

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

HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

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

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

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Uniform Guardianship, Conservatorship and Other
Protective Arrangements Act".

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

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

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 of age;

2 B. "adult subject to conservatorship" means an
3 adult for whom a conservator has been appointed under the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act;

6 C. "adult subject to guardianship" means an adult
7 for whom a guardian has been appointed under the Uniform
8 Guardianship, Conservatorship and Other Protective Arrangements
9 Act;

10 D. "claim" includes a claim against an individual
11 or conservatorship estate, whether arising in contract, tort or
12 otherwise;

13 E. "conservator":
14 (1) means a person appointed by a court to
15 make decisions with respect to the property or financial
16 affairs of an individual subject to conservatorship; and

17 (2) includes a co-conservator;

18 F. "conservatorship estate" means the property
19 subject to conservatorship under the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act;

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

25 H. "full guardianship" means a guardianship that

1 grants the guardian all powers available to a guardian under
2 the Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act;

4 I. "guardian":

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

8 (2) includes a co-guardian; and

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

10 J. "guardian ad litem" means a person appointed to
11 inform the court about, and to represent, the needs and best
12 interest of an individual;

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

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

21 M. "less restrictive alternative":

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

underscored material = new
~~[bracketed material] = delete~~

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

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

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

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

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

23 R. "mental health treatment facility" means an
24 institution, facility or agency licensed, certified or
25 otherwise authorized or permitted by law to provide mental

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 health treatment in the ordinary course of business;

2 S. "minor" means an unemancipated individual under
3 eighteen years of age;

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

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

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

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

18 X. "power of attorney for finances" includes a
19 power of attorney signed under the Uniform Power of Attorney
20 Act;

21 Y. "power of attorney for health care" includes:

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

24 (2) a record signed under the Mental Health
25 Care Treatment Decisions Act;

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Z. "property" includes tangible and intangible
2 property;

3 AA. "protective arrangement instead of
4 conservatorship" means a court order entered under Section 503
5 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act;

7 BB. "protective arrangement instead of
8 guardianship" means a court order entered under Section 502 of
9 the Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act;

11 CC. "protective arrangement under Article 5" means
12 a court order entered under Section 502 or 503 of the Uniform
13 Guardianship, Conservatorship and Other Protective Arrangements
14 Act;

15 DD. "record", used as a noun, means information
16 that is inscribed on a tangible medium or that is stored in an
17 electronic or other medium and is retrievable in perceivable
18 form;

19 EE. "respondent" means an individual for whom
20 appointment of a guardian or conservator or a protective
21 arrangement instead of guardianship or conservatorship is
22 sought;

23 FF. "sign" means, with present intent to
24 authenticate or adopt a record:

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

.208901.3

underscored material = new
[bracketed material] = delete

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

3 GG. "standby guardian" means a person appointed by
4 the court under Section 207 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act;

6 HH. "state":

7 (1) means a state of the United States, the
8 District of Columbia, Puerto Rico, the United States Virgin
9 Islands or any territory or insular possession subject to the
10 jurisdiction of the United States; and

11 (2) includes an Indian tribe, nation, pueblo
12 or band located within the United States and recognized by
13 federal law or formally acknowledged by a state of the United
14 States; and

15 II. "supported decision making" means assistance:

16 (1) from one or more persons of an
17 individual's choosing;

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

20 (3) that enables the individual to make the
21 decisions; and

22 (4) in communicating a decision once made when
23 consistent with the individual's wishes.

24 SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF
25 LAW AND EQUITY APPLICABLE.--Unless displaced by a particular

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 provision of the Uniform Guardianship, Conservatorship and
2 Other Protective Arrangements Act, the principles of law and
3 equity supplement that act's provisions.

4 SECTION 104. [NEW MATERIAL] SUBJECT-MATTER
5 JURISDICTION.--

6 A. Except to the extent jurisdiction is precluded
7 by the Uniform Child-Custody Jurisdiction and Enforcement Act,
8 the district court has jurisdiction over a guardianship for a
9 minor domiciled or present in New Mexico. The court has
10 jurisdiction over a conservatorship or protective arrangement
11 instead of conservatorship for a minor domiciled or having
12 property in New Mexico.

13 B. The district court has jurisdiction over a
14 guardianship, conservatorship or protective arrangement under
15 Article 5 of the Uniform Guardianship, Conservatorship and
16 Other Protective Arrangements Act for an adult as provided in
17 the Uniform Adult Guardianship and Protective Proceedings
18 Jurisdiction Act.

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

24 (1) exclusive jurisdiction to determine the
25 need for the guardianship, conservatorship or protective

.208901.3

underscored material = new
[bracketed material] = delete

1 arrangement;

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

6 (3) nonexclusive jurisdiction to determine the
7 validity of a claim against the respondent or property of the
8 respondent or a question of title concerning the property; and

9 (4) if a guardian or conservator is appointed,
10 exclusive jurisdiction over issues related to administration of
11 the guardianship or conservatorship.

12 D. A court that appoints a guardian or conservator,
13 or authorizes a protective arrangement under Article 5 of the
14 Uniform Guardianship, Conservatorship and Other Protective
15 Arrangements Act, has exclusive and continuing jurisdiction
16 over the proceeding until the court terminates the proceeding
17 or the appointment or protective arrangement expires by its
18 terms.

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

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

24 B. After appointment of a guardian or conservator,
25 the court that made the appointment may transfer the proceeding

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 to a court in another county in New Mexico or another state if
2 transfer is in the best interest of the individual subject to
3 the guardianship or conservatorship.

4 C. If a proceeding for a guardianship or
5 conservatorship is pending in another state or a foreign
6 country and a petition for guardianship or conservatorship for
7 the same individual is filed in a court in New Mexico, the
8 court shall notify the court in the other state or foreign
9 country and, after consultation with that court, assume or
10 decline jurisdiction, whichever is in the best interest of the
11 respondent.

12 D. A guardian or conservator appointed in another
13 state or country may petition the court for appointment as a
14 guardian or conservator in New Mexico for the same individual
15 if jurisdiction in New Mexico is or will be established. The
16 appointment may be made on proof of appointment in the other
17 state or foreign country and presentation of a certified copy
18 of the part of the court record in the other state or country
19 specified by the court in New Mexico.

20 E. Notice of hearing on a petition under Subsection
21 D of this section, together with a copy of the petition, shall
22 be given to the respondent, if the respondent is at least
23 twelve years of age at the time of the hearing, and to the
24 persons that would be entitled to notice if the procedures for
25 appointment of a guardian or conservator under the Uniform

underscored material = new
[bracketed material] = delete

1 Guardianship, Conservatorship and Other Protective Arrangements
2 Act were applicable. The court shall make the appointment
3 unless it determines the appointment would not be in the best
4 interest of the respondent.

5 F. Not later than fourteen days after appointment
6 under Subsection E of this section, the guardian or conservator
7 shall give a copy of the order of appointment to the individual
8 subject to guardianship or conservatorship, if the individual
9 is at least twelve years of age, and to all persons given
10 notice of the hearing on the petition.

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

12 A. Venue for a guardianship proceeding for a minor
13 is in:

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

16 (2) the county in which another proceeding
17 concerning the custody or parental rights of the minor is
18 pending.

19 B. Venue for a guardianship proceeding or
20 protective arrangement instead of guardianship for an adult is
21 in:

22 (1) the county in which the respondent
23 resides;

24 (2) if the respondent has been admitted to an
25 institution by court order, the county in which the court is

.208901.3

underscored material = new
[bracketed material] = delete

1 located; or

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

5 C. Venue for a conservatorship proceeding or
6 protective arrangement instead of conservatorship is in:

7 (1) the county in which the respondent
8 resides, whether or not a guardian has been appointed in
9 another county or other jurisdiction; or

10 (2) if the respondent does not reside in New
11 Mexico, in any county in which property of the respondent is
12 located.

13 D. If proceedings under the Uniform Guardianship,
14 Conservatorship and Other Protective Arrangements Act are
15 brought in more than one county, the court of the county in
16 which the first proceeding is brought has the exclusive right
17 to proceed unless the court determines venue is properly in
18 another court or the interest of justice otherwise requires
19 transfer of the proceeding.

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

21 A. Except as otherwise provided in the Uniform
22 Guardianship, Conservatorship and Other Protective Arrangements
23 Act or the Uniform Probate Code, the New Mexico Rules of
24 Evidence, Rules of Civil Procedure for the District Courts and
25 Rules of Appellate Procedure govern a proceeding under the

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act and appellate review of the proceeding.

3 B. If proceedings for a guardianship,
4 conservatorship or protective arrangement under Article 5 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act for the same individual are commenced or
7 pending in the same court, the proceedings may be consolidated.

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

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

13 A. The court shall issue letters of office to a
14 guardian on filing by the guardian of an acceptance of
15 appointment.

16 B. The court shall issue letters of office to a
17 conservator on filing by the conservator of an acceptance of
18 appointment and filing of any required bond or compliance with
19 any other asset-protection arrangement required by the court.

20 C. Limitations on the powers of a guardian or
21 conservator or on the property subject to conservatorship shall
22 be stated on the letters of office.

23 D. The court at any time may limit the powers
24 conferred on a guardian or conservator. The court shall issue
25 new letters of office to reflect the limitation. The court

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 shall give notice of the limitation to the guardian or
2 conservator, individual subject to guardianship or
3 conservatorship, each parent of a minor subject to guardianship
4 or conservatorship and any other person the court determines.

5 SECTION 109. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF
6 APPOINTMENT.--On acceptance of appointment, a guardian or
7 conservator submits to personal jurisdiction of the court in
8 New Mexico in any proceeding relating to the guardianship or
9 conservatorship.

10 SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-
11 CONSERVATOR.--

12 A. The court at any time may appoint a co-guardian
13 or co-conservator to serve immediately or when a designated
14 event occurs.

15 B. A co-guardian or co-conservator appointed to
16 serve immediately may act when that co-guardian or
17 co-conservator complies with Section 108 of the Uniform
18 Guardianship, Conservatorship and Other Protective Arrangements
19 Act.

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

22 (1) the event occurs; and

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

.208901.3

underscored material = new
[bracketed material] = delete

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

4 SECTION 111. [NEW MATERIAL] JUDICIAL APPOINTMENT OF
5 SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.--

6 A. The court at any time may appoint a successor
7 guardian or successor conservator to serve immediately or when
8 a designated event occurs.

9 B. A person entitled under Section 202 or 302 of
10 the Uniform Guardianship, Conservatorship and Other Protective
11 Arrangements Act to petition the court to appoint a guardian
12 may petition the court to appoint a successor guardian. A
13 person entitled under Section 402 of that act to petition the
14 court to appoint a conservator may petition the court to
15 appoint a successor conservator.

16 C. A successor guardian or successor conservator
17 appointed to serve when a designated event occurs may act as
18 guardian or conservator when:

- 19 (1) the event occurs; and
20 (2) the successor complies with Section 108 of
21 the Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act.

23 D. A successor guardian or successor conservator
24 has the predecessor's powers unless otherwise provided by the
25 court.

underscored material = new
[bracketed material] = delete

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

3 A. Appointment of a guardian or conservator
4 terminates on the death or removal of the guardian or
5 conservator or when the court under Subsection B of this
6 section approves a resignation of the guardian or conservator.

7 B. To resign, a guardian or conservator shall
8 petition the court. The petition may include a request that
9 the court appoint a successor. Resignation of a guardian or
10 conservator is effective on the date the resignation is
11 approved by the court.

12 C. Death, removal or resignation of a guardian or
13 conservator does not affect liability for a previous act or the
14 obligation to account for:

- 15 (1) an action taken on behalf of the
- 16 individual subject to guardianship or conservatorship; or
- 17 (2) the individual's funds or other property.

18 SECTION 113. [NEW MATERIAL] NOTICE OF HEARING
19 GENERALLY.--

20 A. Except as otherwise provided in Sections 203,
21 207, 303, 403 and 505 of the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act, if
23 notice of a hearing under that act is required, the movant
24 shall give notice of the date, time and place of the hearing to
25 the person to be notified unless otherwise ordered by the court

.208901.3

underscored material = new
[bracketed material] = delete

1 for good cause. Except as otherwise provided in that act,
2 notice shall be given as provided in Section 45-1-401 NMSA 1978
3 at least fourteen days before the hearing.

4 B. Proof of notice of a hearing under the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act shall be made before or at the hearing and filed in the
7 proceeding.

8 C. Notice of a hearing under the Uniform
9 Guardianship, Conservatorship and Other Protective Arrangements
10 Act shall be in at least sixteen-point font, in plain language
11 and, to the extent feasible, in a language in which the person
12 to be notified is proficient.

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

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

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

25 SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court

.208901.3

underscored material = new
[bracketed material] = delete

1 at any time may appoint a guardian ad litem for an individual
2 if the court determines the individual's interest otherwise
3 would not be adequately represented. If no conflict of
4 interest exists, a guardian ad litem may be appointed to
5 represent multiple individuals or interests. The guardian ad
6 litem shall not be the same individual as the attorney
7 representing the respondent. The court shall state the duties
8 of the guardian ad litem and the reasons for the appointment.

9 SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--

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

- 13 (1) not otherwise entitled to notice; and
14 (2) interested in the welfare of a respondent,
15 individual subject to guardianship or conservatorship or
16 individual subject to a protective arrangement under Article 5
17 of that act.

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

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

underscored material = new
[bracketed material] = delete

1 appointed.

2 SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR
3 CRIMINAL HISTORY.--

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

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

9 (2) has been convicted of:

10 (a) a felony;

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

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

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

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

.208901.3

underscored material = new
[bracketed material] = delete

1 conservator promptly shall disclose that knowledge to the
2 court.

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

6 SECTION 119. [NEW MATERIAL] COMPENSATION AND EXPENSES--IN
7 GENERAL.--

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

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

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

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 D. If the court dismisses a petition under the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act and determines the petition was filed in bad
4 faith, the court may assess the cost of any court-ordered
5 professional evaluation or visitor against the petitioner.

6 SECTION 120. [NEW MATERIAL] COMPENSATION OF GUARDIAN OR
7 CONSERVATOR.--

8 A. Subject to court approval, a guardian is
9 entitled to reasonable compensation for services as guardian
10 and to reimbursement for room, board, clothing and other
11 appropriate expenses advanced for the benefit of the individual
12 subject to guardianship. If a conservator, other than the
13 guardian or a person affiliated with the guardian, is appointed
14 for the individual, reasonable compensation and reimbursement
15 to the guardian may be approved and paid by the conservator
16 without court approval.

17 B. Subject to court approval, a conservator is
18 entitled to reasonable compensation for services and
19 reimbursement for appropriate expenses from the property of the
20 individual subject to conservatorship.

21 C. In determining reasonable compensation for a
22 guardian or conservator, the court, or a conservator in
23 determining reasonable compensation for a guardian as provided
24 in Subsection A of this section, shall consider:

25 (1) the necessity and quality of the services

1 provided;

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

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

6 (4) the conditions and circumstances under
7 which a service was performed, including whether the service
8 was provided outside regular business hours or under dangerous
9 or extraordinary conditions;

10 (5) the effect of the services on the
11 individual subject to guardianship or conservatorship;

12 (6) the extent to which the services provided
13 were or were not consistent with the guardian's plan under
14 Section 316 of the Uniform Guardianship, Conservatorship and
15 Other Protective Arrangements Act or conservator's plan under
16 Section 419 of that act; and

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

19 D. A guardian or conservator need not use personal
20 funds of the guardian or conservator for the expenses of the
21 individual subject to guardianship or conservatorship.

22 E. If an individual subject to guardianship or
23 conservatorship seeks to modify or terminate the guardianship
24 or conservatorship or remove the guardian or conservator, the
25 court may order compensation to the guardian or conservator for

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 time spent opposing modification, termination or removal only
2 to the extent the court determines the opposition was
3 reasonably necessary to protect the interest of the individual
4 subject to guardianship or conservatorship.

5 SECTION 121. [NEW MATERIAL] LIABILITY OF GUARDIAN OR
6 CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR
7 CONSERVATORSHIP.--A guardian or conservator is not personally
8 liable to another person solely because of the guardianship or
9 conservatorship for an act or omission of the individual
10 subject to guardianship or conservatorship.

11 SECTION 122. [NEW MATERIAL] PETITION AFTER APPOINTMENT
12 FOR INSTRUCTION OR RATIFICATION.--

13 A. A guardian or conservator may petition the court
14 for instruction concerning fiduciary responsibility or
15 ratification of a particular act related to the guardianship or
16 conservatorship.

17 B. On notice and hearing on a petition under
18 Subsection A of this section, the court may give an instruction
19 and issue an order.

20 SECTION 123. [NEW MATERIAL] THIRD-PARTY ACCEPTANCE OF
21 AUTHORITY OF GUARDIAN OR CONSERVATOR.--

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

25 (1) the person has actual knowledge or a

1 reasonable belief that the letters of office of the guardian or
2 conservator are invalid or the conservator or guardian is
3 exceeding or improperly exercising authority granted by the
4 court; or

5 (2) the person has actual knowledge that the
6 individual subject to guardianship or conservatorship is
7 subject to physical or financial abuse, neglect, exploitation
8 or abandonment by the guardian or conservator or a person
9 acting for or with the guardian or conservator.

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

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

16 (2) the person makes, or has actual knowledge
17 that another person has made, a report to the children, youth
18 and families department or the aging and long-term services
19 department stating a good-faith belief that the individual
20 subject to guardianship or conservatorship is subject to
21 physical or financial abuse, neglect, exploitation or
22 abandonment by the guardian or conservator or a person acting
23 for or with the guardian or conservator.

24 C. A person that refuses to accept the authority of
25 a guardian or conservator in accordance with Subsection B of

.208901.3

underscored material = new
[bracketed material] = delete

1 this section may report the refusal and the reason for refusal
2 to the court. The court on receiving the report shall consider
3 whether removal of the guardian or conservator or other action
4 is appropriate.

5 D. A guardian or conservator may petition the court
6 to require a third party to accept a decision made by the
7 guardian or conservator on behalf of the individual subject to
8 guardianship or conservatorship.

9 SECTION 124. [NEW MATERIAL] USE OF AGENT BY GUARDIAN OR
10 CONSERVATOR.--

11 A. Except as otherwise provided in Subsection C of
12 this section, a guardian or conservator may delegate a power to
13 an agent that a prudent guardian or conservator of comparable
14 skills could delegate prudently under the circumstances if the
15 delegation is consistent with the guardian's or conservator's
16 fiduciary duties and the guardian's plan under Section 316 of
17 the Uniform Guardianship, Conservatorship and Other Protective
18 Arrangements Act or the conservator's plan under Section 419 of
19 that act.

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

- 23 (1) selecting the agent;
24 (2) establishing the scope and terms of the
25 agent's work in accordance with the guardian's plan under

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 Section 316 of the Uniform Guardianship, Conservatorship and
2 Other Protective Arrangements Act or conservator's plan under
3 Section 419 of that act;

4 (3) monitoring the agent's performance and
5 compliance with the delegation; and

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

9 C. A guardian or conservator shall not delegate all
10 powers to an agent.

11 D. In performing a power delegated under this
12 section, an agent shall:

13 (1) exercise reasonable care to comply with
14 the terms of the delegation and use reasonable care in the
15 performance of the power; and

16 (2) if the guardian or conservator has
17 delegated to the agent the power to make a decision on behalf
18 of the individual subject to guardianship or conservatorship,
19 use the same decision-making standard the guardian or
20 conservator would be required to use.

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

25 F. A guardian or conservator that delegates and

underscoring material = new
~~[bracketed material]~~ = delete

1 monitors a power in compliance with this section is not liable
2 for the decision, act or omission of the agent.

3 SECTION 125. [NEW MATERIAL] TEMPORARY SUBSTITUTE GUARDIAN
4 OR CONSERVATOR.--

5 A. The court may appoint a temporary substitute
6 guardian for an individual subject to guardianship for a period
7 not exceeding six months if:

8 (1) a proceeding to remove a guardian for the
9 individual is pending; or

10 (2) the court finds a guardian is not
11 effectively performing the guardian's duties and the welfare of
12 the individual requires immediate action.

13 B. The court may appoint a temporary substitute
14 conservator for an individual subject to conservatorship for a
15 period not exceeding six months if:

16 (1) a proceeding to remove a conservator for
17 the individual is pending; or

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

22 C. Except as otherwise ordered by the court, a
23 temporary substitute guardian or temporary substitute
24 conservator appointed under this section has the powers stated
25 in the order of appointment of the guardian or conservator.

underscored material = new
[bracketed material] = delete

1 The authority of the existing guardian or conservator is
2 suspended for as long as the temporary substitute guardian or
3 conservator has authority.

4 D. The court shall give notice of appointment of a
5 temporary substitute guardian or temporary substitute
6 conservator, not later than five days after the appointment,
7 to:

8 (1) the individual subject to guardianship or
9 conservatorship;

10 (2) the affected guardian or conservator; and

11 (3) in the case of a minor, each parent of the
12 minor and any person currently having care or custody of the
13 minor.

14 E. The court may remove a temporary substitute
15 guardian or temporary substitute conservator at any time. The
16 temporary substitute guardian or temporary substitute
17 conservator shall make any report the court requires.

18 SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER--
19 EFFECT.--

20 A. If a guardian has been appointed in another
21 state for an individual and a petition for guardianship for the
22 individual is not pending in New Mexico, the guardian appointed
23 in the other state, after giving notice to the appointing
24 court, may register the guardianship order in New Mexico by
25 filing as a foreign judgment, in a court of an appropriate

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 county of New Mexico, certified copies of the order and letters
2 of office.

3 B. If a conservator has been appointed in another
4 state for an individual and a petition for conservatorship for
5 the individual is not pending in New Mexico, the conservator
6 appointed for the individual in the other state, after giving
7 notice to the appointing court, may register the
8 conservatorship in New Mexico by filing as a foreign judgment,
9 in a court of a county in which property belonging to the
10 individual subject to conservatorship is located, certified
11 copies of the order of conservatorship, letters of office and
12 any bond or other asset-protection arrangement required by the
13 court.

14 C. On registration under this section of a
15 guardianship or conservatorship order from another state, the
16 guardian or conservator may exercise in New Mexico all powers
17 authorized in the order except as prohibited by the Uniform
18 Guardianship, Conservatorship and Other Protective Arrangements
19 Act or other law of New Mexico. If the guardian or conservator
20 is not a resident of New Mexico, the guardian or conservator
21 may maintain an action or proceeding in New Mexico subject to
22 any condition imposed by New Mexico on an action or proceeding
23 by a nonresident party.

24 D. The court may grant any relief available under
25 the Uniform Guardianship, Conservatorship and Other Protective

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 Arrangements Act or other law of New Mexico to enforce an order
2 registered under this section.

3 SECTION 127. [NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR
4 CONSERVATOR.--

5 A. An individual who is subject to guardianship or
6 conservatorship, or a person interested in the welfare of an
7 individual subject to guardianship or conservatorship, that
8 reasonably believes the guardian or conservator is breaching
9 the guardian's or conservator's fiduciary duty or otherwise
10 acting in a manner inconsistent with the Uniform Guardianship,
11 Conservatorship and Other Protective Arrangements Act may file
12 a grievance in a record with the court.

13 B. Subject to Subsection C of this section, after
14 receiving a grievance under Subsection A of this section, the
15 court:

16 (1) shall review the grievance and, if
17 necessary to determine the appropriate response, court records
18 related to the guardianship or conservatorship;

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

22 (a) removal of the guardian and
23 appointment of a successor may be appropriate under Section 318
24 of the Uniform Guardianship, Conservatorship and Other
25 Protective Arrangements Act;

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 (b) termination or modification of the
2 guardianship may be appropriate under Section 319 of the
3 Uniform Guardianship, Conservatorship and Other Protective
4 Arrangements Act;

5 (c) removal of the conservator and
6 appointment of a successor may be appropriate under Section 430
7 of the Uniform Guardianship, Conservatorship and Other
8 Protective Arrangements Act; or

9 (d) termination or modification of the
10 conservatorship may be appropriate under Section 431 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act; and

13 (3) may take any action supported by the
14 evidence, including:

15 (a) ordering the guardian or conservator
16 to provide the court a report, accounting, inventory, updated
17 plan or other information;

18 (b) appointing a guardian ad litem;

19 (c) appointing an attorney for the
20 individual subject to guardianship or conservatorship; or

21 (d) holding a hearing.

22 C. The court may decline to act under Subsection B
23 of this section if a similar grievance was filed within the six
24 months preceding the filing of the current grievance and the
25 court followed the procedures of that subsection in considering

.208901.3

1 the earlier grievance.

2 SECTION 128. [NEW MATERIAL] DELEGATION BY PARENT.--Unless
3 otherwise provided by law, a parent of a minor, by a power of
4 attorney, may delegate to another person for a period not
5 exceeding six months any of the parent's powers regarding care,
6 custody or property of the minor, other than power to consent
7 to marriage or adoption.

8 ARTICLE 2

9 GUARDIANSHIP OF MINOR

10 SECTION 201. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
11 GUARDIAN FOR MINOR.--

12 A. A person becomes a guardian for a minor only on
13 appointment by the court.

14 B. The court may appoint a guardian for a minor who
15 does not have a guardian if the court finds the appointment is
16 in the minor's best interest and:

17 (1) each parent of the minor, after being
18 fully informed of the nature and consequences of guardianship,
19 consents;

20 (2) all parental rights have been terminated;
21 or

22 (3) there is clear and convincing evidence
23 that no parent of the minor is willing or able to exercise the
24 powers the court is granting the guardian.

25 SECTION 202. [NEW MATERIAL] PETITION FOR APPOINTMENT OF

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 GUARDIAN FOR MINOR.--

2 A. A person interested in the welfare of a minor,
3 including the minor, may petition for appointment of a guardian
4 for the minor.

5 B. A petition under Subsection A of this section
6 shall state the petitioner's name, principal residence, current
7 street address, if different, relationship to the minor,
8 interest in the appointment, the name and address of any
9 attorney representing the petitioner and, to the extent known,
10 the following:

11 (1) the minor's name, age, principal
12 residence, current street address, if different, and, if
13 different, address of the dwelling in which it is proposed the
14 minor will reside if the appointment is made;

15 (2) the name and current street address of the
16 minor's parents;

17 (3) the name and address, if known, of each
18 person that had primary care or custody of the minor for at
19 least sixty days during the two years immediately before the
20 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) the name and address of any attorney for
24 the minor and any attorney for each parent of the minor;

25 (5) the reason guardianship is sought and

.208901.3

underscored material = new
[bracketed material] = delete

1 would be in the best interest of the minor;

2 (6) the name and address of any proposed
3 guardian and the reason the proposed guardian should be
4 selected;

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

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

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

14 (10) whether any other proceeding concerning
15 the care or custody of the minor is pending in any court in New
16 Mexico or another jurisdiction.

17 SECTION 203. [NEW MATERIAL] NOTICE OF HEARING FOR
18 APPOINTMENT OF GUARDIAN FOR MINOR.--

19 A. If a petition is filed under Section 202 of the
20 Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act, the court shall schedule a hearing and the
22 petitioner shall:

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

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

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

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

6 (c) any adult with whom the minor
7 resides;

8 (d) each person that had primary care or
9 custody of the minor for at least sixty days during the two
10 years immediately before the filing of the petition or for at
11 least seven hundred thirty days during the five years
12 immediately before the filing of the petition; and

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

15 (2) give notice under Section 113 of the
16 Uniform Guardianship, Conservatorship and Other Protective
17 Arrangements Act of the date, time and place of the hearing,
18 together with a copy of the petition, to:

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

21 (b) any nominee of a parent;

22 (c) each grandparent and adult sibling
23 of the minor;

24 (d) any guardian or conservator acting
25 for the minor in any jurisdiction; and

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (e) any other person the court
2 determines.

3 B. Notice required by Subsection A of this section
4 shall include a statement of the right to request appointment
5 of an attorney for the minor or object to appointment of a
6 guardian and a description of the nature, purpose and
7 consequences of appointment of a guardian.

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

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

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

17 D. If a petitioner is unable to serve notice under
18 Paragraph (1) of Subsection A of this section on a parent of a
19 minor or alleges that the parent waived, in a record, the right
20 to notice under this section, the court shall appoint a visitor
21 who shall:

22 (1) interview the petitioner and the minor;

23 (2) if the petitioner alleges the parent
24 cannot be located, ascertain whether the parent cannot be
25 located with due diligence; and

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 (3) investigate any other matter relating to
2 the petition the court directs.

3 SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR
4 PARENT.--

5 A. The court shall appoint an attorney to represent
6 a minor who is the subject of a proceeding under Section 202 of
7 the Uniform Guardianship, Conservatorship and Other Protective
8 Arrangements Act if:

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

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

12 (3) the court determines the minor needs
13 representation.

14 B. An attorney appointed under Subsection A of this
15 section shall:

16 (1) make a reasonable effort to ascertain the
17 minor's wishes;

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

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

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

underscored material = new
~~[bracketed material] = delete~~

1 D. A parent of a minor who is the subject of a
2 proceeding under Section 202 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act may
4 retain an attorney to represent the parent in the proceeding.

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

7 A. The court shall require a minor who is the
8 subject of a hearing under Section 203 of the Uniform
9 Guardianship, Conservatorship and Other Protective Arrangements
10 Act to attend the hearing and allow the minor to participate in
11 the hearing unless the court determines, by clear and
12 convincing evidence presented at the hearing or a separate
13 hearing, that:

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

18 (2) there is no practicable way for the minor
19 to attend the hearing;

20 (3) the minor lacks the ability or maturity to
21 participate meaningfully in the hearing; or

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

23 B. Unless excused by the court for good cause, the
24 person proposed to be appointed as guardian for a minor shall
25 attend a hearing under Section 203 of the Uniform Guardianship,

underscored material = new
[bracketed material] = delete

1 Conservatorship and Other Protective Arrangements Act.

2 C. Each parent of a minor who is the subject of a
3 hearing under Section 203 of the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act has the
5 right to attend the hearing.

6 D. A person may request permission to participate
7 in a hearing under Section 203 of the Uniform Guardianship,
8 Conservatorship and Other Protective Arrangements Act. The
9 court may grant the request, with or without hearing, on
10 determining that it is in the best interest of the minor who is
11 the subject of the hearing. The court may impose appropriate
12 conditions on the person's participation.

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

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

21 B. In appointing a guardian under Subsection A of
22 this section:

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

underscoring material = new
~~[bracketed material] = delete~~

1 interest of the minor;

2 (2) if multiple parents have nominated
3 different persons to serve as guardian, the court shall appoint
4 the nominee whose appointment is in the best interest of the
5 minor, unless the court finds that appointment of none of the
6 nominees is in the best interest of the minor; and

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

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

23 D. The court, as part of an order appointing a
24 guardian for a minor, shall state rights retained by any parent
25 of the minor, which may include contact or visitation with the

.208901.3

underscored material = new
[bracketed material] = delete

1 minor, decision making regarding the minor's health care,
2 education or other matter or access to a record regarding the
3 minor.

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

7 (1) the guardian has delegated custody of the
8 minor subject to guardianship;

9 (2) the court has modified or limited the
10 powers of the guardian; or

11 (3) the court has removed the guardian.

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

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

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

23 B. A parent of a minor, in a signed record, may
24 nominate a person to be appointed by the court as standby
25 guardian for the minor. The parent, in a signed record, may

.208901.3

1 state desired limitations on the powers to be granted the
2 standby guardian. The parent, in a signed record, may revoke
3 or amend the nomination at any time before the court appoints a
4 standby guardian.

5 C. The court may appoint a standby guardian for a
6 minor on:

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

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

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

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

20 (1) serve a copy of the petition personally
21 on:

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

24 (b) each parent of the minor;

25 (c) the person nominated as standby

underscored material = new
~~[bracketed material] = delete~~

1 guardian; and

2 (d) any other person the court

3 determines; and

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

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

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

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

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

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

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

10 (1) interview the petitioner and the minor;

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

14 (3) investigate any other matter relating to
15 the petition the court directs.

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

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

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

underscoring material = new
~~[bracketed material] = delete~~

1 nominee is in the best interest of the minor.

2 K. An order appointing a standby guardian under
3 this section shall state that each parent of the minor is
4 entitled to notice, and identify any other person entitled to
5 notice, if:

6 (1) the standby guardian assumes the duties
7 and powers of the guardian;

8 (2) the guardian delegates custody of the
9 minor;

10 (3) the court modifies or limits the powers of
11 the guardian; or

12 (4) the court removes the guardian.

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

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

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

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

24 M. A person that receives notice under Subsection L
25 of this section or any other person interested in the welfare

.208901.3

underscored material = new
[bracketed material] = delete

1 of the minor may file with the court an objection to the
2 standby guardian's assumption of duties and powers of a
3 guardian. The court shall hold a hearing if the objection
4 supports a reasonable belief that the conditions for assumption
5 of duties and powers have not been satisfied.

6 SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR
7 MINOR.--

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

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

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

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

23 C. Except as otherwise provided in Subsection D of
24 this section, reasonable notice of the date, time and place of
25 a hearing on a petition for appointment of an emergency

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 guardian for a minor shall be given to:

2 (1) the minor, if the minor is twelve years of
3 age or older;

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

7 (3) each parent of the minor;

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

10 (5) any other person the court determines.

11 D. The court may appoint an emergency guardian for
12 a minor without notice under Subsection C of this section and a
13 hearing only if the court finds from an affidavit or testimony
14 that the minor's health, safety or welfare will be
15 substantially harmed before a hearing with notice on the
16 appointment can be held. If the court appoints an emergency
17 guardian without notice to an unrepresented minor or the
18 attorney for a represented minor, notice of the appointment
19 shall be given not later than forty-eight hours after the
20 appointment to the individuals listed in Subsection C of this
21 section. Not later than five days after the appointment, the
22 court shall hold a hearing on the appropriateness of the
23 appointment.

24 E. Appointment of an emergency guardian under this
25 section, with or without notice, is not a determination that a

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 basis exists for appointment of a guardian under Section 201 of
2 the Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act.

4 F. The court may remove an emergency guardian
5 appointed under this section at any time. The emergency
6 guardian shall make any report the court requires.

7 SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR
8 MINOR.--

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

15 B. A guardian for a minor shall:

16 (1) be personally acquainted with the minor
17 and maintain sufficient contact with the minor to know the
18 minor's abilities, limitations, needs, opportunities and
19 physical and mental health;

20 (2) take reasonable care of the minor's
21 personal effects and bring a proceeding for a conservatorship
22 or protective arrangement instead of conservatorship if
23 necessary to protect other property of the minor;

24 (3) expend funds of the minor that have been
25 received by the guardian for the minor's current needs for

.208901.3

underscored material = new
[bracketed material] = delete

1 support, care, education, health, safety and welfare;

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

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

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

14 (7) in determining what is in the minor's best
15 interest, take into account the minor's preferences to the
16 extent actually known or reasonably ascertainable by the
17 guardian.

18 SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR
19 MINOR.--

20 A. Except as otherwise limited by court order, a
21 guardian of a minor has the powers a parent otherwise would
22 have regarding the minor's support, care, education, health,
23 safety and welfare.

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

.208901.3

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

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

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

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

18 (5) to the extent reasonable, delegate to the
19 minor responsibility for a decision affecting the minor's
20 well-being.

21 C. The court may authorize a guardian for a minor
22 to consent to the adoption of the minor if the minor does not
23 have a parent.

24 D. A guardian for a minor may consent to the
25 marriage of the minor.

underscored material = new
[bracketed material] = delete

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

3 A. Guardianship under the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act for a
5 minor terminates:

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

8 (2) when the court finds that the standard in
9 Section 201 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act for appointment of a guardian
11 is not satisfied, unless the court finds that:

12 (a) termination of the guardianship
13 would be harmful to the minor; and

14 (b) the minor's interest in the
15 continuation of the guardianship outweighs the interest of any
16 parent of the minor in restoration of the parent's right to
17 make decisions for the minor.

18 B. A minor subject to guardianship or a person
19 interested in the welfare of the minor may petition the court
20 to terminate the guardianship, modify the guardianship, remove
21 the guardian and appoint a successor guardian, or remove a
22 standby guardian and appoint a different standby guardian.

23 C. A petitioner under Subsection B of this section
24 shall give notice of the hearing on the petition to the minor,
25 if the minor is twelve years of age or older and is not the

underscored material = new
[bracketed material] = delete

1 petitioner, the guardian, each parent of the minor and any
2 other person the court determines.

3 D. The court shall follow the priorities in
4 Subsection B of Section 206 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act when
6 selecting a successor guardian for a minor.

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

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

16 G. A guardian for a minor that is removed shall
17 cooperate with a successor guardian to facilitate transition of
18 the guardian's responsibilities and protect the best interest
19 of the minor.

20 ARTICLE 3

21 GUARDIANSHIP OF ADULT

22 SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
23 GUARDIAN FOR ADULT.--

24 A. On petition and after notice and hearing, the
25 court may:

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

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

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

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

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

18 B. The court shall grant a guardian appointed under
19 Subsection A of this section only those powers necessitated by
20 the demonstrated needs and limitations of the respondent and
21 issue orders that will encourage development of the
22 respondent's maximum self-determination and independence. The
23 court shall not establish a full guardianship if a limited
24 guardianship, protective arrangement instead of guardianship or
25 other less restrictive alternatives would meet the needs of the

.208901.3

underscored material = new
[bracketed material] = delete

1 respondent.

2 SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF
3 GUARDIAN FOR ADULT.--

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

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

13 (1) the respondent's name, age, principal
14 residence, current street address, if different, and, if
15 different, address of the dwelling in which it is proposed the
16 respondent will reside if the petition is granted;

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

22 (b) adult children or, if none, each
23 parent and adult sibling of the respondent or, if none, at
24 least one adult nearest in kinship to the respondent who can be
25 found with reasonable diligence; and

.208901.3

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

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

8 (a) a person responsible for care of the
9 respondent;

10 (b) any attorney currently representing
11 the respondent;

12 (c) any representative payee appointed
13 by the federal social security administration for the
14 respondent;

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

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

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

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

24 (h) an agent designated under a power of
25 attorney for finances in which the respondent is identified as

1 the principal;

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

4 (j) a person nominated as guardian by
5 the respondent's parent or spouse in a will or other signed
6 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 respondent with decision making during the six
11 months immediately before the filing of the petition;

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

14 (a) the nature and extent of the
15 respondent's alleged need;

16 (b) any protective arrangement instead
17 of guardianship or other less restrictive alternatives for
18 meeting the respondent's alleged need that have been considered
19 or implemented;

20 (c) if no protective arrangement instead
21 of guardianship or other less restrictive alternatives have
22 been considered or implemented, the reason they have not been
23 considered or implemented; and

24 (d) the reason a protective arrangement
25 instead of guardianship or other less restrictive alternative

underscoring material = new
~~[bracketed material] = delete~~

1 is insufficient to meet the respondent's alleged need;

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

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

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

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

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

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

20 **SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR**
21 **APPOINTMENT OF GUARDIAN FOR ADULT.--**

22 A. On filing of a petition under Section 302 of the
23 Uniform Guardianship, Conservatorship and Other Protective
24 Arrangements Act for appointment of a guardian for an adult,
25 the court shall set a date, time and place for hearing the

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 petition.

2 B. A copy of a petition under Section 302 of the
3 Uniform Guardianship, Conservatorship and Other Protective
4 Arrangements Act and notice of a hearing on the petition shall
5 be served personally on the respondent. The notice shall
6 inform the respondent of the respondent's rights at the
7 hearing, including the right to an attorney and to attend the
8 hearing. The notice shall include a description of the nature,
9 purpose and consequences of granting the petition. The court
10 shall not grant the petition if notice substantially complying
11 with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 302
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act, the notice required under
15 Subsection B of this section shall be given to the persons
16 required to be listed in the petition under Paragraphs (1)
17 through (3) of Subsection B of Section 302 of that act and any
18 other person interested in the respondent's welfare the court
19 determines. Failure to give notice under this subsection does
20 not preclude the court from appointing a guardian.

21 D. After the appointment of a guardian, notice of a
22 hearing on a petition for an order under this article together
23 with a copy of the petition shall be given to:

- 24 (1) the adult subject to guardianship;
25 (2) the guardian; and

.208901.3

underscored material = new
[bracketed material] = delete

1 (3) any other person the court determines.

2 SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF
3 VISITOR.--

4 A. On receipt of a petition under Section 302 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act for appointment of a guardian for an adult,
7 the court shall appoint a visitor. The visitor shall be an
8 individual with training or experience in the type of
9 abilities, limitations and needs alleged in the petition.

10 B. A visitor appointed under Subsection A of this
11 section shall interview the respondent in person and, in a
12 manner the respondent is best able to understand:

13 (1) explain to the respondent the substance of
14 the petition, the nature, purpose and effect of the proceeding,
15 the respondent's rights at the hearing on the petition and the
16 general powers and duties of a guardian;

17 (2) determine the respondent's views about the
18 appointment sought by the petitioner, including views about a
19 proposed guardian, the guardian's proposed powers and duties
20 and the scope and duration of the proposed guardianship;

21 (3) inform the respondent of the respondent's
22 right to employ and consult with an attorney at the
23 respondent's expense and the right to request a court-appointed
24 attorney; and

25 (4) inform the respondent that all costs and

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 expenses of the proceeding, including respondent's attorney's
2 fees, may be paid from the respondent's assets.

3 C. The visitor appointed under Subsection A of this
4 section shall:

5 (1) interview the petitioner and proposed
6 guardian, if any;

7 (2) visit the respondent's present dwelling
8 and any dwelling in which it is reasonably believed the
9 respondent will live if the appointment is made;

10 (3) obtain information from any physician or
11 other person known to have treated, advised or assessed the
12 respondent's relevant physical or mental condition; and

13 (4) investigate the allegations in the
14 petition and any other matter relating to the petition the
15 court directs.

16 D. A visitor appointed under Subsection A of this
17 section promptly shall file a report in a record with the court
18 that includes:

19 (1) a summary of self-care and independent-
20 living tasks the respondent can manage without assistance or
21 with existing supports, could manage with the assistance of
22 appropriate supportive services, technological assistance or
23 supported decision making and cannot manage;

24 (2) a recommendation regarding the
25 appropriateness of guardianship, including whether a protective

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 arrangement instead of guardianship or other less restrictive
2 alternative for meeting the respondent's needs is available
3 and:

4 (a) if a guardianship is recommended,
5 whether it should be full or limited; and

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

8 (3) a statement of the qualifications of the
9 proposed guardian and whether the respondent approves or
10 disapproves of the proposed guardian;

11 (4) a statement whether the proposed dwelling
12 meets the respondent's needs and whether the respondent has
13 expressed a preference as to residence;

14 (5) a recommendation whether a professional
15 evaluation under Section 306 of the Uniform Guardianship,
16 Conservatorship and Other Protective Arrangements Act is
17 necessary;

18 (6) a statement whether the respondent is able
19 to attend a hearing at the location court proceedings typically
20 are held;

21 (7) a statement whether the respondent is able
22 to participate in a hearing and that identifies any technology
23 or other form of support that would enhance the respondent's
24 ability to participate; and

25 (8) any other matter the court directs.

.208901.3

underscored material = new
[bracketed material] = delete

1 SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF
2 ATTORNEY FOR ADULT.--

3 A. Unless the respondent in a proceeding for
4 appointment of a guardian for an adult is represented by an
5 attorney, the court shall appoint an attorney to represent the
6 respondent, regardless of the respondent's ability to pay.

7 B. An attorney representing the respondent in a
8 proceeding for appointment of a guardian for an adult shall:

9 (1) make reasonable efforts to ascertain the
10 respondent's wishes;

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

13 (3) if the respondent's wishes are not
14 reasonably ascertainable, advocate for the result that is the
15 least restrictive in type, duration and scope, consistent with
16 the respondent's interests.

17 SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

18 A. At or before a hearing on a petition for a
19 guardianship for an adult, the court shall order a professional
20 evaluation of the respondent:

21 (1) if the respondent requests the evaluation;
22 or

23 (2) in other cases, unless the court finds
24 that it has sufficient information to determine the
25 respondent's needs and abilities without the evaluation.

underscoring material = new
~~[bracketed material] = delete~~

1 B. If the court orders an evaluation under
2 Subsection A of this section, the respondent shall be examined
3 by a licensed physician, psychologist, social worker or other
4 individual appointed by the court who is qualified to evaluate
5 the respondent's alleged cognitive and functional abilities and
6 limitations and will not be advantaged or disadvantaged by a
7 decision to grant the petition or otherwise have a conflict of
8 interest. The individual conducting the evaluation promptly
9 shall file report in a record with the court. Unless otherwise
10 directed by the court, the report shall contain:

11 (1) a description of the nature, type and
12 extent of the respondent's cognitive and functional abilities
13 and limitations;

14 (2) an evaluation of the respondent's mental
15 and physical condition and, if appropriate, educational
16 potential, adaptive behavior and social skills;

17 (3) a prognosis for improvement and
18 recommendation for the appropriate treatment, support or
19 habilitation plan; and

20 (4) the date of the examination on which the
21 report is based.

22 C. The respondent may decline to participate in an
23 evaluation ordered under Subsection A of this section.

24 SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
25 HEARING.--

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 A. Except as otherwise provided in Subsection B of
2 this section, a hearing under Section 303 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act shall not proceed unless the respondent attends the
5 hearing. If it is not reasonably feasible for the respondent
6 to attend a hearing at the location court proceedings typically
7 are held, the court shall make reasonable efforts to hold the
8 hearing at an alternative location convenient to the respondent
9 or allow the respondent to attend the hearing using real-time
10 audio-visual technology.

11 B. A hearing under Section 303 of the Uniform
12 Guardianship, Conservatorship and Other Protective Arrangements
13 Act may proceed without the respondent in attendance if the
14 court finds by clear and convincing evidence that:

15 (1) the respondent consistently and repeatedly
16 has refused to attend the hearing after having been fully
17 informed of the right to attend and the potential consequences
18 of failing to do so; or

19 (2) there is no practicable way for the
20 respondent to attend and participate in the hearing even with
21 appropriate supportive services and technological assistance.

22 C. The respondent may be assisted in a hearing
23 under Section 303 of the Uniform Guardianship, Conservatorship
24 and Other Protective Arrangements Act by a person or persons of
25 the respondent's choosing, assistive technology or an

.208901.3

1 interpreter or translator or a combination of these supports.
2 If assistance would facilitate the respondent's participation
3 in the hearing, but is not otherwise available to the
4 respondent, the court shall make reasonable efforts to provide
5 it.

6 D. The respondent has a right to choose an attorney
7 to represent the respondent at a hearing under Section 303 of
8 the Uniform Guardianship, Conservatorship and Other Protective
9 Arrangements Act.

10 E. At a hearing held under Section 303 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act, the respondent may:

13 (1) present evidence and subpoena witnesses
14 and documents;

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

17 (3) otherwise participate in the hearing.

18 F. Unless excused by the court for good cause, a
19 proposed guardian shall attend a hearing under Section 303 of
20 the Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act.

22 G. A hearing under Section 303 of the Uniform
23 Guardianship, Conservatorship and Other Protective Arrangements
24 Act shall be closed on request of the respondent and a showing
25 of good cause.

underscored material = new
[bracketed material] = delete

1 H. Any person may request to participate in a
2 hearing under Section 303 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act. The
4 court may grant the request, with or without a hearing, on
5 determining that the best interest of the respondent will be
6 served. The court may impose appropriate conditions on the
7 person's participation.

8 SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

9 A. The existence of a proceeding for or the
10 existence of a guardianship for an adult is a matter of public
11 record unless the court seals the record after:

12 (1) the respondent or individual subject to
13 guardianship requests the record be sealed; and

14 (2) either:

15 (a) the petition for guardianship is
16 dismissed; or

17 (b) the guardianship is terminated.

18 B. An adult subject to a proceeding for a
19 guardianship, whether or not a guardian is appointed, an
20 attorney designated by the adult and a person entitled to
21 notice under Subsection E of Section 310 of the Uniform
22 Guardianship, Conservatorship and Other Protective Arrangements
23 Act or a subsequent order are entitled to access court records
24 of the proceeding and resulting guardianship, including the
25 guardian's plan under Section 316 of that act and report under

underscored material = new
[bracketed material] = delete

1 Section 317 of that act. A person not otherwise entitled to
2 access court records under this subsection for good cause may
3 petition the court for access to court records of the
4 guardianship, including the guardian's report and plan. The
5 court shall grant access if access is in the best interest of
6 the respondent or adult subject to guardianship or furthers the
7 public interest and does not endanger the welfare or financial
8 interests of the adult.

9 C. A report under Section 304 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act of a visitor or a professional evaluation under Section 306
12 of that act is confidential and shall be sealed on filing, but
13 is available to:

- 14 (1) the court;
- 15 (2) the individual who is the subject of the
16 report or evaluation, without limitation as to use;
- 17 (3) the petitioner, visitor and petitioner's
18 and respondent's attorneys, for purposes of the proceeding;
- 19 (4) unless the court orders otherwise, an
20 agent appointed under a power of attorney for health care or
21 power of attorney for finances in which the respondent is the
22 principal; and
- 23 (5) any other person if it is in the public
24 interest or for a purpose the court orders for good cause.

25 SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN OF

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 ADULT--ORDER OF PRIORITY.--

2 A. Except as otherwise provided in Subsection C of
3 this section, the court in appointing a guardian for an adult
4 shall consider persons qualified to be guardian in the
5 following order of priority:

6 (1) a guardian, other than a temporary or
7 emergency guardian, currently acting for the respondent in
8 another jurisdiction;

9 (2) a person nominated as guardian by the
10 respondent, including the respondent's most recent nomination
11 made in a power of attorney;

12 (3) an agent appointed by the respondent under
13 a power of attorney for health care;

14 (4) a spouse of the respondent; and

15 (5) a family member or other individual who
16 has shown special care and concern for the respondent.

17 B. If two or more persons have equal priority under
18 Subsection A of this section, the court shall select as
19 guardian the person the court considers best qualified. In
20 determining the best qualified person, the court shall consider
21 the person's relationship with the respondent, the person's
22 skills, the expressed wishes of the respondent, the extent to
23 which the person and the respondent have similar values and
24 preferences and the likelihood the person will be able to
25 perform the duties of a guardian successfully.

.208901.3

underscored material = new
[bracketed material] = delete

1 C. The court, acting in the best interest of the
2 respondent, may decline to appoint as guardian a person having
3 priority under Subsection A of this section and appoint a
4 person having a lower priority or no priority.

5 D. A person that provides paid services to the
6 respondent, or an individual who is employed by a person that
7 provides paid services to the respondent or is the spouse,
8 domestic partner, parent or child of an individual who provides
9 or is employed to provide paid services to the respondent,
10 shall not be appointed as guardian unless:

11 (1) the individual is related to the
12 respondent by blood, marriage or adoption; or

13 (2) the court finds by clear and convincing
14 evidence that the person is the best qualified person available
15 for appointment and the appointment is in the best interest of
16 the respondent.

17 E. An owner, operator or employee of a long-term
18 care facility at which the respondent is receiving care shall
19 not be appointed as guardian unless the owner, operator or
20 employee is related to the respondent by blood, marriage or
21 adoption.

22 SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF
23 GUARDIAN.--

24 A. A court order appointing a guardian for an adult
25 shall:

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (1) include a specific finding that clear and
2 convincing evidence established that the identified needs of
3 the respondent cannot be met by a protective arrangement
4 instead of guardianship or other less restrictive alternative,
5 including use of appropriate supportive services, technological
6 assistance or supported decision making;

7 (2) include a specific finding that clear and
8 convincing evidence established that the respondent was given
9 proper notice of the hearing on the petition;

10 (3) state whether the adult subject to
11 guardianship retains the right to vote and, if the adult does
12 not retain the right to vote, include findings that support
13 removing that right; and

14 (4) 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 vote unless the order under Subsection A of this
20 section includes the statement required by Paragraph (3) of
21 Subsection A of this section. An adult subject to guardianship
22 retains the right to marry unless the order under Subsection A
23 of this section includes the findings required by Paragraph (4)
24 of Subsection A of this section.

25 C. A court order establishing a full guardianship

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 for an adult shall state the basis for granting a full
2 guardianship and include specific findings that support the
3 conclusion that a limited guardianship would not meet the
4 functional needs of the adult subject to guardianship.

5 D. A court order establishing a limited
6 guardianship for an adult shall state the specific powers
7 granted to the guardian.

8 E. The court, as part of an order establishing a
9 guardianship for an adult, shall identify any person that
10 subsequently is entitled to:

11 (1) notice of the rights of the adult under
12 Subsection B of Section 311 of the Uniform Guardianship,
13 Conservatorship and Other Protective Arrangements Act;

14 (2) notice of a change in the primary dwelling
15 of the adult;

16 (3) notice that the guardian has delegated:

17 (a) the power to manage the care of the
18 adult;

19 (b) the power to make decisions about
20 where the adult lives;

21 (c) the power to make major medical
22 decisions on behalf of the adult;

23 (d) a power that requires court approval
24 under Section 315 of the Uniform Guardianship, Conservatorship
25 and Other Protective Arrangements Act; or

.208901.3

underscored material = new
[bracketed material] = delete

- 1 (e) substantially all powers of the
- 2 guardian;
- 3 (4) notice that the guardian will be
- 4 unavailable to visit the adult for more than two months or
- 5 unavailable to perform the guardian's duties for more than one
- 6 month;
- 7 (5) a copy of the guardian's plan under
- 8 Section 316 of the Uniform Guardianship, Conservatorship and
- 9 Other Protective Arrangements Act and the guardian's report
- 10 under Section 317 of that act;
- 11 (6) access to court records relating to the
- 12 guardianship;
- 13 (7) notice of the death or significant change
- 14 in the condition of the adult;
- 15 (8) notice that the court has limited or
- 16 modified the powers of the guardian; and
- 17 (9) notice of the removal of the guardian.

18 F. A spouse and adult children of an adult subject
19 to guardianship are entitled to notice under Subsection E of
20 this section unless the court determines notice would be
21 contrary to the preferences or prior directions of the adult
22 subject to guardianship or not in the best interest of the
23 adult.

24 SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF
25 APPOINTMENT--RIGHTS.--

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

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

underscoring material = new
~~[bracketed material] = delete~~

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

underscored material = new
[bracketed material] = delete

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.--

18 A. On its own after a petition has been filed under
19 Section 302 of the Uniform Guardianship, Conservatorship and
20 Other Protective Arrangements Act, or on petition by a person
21 interested in an adult's welfare, the court may appoint an
22 emergency guardian for the adult if the court finds:

23 (1) appointment of an emergency guardian is
24 likely to prevent substantial harm to the adult's physical
25 health, safety or welfare;

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (2) no other person appears to have authority
2 and willingness to act in the circumstances; and

3 (3) there is reason to believe that a basis
4 for appointment of a guardian under Section 301 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act exists.

7 B. The duration of authority of an emergency
8 guardian for an adult shall not exceed sixty days, and the
9 emergency guardian may exercise only the powers specified in
10 the order of appointment. The emergency guardian's authority
11 may be extended once for not more than sixty days if the court
12 finds that the conditions for appointment of an emergency
13 guardian in Subsection A of this section continue.

14 C. Immediately on filing of a petition for an
15 emergency guardian for an adult, the court shall appoint an
16 attorney to represent the respondent in the proceeding. Except
17 as otherwise provided in Subsection D of this section,
18 reasonable notice of the date, time and place of a hearing on
19 the petition shall be given to the respondent, the respondent's
20 attorney and any other person the court determines.

21 D. The court may appoint an emergency guardian for
22 an adult without notice to the adult and any attorney for the
23 adult only if the court finds from an affidavit or testimony
24 that the respondent's physical health, safety or welfare will
25 be substantially harmed before a hearing with notice on the

.208901.3

underscored material = new
[bracketed material] = delete

1 appointment can be held. If the court appoints an emergency
2 guardian without giving notice under Subsection C of this
3 section, the court shall:

4 (1) give notice of the appointment not later
5 than forty-eight hours after the appointment to:

- 6 (a) the respondent;
7 (b) the respondent's attorney; and
8 (c) any other person the court
9 determines; and

10 (2) hold a hearing on the appropriateness of
11 the appointment not later than five days after the appointment.

12 E. Appointment of an emergency guardian under this
13 section is not a determination that a basis exists for
14 appointment of a guardian under Section 301 of the Uniform
15 Guardianship, Conservatorship and Other Protective Arrangements
16 Act.

17 F. The court may remove an emergency guardian
18 appointed under this section at any time. The emergency
19 guardian shall make any report the court requires.

20 SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR
21 ADULT.--

22 A. A guardian for an adult is a fiduciary. Except
23 as otherwise limited by the court, a guardian for an adult
24 shall make decisions regarding the support, care, education,
25 health and welfare of the adult subject to guardianship to the

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 extent necessitated by the adult's limitations.

2 B. A guardian for an adult shall promote the self-
3 determination of the adult and, to the extent reasonably
4 feasible, encourage the adult to participate in decisions, act
5 on the adult's own behalf and develop or regain the capacity to
6 manage the adult's personal affairs. In furtherance of this
7 duty, the guardian shall:

8 (1) become or remain personally acquainted
9 with the adult and maintain sufficient contact with the adult,
10 including through regular visitation, to know the adult's
11 abilities, limitations, needs, opportunities and physical and
12 mental health;

13 (2) to the extent reasonably feasible,
14 identify the values and preferences of the adult and involve
15 the adult in decisions affecting the adult, including decisions
16 about the adult's care, dwelling, activities or social
17 interactions; and

18 (3) make reasonable efforts to identify and
19 facilitate supportive relationships and services for the adult.

20 C. A guardian for an adult at all times shall
21 exercise reasonable care, diligence and prudence when acting on
22 behalf of or making decisions for the adult. In furtherance of
23 this duty, the guardian shall:

24 (1) take reasonable care of the personal
25 effects, pets and service or support animals of the adult and

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 bring a proceeding for a conservatorship or protective
2 arrangement instead of conservatorship if necessary to protect
3 the adult's property;

4 (2) expend funds and other property of the
5 adult received by the guardian for the adult's current needs
6 for support, care, education, health and welfare;

7 (3) conserve any funds and other property of
8 the adult not expended under Paragraph (2) of this subsection
9 for the adult's future needs, but if a conservator has been
10 appointed for the adult, pay the funds and other property at
11 least quarterly to the conservator to be conserved for the
12 adult's future needs; and

13 (4) monitor the quality of services, including
14 long-term care services, provided to the adult.

15 D. In making a decision for an adult subject to
16 guardianship, the guardian shall make the decision the guardian
17 reasonably believes the adult would make if the adult were able
18 unless doing so would unreasonably harm or endanger the welfare
19 or personal or financial interests of the adult. To determine
20 the decision the adult subject to guardianship would make if
21 able, the guardian shall consider the adult's previous or
22 current directions, preferences, opinions, values and actions,
23 to the extent actually known or reasonably ascertainable by the
24 guardian.

25 E. If a guardian for an adult cannot make a

.208901.3

underscored material = new
[bracketed material] = delete

1 decision under Subsection D of this section because the
2 guardian does not know and cannot reasonably determine the
3 decision the adult probably would make if able, or the guardian
4 reasonably believes the decision the adult would make would
5 unreasonably harm or endanger the welfare or personal or
6 financial interests of the adult, the guardian shall act in
7 accordance with the best interest of the adult. In determining
8 the best interest of the adult, the guardian shall consider:

9 (1) information received from professionals
10 and persons that demonstrate sufficient interest in the welfare
11 of the adult;

12 (2) other information the guardian believes
13 the adult would have considered if the adult were able to act;
14 and

15 (3) other factors a reasonable person in the
16 circumstances of the adult would consider, including
17 consequences for others.

18 F. A guardian for an adult immediately shall notify
19 the court if the condition of the adult has changed so that the
20 adult is capable of exercising rights previously removed.

21 SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR
22 ADULT.--

23 A. Except as limited by court order, a guardian for
24 an adult may:

25 (1) apply for and receive funds and benefits

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 for the support of the adult, unless a conservator is appointed
2 for the adult and the application or receipt is within the
3 powers of the conservator;

4 (2) unless inconsistent with a court order,
5 establish the adult's place of dwelling;

6 (3) consent to health or other care, treatment
7 or service for the adult;

8 (4) if a conservator for the adult has not
9 been appointed, commence a proceeding, including an
10 administrative proceeding, or take other appropriate action to
11 compel another person to support the adult or pay funds for the
12 adult's benefit;

13 (5) to the extent reasonable, delegate to the
14 adult responsibility for a decision affecting the adult's well-
15 being; and

16 (6) receive personally identifiable health
17 care information regarding the adult.

18 B. The court by specific order may authorize a
19 guardian for an adult to consent to the adoption of the adult.

20 C. The court by specific order may authorize a
21 guardian for an adult to:

22 (1) consent or withhold consent to the
23 marriage of the adult if the adult's right to marry has been
24 removed under Section 310 of the Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act;

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (2) petition for divorce, dissolution or
2 annulment of marriage of the adult or a declaration of
3 invalidity of the adult's marriage; or

4 (3) support or oppose a petition for divorce,
5 dissolution or annulment of marriage of the adult or a
6 declaration of invalidity of the adult's marriage.

7 D. In determining whether to authorize a power
8 under Subsection B of this section, the court shall consider
9 whether the underlying act would be in accordance with the
10 adult's preferences, values and prior directions and whether
11 the underlying act would be in the adult's best interest.

12 E. In exercising a guardian's power under Paragraph
13 (2) of Subsection A of this section to establish the adult's
14 place of dwelling, the guardian shall:

15 (1) select a residential setting the guardian
16 believes the adult would select if the adult were able, in
17 accordance with the decision-making standard in Subsections D
18 and E of Section 313 of the Uniform Guardianship,
19 Conservatorship and Other Protective Arrangements Act. If the
20 guardian does not know and cannot reasonably determine what
21 setting the adult subject to guardianship probably would choose
22 if able, or the guardian reasonably believes the decision the
23 adult would make would unreasonably harm or endanger the
24 welfare or personal or financial interests of the adult, the
25 guardian shall choose in accordance with Subsection E of that

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 section a residential setting that is consistent with the
2 adult's best interest;

3 (2) in selecting among residential settings,
4 give priority to a residential setting in a location that will
5 allow the adult to interact with persons important to the adult
6 and meet the adult's needs in the least restrictive manner
7 reasonably feasible unless to do so would be inconsistent with
8 the decision-making standard in Subsections D and E of Section
9 313 of the Uniform Guardianship, Conservatorship and Other
10 Protective Arrangements Act;

11 (3) not later than thirty days after a change
12 in the dwelling of the adult:

13 (a) give notice of the change to the
14 court, the adult and any person identified as entitled to the
15 notice in the court order appointing the guardian or a
16 subsequent order; and

17 (b) include in the notice the address
18 and nature of the new dwelling and state whether the adult
19 received advance notice of the change and whether the adult
20 objected to the change;

21 (4) establish or move the permanent place of
22 dwelling of the adult to a nursing home, mental health
23 treatment facility or other facility that places restrictions
24 on the adult's ability to leave or have visitors only if:

25 (a) the establishment or move is in the

underscoring material = new
~~[bracketed material] = delete~~

1 guardian's plan under Section 316 of the Uniform Guardianship,
2 Conservatorship and Other Protective Arrangements Act;

3 (b) the court authorizes the
4 establishment or move; or

5 (c) the guardian gives notice of the
6 establishment or move at least fourteen days before the
7 establishment or move to the adult and all persons entitled to
8 notice under Paragraph (2) of Subsection E of Section 310 of
9 the Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act or a subsequent order and no objection is
11 filed;

12 (5) establish or move the place of dwelling of
13 the adult outside New Mexico only if consistent with the
14 guardian's plan and authorized by the court by specific order;
15 and

16 (6) take action that would result in the sale
17 of or surrender of the lease to the primary dwelling of the
18 adult only if:

19 (a) the action is specifically in the
20 guardian's plan under Section 316 of the Uniform Guardianship,
21 Conservatorship and Other Protective Arrangements Act;

22 (b) the court authorizes the action by
23 specific order; or

24 (c) notice of the action was given at
25 least fourteen days before the action to the adult and all

underscored material = new
[bracketed material] = delete

1 persons entitled to the notice under Paragraph (2) of
2 Subsection E of Section 310 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act or a
4 subsequent order and no objection has been filed.

5 F. In exercising a guardian's power under Paragraph
6 (3) of Subsection A of this section to make health care
7 decisions, the guardian shall:

8 (1) involve the adult in decision making to
9 the extent reasonably feasible, including, when practicable, by
10 encouraging and supporting the adult in understanding the risks
11 and benefits of health care options;

12 (2) defer to a decision by an agent under a
13 power of attorney for health care signed by the adult and
14 cooperate to the extent feasible with the agent making the
15 decision; and

16 (3) take into account:
17 (a) the risks and benefits of treatment
18 options; and
19 (b) the current and previous wishes and
20 values of the adult, if known or reasonably ascertainable by
21 the guardian.

22 SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON
23 GUARDIAN'S POWER.--

24 A. Unless authorized by the court by specific
25 order, a guardian for an adult does not have the power to

underscoring material = new
~~[bracketed material]~~ = delete

1 revoke or amend a power of attorney for health care or power of
2 attorney for finances signed by the adult. If a power of
3 attorney for health care is in effect, unless there is a court
4 order to the contrary, a health care decision of an agent takes
5 precedence over that of the guardian and the guardian shall
6 cooperate with the agent to the extent feasible. If a power of
7 attorney for finances is in effect, unless there is a court
8 order to the contrary, a decision by the agent that the agent
9 is authorized to make under the power of attorney for finances
10 takes precedence over that of the guardian and the guardian
11 shall cooperate with the agent to the extent feasible.

12 B. A guardian for an adult shall not initiate the
13 commitment of the adult to a mental health treatment facility
14 except in accordance with the state's procedure for involuntary
15 civil commitment.

16 C. A guardian for an adult shall not restrict the
17 ability of the adult to communicate, visit or interact with
18 others, including receiving visitors and making or receiving
19 telephone calls, personal mail or electronic communications,
20 including through social media or participating in social
21 activities, unless:

- 22 (1) authorized by the court by specific order;
23 (2) a protective order or a protective
24 arrangement instead of guardianship is in effect that limits
25 contact between the adult and a person; or

.208901.3

underscored material = new
[bracketed material] = delete

1 (3) the guardian has good cause to believe
2 restriction is necessary because interaction with a specified
3 person poses a risk of significant physical, psychological or
4 financial harm to the adult and the restriction is:

5 (a) for a period of not more than seven
6 business days if the person has a family or preexisting social
7 relationship with the adult; or

8 (b) for a period of not more than sixty
9 days if the person does not have a family or preexisting social
10 relationship with the adult.

11 SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--

12 A. A guardian for an adult, not later than sixty
13 days after appointment and when there is a significant change
14 in circumstances, or the guardian seeks to deviate
15 significantly from the guardian's plan, shall file with the
16 court a plan for the care of the adult. The plan shall be
17 based on the needs of the adult and take into account the best
18 interest of the adult as well as the adult's preferences,
19 values and prior directions, to the extent known to or
20 reasonably ascertainable by the guardian. The guardian shall
21 include in the plan:

22 (1) the living arrangement, services and
23 supports the guardian expects to arrange, facilitate or
24 continue for the adult;

25 (2) social and educational activities the

underscoring material = new
~~[bracketed material] = delete~~

1 guardian expects to facilitate on behalf of the adult;

2 (3) any person with whom the adult has a close
3 personal relationship or relationship involving regular
4 visitation and any plan the guardian has for facilitating
5 visits with the person;

6 (4) the anticipated nature and frequency of
7 the guardian's visits and communication with the adult;

8 (5) goals for the adult, including any goal
9 related to the restoration of the adult's rights and how the
10 guardian anticipates achieving the goals;

11 (6) whether the adult has an existing plan
12 and, if so, whether the guardian's plan is consistent with the
13 adult's plan; and

14 (7) a statement or list of the amount the
15 guardian proposes to charge for each service the guardian
16 anticipates providing to the adult.

17 B. A guardian shall give notice of the filing of
18 the guardian's plan under Subsection A of this section,
19 together with a copy of the plan, to the adult subject to
20 guardianship, a person entitled to notice under Subsection E of
21 Section 310 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.

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 C. An adult subject to guardianship and any person
2 entitled under Subsection B of this section to receive notice
3 and a copy of the guardian's plan may object to the plan.

4 D. A guardian shall petition the court for approval
5 of a plan filed under Subsection A of this section. The court
6 shall review the plan and determine whether to approve it or
7 require a new plan. In deciding whether to approve the plan,
8 the court shall consider an objection under Subsection C of
9 this section and whether the plan is consistent with the
10 guardian's duties and powers under Sections 313 and 314 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act. The court shall not approve the plan
13 without:

14 (1) notice to the adult subject to
15 guardianship, a person entitled to notice under Subsection E of
16 Section 310 of the Uniform Guardianship, Conservatorship and
17 Other Protective Arrangements Act or under a subsequent order
18 and any other person the court deems entitled to notice; and

19 (2) a hearing.

20 E. After the guardian's plan filed under this
21 section is approved by the court, the guardian shall provide a
22 copy of the plan to the adult subject to guardianship, a person
23 entitled to notice under Subsection E of Section 310 of the
24 Uniform Guardianship, Conservatorship and Other Protective
25 Arrangements Act or a subsequent order and any other person the

.208901.3

1 court determines.

2 SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING
3 OF GUARDIANSHIP.--

4 A. A guardian for an adult, not later than sixty
5 days after appointment and at least annually thereafter, shall
6 file with the court a report in a record regarding the
7 condition of the adult and accounting for funds and other
8 property in the guardian's possession or subject to the
9 guardian's control.

10 B. A report under Subsection A of this section
11 shall state or contain:

12 (1) the mental, physical and social condition
13 of the adult;

14 (2) the living arrangements of the adult
15 during the reporting period;

16 (3) a summary of the supported decision
17 making, technological assistance, medical services, educational
18 and vocational services and other supports and services
19 provided to the adult and the guardian's opinion as to the
20 adequacy of the adult's care;

21 (4) a summary of the guardian's visits with
22 the adult, including the dates of the visits;

23 (5) action taken on behalf of the adult;

24 (6) the extent to which the adult has
25 participated in decision making;

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (7) if the adult is living in a mental health
2 treatment facility or living in a facility that provides the
3 adult with health care or other personal services, whether the
4 guardian considers the facility's current plan for support,
5 care, treatment or habilitation consistent with the adult's
6 preferences, values, prior directions and best interest;

7 (8) anything of more than de minimis value
8 that the guardian, any individual who resides with the guardian
9 or the spouse, parent, child or sibling of the guardian has
10 received from an individual providing goods or services to the
11 adult;

12 (9) if the guardian delegated a power to an
13 agent, the power delegated and the reason for the delegation;

14 (10) any business relation the guardian has
15 with a person the guardian has paid or that has benefited from
16 the property of the adult;

17 (11) a copy of the guardian's most recently
18 approved plan under Section 316 of the Uniform Guardianship,
19 Conservatorship and Other Protective Arrangements Act and a
20 statement whether the guardian has deviated from the plan and,
21 if so, how the guardian has deviated and why;

22 (12) plans for future care and support of the
23 adult;

24 (13) a recommendation as to the need for
25 continued guardianship and any recommended change in the scope

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 of the guardianship; and

2 (14) whether any co-guardian or successor
3 guardian appointed to serve when a designated event occurs is
4 alive and able to serve.

5 C. The court may appoint a visitor to review a
6 report submitted under this section or a guardian's plan
7 submitted under Section 316 of the Uniform Guardianship,
8 Conservatorship and Other Protective Arrangements Act,
9 interview the guardian or adult subject to guardianship or
10 investigate any other matter involving the guardianship.

11 D. Notice of the filing under this section of a
12 guardian's report, together with a copy of the report, shall be
13 given to the adult subject to guardianship, a person entitled
14 to notice under Subsection E of Section 310 of the Uniform
15 Guardianship, Conservatorship and Other Protective Arrangements
16 Act or a subsequent order and any other person the court
17 determines. The notice and report shall be given not later
18 than fourteen days after the filing.

19 E. The court may establish procedures for
20 monitoring a report submitted under this section and may review
21 each report at any time to determine whether:

22 (1) the report provides sufficient information
23 to establish the guardian has complied with the guardian's
24 duties;

25 (2) the guardianship should continue; and

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 (3) the guardian's requested fees, if any,
2 should be approved.

3 F. If the court determines there is reason to
4 believe a guardian for an adult has not complied with the
5 guardian's duties or the guardianship should be modified or
6 terminated, the court:

7 (1) shall notify the adult, the guardian and
8 any other person entitled to notice under Subsection E of
9 Section 310 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act or a subsequent order;

11 (2) may require additional information from
12 the guardian;

13 (3) may appoint a visitor to interview the
14 adult or guardian or investigate any matter involving the
15 guardianship; and

16 (4) consistent with Sections 318 and 319 of
17 the Uniform Guardianship, Conservatorship and Other Protective
18 Arrangements Act, may hold a hearing to consider removal of the
19 guardian, termination of the guardianship or a change in the
20 powers granted to the guardian or terms of the guardianship.

21 G. If the court has reason to believe fees
22 requested by a guardian for an adult are not reasonable, the
23 court shall hold a hearing to determine whether to adjust the
24 requested fees and give notice of the hearing to the adult
25 subject to guardianship, a person entitled to notice under

.208901.3

underscored material = new
[bracketed material] = delete

1 Subsection E of Section 310 of the Uniform Guardianship,
2 Conservatorship and Other Protective Arrangements Act or under
3 a subsequent order and any other person the court deems
4 entitled to notice.

5 H. A guardian for an adult may petition the court
6 for approval of a report filed under this section and shall
7 petition the court for approval of an annual report, a report
8 filed upon resignation, removal or termination or a report
9 filed upon the court's direction. The court shall not approve
10 the report without:

11 (1) notice to the adult subject to
12 guardianship, a person entitled to notice under Subsection E of
13 Section 310 of the Uniform Guardianship, Conservatorship and
14 Other Protective Arrangements Act or under a subsequent order
15 and any other person the court deems entitled to notice; and

16 (2) a hearing.

17 SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR
18 ADULT--APPOINTMENT OF SUCCESSOR.--

19 A. The court may remove a guardian for an adult for
20 failure to perform the guardian's duties or for other good
21 cause and appoint a successor guardian to assume the duties of
22 guardian.

23 B. The court shall hold a hearing to determine
24 whether to remove a guardian for an adult and appoint a
25 successor guardian on:

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (1) petition of the adult, guardian or person
2 interested in the welfare of the adult, that contains
3 allegations that, if true, would support a reasonable belief
4 that removal of the guardian and appointment of a successor
5 guardian may be appropriate, but the court may decline to hold
6 a hearing if a petition based on the same or substantially
7 similar facts was filed during the preceding six months;

8 (2) communication from the adult, guardian or
9 person interested in the welfare of the adult that supports a
10 reasonable belief that removal of the guardian and appointment
11 of a successor guardian may be appropriate; or

12 (3) determination by the court that a hearing
13 would be in the best interest of the adult.

14 C. Notice of a petition under Paragraph (1) of
15 Subsection B of this section shall be given to the adult
16 subject to guardianship, the guardian and any other person the
17 court determines.

18 D. An adult subject to guardianship who seeks to
19 remove the guardian and have a successor guardian appointed has
20 the right to choose an attorney to represent the adult in this
21 matter. If the adult is not represented by an attorney, the
22 court shall appoint an attorney under the same conditions as in
23 Section 305 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act. The court shall award
25 reasonable attorney's fees to the attorney for the adult as

.208901.3

underscored material = new
[bracketed material] = delete

1 provided in Section 119 of that act.

2 E. In selecting a successor guardian for an adult,
3 the court shall follow the priorities under Section 309 of the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act.

6 F. Not later than thirty days after appointing a
7 successor guardian, the court shall give notice of the
8 appointment to the adult subject to guardianship and any person
9 entitled to notice under Subsection E of Section 310 of the
10 Uniform Guardianship, Conservatorship and Other Protective
11 Arrangements Act or a subsequent order.

12 SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION
13 OF GUARDIANSHIP FOR ADULT.--

14 A. An adult subject to guardianship, the guardian
15 for the adult or a person interested in the welfare of the
16 adult may petition for:

17 (1) termination of the guardianship on the
18 ground that a basis for appointment under Section 301 of the
19 Uniform Guardianship, Conservatorship and Other Protective
20 Arrangements Act does not exist or termination would be in the
21 best interest of the adult or for other good cause; or

22 (2) modification of the guardianship on the
23 ground that the extent of protection or assistance granted is
24 not appropriate or for other good cause.

25 B. The court shall hold a hearing to determine

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 whether termination or modification of a guardianship for an
2 adult is appropriate on:

3 (1) petition under Subsection A of this
4 section that contains allegations that, if true, would support
5 a reasonable belief that termination or modification of the
6 guardianship may be appropriate, but the court may decline to
7 hold a hearing if a petition based on the same or substantially
8 similar facts was filed during the preceding six months;

9 (2) communication from the adult, guardian or
10 person interested in the welfare of the adult that supports a
11 reasonable belief that termination or modification of the
12 guardianship may be appropriate, including because the
13 functional needs of the adult or supports or services available
14 to the adult 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 of the adult or
18 supports or services available to the adult have changed or a
19 protective arrangement instead of guardianship or other less
20 restrictive alternative for meeting the adult's needs is
21 available; or

22 (4) a determination by the court that a
23 hearing would be in the best interest of the adult.

24 C. Notice of a petition under Paragraph (1) of
25 Subsection B of this section shall be given to the adult

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 subject to guardianship, the guardian and any other person the
2 court determines.

3 D. On presentation of prima facie evidence for
4 termination of a guardianship for an adult, the court shall
5 order termination unless it is proven that a basis for
6 appointment of a guardian under Section 301 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act exists.

9 E. The court shall modify the powers granted to a
10 guardian for an adult if the powers are excessive or inadequate
11 due to a change in the abilities or limitations of the adult,
12 the adult's supports or other circumstances.

13 F. Unless the court otherwise orders for good
14 cause, before terminating or modifying a guardianship for an
15 adult, the court shall follow the same procedures to safeguard
16 the rights of the adult that apply to a petition for
17 guardianship.

18 G. An adult subject to guardianship who seeks to
19 terminate or modify the terms of the guardianship has the right
20 to choose an attorney to represent the adult in the matter. If
21 the adult is not represented by an attorney, the court shall
22 appoint an attorney under the same conditions as in Section 305
23 of the Uniform Guardianship, Conservatorship and Other
24 Protective Arrangements Act. The court shall award reasonable
25 attorney's fees to the attorney for the adult as provided in

.208901.3

1 Section 119 of that act.

2 ARTICLE 4

3 CONSERVATORSHIP

4 SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
5 CONSERVATOR.--

6 A. On petition and after notice and hearing, the
7 court may appoint a conservator for the property or financial
8 affairs of a minor if the court finds by a preponderance of
9 evidence that appointment of a conservator is in the minor's
10 best interest and:

11 (1) if the minor has a parent, the court gives
12 weight to any recommendation of the parent whether an
13 appointment is in the minor's best interest; and

14 (2) either:

15 (a) the minor owns funds or other
16 property requiring management or protection that otherwise
17 cannot be provided;

18 (b) the minor has or may have financial
19 affairs that may be put at unreasonable risk or hindered
20 because of the minor's age; or

21 (c) appointment is necessary or
22 desirable to obtain or provide funds or other property needed
23 for the support, care, education, health or welfare of the
24 minor.

25 B. On petition and after notice and hearing, the

.208901.3

1 court may appoint a conservator for the property or financial
2 affairs of an adult if the court finds by clear and convincing
3 evidence that:

4 (1) the adult is unable to manage property or
5 financial affairs because:

6 (a) of a limitation in the adult's
7 ability to receive and evaluate information or make or
8 communicate decisions, even with the use of appropriate
9 supportive services, technological assistance or supported
10 decision making; or

11 (b) the adult is missing, detained or
12 unable to return to the United States;

13 (2) appointment is necessary to:

14 (a) avoid harm to the adult or
15 significant dissipation of the property of the adult; or

16 (b) obtain or provide funds or other
17 property needed for the support, care, education, health or
18 welfare of the adult or of an individual entitled to the
19 adult's support; and

20 (3) the respondent's identified needs cannot
21 be met by a protective arrangement instead of conservatorship
22 or other less restrictive alternative.

23 C. The court shall grant a conservator only those
24 powers necessitated by demonstrated limitations and needs of
25 the respondent and issue orders that will encourage development

underscored material = new
[bracketed material] = delete

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

6 SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF
7 CONSERVATOR.--

8 A. The following may petition for the appointment
9 of a conservator:

10 (1) the individual for whom the order is
11 sought;

12 (2) a person interested in the estate,
13 financial affairs or welfare of the individual, including a
14 person that would be adversely affected by lack of effective
15 management of property or financial affairs of the individual;
16 or

17 (3) the guardian for the individual.

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

24 (1) the respondent's name, age, principal
25 residence, current street address, if different, and, if

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 different, address of the dwelling in which it is proposed the
2 respondent will reside if the petition is granted;

3 (2) the name and address of the respondent's:

4 (a) spouse or, if the respondent has
5 none, an adult with whom the respondent has shared household
6 responsibilities for more than six months in the twelve-month
7 period before the filing of the petition;

8 (b) adult children or, if none, each
9 parent and adult sibling of the respondent or, if none, at
10 least one adult nearest in kinship to the respondent who can be
11 found with reasonable diligence; and

12 (c) adult stepchildren whom the
13 respondent actively parented during the stepchildren's minor
14 years and with whom the respondent had an ongoing relationship
15 during the two years immediately before the filing of the
16 petition;

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

19 (a) a person responsible for the care or
20 custody of the respondent;

21 (b) any attorney currently representing
22 the respondent;

23 (c) the representative payee appointed
24 by the federal social security administration for the
25 respondent;

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

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

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

5 (f) the fiduciary appointed for the
6 respondent by the federal department of veterans affairs;

7 (g) an agent designated under a power of
8 attorney for health care in which the respondent is identified
9 as the principal;

10 (h) an agent designated under a power of
11 attorney for finances in which the respondent is identified as
12 the principal;

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

16 (j) any proposed conservator, including
17 a person nominated by the respondent, if the respondent is
18 twelve years of age or older; and

19 (k) if the individual for whom a
20 conservator is sought is a minor: 1) an adult not otherwise
21 listed with whom the minor resides; and 2) each person not
22 otherwise listed that had primary care or custody of the minor
23 for at least sixty days during the two years immediately before
24 the filing of the petition or for at least seven hundred thirty
25 days during the five years immediately before the filing of the

.208901.3

1 petition;

2 (4) a general statement of the respondent's
3 property with an estimate of its value, including any insurance
4 or pension and the source and amount of other anticipated
5 income or receipts;

6 (5) the reason conservatorship is necessary,
7 including a brief description of:

8 (a) the nature and extent of the
9 respondent's alleged need;

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

15 (c) any protective arrangement instead
16 of conservatorship or other less restrictive alternative for
17 meeting the respondent's alleged need that has been considered
18 or implemented;

19 (d) if no protective arrangement or
20 other less restrictive alternatives have been considered or
21 implemented, the reason it has not been considered or
22 implemented; and

23 (e) the reason a protective arrangement
24 or other less restrictive alternative is insufficient to meet
25 the respondent's need;

underscored material = new
[bracketed material] = delete

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

3 (7) if the petitioner seeks a full
4 conservatorship, the reason a limited conservatorship or
5 protective arrangement instead of conservatorship is not
6 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 respondent needs an
15 interpreter, translator or other form of support to communicate
16 effectively with the court or understand court proceedings; and

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

19 SECTION 403. [NEW MATERIAL] NOTICE AND HEARING.--

20 A. On filing of a petition under Section 402 of the
21 Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act for appointment of a conservator, the court
23 shall set a date, time and place for a hearing on the petition.

24 B. A copy of a petition under Section 402 of the
25 Uniform Guardianship, Conservatorship and Other Protective

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Arrangements Act and notice of a hearing on the petition shall
2 be served personally on the respondent. If the respondent's
3 whereabouts are unknown or personal service cannot be made,
4 service on the respondent shall be made as provided in Section
5 45-1-401 NMSA 1978. The notice shall inform the respondent of
6 the respondent's rights at the hearing, including the right to
7 an attorney and to attend the hearing. The notice also shall
8 include a description of the nature, purpose and consequences
9 of granting the petition. The court shall not grant a petition
10 for appointment of a conservator if notice substantially
11 complying with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 402
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act, notice of the hearing shall be
15 given to the persons required to be listed in the petition
16 under Paragraphs (1) through (3) of Subsection B of Section 402
17 of that act and any other person interested in the respondent's
18 welfare the court determines. Failure to give notice under
19 this subsection does not preclude the court from appointing a
20 conservator.

21 D. After the appointment of a conservator, notice
22 of a hearing on a petition for an order under this article,
23 together with a copy of the petition, shall be given to:

24 (1) the individual subject to conservatorship,
25 if the individual is twelve years of age or older and not

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 missing, detained or unable to return to the United States;

2 (2) the conservator; and

3 (3) any other person the court determines.

4 SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY
5 PROPERTY WHILE PROCEEDING PENDING.--While a petition under
6 Section 402 of the Uniform Guardianship, Conservatorship and
7 Other Protective Arrangements Act is pending, after preliminary
8 hearing and without notice to others, the court may issue an
9 order to preserve and apply property of the respondent as
10 required for the support of the respondent or an individual who
11 is in fact dependent on the respondent. The court may appoint
12 a special master to assist in implementing the order.

13 SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF
14 VISITOR.--

15 A. If the respondent in a proceeding to appoint a
16 conservator is a minor, the court may appoint a visitor to
17 investigate a matter related to the petition or inform the
18 minor or a parent of the minor about the petition or a related
19 matter.

20 B. If the respondent in a proceeding to appoint a
21 conservator is an adult, the court shall appoint a visitor
22 unless the adult is represented by an attorney appointed by the
23 court. The duties and reporting requirements of the visitor
24 are limited to the relief requested in the petition. The
25 visitor shall be an individual with training or experience in

.208901.3

1 the type of abilities, limitations and needs alleged in the
2 petition.

3 C. A visitor appointed under Subsection B of this
4 section for an adult shall interview the respondent in person
5 and, in a manner the respondent is best able to understand:

6 (1) explain to the respondent the substance of
7 the petition, the nature, purpose and effect of the proceeding,
8 the respondent's rights at the hearing on the petition and the
9 general powers and duties of a conservator;

10 (2) determine the respondent's views about the
11 appointment sought by the petitioner, including views about a
12 proposed conservator, the conservator's proposed powers and
13 duties and the scope and duration of the proposed
14 conservatorship;

15 (3) inform the respondent of the respondent's
16 right to employ and consult with an attorney at the
17 respondent's expense and the right to request a court-appointed
18 attorney; and

19 (4) inform the respondent that all costs and
20 expenses of the proceeding, including respondent's attorney's
21 fees, may be paid from the respondent's assets.

22 D. The visitor appointed for an adult under
23 Subsection B of this section shall:

24 (1) interview the petitioner and proposed
25 conservator, if any;

underscoring material = new
~~[bracketed material] = delete~~

1 (2) review financial records of the
2 respondent, if relevant to the visitor's recommendation under
3 Paragraph (1) of Subsection E of this section;

4 (3) investigate whether the respondent's needs
5 could be met by a protective arrangement instead of
6 conservatorship or other less restrictive alternative and, if
7 so, identify the arrangement or other less restrictive
8 alternative; and

9 (4) investigate the allegations in the
10 petition and any other matter relating to the petition the
11 court directs.

12 E. A visitor appointed for an adult under
13 Subsection B of this section promptly shall file a report in a
14 record with the court that includes:

15 (1) a recommendation:

16 (a) regarding the appropriateness of
17 conservatorship or whether a protective arrangement instead of
18 conservatorship or other less restrictive alternative for
19 meeting the respondent's needs is available;

20 (b) if a conservatorship is recommended,
21 whether it should be full or limited; and

22 (c) if a limited conservatorship is
23 recommended, the powers to be granted to the conservator and
24 the property that should be placed under the conservator's
25 control;

.208901.3

underscored material = new
[bracketed material] = delete

1 (2) a statement of the qualifications of the
2 proposed conservator and whether the respondent approves or
3 disapproves of the proposed conservator;

4 (3) a recommendation whether a professional
5 evaluation under Section 407 of the Uniform Guardianship,
6 Conservatorship and Other Protective Arrangements Act is
7 necessary;

8 (4) a statement whether the respondent is able
9 to attend a hearing at the location court proceedings typically
10 are held;

11 (5) a statement whether the respondent is able
12 to participate in a hearing and that identifies any technology
13 or other form of support that would enhance the respondent's
14 ability to participate; and

15 (6) any other matter the court directs.

16 SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF
17 ATTORNEY.--

18 A. Unless the respondent in a proceeding for
19 appointment of a conservator is represented by an attorney, the
20 court shall appoint an attorney to represent the respondent
21 regardless of the respondent's ability to pay.

22 B. An attorney representing the respondent in a
23 proceeding for appointment of a conservator shall:

24 (1) make reasonable efforts to ascertain the
25 respondent's wishes;

1 (2) advocate for the respondent's wishes to
2 the extent reasonably ascertainable; and

3 (3) if the respondent's wishes are not
4 reasonably ascertainable, advocate for the result that is the
5 least restrictive in type, duration and scope, consistent with
6 the respondent's interests.

7 SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

8 A. At or before a hearing on a petition for
9 conservatorship for an adult, the court shall order a
10 professional evaluation of the respondent:

11 (1) if the respondent requests the evaluation;
12 or

13 (2) in other cases, unless the court finds it
14 has sufficient information to determine the respondent's needs
15 and abilities without the evaluation.

16 B. If the court orders an evaluation under
17 Subsection A of this section, the respondent shall be examined
18 by a licensed physician, psychologist, social worker or other
19 individual appointed by the court who is qualified to evaluate
20 the respondent's alleged cognitive and functional abilities and
21 limitations and will not be advantaged or disadvantaged by a
22 decision to grant the petition or otherwise have a conflict of
23 interest. The individual conducting the evaluation promptly
24 shall file a report in a record with the court. Unless
25 otherwise directed by the court, the report shall contain:

.208901.3

underscored material = new
[bracketed material] = delete

1 (1) a description of the nature, type and
2 extent of the respondent's cognitive and functional abilities
3 and limitations with regard to the management of the
4 respondent's property and financial affairs;

5 (2) an evaluation of the respondent's mental
6 and physical condition and, if appropriate, educational
7 potential, adaptive behavior and social skills;

8 (3) a prognosis for improvement with regard to
9 the ability to manage the respondent's property and financial
10 affairs; and

11 (4) the date of the examination on which the
12 report is based.

13 C. A respondent may decline to participate in an
14 evaluation ordered under Subsection A of this section.

15 SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
16 HEARING.--

17 A. Except as otherwise provided in Subsection B of
18 this section, a hearing under Section 403 of the Uniform
19 Guardianship, Conservatorship and Other Protective Arrangements
20 Act shall not proceed unless the respondent attends the
21 hearing. If it is not reasonably feasible for the respondent
22 to attend a hearing at the location court proceedings typically
23 are held, the court shall make reasonable efforts to hold the
24 hearing at an alternative location convenient to the respondent
25 or allow the respondent to attend the hearing using real-time

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 audio-visual technology.

2 B. A hearing under Section 403 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act may proceed without the respondent in attendance if the
5 court finds by clear and convincing evidence that:

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

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

13 (3) the respondent is a minor who has received
14 proper notice and attendance would be harmful to the minor.

15 C. The respondent may be assisted in a hearing
16 under Section 403 of the Uniform Guardianship, Conservatorship
17 and Other Protective Arrangements Act by a person or persons of
18 the respondent's choosing, assistive technology or an
19 interpreter or translator or a combination of these supports.
20 If assistance would facilitate the respondent's participation
21 in the hearing, but is not otherwise available to the
22 respondent, the court shall make reasonable efforts to provide
23 it.

24 D. The respondent has a right to choose an attorney
25 to represent the respondent at a hearing under Section 403 of

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 the Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act.

3 E. At a hearing under Section 403 of the Uniform
4 Guardianship, Conservatorship and Other Protective Arrangements
5 Act, the respondent may:

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

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

10 (3) otherwise participate in the hearing.

11 F. Unless excused by the court for good cause, a
12 proposed conservator shall attend a hearing under Section 403
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act.

15 G. A hearing under Section 403 of the Uniform
16 Guardianship, Conservatorship and Other Protective Arrangements
17 Act shall be closed on request of the respondent and a showing
18 of good cause.

19 H. Any person may request to participate in a
20 hearing under Section 403 of the Uniform Guardianship,
21 Conservatorship and Other Protective Arrangements Act. The
22 court may grant the request, with or without a hearing, on
23 determining that the best interest of the respondent will be
24 served. The court may impose appropriate conditions on the
25 person's participation.

.208901.3

1 SECTION 409. [NEW MATERIAL] CONFIDENTIALITY OF

2 RECORDS.--

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

6 (1) the respondent, the individual subject to
7 conservatorship or the parent of a minor subject to
8 conservatorship requests the record be sealed; and

9 (2) either:

10 (a) the petition for conservatorship is
11 dismissed; or

12 (b) the conservatorship is terminated.

13 B. An individual subject to a proceeding for a
14 conservatorship, whether or not a conservator is appointed, an
15 attorney designated by the individual and a person entitled to
16 notice under Section 411 of the Uniform Guardianship,
17 Conservatorship and Other Protective Arrangements Act or a
18 subsequent order may access court records of the proceeding and
19 resulting conservatorship, including the conservator's plan
20 under Section 419 of that act and the conservator's report
21 under Section 423 of that act. A person not otherwise entitled
22 to access to court records under this section for good cause
23 may petition the court for access to court records of the
24 conservatorship, including the conservator's plan and report.
25 The court shall grant access if access is in the best interest

.208901.3

underscored material = new
[bracketed material] = delete

1 of the respondent or individual subject to conservatorship or
2 furthers the public interest and does not endanger the welfare
3 or financial interests of the respondent or individual.

4 C. A report under Section 405 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act of a visitor or professional evaluation under Section 407
7 of that act is confidential and shall be sealed on filing, but
8 is available to:

9 (1) the court;

10 (2) the individual who is the subject of the
11 report or evaluation, without limitation as to use;

12 (3) the petitioner, visitor and petitioner's
13 and respondent's attorneys, for purposes of the proceeding;

14 (4) unless the court directs otherwise, an
15 agent appointed under a power of attorney for finances in which
16 the respondent is identified as the 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 SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER
20 OF PRIORITY.--

21 A. Except as otherwise provided in Subsection C of
22 this section, the court in appointing a conservator shall
23 consider persons qualified to be a conservator in the following
24 order of priority:

25 (1) a conservator, other than a temporary or

.208901.3

1 emergency conservator, currently acting for the respondent in
2 another jurisdiction;

3 (2) a person nominated as conservator by the
4 respondent, including the respondent's most recent nomination
5 made in a power of attorney for finances;

6 (3) an agent appointed by the respondent to
7 manage the respondent's property under a power of attorney for
8 finances;

9 (4) a spouse of the respondent; and

10 (5) a family member or other individual who
11 has shown special care and concern for the respondent.

12 B. If two or more persons have equal priority under
13 Subsection A of this section, the court shall select as
14 conservator the person the court considers best qualified. In
15 determining the best qualified person, the court shall consider
16 the person's relationship with the respondent, the person's
17 skills, the expressed wishes of the respondent, the extent to
18 which the person and the respondent have similar values and
19 preferences and the likelihood the person will be able to
20 perform the duties of a conservator successfully.

21 C. The court, acting in the best interest of the
22 respondent, may decline to appoint as conservator a person
23 having priority under Subsection A of this section and appoint
24 a person having a lower priority or no priority.

25 D. A person that provides paid services to the

underscored material = new
[bracketed material] = delete

1 respondent, or an individual who is employed by a person that
2 provides paid services to the respondent or is the spouse,
3 domestic partner, parent or child of an individual who provides
4 or is employed to provide paid services to the respondent,
5 shall not be appointed as conservator unless:

6 (1) the individual is related to the
7 respondent by blood, marriage or adoption; or

8 (2) the court finds by clear and convincing
9 evidence that the person is the best qualified person available
10 for appointment and the appointment is in the best interest of
11 the respondent.

12 E. An owner, operator or employee of a long-term
13 care facility at which the respondent is receiving care shall
14 not be appointed as conservator unless the owner, operator or
15 employee is related to the respondent by blood, marriage or
16 adoption.

17 SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT.--

18 A. A court order appointing a conservator for a
19 minor shall include findings to support appointment of a
20 conservator and, if a full conservatorship is granted, the
21 reason a limited conservatorship would not meet the identified
22 needs of the minor.

23 B. A court order appointing a conservator for an
24 adult shall:

25 (1) include a specific finding that clear and

underscoring material = new
~~[bracketed material] = delete~~

1 convincing evidence has established that the identified needs
2 of the respondent cannot be met by a protective arrangement
3 instead of conservatorship or other less restrictive
4 alternative, including use of appropriate supportive services,
5 technological assistance or supported decision making; and

6 (2) include a specific finding that clear and
7 convincing evidence established the respondent was given proper
8 notice of the hearing on the petition.

9 C. A court order establishing a full
10 conservatorship for an adult shall state the basis for granting
11 a full conservatorship and include specific findings to support
12 the conclusion that a limited conservatorship would not meet
13 the functional needs of the adult.

14 D. A court order establishing a limited
15 conservatorship shall state the specific property placed under
16 the control of the conservator and the powers granted to the
17 conservator.

18 E. The court, as part of an order establishing a
19 conservatorship, shall identify any person that subsequently is
20 entitled to:

21 (1) notice of the rights of the individual
22 subject to conservatorship under Subsection B of Section 412 of
23 the Uniform Guardianship, Conservatorship and Other Protective
24 Arrangements Act;

25 (2) notice of a sale of or surrender of a

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 lease to the primary dwelling of the individual;

2 (3) notice that the conservator has delegated
3 a power that requires court approval under Section 414 of the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act or substantially all powers of the
6 conservator;

7 (4) notice that the conservator will be
8 unavailable to perform the conservator's duties for more than
9 one month;

10 (5) a copy of the conservator's plan under
11 Section 419 of the Uniform Guardianship, Conservatorship and
12 Other Protective Arrangements Act and the conservator's report
13 under Section 423 of that act;

14 (6) access to court records relating to the
15 conservatorship;

16 (7) notice of a transaction involving a
17 substantial conflict between the conservator's fiduciary duties
18 and personal interests;

19 (8) notice of the death or significant change
20 in the condition of the individual;

21 (9) notice that the court has limited or
22 modified the powers of the conservator; and

23 (10) notice of the removal of the conservator.

24 F. If an individual subject to conservatorship is
25 an adult, the spouse and adult children of the adult subject to

.208901.3

underscoring material = new
[bracketed material] = delete

1 conservatorship are entitled under Subsection E of this section
2 to notice unless the court determines notice would be contrary
3 to the preferences or prior directions of the adult subject to
4 conservatorship or not in the best interest of the adult.

5 G. If an individual subject to conservatorship is a
6 minor, each parent and adult sibling of the minor is entitled
7 under Subsection E of this section to notice unless the court
8 determines notice would not be in the best interest of the
9 minor.

10 SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF
11 APPOINTMENT--RIGHTS.--

12 A. A conservator appointed under Section 411 of the
13 Uniform Guardianship, Conservatorship and Other Protective
14 Arrangements Act shall give to the individual subject to
15 conservatorship and to all other persons given notice under
16 Section 403 of that act a copy of the order of appointment,
17 together with notice of the right to request termination or
18 modification. The order and notice shall be given not later
19 than fourteen days after the appointment.

20 B. Not later than thirty days after appointment of
21 a conservator under Section 411 of the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act, the
23 court shall give to the individual subject to conservatorship,
24 the conservator and any other person entitled to notice under
25 Subsection E of Section 411 of the Uniform Guardianship,

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Conservatorship and Other Protective Arrangements Act a
2 statement of the rights of the individual subject to
3 conservatorship and procedures to seek relief if the individual
4 is denied those rights. The statement shall be in plain
5 language, in at least sixteen-point font and, to the extent
6 feasible, in a language in which the individual subject to
7 conservatorship is proficient. The statement shall notify the
8 individual subject to conservatorship of the right to:

9 (1) seek termination or modification of the
10 conservatorship, or removal of the conservator, and choose an
11 attorney to represent the individual in these matters;

12 (2) participate in decision making to the
13 extent reasonably feasible;

14 (3) receive a copy of the conservator's plan
15 under Section 419 of the Uniform Guardianship, Conservatorship
16 and Other Protective Arrangements Act, the conservator's
17 inventory under Section 420 of that act and the conservator's
18 report under Section 423 of that act; and

19 (4) object to the conservator's inventory,
20 plan or report.

21 C. If a conservator is appointed for the reasons
22 stated in Subparagraph (b) of Paragraph (1) of Subsection B of
23 Section 401 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act and the individual subject to
25 conservatorship is missing, notice under this section to the

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 individual is not required.

2 SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

3 A. On its own or on petition by a person interested
4 in an individual's welfare after a petition has been filed
5 under Section 402 of the Uniform Guardianship, Conservatorship
6 and Other Protective Arrangements Act, the court may appoint an
7 emergency conservator for the individual if the court finds:

8 (1) appointment of an emergency conservator is
9 likely to prevent substantial and irreparable harm to the
10 individual's property or financial interests;

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

13 (3) there is reason to believe that a basis
14 for appointment of a conservator under Section 401 of the
15 Uniform Guardianship, Conservatorship and Other Protective
16 Arrangements Act exists.

17 B. The duration of authority of an emergency
18 conservator shall not exceed sixty days, and the emergency
19 conservator may exercise only the powers specified in the order
20 of appointment. The emergency conservator's authority may be
21 extended once for not more than sixty days if the court finds
22 that the conditions for appointment of an emergency conservator
23 under Subsection A of this section continue.

24 C. Immediately on filing of a petition for an
25 emergency conservator, the court shall appoint an attorney to

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 represent the respondent in the proceeding. Except as
2 otherwise provided in Subsection D of this section, reasonable
3 notice of the date, time and place of a hearing on the petition
4 shall be given to the respondent, the respondent's attorney and
5 any other person the court determines.

6 D. The court may appoint an emergency conservator
7 without notice to the respondent and any attorney for the
8 respondent only if the court finds from an affidavit or
9 testimony that the respondent's property or financial interests
10 will be substantially and irreparably harmed before a hearing
11 with notice on the appointment can be held. If the court
12 appoints an emergency conservator without giving notice under
13 Subsection C of this section, the court shall give notice of
14 the appointment not later than forty-eight hours after the
15 appointment to:

- 16 (1) the respondent;
17 (2) the respondent's attorney; and
18 (3) any other person the court determines.

19 E. Not later than five days after the appointment,
20 the court shall hold a hearing on the appropriateness of the
21 appointment.

22 F. Appointment of an emergency conservator under
23 this section is not a determination that a basis exists for
24 appointment of a conservator under Section 401 of the Uniform
25 Guardianship, Conservatorship and Other Protective Arrangements

.208901.3

underscored material = new
[bracketed material] = delete

1 Act.

2 G. The court may remove an emergency conservator
3 appointed under this section at any time. The emergency
4 conservator shall make any report the court requires.

5 SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR
6 REQUIRING COURT APPROVAL.--

7 A. Except as otherwise ordered by the court, a
8 conservator shall give notice to persons entitled to notice
9 under Subsection D of Section 403 of the Uniform Guardianship,
10 Conservatorship and Other Protective Arrangements Act and
11 receive specific authorization by the court before the
12 conservator may exercise with respect to the conservatorship
13 the power to:

14 (1) make a gift, except a gift of de minimis
15 value;

16 (2) sell, encumber an interest in or surrender
17 a lease to the primary dwelling of the individual subject to
18 conservatorship;

19 (3) convey, release or disclaim a contingent
20 or expectant interest in property, including marital property
21 and any right of survivorship incident to joint tenancy or
22 tenancy by the entireties;

23 (4) exercise or release a power of
24 appointment;

25 (5) create a revocable or irrevocable trust of

underscoring material = new
~~[bracketed material] = delete~~

1 property of the conservatorship estate, whether or not the
2 trust extends beyond the duration of the conservatorship, or
3 revoke or amend a trust revocable by the individual subject to
4 conservatorship;

5 (6) exercise a right to elect an option or
6 change a beneficiary under an insurance policy or annuity or
7 surrender the policy or annuity for its cash value;

8 (7) exercise a right to an elective share in
9 the estate of a deceased spouse of the individual subject to
10 conservatorship or renounce or disclaim a property interest;

11 (8) grant a creditor priority for payment over
12 creditors of the same or higher class if the creditor is
13 providing property or services used to meet the basic living
14 and care needs of the individual subject to conservatorship and
15 preferential treatment otherwise would be impermissible under
16 Subsection E of Section 428 of the Uniform Guardianship,
17 Conservatorship and Other Protective Arrangements Act; and

18 (9) make, modify, amend or revoke the will of
19 the individual subject to conservatorship in compliance with
20 the Uniform Probate Code.

21 B. In approving a conservator's exercise of a power
22 listed in Subsection A of this section, the court shall
23 consider primarily the decision the individual subject to
24 conservatorship would make if able, to the extent the decision
25 can be ascertained.

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 C. To determine under Subsection B of this section
2 the decision the individual subject to conservatorship would
3 make if able, the court shall consider the individual's prior
4 or current directions, preferences, opinions, values and
5 actions, to the extent actually known or reasonably
6 ascertainable by the conservator. The court also shall
7 consider:

- 8 (1) the financial needs of the individual
9 subject to conservatorship and individuals who are in fact
10 dependent on the individual subject to conservatorship for
11 support and the interests of creditors of the individual;
- 12 (2) possible reduction of income, estate,
13 inheritance or other tax liabilities;
- 14 (3) eligibility for governmental assistance;
- 15 (4) the previous pattern of giving or level of
16 support provided by the individual;
- 17 (5) any existing estate plan or lack of estate
18 plan of the individual;
- 19 (6) the life expectancy of the individual and
20 the probability the conservatorship will terminate before the
21 individual's death; and
- 22 (7) any other relevant factor.

23 D. A conservator shall not revoke or amend a power
24 of attorney for finances signed by the individual subject to
25 conservatorship. If a power of attorney for finances is in

underscoring material = new
~~[bracketed material] = delete~~

1 effect, a decision of the agent takes precedence over that of
2 the conservator, unless the court orders otherwise.

3 SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER
4 APPOINTMENT.--An individual subject to conservatorship or a
5 person interested in the welfare of the individual may petition
6 for an order:

7 A. requiring the conservator to furnish a bond or
8 collateral or additional bond or collateral or allowing a
9 reduction in a bond or collateral previously furnished;

10 B. requiring an accounting for the administration
11 of the conservatorship estate;

12 C. directing distribution;

13 D. removing the conservator and appointing a
14 temporary or successor conservator;

15 E. modifying the type of appointment or powers
16 granted to the conservator, if the extent of protection or
17 management previously granted is excessive or insufficient to
18 meet the individual's needs, including because the individual's
19 abilities or supports have changed;

20 F. rejecting or modifying the conservator's plan
21 under Section 419 of the Uniform Guardianship, Conservatorship
22 and Other Protective Arrangements Act, the conservator's
23 inventory under Section 420 of that act or the conservator's
24 report under Section 423 of that act; or

25 G. granting other appropriate relief.

1 SECTION 416. ~~[NEW MATERIAL]~~ BOND--ALTERNATIVE ASSET-

2 PROTECTION ARRANGEMENT.--

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

15 B. Unless the court directs otherwise, the bond
16 required under this section shall be in the amount of the
17 aggregate capital value of the conservatorship estate, plus one
18 year's estimated income, less the value of property deposited
19 under an arrangement requiring a court order for its removal
20 and real property the conservator lacks power to sell or convey
21 without specific court authorization. The court, in place of
22 surety on a bond, may accept collateral for the performance of
23 the bond, including a pledge of securities or a mortgage of
24 real property.

25 C. A financial institution that possesses and is

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

underscoring material = new
~~[bracketed material] = delete~~

1 exercising general trust powers in New Mexico is not required
2 to give a bond under this section. As used in this subsection,
3 "financial institution" means a state- or federally chartered,
4 federally insured depository bank or trust company.

5 SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF
6 BOND.--

7 A. The following rules apply to the bond required
8 under Section 416 of the Uniform Guardianship, Conservatorship
9 and Other Protective Arrangements Act:

10 (1) except as otherwise provided by the bond,
11 the surety and the conservator are jointly and severally
12 liable;

13 (2) by executing a bond provided by a
14 conservator, the surety submits to the personal jurisdiction of
15 the court that issued letters of office to the conservator in a
16 proceeding relating to the duties of the conservator in which
17 the surety is named as a party. Notice of the proceeding shall
18 be given to the surety at the address shown in the records of
19 the court in which the bond is filed and any other address of
20 the surety then known to the person required to provide the
21 notice;

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

.208901.3

underscored material = new
[bracketed material] = delete

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

3 B. A proceeding shall not be brought under this
4 section against a surety of a bond on a matter as to which a
5 proceeding against the conservator is barred.

6 C. If a bond under Section 416 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act is not renewed by the conservator, the surety or sureties
9 immediately shall give notice to the court and the individual
10 subject to conservatorship.

11 SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

12 A. A conservator is a fiduciary and has duties of
13 prudence and loyalty to the individual subject to
14 conservatorship.

15 B. A conservator shall promote the self-
16 determination of the individual subject to conservatorship and,
17 to the extent feasible, encourage the individual to participate
18 in decisions, act on the individual's own behalf and develop or
19 regain the capacity to manage the individual's personal
20 affairs.

21 C. In making a decision for an individual subject
22 to conservatorship, the conservator shall make the decision the
23 conservator reasonably believes the individual would make if
24 able, unless doing so would fail to preserve the resources
25 needed to maintain the individual's well-being and lifestyle or

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 otherwise unreasonably harm or endanger the welfare or personal
2 or financial interests of the individual. To determine the
3 decision the individual would make if able, the conservator
4 shall consider the individual's prior or current directions,
5 preferences, opinions, values and actions, to the extent
6 actually known or reasonably ascertainable by the conservator.

7 D. If a conservator cannot make a decision under
8 Subsection C of this section because the conservator does not
9 know and cannot reasonably determine the decision the
10 individual subject to conservatorship probably would make if
11 able, or the conservator reasonably believes the decision the
12 individual would make would fail to preserve resources needed
13 to maintain the individual's well-being and lifestyle or
14 otherwise unreasonably harm or endanger the welfare or personal
15 or financial interests of the individual, the conservator shall
16 act in accordance with the best interest of the individual.

17 In determining the best interest of the individual, the
18 conservator shall consider:

19 (1) information received from professionals
20 and persons that demonstrate sufficient interest in the welfare
21 of the individual;

22 (2) other information the conservator believes
23 the individual would have considered if the individual were
24 able to act; and

25 (3) other factors a reasonable person in the

1 circumstances of the individual would consider, including
2 consequences for others.

3 E. Except when inconsistent with the conservator's
4 duties under Subsections A through D of this section, a
5 conservator shall invest and manage the conservatorship estate
6 as a prudent investor would, by considering:

7 (1) the circumstances of the individual
8 subject to conservatorship and the conservatorship estate;

9 (2) general economic conditions;

10 (3) the possible effect of inflation or
11 deflation;

12 (4) the expected tax consequences of an
13 investment decision or strategy;

14 (5) the role of each investment or course of
15 action in relation to the conservatorship estate as a whole;

16 (6) the expected total return from income and
17 appreciation of capital;

18 (7) the need for liquidity, regularity of
19 income and preservation or appreciation of capital; and

20 (8) the special relationship or value, if any,
21 of specific property to the individual subject to
22 conservatorship.

23 F. The propriety of a conservator's investment and
24 management of the conservatorship estate is determined in light
25 of the facts and circumstances existing when the conservator

underscoring material = new
~~[bracketed material] = delete~~

1 decides or acts and not by hindsight.

2 G. A conservator shall make a reasonable effort to
3 verify facts relevant to the investment and management of the
4 conservatorship estate.

5 H. A conservator that has special skills or
6 expertise, or is named conservator in reliance on the
7 conservator's representation of special skills or expertise,
8 has a duty to use the special skills or expertise in carrying
9 out the conservator's duties.

10 I. In investing, selecting specific property for
11 distribution and invoking a power of revocation or withdrawal
12 for the use or benefit of the individual subject to
13 conservatorship, a conservator shall consider any estate plan
14 of the individual known or reasonably ascertainable to the
15 conservator and may examine the will or other donative,
16 nominative or appointive instrument of the individual.

17 J. A conservator shall maintain insurance on the
18 insurable real and personal property of the individual subject
19 to conservatorship, unless the conservatorship estate lacks
20 sufficient funds to pay for insurance or the court finds:

21 (1) the property lacks sufficient equity; or

22 (2) insuring the property would unreasonably
23 dissipate the conservatorship estate or otherwise not be in the
24 best interest of the individual.

25 K. If a power of attorney for finances is in

underscoring material = new
~~[bracketed material] = delete~~

1 effect, a conservator shall cooperate with the agent to the
2 extent feasible.

3 L. A conservator has access to and authority over a
4 digital asset of the individual subject to conservatorship to
5 the extent provided by the Revised Uniform Fiduciary Access to
6 Digital Assets Act or court order.

7 M. A conservator for an adult shall notify the
8 court if the condition of the adult has changed so that the
9 adult is capable of exercising rights previously removed. The
10 notice shall be given immediately upon learning of the change.

11 SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

12 A. A conservator, not later than sixty days after
13 appointment and when there is a significant change in
14 circumstances or the conservator seeks to deviate significantly
15 from the conservator's plan, shall file with the court a plan
16 for protecting, managing, expending and distributing the assets
17 of the conservatorship estate. The plan shall be based on the
18 needs of the individual subject to conservatorship and take
19 into account the best interest of the individual as well as the
20 individual's preferences, values and prior directions, to the
21 extent known to or reasonably ascertainable by the conservator.
22 The conservator shall include in the plan:

23 (1) a budget containing projected expenses and
24 resources, including an estimate of the total amount of fees
25 the conservator anticipates charging per year and a statement

underscoring material = new
~~[bracketed material] = delete~~

1 or list of the amount the conservator proposes to charge for
2 each service the conservator anticipates providing to the
3 individual;

4 (2) how the conservator will involve the
5 individual in decisions about management of the conservatorship
6 estate;

7 (3) any step the conservator plans to take to
8 develop or restore the ability of the individual to manage the
9 conservatorship estate; and

10 (4) an estimate of the duration of the
11 conservatorship.

12 B. A conservator shall give notice of the filing of
13 the conservator's plan under Subsection A of this section,
14 together with a copy of the plan, to the individual subject to
15 conservatorship, a person entitled to notice under Subsection E
16 of Section 411 of the Uniform Guardianship, Conservatorship and
17 Other Protective Arrangements Act or a subsequent order and any
18 other person the court determines. The notice shall include a
19 statement of the right to object to the plan and be given not
20 later than fourteen days after the filing.

21 C. An individual subject to conservatorship and any
22 person entitled under Subsection B of this section to receive
23 notice and a copy of the conservator's plan may object to the
24 plan.

25 D. A conservator shall petition the court for

underscored material = new
[bracketed material] = delete

1 approval of a plan filed under Subsection A of this section.
2 The court shall review the plan and determine whether to
3 approve it or require a new plan. In deciding whether to
4 approve the plan, the court shall consider an objection under
5 Subsection C of this section and whether the plan is consistent
6 with the conservator's duties and powers. The court shall not
7 approve the plan without:

8 (1) notice to the adult subject to
9 conservatorship, a person entitled to notice under Subsection E
10 of Section 411 of the Uniform Guardianship, Conservatorship and
11 Other Protective Arrangements Act or under a subsequent order
12 and any other person the court deems entitled to notice; and

13 (2) a hearing.

14 E. After a conservator's plan under this section is
15 approved by the court, the conservator shall provide a copy of
16 the plan to the individual subject to conservatorship, a person
17 entitled to notice under Subsection E of Section 411 of the
18 Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act or a subsequent order and any other person the
20 court determines.

21 SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

22 A. Not later than sixty days after appointment, a
23 conservator shall prepare and file with the appointing court a
24 detailed inventory of the conservatorship estate, together with
25 an oath or affirmation that the inventory is believed to be

.208901.3

underscored material = new
[bracketed material] = delete

1 complete and accurate as far as information permits.

2 B. A conservator shall give notice of the filing of
3 an inventory to the individual subject to conservatorship, a
4 person entitled to notice under Subsection E of Section 411 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act or a subsequent order and any other person the
7 court determines. The notice shall be given not later than
8 fourteen days after the filing.

9 C. A conservator shall keep records of the
10 administration of the conservatorship estate and make them
11 available for examination on reasonable request of the
12 individual subject to conservatorship, a guardian for the
13 individual or any other person the conservator or the court
14 determines.

15 SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF
16 CONSERVATOR NOT REQUIRING COURT APPROVAL.--

17 A. Except as otherwise provided in Section 414 of
18 the Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act or qualified or limited in the court's order
20 of appointment and stated in the letters of office, a
21 conservator has all powers granted in this section and any
22 additional power granted to a trustee by law of New Mexico
23 other than that act.

24 B. A conservator, acting reasonably and consistent
25 with the fiduciary duties of the conservator to accomplish the

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 purpose of the conservatorship, without specific court
2 authorization or confirmation, may with respect to the
3 conservatorship estate:

4 (1) collect, hold and retain property,
5 including property in which the conservator has a personal
6 interest and real property in another state, until the
7 conservator determines disposition of the property should be
8 made;

9 (2) receive additions to the conservatorship
10 estate;

11 (3) continue or participate in the operation
12 of a business or other enterprise;

13 (4) acquire an undivided interest in property
14 in which the conservator, in a fiduciary capacity, holds an
15 undivided interest;

16 (5) invest assets;

17 (6) deposit funds or other property in a
18 financial institution, including one operated by the
19 conservator;

20 (7) acquire or dispose of property, including
21 real property in another state, for cash or on credit, at
22 public or private sale and manage, develop, improve, exchange,
23 partition, change the character of or abandon property;

24 (8) make ordinary or extraordinary repairs or
25 alterations in a building or other structure, demolish any

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 improvement or raze an existing or erect a new party wall or
2 building;

3 (9) subdivide or develop land, dedicate land
4 to public use, make or obtain the vacation of a plat and adjust
5 a boundary, adjust a difference in valuation of land, exchange
6 or partition land by giving or receiving consideration and
7 dedicate an easement to public use without consideration;

8 (10) enter for any purpose into a lease of
9 property as lessor or lessee, with or without an option to
10 purchase or renew, for a term within or extending beyond the
11 term of the conservatorship;

12 (11) enter into a lease or arrangement for
13 exploration and removal of minerals or other natural resources
14 or a pooling or unitization agreement;

15 (12) grant an option involving disposition of
16 property or accept or exercise an option for the acquisition of
17 property;

18 (13) vote a security, in person or by general
19 or limited proxy;

20 (14) pay a call, assessment or other sum
21 chargeable or accruing against or on account of a security;

22 (15) sell or exercise a stock subscription or
23 conversion right;

24 (16) consent, directly or through a committee
25 or agent, to the reorganization, consolidation, merger,

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 dissolution or liquidation of a corporation or other business
2 enterprise;

3 (17) hold a security in the name of a nominee
4 or in other form without disclosure of the conservatorship so
5 that title to the security may pass by delivery;

6 (18) insure:

7 (a) the conservatorship estate, in whole
8 or in part, against damage or loss in accordance with
9 Subsection J of Section 418 of the Uniform Guardianship,
10 Conservatorship and Other Protective Arrangements Act; and

11 (b) the conservator against liability
12 with respect to a third person;

13 (19) borrow funds, with or without security,
14 to be repaid from the conservatorship estate or otherwise;

15 (20) advance funds for the protection of the
16 conservatorship estate or the individual subject to
17 conservatorship and all expenses, losses and liability
18 sustained in the administration of the conservatorship estate
19 or because of holding any property for which the conservator
20 has a lien on the conservatorship estate;

21 (21) pay or contest a claim, settle a claim by
22 or against the conservatorship estate or the individual subject
23 to conservatorship by compromise, arbitration or otherwise or
24 release, in whole or in part, a claim belonging to the
25 conservatorship estate to the extent the claim is

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 uncollectible;

2 (22) pay a tax, assessment, compensation of
3 the conservator or any guardian and other expense incurred in
4 the collection, care, administration and protection of the
5 conservatorship estate;

6 (23) pay a sum distributable to the individual
7 subject to conservatorship or an individual who is in fact
8 dependent on the individual subject to conservatorship by
9 paying the sum to the distributee or for the use of the
10 distributee:

11 (a) to the guardian for the distributee;

12 (b) to the custodian of the distributee
13 under the Uniform Transfers to Minors Act or custodial trustee
14 under the Uniform Custodial Trust Act; or

15 (c) if there is no guardian, custodian
16 or custodial trustee, to a relative or other person having
17 physical custody of the distributee;

18 (24) bring or defend an action, claim or
19 proceeding in any jurisdiction for the protection of the
20 conservatorship estate or the conservator in the performance of
21 the conservator's duties;

22 (25) structure the finances of the individual
23 subject to conservatorship to establish eligibility for a
24 public benefit, including by making gifts consistent with the
25 individual's preferences, values and prior directions, if the

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 conservator's action does not jeopardize the individual's
2 welfare and otherwise is consistent with the conservator's
3 duties; and

4 (26) execute and deliver any instrument that
5 will accomplish or facilitate the exercise of a power of the
6 conservator.

7 SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM
8 CONSERVATORSHIP ESTATE.--Except as otherwise provided in
9 Section 414 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act or qualified or limited in
11 the court's order of appointment and stated in the letters of
12 office and unless contrary to a conservator's plan under
13 Section 419 of that act, the conservator may expend or
14 distribute income or principal of the conservatorship estate
15 without specific court authorization or confirmation for the
16 support, care, education, health or welfare of the individual
17 subject to conservatorship or an individual who is in fact
18 dependent on the individual subject to conservatorship,
19 including the payment of child or spousal support, in
20 accordance with the following rules:

21 A. the conservator shall consider a recommendation
22 relating to the appropriate standard of support, care,
23 education, health or welfare for the individual subject to
24 conservatorship or individual who is dependent on the
25 individual subject to conservatorship, made by a guardian for

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 the individual subject to conservatorship, if any, and, if the
2 individual subject to conservatorship is a minor, a
3 recommendation made by a parent of the minor;

4 B. the conservator acting in compliance with the
5 conservator's duties under Section 418 of the Uniform
6 Guardianship, Conservatorship and Other Protective Arrangements
7 Act is not liable for an expenditure or distribution made based
8 on a recommendation under Subsection A of this section unless
9 the conservator knows the expenditure or distribution is not in
10 the best interest of the individual subject to conservatorship;

11 C. in making an expenditure or distribution under
12 this section, the conservator shall consider:

13 (1) the size of the conservatorship estate,
14 the estimated duration of the conservatorship and the
15 likelihood the individual subject to conservatorship, at some
16 future time, may be fully self-sufficient and able to manage
17 the individual's financial affairs and the conservatorship
18 estate;

19 (2) the accustomed standard of living of the
20 individual subject to conservatorship and individual who is
21 dependent on the individual subject to conservatorship;

22 (3) other funds or source used for the support
23 of the individual subject to conservatorship; and

24 (4) the preferences, values and prior
25 directions of the individual subject to conservatorship; and

.208901.3

underscored material = new
[bracketed material] = delete

1 D. funds expended or distributed under this section
2 may be paid by the conservator to any person, including the
3 individual subject to conservatorship, as reimbursement for
4 expenditures the conservator might have made, or in advance for
5 services to be provided to the individual subject to
6 conservatorship or individual who is dependent on the
7 individual subject to conservatorship if it is reasonable to
8 expect the services will be performed and advance payment is
9 customary or reasonably necessary under the circumstances.

10 SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND
11 ACCOUNTING--MONITORING.--

12 A. A conservator shall file with the court a report
13 in a record regarding the administration of the conservatorship
14 estate annually unless the court otherwise directs, on
15 resignation or removal, on termination of the conservatorship
16 and at any other time the court directs.

17 B. A report under Subsection A of this section
18 shall state or contain:

19 (1) an accounting that lists property included
20 in the conservatorship estate and the receipts, disbursements,
21 liabilities and distributions during the period for which the
22 report is made;

23 (2) a list of the services provided to the
24 individual subject to conservatorship;

25 (3) a copy of the conservator's most recently

underscoring material = new
~~[bracketed material] = delete~~

1 approved plan and a statement whether the conservator has
2 deviated from the plan and, if so, how the conservator has
3 deviated and why;

4 (4) a recommendation as to the need for
5 continued conservatorship and any recommended change in the
6 scope of the conservatorship;

7 (5) to the extent feasible, a copy of the most
8 recent reasonably available financial statements evidencing the
9 status of bank accounts, investment accounts and mortgages or
10 other debts of the individual subject to conservatorship with
11 all but the last four digits of the account numbers and social
12 security number redacted;

13 (6) anything of more than de minimis value
14 that the conservator, any individual who resides with the
15 conservator or the spouse, parent, child or sibling of the
16 conservator has received from a person providing goods or
17 services to the individual subject to conservatorship;

18 (7) any business relation the conservator has
19 with a person the conservator has paid or that has benefited
20 from the property of the individual subject to conservatorship;
21 and

22 (8) whether any co-conservator or successor
23 conservator appointed to serve when a designated event occurs
24 is alive and able to serve.

25 C. The court may appoint a visitor to review a

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 report under this section or conservator's plan under Section
2 419 of the Uniform Guardianship, Conservatorship and Other
3 Protective Arrangements Act, interview the individual subject
4 to conservatorship or conservator or investigate any other
5 matter involving the conservatorship. In connection with the
6 report, the court may order the conservator to submit the
7 conservatorship estate to appropriate examination in a manner
8 the court directs.

9 D. Notice of the filing under this section of a
10 conservator's report, together with a copy of the report, shall
11 be provided to the individual subject to conservatorship, a
12 person entitled to notice under Subsection E of Section 411 of
13 the Uniform Guardianship, Conservatorship and Other Protective
14 Arrangements Act or a subsequent order and other persons the
15 court determines. The notice and report shall be given not
16 later than fourteen days after filing.

17 E. The court may establish procedures for
18 monitoring a report submitted under this section and review
19 each report at least annually to determine whether:

20 (1) the reports provide sufficient information
21 to establish the conservator has complied with the
22 conservator's duties;

23 (2) the conservatorship should continue; and

24 (3) the conservator's requested fees, if any,
25 should be approved.

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 F. If the court determines there is reason to
2 believe a conservator has not complied with the conservator's
3 duties or the conservatorship should not continue, the court:

4 (1) shall notify the individual subject to
5 conservatorship, the conservator and any other person entitled
6 to notice under Subsection E of Section 411 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act or a subsequent order;

9 (2) may require additional information from
10 the conservator;

11 (3) may appoint a visitor to interview the
12 individual subject to conservatorship or conservator or
13 investigate any matter involving the conservatorship; and

14 (4) consistent with Sections 430 and 431 of
15 the Uniform Guardianship, Conservatorship and Other Protective
16 Arrangements Act, may hold a hearing to consider removal of the
17 conservator, termination of the conservatorship or a change in
18 the powers granted to the conservator or terms of the
19 conservatorship.

20 G. If the court has reason to believe fees
21 requested by a conservator are not reasonable, the court shall
22 hold a hearing to determine whether to adjust the requested
23 fees and give notice of the hearing to the individual subject
24 to conservatorship, a person entitled to notice under
25 Subsection E of Section 411 of the Uniform Guardianship,

.208901.3

1 Conservatorship and Other Protective Arrangements Act or under
2 a subsequent order and any other person the court deems
3 entitled to notice.

4 H. A conservator may petition the court for
5 approval of a report filed under this section and shall
6 petition the court for approval of an annual report, a report
7 filed upon resignation, removal or termination or a report
8 filed upon the court's direction. The court after review shall
9 not approve the report without:

10 (1) notice to the individual subject to
11 conservatorship, a person entitled to notice under Subsection E
12 of Section 411 of the Uniform Guardianship, Conservatorship and
13 Other Protective Arrangements Act or under a subsequent order
14 and any other person the court deems entitled to notice; and

15 (2) a hearing.

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

21 J. An order, after notice and hearing, approving a
22 final report filed under this section discharges the
23 conservator from all liabilities, claims and causes of action
24 by a person given notice of the report and the hearing as to a
25 matter adequately disclosed in the report.

underscored material = new
[bracketed material] = delete

1 **SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF**
2 **PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--**

3 A. The interest of an individual subject to
4 conservatorship in property included in the conservatorship
5 estate is not transferrable or assignable by the individual and
6 is not subject to levy, garnishment or similar process for
7 claims against the individual unless allowed under Section 428
8 of the Uniform Guardianship, Conservatorship and Other
9 Protective Arrangements Act.

10 B. If an individual subject to conservatorship
11 enters into a contract after having the right to enter the
12 contract removed by the court, the contract is void against the
13 individual and the individual's property but is enforceable
14 against the person that contracted with the individual.

15 C. A person other than the conservator that deals
16 with an individual subject to conservatorship with respect to
17 property included in the conservatorship estate is entitled to
18 protection provided by law of New Mexico other than the Uniform
19 Guardianship, Conservatorship and Other Protective Arrangements
20 Act.

21 **SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING**
22 **CONFLICT OF INTEREST.--**A transaction involving a
23 conservatorship estate that is affected by a substantial
24 conflict between the conservator's fiduciary duties and
25 personal interest is voidable unless the transaction is

underscored material = new
[bracketed material] = delete

1 authorized by court order after notice to persons entitled to
2 notice under Subsection E of Section 411 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act or a subsequent order. A transaction affected by a
5 substantial conflict includes a sale, encumbrance or other
6 transaction involving the conservatorship estate entered into
7 by the conservator, an individual with whom the conservator
8 resides, the spouse, descendant, sibling, agent or attorney of
9 the conservator or a corporation or other enterprise in which
10 the conservator has a substantial beneficial interest.

11 SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING
12 WITH CONSERVATOR.--

13 A. A person that assists or deals with a
14 conservator in good faith and for value in any transaction,
15 other than a transaction requiring a court order under Section
16 414 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act, is protected as though the
18 conservator properly exercised any power in question.
19 Knowledge by a person that the person is dealing with a
20 conservator alone does not require the person to inquire into
21 the existence of authority of the conservator or the propriety
22 of the conservator's exercise of authority, but restrictions on
23 authority stated in letters of office, or otherwise provided by
24 law, are effective as to the person. A person that pays or
25 delivers property to a conservator is not responsible for

.208901.3

underscored material = new
[bracketed material] = delete

1 proper application of the property.

2 B. Protection under Subsection A of this section
3 extends to a procedural irregularity or jurisdictional defect
4 in the proceeding leading to the issuance of letters of office
5 and does not substitute for protection for a person that
6 assists or deals with a conservator provided by comparable
7 provisions in law of New Mexico other than the Uniform
8 Guardianship, Conservatorship and Other Protective Arrangements
9 Act relating to a commercial transaction or simplifying a
10 transfer of securities by a fiduciary.

11 SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT
12 TO CONSERVATORSHIP.--

13 A. If an individual subject to conservatorship
14 dies, the conservator shall deliver to the court for
15 safekeeping any will of the individual in the conservator's
16 possession and inform the personal representative named in the
17 will, if feasible, or, if not feasible, a beneficiary named in
18 the will, of the delivery.

19 B. On the death of an individual subject to
20 conservatorship, the conservator shall conclude the
21 administration of the conservatorship estate as provided in
22 Section 431 of the Uniform Guardianship, Conservatorship and
23 Other Protective Arrangements Act.

24 SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF
25 CLAIM.--

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 A. A conservator may pay, or secure by encumbering
2 property included in the conservatorship estate, a claim
3 against the conservatorship estate or the individual subject to
4 conservatorship arising before or during the conservatorship,
5 on presentation and allowance in accordance with the priorities
6 under Subsection D of this section. A claimant may present a
7 claim by:

8 (1) sending or delivering to the conservator a
9 statement in a record of the claim, indicating its basis, the
10 name and address of the claimant and the amount claimed; or

11 (2) filing the claim with the court, in a form
12 acceptable to the court, and sending or delivering a copy of
13 the claim to the conservator.

14 B. A claim under Subsection A of this section is
15 presented on receipt by the conservator of the statement of the
16 claim or the filing with the court of the claim, whichever
17 first occurs. A presented claim is allowed if it is not
18 disallowed in whole or in part by the conservator in a record
19 sent or delivered to the claimant not later than sixty days
20 after its presentation. Before payment, the conservator may
21 change an allowance of the claim to a disallowance in whole or
22 in part, but not after allowance under a court order or order
23 directing payment of the claim. Presentation of a claim tolls
24 until thirty days after disallowance of the claim the running
25 of a statute of limitations that has not expired relating to

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 the claim.

2 C. A claimant whose claim under Subsection A of
3 this section has not been paid may petition the court to
4 determine the claim at any time before it is barred by a
5 statute of limitations, and the court may order its allowance,
6 payment or security by encumbering property included in the
7 conservatorship estate. If a proceeding is pending against the
8 individual subject to conservatorship at the time of
9 appointment of the conservator or is initiated thereafter, the
10 moving party shall give the conservator notice of the
11 proceeding if it could result in creating a claim against the
12 conservatorship estate.

13 D. If a conservatorship estate is likely to be
14 exhausted before all existing claims are paid, the conservator
15 shall distribute the estate in money or in kind in payment of
16 claims in the following order:

- 17 (1) costs and expenses of administration;
- 18 (2) a claim of the federal or state government
19 having priority under law other than the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act;
- 21 (3) a claim incurred by the conservator for
22 support, care, education, health or welfare previously provided
23 to the individual subject to conservatorship or an individual
24 who is in fact dependent on the individual subject to
25 conservatorship;

underscored material = new
[bracketed material] = delete

1 (4) a claim arising before the
2 conservatorship; and

3 (5) all other claims.

4 E. Preference shall not be given in the payment of
5 a claim under Subsection D of this section over another claim
6 of the same class. A claim due and payable shall not be
7 preferred over a claim not due unless:

8 (1) doing so would leave the conservatorship
9 estate without sufficient funds to pay the basic living and
10 health care expenses of the individual subject to
11 conservatorship; and

12 (2) the court authorizes the preference under
13 Paragraph (8) of Subsection A of Section 414 of the Uniform
14 Guardianship, Conservatorship and Other Protective Arrangements
15 Act.

16 F. If assets of a conservatorship estate are
17 adequate to meet all existing claims, the court, acting in the
18 best interest of the individual subject to conservatorship, may
19 order the conservator to grant a security interest in the
20 conservatorship estate for payment of a claim at a future date.

21 SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF
22 CONSERVATOR.--

23 A. Except as otherwise agreed by a conservator, the
24 conservator is not personally liable on a contract properly
25 entered into in a fiduciary capacity in the course of

underscored material = new
[bracketed material] = delete

1 administration of the conservatorship estate unless the
2 conservator fails to reveal the conservator's representative
3 capacity before entering into the contract or in the contract.

4 B. A conservator is personally liable for an
5 obligation arising from control of property of the
6 conservatorship estate or an act or omission occurring in the
7 course of administration of the conservatorship estate only if
8 the conservator is personally at fault.

9 C. A claim based on a contract entered into by a
10 conservator in a fiduciary capacity, an obligation arising from
11 control of property included in the conservatorship estate or a
12 tort committed in the course of administration of the
13 conservatorship estate may be asserted against the
14 conservatorship estate in a proceeding against the conservator
15 in a fiduciary capacity, whether or not the conservator is
16 personally liable for the claim.

17 D. A question of liability between a
18 conservatorship estate and the conservator personally may be
19 determined in a proceeding for accounting, surcharge or
20 indemnification or another appropriate proceeding or action.

21 SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--
22 APPOINTMENT OF SUCCESSOR.--

23 A. The court may remove a conservator for failure
24 to perform the conservator's duties or other good cause and
25 appoint a successor conservator to assume the duties of the

.208901.3

1 conservator.

2 B. The court shall hold a hearing to determine
3 whether to remove a conservator and appoint a successor on:

4 (1) petition of the individual subject to
5 conservatorship, conservator or person interested in the
6 welfare of the individual that contains allegations that, if
7 true, would support a reasonable belief that removal of the
8 conservator and appointment of a successor may be appropriate,
9 but the court may decline to hold a hearing if a petition based
10 on the same or substantially similar facts was filed during the
11 preceding six months;

12 (2) communication from the individual subject
13 to conservatorship, conservator or person interested in the
14 welfare of the individual that supports a reasonable belief
15 that removal of the conservator and appointment of a successor
16 may be appropriate; or

17 (3) determination by the court that a hearing
18 would be in the best interest of the individual subject to
19 conservatorship.

20 C. Notice of a petition under Paragraph (1) of
21 Subsection B of this section shall be given to the individual
22 subject to conservatorship, the conservator and any other
23 person the court determines.

24 D. An individual subject to conservatorship who
25 seeks to remove the conservator and have a successor appointed

underscored material = new
[bracketed material] = delete

1 has the right to choose an attorney to represent the individual
2 in this matter. If the individual is not represented by an
3 attorney, the court shall appoint an attorney under the same
4 conditions as in Section 406 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act. The
6 court shall award reasonable attorney's fees to the attorney as
7 provided in Section 119 of that act.

8 E. In selecting a successor conservator, the court
9 shall follow the priorities under Section 410 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act.

12 F. Not later than thirty days after appointing a
13 successor conservator, the court shall give notice of the
14 appointment to the individual subject to conservatorship and
15 any person entitled to notice under Subsection E of Section 411
16 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act or a subsequent order.

18 SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION
19 OF CONSERVATORSHIP.--

20 A. A conservatorship for a minor terminates on the
21 earliest of:

22 (1) a court order terminating the
23 conservatorship;

24 (2) the minor becoming an adult or, if the
25 minor consents or the court finds by clear and convincing

underscored material = new
~~[bracketed material] = delete~~

1 evidence that substantial harm to the minor's interests is
2 otherwise likely, attaining twenty-one years of age;

3 (3) emancipation of the minor; or

4 (4) death of the minor.

5 B. A conservatorship for an adult terminates on
6 order of the court or when the adult dies.

7 C. An individual subject to conservatorship, the
8 conservator or a person interested in the welfare of the
9 individual may petition for:

10 (1) termination of the conservatorship on the
11 ground that a basis for appointment under Section 401 of the
12 Uniform Guardianship, Conservatorship and Other Protective
13 Arrangements Act does not exist or termination would be in the
14 best interest of the individual or for other good cause; or

15 (2) modification of the conservatorship on the
16 ground that the extent of protection or assistance granted is
17 not appropriate or for other good cause.

18 D. The court shall hold a hearing to determine
19 whether termination or modification of a conservatorship is
20 appropriate on:

21 (1) petition under Subsection C of this
22 section that contains allegations that, if true, would support
23 a reasonable belief that termination or modification of the
24 conservatorship may be appropriate, but the court may decline
25 to hold a hearing if a petition based on the same or

.208901.3

underscored material = new
~~[bracketed material] = delete~~

1 substantially similar facts was filed within the preceding six
2 months;

3 (2) a communication from the individual
4 subject to conservatorship, conservator or person interested in
5 the welfare of the individual that supports a reasonable belief
6 that termination or modification of the conservatorship may be
7 appropriate, including because the functional needs of the
8 individual or supports or services available to the individual
9 have changed;

10 (3) a report from a guardian or conservator
11 that indicates that termination or modification may be
12 appropriate because the functional needs or supports or
13 services available to the individual have changed or a
14 protective arrangement instead of conservatorship or other less
15 restrictive alternative is available; or

16 (4) a determination by the court that a
17 hearing would be in the best interest of the individual.

18 E. Notice of a petition under Subsection C of this
19 section shall be given to the individual subject to
20 conservatorship, the conservator and any such other person the
21 court determines.

22 F. On presentation of prima facie evidence for
23 termination of a conservatorship, the court shall order
24 termination unless it is proven that a basis for appointment of
25 a conservator under Section 401 of the Uniform Guardianship,

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Conservatorship and Other Protective Arrangements Act exists.

2 G. The court shall modify the powers granted to a
3 conservator if the powers are excessive or inadequate due to a
4 change in the abilities or limitations of the individual
5 subject to conservatorship, the individual's supports or other
6 circumstances.

7 H. Unless the court otherwise orders for good
8 cause, before terminating a conservatorship, the court shall
9 follow the same procedures to safeguard the rights of the
10 individual subject to conservatorship that apply to a petition
11 for conservatorship.

12 I. An individual subject to conservatorship who
13 seeks to terminate or modify the terms of the conservatorship
14 has the right to choose an attorney to represent the individual
15 in this matter. If the individual is not represented by an
16 attorney, the court shall appoint an attorney under the same
17 conditions as in Section 406 of the Uniform Guardianship,
18 Conservatorship and Other Protective Arrangements Act. The
19 court shall award reasonable attorney's fees to the attorney as
20 provided in Section 119 of that act.

21 J. On termination of a conservatorship other than
22 by reason of the death of the individual subject to
23 conservatorship, property of the conservatorship estate passes
24 to the individual. The order of termination shall direct the
25 conservator to file a final report and petition for discharge

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 on approval by the court of the final report.

2 K. On termination of a conservatorship by reason of
3 the death of the individual subject to conservatorship, the
4 conservator promptly shall file a final report and petition for
5 discharge on approval by the court of the final report. On
6 approval of the final report, the conservator shall proceed
7 expeditiously to distribute the conservatorship estate to the
8 individual's estate or as otherwise ordered by the court. The
9 conservator may take reasonable measures necessary to preserve
10 the conservatorship estate until distribution can be made.

11 L. The court shall issue a final order of discharge
12 on the approval by the court of the final report and
13 satisfaction by the conservator of any other condition the
14 court imposed on the conservator's discharge.

15 SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR
16 WITHOUT APPOINTMENT OF CONSERVATOR.--

17 A. Unless a person required to transfer funds or
18 other property to a minor knows that a conservator for the
19 minor has been appointed or a proceeding is pending for
20 conservatorship, the person may transfer an amount or value not
21 exceeding fifteen thousand dollars (\$15,000) in a twelve-month
22 period to:

- 23 (1) a person that has care or custody of the
24 minor and with whom the minor resides;
25 (2) a guardian for the minor;

underscored material = new
[bracketed material] = delete

1 (3) a custodian under the Uniform Transfers to
2 Minors Act; or

3 (4) a financial institution as a deposit in an
4 interest-bearing account or certificate solely in the name of
5 the minor and shall give notice to the minor of the deposit.

6 B. A person that transfers funds or other property
7 under this section is not responsible for its proper
8 application.

9 C. A person that receives funds or other property
10 for a minor under Paragraph (1) or (2) of Subsection A of this
11 section may apply it only to the support, care, education,
12 health or welfare of the minor and shall not derive a personal
13 financial benefit from it, except for reimbursement for
14 necessary expenses. Funds not applied for these purposes shall
15 be preserved for the future support, care, education, health or
16 welfare of the minor and the balance, if any, transferred to
17 the minor when the minor becomes an adult or otherwise is
18 emancipated.

19 ARTICLE 5

20 OTHER PROTECTIVE ARRANGEMENTS

21 SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE
22 ARRANGEMENT.--

23 A. Under this article, a court:

24 (1) on receiving a petition for a guardianship
25 for an adult may order a protective arrangement instead of

.208901.3

underscored material = new
[bracketed material] = delete

1 guardianship as a less restrictive alternative to guardianship;
2 and

3 (2) on receiving a petition for a
4 conservatorship for an individual may order a protective
5 arrangement instead of conservatorship as a less restrictive
6 alternative to conservatorship.

7 B. A person interested in an adult's welfare,
8 including the adult or a conservator for the adult, may
9 petition under this article for a protective arrangement
10 instead of guardianship.

11 C. The following persons may petition under this
12 article for a protective arrangement instead of
13 conservatorship:

14 (1) the individual for whom the protective
15 arrangement is sought;

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

21 (3) the guardian for the individual.

22 SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE
23 ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

24 A. After the hearing on a petition under Section
25 302 of the Uniform Guardianship, Conservatorship and Other

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 Protective Arrangements Act for a guardianship or under
2 Subsection B of Section 501 of that act for a protective
3 arrangement instead of guardianship, the court may issue an
4 order under Subsection B of this section for a protective
5 arrangement instead of guardianship if the court finds by clear
6 and convincing evidence that:

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

13 (2) the respondent's identified needs cannot
14 be met by a less restrictive alternative.

15 B. If the court makes the findings under Subsection
16 A of this section, the court, instead of appointing a guardian,
17 may:

18 (1) authorize or direct a transaction
19 necessary to meet the respondent's need for health, safety or
20 care, including:

21 (a) a particular medical treatment or
22 refusal of a particular medical treatment;

23 (b) a move to a specified place of
24 dwelling; or

25 (c) visitation or supervised visitation

underscored material = new
[bracketed material] = delete

1 between the respondent and another person;

2 (2) restrict access to the respondent by a
3 specified person whose access places the respondent at serious
4 risk of physical, psychological or financial harm; and

5 (3) order other arrangements on a limited
6 basis that are appropriate.

7 C. In deciding whether to issue an order under this
8 section, the court shall consider the factors under Sections
9 313 and 314 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act that a guardian shall
11 consider when making a decision on behalf of an adult subject
12 to guardianship.

13 SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE
14 ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

15 A. After the hearing on a petition under Section
16 402 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act for conservatorship for an adult or
18 under Subsection C of Section 501 of that act for a protective
19 arrangement instead of conservatorship for an adult, the court
20 may issue an order under Subsection C of this section for a
21 protective arrangement instead of conservatorship for the
22 respondent if the court finds:

23 (1) by clear and convincing evidence that the
24 respondent is unable to manage the respondent's property or
25 financial affairs because:

.208901.3

underscoring material = new
~~[bracketed material] = delete~~

1 (a) of a limitation in the ability to
2 receive and evaluate information or make or communicate
3 decisions, even with appropriate supportive services,
4 technological assistance or supported decision making; or

5 (b) the adult is missing, detained or
6 unable to return to the United States;

7 (2) by a preponderance of the evidence that:

8 (a) the respondent has property likely
9 to be wasted or dissipated unless management is provided; or

10 (b) an order under Subsection C of this
11 section is necessary or desirable to obtain or provide funds or
12 other property needed for the support, care, education, health
13 or welfare of the respondent or an individual entitled to the
14 respondent's support; and

15 (3) the respondent's identified needs cannot
16 be met by a less restrictive alternative.

17 B. After the hearing on a petition under Section
18 402 of the Uniform Guardianship, Conservatorship and Other
19 Protective Arrangements Act for conservatorship for a minor or
20 under Subsection C of Section 501 of that act for a protective
21 arrangement instead of conservatorship for a minor, the court
22 may issue an order under Subsection C of this section for a
23 protective arrangement instead of conservatorship for the
24 respondent if the court finds by a preponderance of the
25 evidence that the arrangement is in the minor's best interest

.208901.3

1 and:

2 (1) if the minor has a parent, the court gives
3 weight to any recommendation of the parent whether an
4 arrangement is in the minor's best interest;

5 (2) either:

6 (a) the minor owns money or property
7 requiring management or protection that otherwise cannot be
8 provided;

9 (b) the minor has or may have financial
10 affairs that may be put at unreasonable risk or hindered
11 because of the minor's age; or

12 (c) the arrangement is necessary or
13 desirable to obtain or provide funds or other property needed
14 for the support, care, education, health or welfare of the
15 minor; and

16 (3) the order under Subsection C of this
17 section is necessary or desirable to obtain or provide money
18 needed for the support, care, education, health or welfare of
19 the minor.

20 C. If the court makes the findings under Subsection
21 A or B of this section, the court, instead of appointing a
22 conservator, may:

23 (1) authorize or direct a transaction
24 necessary to protect the financial interest or property of the
25 respondent, including:

.208901.3

1 (a) an action to establish eligibility
2 for benefits;

3 (b) payment, delivery, deposit or
4 retention of funds or property;

5 (c) sale, mortgage, lease or other
6 transfer of property;

7 (d) purchase of an annuity;

8 (e) entry into a contractual
9 relationship, including a contract to provide for personal
10 care, supportive services, education, training or employment;

11 (f) addition to or establishment of a
12 trust;

13 (g) ratification or invalidation of a
14 contract, trust, will or other transaction, including a
15 transaction related to the property or business affairs of the
16 respondent; or

17 (h) settlement of a claim; or

18 (2) restrict access to the respondent's
19 property by a specified person whose access to the property
20 places the respondent at serious risk of financial harm.

21 D. After the hearing on a petition under Paragraph
22 (2) of Subsection A of Section 501 of the Uniform Guardianship,
23 Conservatorship and Other Protective Arrangements Act or
24 Subsection C of that section, whether or not the court makes
25 the findings under Subsection A or B of this section, the court

.208901.3

underscored material = new
[bracketed material] = delete

1 may issue an order to restrict access to the respondent or the
2 respondent's property by a specified person that the court
3 finds by clear and convincing evidence:

4 (1) through fraud, coercion, duress or the use
5 of deception and control caused or attempted to cause an action
6 that would have resulted in financial harm to the respondent or
7 the respondent's property; and

8 (2) poses a serious risk of substantial
9 financial harm to the respondent or the respondent's property.

10 E. Before issuing an order under Subsection C or D
11 of this section, the court shall consider the factors under
12 Section 418 of the Uniform Guardianship, Conservatorship and
13 Other Protective Arrangements Act that a conservator shall
14 consider when making a decision on behalf of an individual
15 subject to conservatorship.

16 F. Before issuing an order under Subsection C or D
17 of this section for a respondent who is a minor, the court also
18 shall consider the best interest of the minor, the preference
19 of the parents of the minor and the preference of the minor, if
20 the minor is twelve years of age or older.

21 **SECTION 504.** [NEW MATERIAL] PETITION FOR PROTECTIVE
22 ARRANGEMENT.--A petition for a protective arrangement instead
23 of guardianship or conservatorship shall state the petitioner's
24 name, principal residence, current street address, if
25 different, relationship to the respondent, interest in the

.208901.3

1 protective arrangement, the name and address of any attorney
2 representing the petitioner and, to the extent known, the
3 following:

4 A. the respondent's name, age, principal residence,
5 current street address, if different, and, if different,
6 address of the dwelling in which it is proposed the respondent
7 will reside if the petition is granted;

8 B. the name and address of the respondent's:

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

13 (2) adult children or, if none, each parent
14 and adult sibling of the respondent, or, if none, at least one
15 adult nearest in kinship to the respondent who can be found
16 with reasonable diligence; and

17 (3) adult stepchildren whom the respondent
18 actively parented during the stepchildren's minor years and
19 with whom the respondent had an ongoing relationship in the
20 two-year period immediately before the filing of the petition;

21 C. the name and current address of each of the
22 following, if applicable:

23 (1) a person responsible for the care or
24 custody of the respondent;

25 (2) any attorney currently representing the

underscored material = new
~~[bracketed material] = delete~~

1 respondent;

2 (3) the representative payee appointed by the
3 federal social security administration for the respondent;

4 (4) a guardian or conservator acting for the
5 respondent in New Mexico or another jurisdiction;

6 (5) a trustee or custodian of a trust or
7 custodianship of which the respondent is a beneficiary;

8 (6) the fiduciary appointed for the respondent
9 by the federal department of veterans affairs;

10 (7) an agent designated under a power of
11 attorney for health care in which the respondent is identified
12 as the principal;

13 (8) an agent designated under a power of
14 attorney for finances in which the respondent is identified as
15 the principal;

16 (9) a person nominated as guardian or
17 conservator by the respondent if the respondent is twelve years
18 of age or older;

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

21 (11) a person known to have routinely assisted
22 the respondent with decision making in the six-month period
23 immediately before the filing of the petition; and

24 (12) if the respondent is a minor:

25 (a) an adult not otherwise listed with

.208901.3

1 whom the respondent resides; and

2 (b) each person not otherwise listed
3 that had primary care or custody of the respondent for at least
4 sixty days during the two years immediately before the filing
5 of the petition or for at least seven hundred thirty days
6 during the five years immediately before the filing of the
7 petition;

8 D. the nature of the protective arrangement sought;

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

11 (1) the nature and extent of the respondent's
12 alleged need;

13 (2) any less restrictive alternative for
14 meeting the respondent's alleged need that has been considered
15 or implemented;

16 (3) if no less restrictive alternative has
17 been considered or implemented, the reason less restrictive
18 alternatives have not been considered or implemented; and

19 (4) the reason other less restrictive
20 alternatives are insufficient to meet the respondent's alleged
21 need;

22 F. the name and current address, if known, of any
23 person with whom the petitioner seeks to limit the respondent's
24 contact;

25 G. whether the respondent needs an interpreter,

underscored material = new
[bracketed material] = delete

1 translator or other form of support to communicate effectively
2 with the court or understand court proceedings;

3 H. if a protective arrangement instead of
4 guardianship is sought and the respondent has property other
5 than personal effects, a general statement of the respondent's
6 property with an estimate of its value, including any insurance
7 or pension and the source and amount of any other anticipated
8 income or receipts; and

9 I. if a protective arrangement instead of
10 conservatorship is sought, a general statement of the
11 respondent's property with an estimate of its value, including
12 any insurance or pension and the source and amount of other
13 anticipated income or receipts.

14 SECTION 505. [NEW MATERIAL] NOTICE AND HEARING.--

15 A. On filing of a petition under Section 501 of the
16 Uniform Guardianship, Conservatorship and Other Protective
17 Arrangements Act, the court shall set a date, time and place
18 for a hearing on the petition.

19 B. A copy of a petition under Section 501 of the
20 Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act and notice of a hearing on the petition shall
22 be served personally on the respondent. The notice shall
23 inform the respondent of the respondent's rights at the
24 hearing, including the right to an attorney and to attend the
25 hearing. The notice shall include a description of the nature,

.208901.3

underscored material = new
[bracketed material] = delete

1 purpose and consequences of granting the petition. The court
2 shall not grant the petition if notice substantially complying
3 with this subsection is not served on the respondent.

4 C. In a proceeding on a petition under Section 501
5 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act, notice of the hearing shall be
7 given to the persons required to be listed in the petition
8 under Subsections A through C of Section 504 of that act and
9 any other person interested in the respondent's welfare the
10 court determines. Failure to give notice under this subsection
11 does not preclude the court from granting the petition.

12 D. After the court has ordered a protective
13 arrangement under this article, notice of a hearing on a
14 petition filed under the Uniform Guardianship, Conservatorship
15 and Other Protective Arrangements Act, together with a copy of
16 the petition, shall be given to the respondent and any other
17 person the court determines.

18 SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF
19 VISITOR.--

20 A. On filing of a petition under Section 501 of the
21 Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act for a protective arrangement instead of
23 guardianship, the court shall appoint a visitor. The visitor
24 shall be an individual with training or experience in the type
25 of abilities, limitations and needs alleged in the petition.

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 B. 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 conservatorship for a minor, the court may appoint a visitor to
5 investigate a matter related to the petition or inform the
6 minor or a parent of the minor about the petition or a related
7 matter.

8 C. On filing of a petition under Section 501 of the
9 Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act for a protective arrangement instead of
11 conservatorship for an adult, the court shall appoint a visitor
12 unless the respondent is represented by an attorney appointed
13 by the court. The visitor shall be an individual with training
14 or experience in the types of abilities, limitations and needs
15 alleged in the petition.

16 D. A visitor appointed under Subsection A or C of
17 this section shall interview the respondent in person and, in a
18 manner the respondent is best able to understand:

19 (1) explain to the respondent the substance of
20 the petition, the nature, purpose and effect of the proceeding
21 and the respondent's rights at the hearing on the petition;

22 (2) determine the respondent's views with
23 respect to the order sought;

24 (3) inform the respondent of the respondent's
25 right to employ and consult with an attorney at the

underscoring material = new
~~[bracketed material] = delete~~

1 respondent's expense and the right to request a court-appointed
2 attorney;

3 (4) inform the respondent that all costs and
4 expenses of the proceeding, including respondent's attorney's
5 fees, may be paid from the respondent's assets;

6 (5) if the petitioner seeks an order related
7 to the dwelling of the respondent, visit the respondent's
8 present dwelling and any dwelling in which it is reasonably
9 believed the respondent will live if the order is granted;

10 (6) if a protective arrangement instead of
11 guardianship is sought, obtain information from any physician
12 or other person known to have treated, advised or assessed the
13 respondent's relevant physical or mental condition;

14 (7) if a protective arrangement instead of
15 conservatorship is sought, review financial records of the
16 respondent, if relevant to the visitor's recommendation under
17 Paragraph (2) of Subsection E of this section; and

18 (8) investigate the allegations in the
19 petition and any other matter relating to the petition the
20 court directs.

21 E. A visitor under this section promptly shall file
22 a report in a record with the court that includes:

23 (1) to the extent relevant to the order
24 sought, a summary of self-care, independent-living tasks and
25 financial-management tasks that the respondent:

.208901.3

1 (a) can manage without assistance or
2 with existing supports;

3 (b) could manage with the assistance of
4 appropriate supportive services, technological assistance or
5 supported decision making; and

6 (c) cannot manage;

7 (2) a recommendation regarding the
8 appropriateness of the protective arrangement sought and
9 whether a less restrictive alternative for meeting the
10 respondent's needs is available;

11 (3) if the petition seeks to change the
12 physical location of the dwelling of the respondent, a
13 statement whether the proposed dwelling meets the respondent's
14 needs and whether the respondent has expressed a preference as
15 to the respondent's dwelling;

16 (4) a recommendation whether a professional
17 evaluation under Section 508 of the Uniform Guardianship,
18 Conservatorship and Other Protective Arrangements Act is
19 necessary;

20 (5) a statement whether the respondent is able
21 to attend a hearing at the location court proceedings typically
22 are held;

23 (6) a statement whether the respondent is able
24 to participate in a hearing and that identifies any technology
25 or other form of support that would enhance the respondent's

underscored material = new
[bracketed material] = delete

1 ability to participate; and

2 (7) any other matter the court directs.

3 SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF
4 ATTORNEY.--

5 A. Unless the respondent in a proceeding under this
6 article is represented by an attorney, the court shall appoint
7 an attorney to represent the respondent, regardless of the
8 respondent's ability to pay.

9 B. An attorney representing the respondent in a
10 proceeding under this article shall:

11 (1) make reasonable efforts to ascertain the
12 respondent's wishes;

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

15 (3) if the respondent's wishes are not
16 reasonably ascertainable, advocate for the result that is the
17 least restrictive alternative in type, duration and scope,
18 consistent with the respondent's interests.

19 SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

20 A. At or before a hearing on a petition under this
21 article for a protective arrangement, the court shall order a
22 professional evaluation of the respondent:

23 (1) if the respondent requests the evaluation;

24 or

25 (2) or in other cases, unless the court finds

1 that it has sufficient information to determine the
2 respondent's needs and abilities without the evaluation.

3 B. If the court orders an evaluation under
4 Subsection A of this section, the respondent shall be examined
5 by a licensed physician, psychologist, social worker or other
6 individual appointed by the court who is qualified to evaluate
7 the respondent's alleged cognitive and functional abilities and
8 limitations and will not be advantaged or disadvantaged by a
9 decision to grant the petition or otherwise have a conflict of
10 interest. The individual conducting the evaluation promptly
11 shall file a report in a record with the court. Unless
12 otherwise directed by the court, the report shall contain:

13 (1) a description of the nature, type and
14 extent of the respondent's cognitive and functional abilities
15 and limitations;

16 (2) an evaluation of the respondent's mental
17 and physical condition and, if appropriate, educational
18 potential, adaptive behavior and social skills;

19 (3) a prognosis for improvement, including
20 with regard to the ability to manage the respondent's property
21 and financial affairs if a limitation in that ability is
22 alleged and recommendation for the appropriate treatment,
23 support or habilitation plan; and

24 (4) the date of the examination on which the
25 report is based.

underscored material = new
[bracketed material] = delete

1 C. The respondent may decline to participate in an
2 evaluation ordered under Subsection A of this section.

3 SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
4 HEARING.--

5 A. Except as otherwise provided in Subsection B of
6 this section, a hearing under this article shall not proceed
7 unless the respondent attends the hearing. If it is not
8 reasonably feasible for the respondent to attend a hearing at
9 the location court proceedings typically are held, the court
10 shall make reasonable efforts to hold the hearing at an
11 alternative location convenient to the respondent or allow the
12 respondent to attend the hearing using real-time audio-visual
13 technology.

14 B. A hearing under this article may proceed without
15 the respondent in attendance if the court finds by clear and
16 convincing evidence that:

17 (1) the respondent consistently and repeatedly
18 has refused to attend the hearing after having been fully
19 informed of the right to attend and the potential consequences
20 of failing to do so;

21 (2) there is no practicable way for the
22 respondent to attend and participate in the hearing even with
23 appropriate supportive services and technological assistance;
24 or

25 (3) the respondent is a minor who has received

underscored material = new
[bracketed material] = delete

1 proper notice and attendance would be harmful to the minor.

2 C. The respondent may be assisted in a hearing
3 under this article by a person or persons of the respondent's
4 choosing, assistive technology or an interpreter or translator
5 or a combination of these supports. If assistance would
6 facilitate the respondent's participation in the hearing, but
7 is not otherwise available to the respondent, the court shall
8 make reasonable efforts to provide it.

9 D. The respondent has a right to choose an attorney
10 to represent the respondent at a hearing under this article.

11 E. At a hearing under this article, the respondent
12 may:

13 (1) present evidence and subpoena witnesses
14 and documents;

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

17 (3) otherwise participate in the hearing.

18 F. A hearing under this article shall be closed on
19 request of the respondent and a showing of good cause.

20 G. Any person may request to participate in a
21 hearing under this article. The court may grant the request,
22 with or without a hearing, on determining that the best
23 interest of the respondent will be served. The court may
24 impose appropriate conditions on the person's participation.

25 SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court

.208901.3

underscored material = new
[bracketed material] = delete

1 shall give notice of an order under this article to the
2 individual who is subject to the protective arrangement instead
3 of guardianship or conservatorship, a person whose access to
4 the individual is restricted by the order and any other person
5 the court determines.

6 SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

7 A. The existence of a proceeding for or the
8 existence of a protective arrangement instead of guardianship
9 or conservatorship is a matter of public record unless the
10 court seals the record after:

11 (1) the respondent, the individual subject to
12 the protective arrangement or the parent of a minor subject to
13 the protective arrangement requests the record be sealed; and

14 (2) either:

15 (a) the proceeding is dismissed;

16 (b) the protective arrangement is no
17 longer in effect; or

18 (c) an act authorized by the order
19 granting the protective arrangement has been completed.

20 B. A respondent, an individual subject to a
21 protective arrangement instead of guardianship or
22 conservatorship, an attorney designated by the respondent or
23 individual, a parent of a minor subject to a protective
24 arrangement and any other person the court determines are
25 entitled to access court records of the proceeding and

.208901.3

1 resulting protective arrangement. A person not otherwise
2 entitled to access to court records under this subsection for
3 good cause may petition the court for access. The court shall
4 grant access if access is in the best interest of the
5 respondent or individual subject to the protective arrangement
6 or furthers the public interest and does not endanger the
7 welfare or financial interests of the respondent or individual.

8 C. A report of a visitor or professional evaluation
9 generated in the course of a proceeding under this article
10 shall be sealed on filing, but is available to:

11 (1) the court;

12 (2) the individual who is the subject of the
13 report or evaluation, without limitation as to use;

14 (3) the petitioner, visitor and petitioner's
15 and respondent's attorneys, for purposes of the proceeding;

16 (4) unless the court orders otherwise, an
17 agent appointed under a power of attorney for finances in which
18 the respondent is the principal;

19 (5) if the order is for a protective
20 arrangement instead of guardianship and unless the court orders
21 otherwise, an agent appointed under a power of attorney for
22 health care in which the respondent is identified as the
23 principal; and

24 (6) any other person if it is in the public
25 interest or for a purpose the court orders for good cause.

underscoring material = new
~~[bracketed material]~~ = delete

1 through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being
2 Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws
3 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section
4 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter
5 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210,
6 Section 54, Laws 1975, Chapter 257, Sections 5-210 through
7 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975,
8 Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5
9 through 7, Laws 1975, Chapter 257, Sections 5-305 through
10 5-307, Laws 1989, Chapter 252, Section 9, Laws 1975, Chapter
11 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252,
12 Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and
13 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter
14 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section
15 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter
16 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and
17 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975,
18 Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420
19 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975,
20 Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter
21 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through
22 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as
23 amended) are repealed.

24 **SECTION 604. APPLICABILITY.**--The Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act applies

.208901.3

underscoring material = new
~~[bracketed material]~~ = delete

1 to a proceeding for appointment of a guardian or conservator or
2 for a protective arrangement instead of guardianship or
3 conservatorship commenced after January 1, 2019 and a
4 guardianship, conservatorship or protective arrangement instead
5 of guardianship or conservatorship in existence on January 1,
6 2019 unless the court finds application of a particular
7 provision of that act would substantially interfere with the
8 effective conduct of the proceeding or prejudice the rights of
9 a party, in which case the particular provision of that act
10 does not apply and the superseded law applies.

11 SECTION 605. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2019.