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AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; REVISING PROCEDURES FOR  
THE APPOINTMENT OF TEMPORARY GUARDIANS AND TEMPORARY  
CONSERVATORS FOR ALLEGEDLY INCAPACITATED PERSONS; CLARIFYING  
REPORTING REQUIREMENTS.

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

SECTION 1. Section 45-5-310 NMSA 1978 (being Laws 1975,  
Chapter 257, Section 5-310, as amended) is amended to read:

"45-5-310. TEMPORARY GUARDIANS.--

A. When a petition for guardianship has been  
filed, but adherence to the procedures set out in Section  
45-5-303 NMSA 1978 would cause serious, immediate and  
irreparable harm to the alleged incapacitated person's  
health, safety or welfare, the court may appoint a temporary  
guardian prior to the final hearing and decision on the  
petition, subject to the requirements of this section.

B. Upon separate motion by the petitioner, the  
court shall schedule and hold a hearing on the appointment of  
a temporary guardian no later than ten business days from the  
date the motion is filed and appoint a guardian ad litem for  
the alleged incapacitated person. The guardian ad litem  
shall file a report no later than two days prior to the  
hearing. The report shall include those items found in  
Paragraphs (1) through (3) of Subsection A of Section

1 45-5-303.1 NMSA 1978. Notice of the hearing shall be as set  
2 out in Section 45-5-309 NMSA 1978.

3 C. Upon a finding that serious, immediate and  
4 irreparable harm to the alleged incapacitated person's  
5 health, safety or welfare would result during the pendency of  
6 petition, the court shall appoint a temporary guardian and  
7 shall specify the temporary guardian's powers in order to  
8 prevent serious, immediate and irreparable harm to the  
9 alleged incapacitated person. The duration of the temporary  
10 guardianship shall not exceed thirty days. However, if after  
11 a hearing in which there is a showing of good cause, the  
12 court may extend the temporary guardianship for no more than  
13 an additional sixty days.

14 D. A temporary guardian may be appointed without  
15 notice to the alleged incapacitated person and to the alleged  
16 incapacitated person's attorney only if it clearly appears  
17 from specific facts shown by affidavit or sworn testimony  
18 that serious, immediate and irreparable harm will result to  
19 the alleged incapacitated person's health, safety or welfare  
20 before a ten-day hearing on the appointment of a temporary  
21 guardian can be held. If a temporary guardian is appointed  
22 without notice to the alleged incapacitated person and the  
23 alleged incapacitated person's attorney, the court shall  
24 schedule and hold a hearing no later than ten business days  
25 from the date the motion for temporary guardian is filed to

1 determine whether the temporary guardianship should continue  
2 and, if so, to address the continued authority of the  
3 temporary guardian. The petitioner shall have the alleged  
4 incapacitated person and the alleged incapacitated person's  
5 attorney served personally within twenty-four hours of the  
6 appointment of a temporary guardian as provided in Subsection  
7 B of Section 45-5-309 NMSA 1978. The alleged incapacitated  
8 person, the alleged incapacitated person's counsel or any  
9 interested person may appear and move dissolution or  
10 modification of the court's order, and, in that event, the  
11 court shall proceed to hear and determine such motion at the  
12 initial ten-day hearing or no later than ten business days  
13 from the date the motion is made, whichever comes first.

14 E. A temporary guardian is entitled to the care  
15 and custody of the alleged incapacitated person, but a  
16 temporary guardian may not sell or dispose of any property  
17 belonging to the alleged incapacitated person, or make a  
18 change to the housing or other placement of the alleged  
19 incapacitated person, without specific authorization from the  
20 court. A temporary guardian may be removed by the court at  
21 any time. A temporary guardian shall file an initial written  
22 report with the court within fifteen days of appointment by  
23 completing the guardian's report, as approved by the supreme  
24 court. A temporary guardian shall file a final written  
25 report with the court by completing the guardian's report, as

1 approved by the supreme court, within fifteen days of the  
2 termination of the temporary guardianship or as otherwise  
3 ordered by the court. In all other respects, the provisions  
4 of the Uniform Probate Code concerning guardians apply to  
5 temporary guardians.

6 F. Appointment of a temporary guardian shall have  
7 the temporary effect of limiting the legal rights of the  
8 alleged incapacitated person as specified in the court order.  
9 Appointment of a temporary guardian shall not be evidence of  
10 incapacity."

11 SECTION 2. Section 45-5-408 NMSA 1978 (being Laws 1989,  
12 Chapter 252, Section 21, as amended) is amended to read:

13 "45-5-408. TEMPORARY CONSERVATORS.--

14 A. When a petition for conservatorship has been  
15 filed, but adherence to the procedures set out in Section  
16 45-5-407 NMSA 1978 would cause serious, immediate and  
17 irreparable harm to the alleged incapacitated person's or  
18 minor's estate or financial interests, or both, the court may  
19 appoint a temporary conservator prior to the final hearing  
20 and decision on the petition, subject to the requirements of  
21 this section.

22 B. Upon separate motion by the petitioner, the  
23 court shall schedule and hold a hearing on the appointment of  
24 a temporary conservator no later than ten business days from  
25 the date the motion is filed and appoint a guardian ad litem

1 for the alleged incapacitated person. The guardian ad litem  
2 shall file a report no later than two days prior to the  
3 hearing. The report shall identify and present all available  
4 less restrictive alternatives to conservatorship and include  
5 those items found in Paragraphs (1) and (2) of Subsection A  
6 of Section 45-5-404.1 NMSA 1978. Notice of the hearing shall  
7 be provided as set out in Section 45-5-405 NMSA 1978.

8 C. Upon a finding that serious, immediate and  
9 irreparable harm to the alleged incapacitated person's estate  
10 and financial interests would result during the pendency of  
11 petition, the court shall appoint a temporary conservator and  
12 shall specify the temporary conservator's powers in order to  
13 prevent serious, immediate and irreparable harm to the  
14 alleged incapacitated person's property. The duration of the  
15 temporary conservatorship shall not exceed thirty days.  
16 However, if after a hearing in which there is a showing of  
17 good cause, the court may extend the temporary  
18 conservatorship for no more than an additional sixty days.

19 D. A temporary conservator may be appointed  
20 without notice to the alleged incapacitated person and to the  
21 alleged incapacitated person's attorney only if it clearly  
22 appears from specific facts shown by affidavit or sworn  
23 testimony that serious, immediate and irreparable harm will  
24 result to the alleged incapacitated person's estate or  
25 financial interests before a ten-day hearing on the

1 appointment of a temporary conservator can be held. If a  
2 temporary conservator is appointed without notice to the  
3 alleged incapacitated person and the alleged incapacitated  
4 person's attorney, the court shall schedule and hold a  
5 hearing no later than ten business days from the date the  
6 motion for temporary conservator is filed to determine  
7 whether the temporary conservatorship should continue and, if  
8 so, to address the continued authority of the temporary  
9 conservator. The petitioner shall have the alleged  
10 incapacitated person and the alleged incapacitated person's  
11 attorney served personally within twenty-four hours of the  
12 appointment of a temporary conservator as provided in  
13 Subsection B of Section 45-5-405 NMSA 1978. The alleged  
14 incapacitated person, the alleged incapacitated person's  
15 counsel or any interested person may appear and move  
16 dissolution or modification of the court's order, and, in  
17 that event, the court shall proceed to hear and determine  
18 such motion at the initial ten-day hearing or no later than  
19 ten business days from the date the motion is made, whichever  
20 comes first.

21 E. A temporary conservator is entitled to the care  
22 and custody of the alleged incapacitated person's estate and  
23 financial interests, but a temporary conservator may not sell  
24 or dispose of any property belonging to the alleged  
25 incapacitated person, or make a change to the housing or

1 other placement of the alleged incapacitated person, without  
2 specific authorization from the court. A temporary  
3 conservator may be removed by the court at any time. A  
4 temporary conservator shall file an initial written report  
5 with the court within fifteen days of appointment by  
6 completing the conservator's inventory, as approved by the  
7 supreme court. A temporary conservator shall file a final  
8 written report with the court by completing the conservator's  
9 report, as approved by the supreme court, within fifteen days  
10 of the termination of the temporary conservatorship or as  
11 otherwise ordered by the court. In all other respects, the  
12 provisions of the Uniform Probate Code concerning  
13 conservators apply to temporary conservators.

14 F. Appointment of a temporary conservator shall  
15 have the temporary effect of limiting the legal rights of the  
16 alleged incapacitated person as specified in the court order.  
17 Appointment of a temporary conservator shall not be evidence  
18 of incapacity."

19 SECTION 3. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2022. \_\_\_\_\_

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