARDIAN AD LITEM.--

17 A. The guardian ad litem shall:

18 (1) interview the person to be protected in  
19 person prior to the hearing;

20 (2) present the position of the person to be  
21 protected to the court;

22 (3) interview the qualified health care  
23 professional, the visitor, the proposed conservator and any  
24 other person who may have relevant information concerning the  
25 person to be protected;

1 (4) review both the medical report submitted  
2 by the qualified health care professional and the report by  
3 the visitor;

4 (5) obtain independent medical or  
5 psychological assessments, or both, if necessary; and

6 (6) file a written report with the court  
7 prior to the hearing on the petition for appointment.

8 B. Unless otherwise ordered by the court, the  
9 duties of the guardian ad litem terminate and the guardian ad  
10 litem is discharged from the guardian ad litem's duties upon  
11 entry of the order appointing the conservator and acceptance  
12 of the appointment by the conservator."

13 SECTION 9. Section 45-5-407 NMSA 1978 (being Laws 1975,  
14 Chapter 257, Section 5-407, as amended) is amended to read:

15 "45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A  
16 CONSERVATOR.--

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

1 interests of the minor.

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

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

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

19 (2) contain observations, with supporting  
20 data, regarding the ability of the person to be protected to  
21 manage the person's estate or financial affairs.

22 D. The court shall also appoint a visitor who  
23 shall interview the person seeking appointment as conservator  
24 and the person to be protected. The visitor shall also visit  
25 the present place of residence of the person to be protected.

1 The visitor shall evaluate the needs of the person to be  
2 protected and shall submit a written report to the court. The  
3 report shall include a recommendation regarding the  
4 appropriateness of the appointment of the proposed  
5 conservator. The report shall also include recommendations  
6 regarding:

7 (1) those aspects of the person's financial  
8 affairs that the person to be protected can manage without  
9 supervision or assistance;

10 (2) those aspects of the person's financial  
11 affairs that the person to be protected could manage with the  
12 supervision or assistance of support services and benefits;  
13 and

14 (3) those aspects of the person's financial  
15 affairs that the person to be protected is unable to manage  
16 even with the supervision or assistance of support services  
17 and benefits.

18 Unless otherwise ordered by the court, the appointment  
19 of the visitor terminates and the visitor is discharged from  
20 duties upon entry of an order appointing a conservator and  
21 acceptance of the appointment by the conservator.

22 E. The person to be protected shall be present at  
23 the hearing on the issues raised by the petition and any  
24 response to the petition, unless the court determines it is  
25 not in the best interest of the person for whom a conservator

1 is sought to be present because of a threat to the health or  
2 safety of the person for whom a conservator is sought or  
3 others as determined by the court. The court upon request or  
4 its own motion may conduct hearings at the location of the  
5 person to be protected if the person is unable to be present  
6 in court. At a hearing conducted pursuant to this section,  
7 the person to be protected may:

8 (1) present evidence and subpoena witnesses  
9 and documents;

10 (2) examine witnesses, including a court-  
11 appointed guardian ad litem, qualified health care  
12 professional and visitor; and

13 (3) otherwise participate in the hearing.

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

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

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

21 (2) ascertain the person's capacity to  
22 manage the person's financial affairs.

23 H. If it is determined that the person to be  
24 protected possesses the capacity to manage the person's estate  
25 or financial affairs, or both, the court shall dismiss the



1 petition.

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

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

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

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

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

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

22 J. After hearing, upon finding that a basis for  
23 the appointment of a conservator has been established, the  
24 court shall make an appointment of a conservator. The court  
25 shall appoint a limited conservator if it determines that the

1 incapacitated person is able to manage some but not all  
2 aspects of the incapacitated person's estate and financial  
3 affairs. The court shall specify those powers that the  
4 limited conservator shall have and may further restrict each  
5 power so as to permit the incapacitated person to care for the  
6 incapacitated person's estate and financial affairs  
7 commensurate with the incapacitated person's ability to do so.

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

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

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

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

1 (2) either:

2 (a) the petition for conservatorship is  
3 dismissed; or

4 (b) the conservatorship is terminated.

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

19 O. A report pursuant to Subsections C and D of  
20 this section or a written report filed pursuant to Section  
21 45-5-404.1 or 45-5-409 NMSA 1978 is confidential and shall be  
22 sealed on filing, but is available to:

23 (1) the court;

24 (2) the alleged incapacitated person or  
25 protected person who is the subject of the report, without

1 limitation as to use;

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

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

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

12 P. Notwithstanding the provisions of Subsection M  
13 of this section, any disclosure of information shall not  
14 include any diagnostic information, treatment information or  
15 other medical or psychological information.

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

20 R. Upon request of the petitioner or person to be  
21 protected, the court shall schedule a jury trial.

22 S. Upon entry of an order appointing a  
23 conservator, a copy of the order shall be furnished to the  
24 person for whom the conservator was appointed and that  
25 person's counsel. The order shall contain the name and

1 address of the conservator as well as notice to the person for  
2 whom the conservator was appointed of that person's right to  
3 appeal the appointment and of that person's right to seek  
4 alteration or termination of the conservatorship at any time."

5 SECTION 10. Section 45-5-409 NMSA 1978 (being Laws  
6 1989, Chapter 252, Section 22, as amended) is amended to read:

7 "45-5-409. ANNUAL REPORT AND ACCOUNT--AUDITS.--

8 A. Every conservator shall file an annual report  
9 and account with the appointing court within thirty days of  
10 the anniversary date of the conservator's appointment, upon  
11 the conservator's resignation or removal or upon termination  
12 of the conservatorship. A copy of the annual report and  
13 account shall also be mailed to the district judge who  
14 appointed the conservator or the conservator's successor, to  
15 the incapacitated person and to the incapacitated person's  
16 guardian, if any. The report shall include information  
17 concerning the progress and condition of the person under  
18 conservatorship, a report on the manner in which the  
19 conservator carried out the conservator's powers and fulfilled  
20 the conservator's duties and the conservator's opinion  
21 regarding the continued need for conservatorship.  
22 Only reports that substantially comply with forms approved by  
23 the supreme court shall be accepted by the court as fulfilling  
24 the requirements of this section.

25 B. Any conservator may rely on a qualified health

1 care professional's current written report to provide  
2 descriptions of the physical and mental conditions required in  
3 the report provided for in Subsection A of this section.

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

8 D. The conservator may be fined twenty-five  
9 dollars (\$25.00) per day for an overdue interim or annual  
10 report and account. The fine shall be paid to the current  
11 school fund.

12 E. In connection with an account, the court may  
13 require a conservator to submit to a physical check of the  
14 property in the conservator's control, to be made in any  
15 manner the court may order.

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

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

1 SECTION 11. Section 45-5-410 NMSA 1978 (being Laws  
2 1975, Chapter 257, Section 5-410, as amended) is amended to  
3 read:

4 "45-5-410. WHO MAY BE APPOINTED CONSERVATOR--  
5 PRIORITIES.--

6 A. The court may appoint an individual, or a  
7 corporation with general power to serve as trustee, as  
8 conservator of the incapacitated person. The following are  
9 entitled to consideration for appointment in the order listed:

10 (1) a conservator, guardian of property or  
11 other like fiduciary appointed or recognized by the  
12 appropriate court of any other jurisdiction in which the  
13 incapacitated person resides;

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

23 (3) the spouse of the incapacitated person;

24 (4) an adult child of the incapacitated  
25 person;

1 (5) a parent of the incapacitated person or  
2 a person nominated by the will of a deceased parent;

3 (6) any relative of the incapacitated person  
4 with whom the incapacitated person has resided for more than  
5 six months prior to the filing of the petition;

6 (7) a person nominated by the person who is  
7 caring for the incapacitated person or paying benefits to the  
8 incapacitated person; and

9 (8) any other person.

10 B. A person under the priorities of Paragraph (1),  
11 (2), (3), (4), (5) or (6) of Subsection A of this section may  
12 nominate in writing a person to serve in the person's stead.  
13 With respect to persons having equal priority, the court shall  
14 select the one who is best qualified of those willing to  
15 serve.

16 C. The court, for good cause, may pass over a  
17 person having priority and appoint a person having lesser  
18 priority under this section and shall take into consideration:

19 (1) the preference of the incapacitated  
20 person;

21 (2) the geographic location of the proposed  
22 conservator;

23 (3) the relationship of the proposed  
24 conservator to the incapacitated person;

25 (4) the ability of the proposed conservator



1 to carry out the powers and duties of the conservatorship; and  
2 (5) potential financial conflicts of  
3 interest between the incapacitated person and the proposed  
4 conservator.

5 D. A professional conservator shall not serve or  
6 be appointed as a conservator of the protected person unless  
7 the professional conservator is certified and is in good  
8 standing with a national or state organization recognized by  
9 the supreme court that provides professional certification for  
10 conservators."

11 SECTION 12. Section 45-5-415 NMSA 1978 (being Laws  
12 1975, Chapter 257, Section 5-415, as amended) is amended to  
13 read:

14 "45-5-415. DEATH, SUBSTITUTION, REVIEW AND TERMINATION  
15 OF CONSERVATORSHIP.--

16 A. On the petition of the incapacitated person or  
17 a person interested in the incapacitated person's welfare, the  
18 court may remove a conservator for good cause, upon notice and  
19 hearing. A temporary conservator may be appointed pursuant to  
20 Section 45-5-408 NMSA 1978 pending a final hearing.

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

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

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

14           E. In a proceeding that increases the  
15 conservator's authority or reduces the autonomy of the  
16 incapacitated person, the court shall follow the same  
17 procedures to safeguard the rights of the incapacitated person  
18 as those that apply to a petition for appointment of a  
19 conservator, as set forth in Section 45-5-407 NMSA 1978.

20           F. Following receipt of a request for review, the  
21 court shall hold a status hearing, which may be informal, to  
22 determine the appropriate order to be entered. If the court  
23 finds the incapacitated person is capable of more autonomy  
24 than at the time of the original order, the court may enter an  
25 order removing the conservator, terminating the

1 conservatorship or reducing the powers previously granted to  
2 the conservator. The court has the option to follow all or  
3 part of the procedures that apply for the appointment of a  
4 conservator, as set forth in Section 45-5-407 NMSA 1978.

5 G. At any time following the appointment of a  
6 conservator, but not later than ten years after the initial  
7 appointment of a conservator for an incapacitated person and  
8 every ten years thereafter, the court shall:

9 (1) hold a status hearing, after notice to  
10 the conservator, the incapacitated person and appropriate  
11 interested persons, to review the status of the incapacitated  
12 person's capacity and the continued need for a conservator; or

13 (2) appoint a court investigator to assess  
14 the incapacitated person's capacity. The court investigator  
15 shall prepare a detailed report to the court regarding the  
16 status of the incapacitated person's capacity and the  
17 continued need for a conservator. Any report shall be made  
18 available to the conservator, the incapacitated person and  
19 interested persons identified by the court.

20 H. If the court is unable to contact either the  
21 conservator or the incapacitated person and neither appears  
22 for the status hearing held pursuant to Paragraph (1) of  
23 Subsection G of this section, the court shall appoint a  
24 guardian ad litem to investigate and report to the court as to  
25 the status of the incapacitated person and the conservator.

1 Any report shall be made available to the conservator, the  
2 incapacitated person and appropriate interested persons, if  
3 known to the court.

4 I. Following the status hearing or the court's  
5 report from the court investigator or guardian ad litem on the  
6 status of the incapacitated person and the conservator as  
7 provided in Subsection H of this section, the court may enter  
8 an appropriate order; provided that, in entering an order that  
9 increases the conservator's authority or reduces the autonomy  
10 of the incapacitated person, the court shall follow the same  
11 procedures to safeguard the rights of the incapacitated person  
12 as those that apply to a petition for appointment of a  
13 conservator, as set forth in Section 45-5-407 NMSA 1978."

14 SECTION 13. Section 45-5-429 NMSA 1978 (being Laws  
15 1975, Chapter 257, Section 5-429) is amended to read:

16 "45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

17 A. Unless otherwise provided in the contract, a  
18 conservator is not individually liable on a contract properly  
19 entered into in the conservator's fiduciary capacity in the  
20 course of administration of the estate unless the conservator  
21 fails to reveal the conservator's representative capacity and  
22 identify the estate in the contract.

23 B. The conservator is individually liable for  
24 obligations arising from ownership or control of property of  
25 the estate or for torts committed in the course of

1 administration of the estate only if the conservator is  
2 personally at fault.

3 C. Claims based on contracts entered into by a  
4 conservator in the conservator's fiduciary capacity on  
5 obligations arising from ownership or control of the estate or  
6 on torts committed in the course of administration of the  
7 estate may be asserted against the estate by proceeding  
8 against the conservator in the conservator's fiduciary  
9 capacity, whether or not the conservator is individually  
10 liable for those claims.

11 D. Any question of liability between the estate  
12 and the conservator individually may be determined in a  
13 proceeding for accounting, surcharge or indemnification or  
14 other appropriate proceeding or action.

15 E. No person shall request, procure or receive a  
16 release or waiver of liability, however denominated, of a  
17 conservator, an agent, an affiliate or a designee of a  
18 conservator or any other third party acting on behalf of a  
19 conservator.

20 F. A release or waiver of liability that is  
21 requested, procured or received contrary to the provisions of  
22 this section is void."

23 SECTION 14. A new section of the Uniform Probate Code  
24 is enacted to read:

25 "GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.--

1           A. A protected person, or any interested person  
2 regardless of previous standing, who believes a guardian,  
3 conservator or representative payee is breaching the guardian,  
4 conservator or representative payee's fiduciary duty or  
5 otherwise acting in a manner inconsistent with the Uniform  
6 Probate Code or orders of appointment, may file a grievance  
7 with the court.

8           B. Subject to Subsection C of this section, after  
9 receiving a grievance filed pursuant to Subsection A of this  
10 section, the court:

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

14                   (2) shall schedule a hearing if the  
15 grievance supports a reasonable belief that:

16                           (a) removal of the guardian or  
17 conservator and appointment of a successor may be appropriate;

18                           (b) termination or modification of the  
19 guardianship or conservatorship may be appropriate; and

20                           (c) transfer of accounts to a successor  
21 representative payee may be appropriate; and

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

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

1 inventory or other specified information;

2 (b) appointing a guardian ad litem; and

3 (c) holding a hearing.

4 C. The court may decline to take the actions  
5 provided for in Subsection B of this section if a similar  
6 grievance had been filed within six months preceding the  
7 filing of the current grievance and the court took the actions  
8 provided for in that subsection in considering the earlier  
9 grievance.

10 D. As used in this section, "representative payee"  
11 means a person appointed by the federal social security  
12 administration to receive and manage the supplemental security  
13 income or social security disability income for individuals  
14 who cannot fully manage their own income."

15 SECTION 15. REPEAL.--Section 45-5-409.1 NMSA 1978  
16 (being Laws 2018, Chapter 10, Section 13) is repealed.

17 SECTION 16. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2019. \_\_\_\_\_

SB 395  
Page 47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25