

HJM 6 GUARDIANSHIP TASK FORCE 2008
Appendix C

RECOMMENDATIONS FOR CHANGES TO NEW MEXICO STATUTES

Chapter 24 Health and Safety Article 7A Uniform Health-Care Decisions Act

24-7A-1. Definitions.

V. ~~“ward”~~ “protected person” means an adult or emancipated minor for whom a guardian has been appointed.

24-7A-6. Decisions of guardian.

A. A guardian shall comply with the ~~ward's~~ protected person's individual instructions made while the protected person had capacity and may not ~~revoke~~ disregard the ~~ward's~~ protected person's preferences contained in an advance health-care directive unless the appointing court expressly so authorizes after notice to the agent if any and the ~~ward~~ protected person. The court may disregard such preferences if it finds by clear and convincing evidence that the preferences do not accurately reflect the free choice of the protected person at the time of the instruction or that the protected person had revoked the instructions while he or she had capacity pursuant to NMSA §24-7A-3B. In addition the court may proceed pursuant to NMSA §24-7A-14.

B. A health-care decision of an agent appointed by an individual having capacity takes precedence over that of a guardian, unless the appointing court expressly directs otherwise after notice to the agent and the ~~ward~~ protected person.

C. Subject to the provisions of Subsections A and B of this section, a health-care decision made by a guardian for the ~~ward~~ protected person is effective without judicial approval, if the appointing court has expressly authorized the guardian to make health-care decisions for the ~~ward~~ protected person, in accordance with the provisions of Section 45-5-312 NMSA 1978, after notice to the ~~ward~~ protected person and any agent.

Article 7B Mental Health Care Treatment Decisions Act

24-7B-3. Definitions.

R. ~~“ward”~~ “protected person” means an adult or emancipated minor for whom a guardian has been appointed.

24-7B-8. Decisions by guardian.

A. A guardian shall comply with the ~~ward's~~ protected person's individual instructions made while the protected person had capacity and may not ~~revoke~~ disregard the protected person's preferences contained in an advance directive for mental health treatment unless the appointing court expressly so authorizes after notice to the agent if any and the ~~ward~~

protected person. The court may disregard such preferences if it finds by clear and convincing evidence that the instructions do not accurately reflect the free choice of the protected person at the time of the instruction or that the protected person had revoked the instructions pursuant to NMSA §24-7B-6B while he or she had capacity.

B. A mental health treatment decision of an agent appointed by an individual having capacity takes precedence over that of a guardian, unless the appointing court expressly directs otherwise after notice to the agent and the ~~ward~~ protected person.

C. Subject to the provisions of Subsections A and B of this section, a mental health treatment decision made by a guardian for the ~~ward~~ protected person is effective without judicial approval, if the appointing court has expressly authorized the guardian to make mental health treatment decisions for the ~~ward~~ protected person, in accordance with the provisions of Sections 43-1-15 or 45-5-312 NMSA 1978, after notice to the ~~ward~~ protected person and any agent.

Chapter 28 Human Rights Article 16B Office of Guardianship Act

28-16B-3 Office; powers and duties.

A. The office of guardianship may:

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

28-16B-4 Contract monitoring and enforcement.

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

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

28-16B-5 Contracts.

A contract for guardianship services shall include:

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

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

28-16B-6 Resolution of complaints.

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

Chapter 38 Trials Article 1 Process

38-1-12. Service of process against insane or incompetent person.

Whenever there shall be a guardian of the estate or a guardian of the person of an insane or incompetent person, duly appointed by a court of competent jurisdiction of this state, every process against such insane, or incompetent person shall be served upon either of such guardians in such manner as may be provided by law for service of process, including service by publication. Service of process so made shall be considered as proper service upon the ~~ward~~ protected person. In all other cases process shall be served upon the ~~ward~~ protected person in the same manner as upon competent or sane persons.

Article 4 Parties

38-4-16. Compromise by guardian ad litem.

The guardian ad litem so appearing in any action or proceeding for and on behalf of an incapacitated person shall have power to compromise the same and to agree to the judgment to be entered therein for or against ~~his ward~~ the protected person, subject to the approval of the court in which such suit is pending.

Mental Health and Developmental Disabilities Code

43-1-11. Commitment of adults for thirty-day period.

A. Every adult client involuntarily admitted to an evaluation facility pursuant to [Section 43-1-10 NMSA](#) 1978 has the right to a hearing within seven days of admission unless waived after consultation with counsel. If the division, physician or evaluation facility decides to seek commitment of the client for evaluation and treatment, a petition shall be filed with the court within five days of admission requesting the commitment. The petition shall include a description of the specific behavior or symptoms of the client which evidence a likelihood of serious harm to the client or others and shall include an initial screening report by the evaluating physician individually or with the assistance of a mental health professional or, if a physician is not available, by a mental health professional acceptable to the court. The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the

petition shall be served on the client, the client's guardian and treatment guardian, if one has been appointed, and the client's attorney.

B. At the hearing, the client shall be represented by counsel and shall have the right to present evidence on his behalf, including testimony by an independent mental health professional of his own choosing, to cross-examine witnesses and to be present at the hearing. The presence of the client may be waived upon a showing to the court that the client knowingly and voluntarily waives his right to be present. A complete record of all proceedings shall be made.

C. A court appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit, if circumstances make live testimony too burdensome.

D. The Court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

E. Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:

(1) as a result of a mental disorder, the client presents a likelihood of serious harm to himself or others;

(2) the client needs and is likely to benefit from the proposed treatment; and

(3) the proposed commitment is consistent with the treatment needs of the client and with the least drastic means principle.

F. Once the court has made the findings set forth in Subsection C of this section, the court shall hear further evidence as to whether the client is capable of informed consent. If the court determines that the client is incapable of informed consent, the court shall appoint for the client a treatment guardian who shall have only those powers enumerated in [Section 43-1-15 NMSA](#) 1978.

G. Any interested person who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to himself or others, but does not require emergency care, may request the district attorney to investigate and determine whether reasonable grounds exist to commit the adult for a thirty-day period of evaluation and treatment. The applicant may present to the district attorney any medical reports or other evidence immediately available to him, but shall not be required to obtain a medical report or other particular evidence in order to make such petition. The district attorney shall act on the petition within seventy-two hours. If the district attorney determines that reasonable grounds exist to commit the adult, he may petition the court

for a hearing. The court may issue a summons to the proposed client to appear at the time designated for a hearing which shall be not less than five days from the date the petition is served. If the proposed client is summoned and fails to appear at the proposed time and upon a finding of the court that the proposed client has failed to appear, or appears without having been evaluated, the court may order the proposed client to be detained for evaluation as provided for in Subsection C of [Section 43-1-10 NMSA](#) 1978.

~~F~~ H. Any hearing provided for pursuant to Subsection E of this section shall be conducted in conformance with the requirements of Subsection B of this section.

HISTORY: 1953 Comp., § 34-2A-10, enacted by Laws 1977, ch. 279, § 10; 1978, ch. 161, § 5; 1979, ch. 396, § 3; [1989, ch. 128, § 7](#).

43-1-12. Extended commitment of adults.

A. The department, physician or evaluation facility may file a petition for extended commitment within twenty-one days after the beginning of the thirty-day commitment. The petition must explain the necessity for extended commitment, specify the treatment which has been provided during the evaluation, and must include an individual treatment plan for the proposed commitment period. The petition shall also list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian and treatment guardian, if one has been appointed, and the client's attorney.

B. A hearing shall be held upon the petition prior to the expiration of the thirty-day commitment period, at which the client shall have all rights granted to him under [Section 43-1-11 NMSA](#) 1978 and in addition shall have a right to a trial by a six-person jury if requested, and to an expeditious appeal, unless waived.

C. A court appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit, if circumstances make live testimony too burdensome.

D. The Court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

~~E~~ E. If, at the conclusion of the hearing, the fact finder determines by clear and convincing evidence that the client presents a likelihood of harm to himself or others, that extended treatment is likely to improve the client's condition and that the proposed extended commitment is consistent with the least drastic means principle, the court shall order commitment of the client for a period not to exceed six months, except that when the client has been committed for two consecutive periods of commitment, any commitment commencing thereafter shall not exceed one year. At the expiration of the commitment order the client may be detained only after a new commitment hearing,

unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

~~D~~ F. Any client involuntarily referred for treatment pursuant to this section shall be entitled to a reexamination of the order for his involuntary referral for treatment on his own petition, or that of his legal guardian, parent, spouse, relative or friend, to the district court of the county in which he resides or is detained. Upon receipt of the petition, the court shall conduct a proceeding in accordance with this section except that such proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for treatment or sooner than sixty days after the filing of a previous petition under this subsection.

~~E~~ G. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

~~F~~ H. Nothing in this code shall prohibit a client from seeking voluntary admission under [Section 43-1-14 NMSA 1978](#).

~~G~~ I. No mental health treatment facility is required to detain, treat or provide services to a client when the client does not require such detention, treatment or services.

HISTORY: 1953 Comp., § 34-2A-11, enacted by Laws 1977, ch. 279, § 11; 1978, ch. 161, § 6.

43-1-13. Involuntary commitment of developmentally disabled adults to residential care.

A. A guardian, appointed pursuant to the Probate Code [Chapter 45 NMSA 1978], may file an application with the department or an evaluation facility seeking residential habilitation services for ~~his ward~~ the protected person. The application shall set forth the basis for the guardian's belief that residential habilitation is necessary and shall include a copy of pertinent medical and psychological evaluations which have been completed.

B. Upon receipt of an application filed according to Subsection A of this section, the department or evaluation facility may accept the client for a period of evaluation and treatment not to exceed fourteen days. An evaluation facility shall prepare an individual habilitation plan which shall be consistent with the least drastic means principle.

C. If the habilitation plan recommends residential services, the department or evaluation facility shall file with the court a petition for extended residential placement. Upon receipt of the petition, the court shall appoint an attorney to represent the client. Notice of the hearing scheduled on the petition and a copy of the habilitation plan shall be given to the client, his attorney and his guardian. The petition shall contain a list of the names and addresses of proposed witnesses.

D. At the hearing on the petition, the proposed client shall be represented by counsel, and

shall have the right to present evidence on his behalf, including testimony of a developmental disability professional of his choosing, to cross-examine witnesses, to be present at the hearing, and to trial by a six-person jury, if requested. A complete record of the hearing shall be made. There shall be a right to an expeditious appeal.

E. The guardian of an adult involved in a commitment proceeding for extended residential habilitation services shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit, if circumstances make live testimony too burdensome.

F. The Court shall include in its findings the guardian's opinion regarding the need for residential habilitation services or a statement detailing the efforts made to ascertain the guardian's opinion.

E G. The court shall order residential placement of the proposed client if it is established by clear and convincing evidence that the proposed client has a developmental disability which creates an imminent likelihood of serious harm to himself or others or the person is so greatly disabled that residential services would be in his best interest and that such residential placement is, in his case, the least drastic means. The court's order of residential placement shall be for a period not to exceed six months. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

F H. The court shall order that placement which is least restrictive to the client, and may order attendance and participation as a nonresident in habilitation programs conducted at residential or nonresidential facilities.

G I. Any client involuntarily referred for habilitation treatment shall be entitled to a reexamination of the order for his involuntary referral for habilitation and treatment on his own petition, or that of his legal guardian, parent, spouse, relative or friend, to the district court of the county in which he resides or is detained. Upon receipt of the petition, the court shall conduct or cause to be conducted by a special commissioner a proceeding in accordance with this section except that such proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for habilitation and treatment or sooner than sixty days after the filing of a previous petition under this subsection.

H J. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

I K. No developmental disabilities treatment or habilitation facility is required to detain, treat or provide services to a client when the client does not appear to require such detention, treatment or habilitation.

HISTORY: 1953 Comp., § 34-2A-12, enacted by Laws 1977, ch. 279, § 12; 1978, ch. 161, § 7.

43-1-14. Voluntary admission to residential treatment or habilitation.

~~A. Consistent with the provisions of Section 43-1-16 NMSA 1978,~~ A Any person may voluntarily present himself for admission to residential treatment or habilitation.

B. A guardian appointed under the Probate Code (45-5-301 et seq.) or an agent or surrogate under the Uniform Health-Care Decisions Act (24-7a-1 et seq.) or an agent under the Mental Health Care Treatment Decisions Act (24-7B-1 et seq.) may not consent to the admission of an individual to a mental health-care facility. If a guardian has full power or limited power which includes medical or mental health treatment, or if the individual's written advance health-care directive or advance directive for mental health treatment expressly permits treatment in a mental health-care facility, the guardian, agent or surrogate may only present the individual to a facility for evaluation for admission pursuant to 43-1-10 E.

~~B~~C. Nothing in this section shall be construed as depriving voluntary clients of any right given to involuntary clients.

~~C~~D. Any client voluntarily admitted to residential treatment or habilitation shall have the right to immediate discharge from the residential facility upon request, unless the director of the facility or a physician determines that the client requires continued confinement and meets the criteria for involuntary residential treatment or habilitation under the code. If the director or physician so determines they [he] shall, on the first business day following the client's request for release, request the district attorney to initiate commitment proceedings under the code. The client has a right to a hearing on his confinement within five days of his request for release.

§ 43-1-15. Consent to treatment; adult clients.

A. No psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed. A client shall not be presumed to be incapable of giving consent for administration of psychotropic medications solely because he has been involuntarily committed to a treatment facility or is awaiting a hearing on whether he should be involuntarily committed to a treatment facility.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent he may petition the court for the appointment of a treatment guardian to make a substitute decision for the client.

C. This original petition shall be served on the client, and his attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be

represented by an attorney, and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses.

D. When appointing a treatment guardian for an adult the Court shall give priority to any other court appointed guardian or if no guardian has been appointed by a court to an agent designated or nominated by the client, when the client had capacity.

E. If after the hearing the court finds by clear and convincing evidence that the client is not capable of making his own treatment decisions, the court may order the appointment of a treatment guardian.

F. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the treatment guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall give consideration to any previous decisions made by the client in similar circumstances when the client was able to make treatment decisions.

G. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize any peace officer to take the client into custody and to transport him to an evaluation facility and may authorize the facility forcibly to administer treatment.

H. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends or relatives, or other agents or guardians of the client as he deems appropriate to the extent reasonably practical in making his decision.

I. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, he may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

J. When the court appoints a treatment guardian, it shall specify the length of time during which he may exercise his powers, up to a maximum period of one year. If at the end of his guardianship period the treatment guardian believes that the client is still incapable of making his own treatment decisions, he shall petition the court for reappointment or for appointment of a new treatment guardian. The petition shall be served on the client, the client's attorney and the previously appointed treatment guardian if filed by another party. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The client shall

be represented by counsel and shall have the right to be present and present evidence at all such hearings.

Ⓓ K. If during a period of a treatment guardian's power the treatment guardian, the client, the treatment provider, a member of the client's family, client's attorney or any other interested person believes that the client has regained competence to make his own treatment decisions, he shall petition the court for a termination of the treatment guardianship. If the court finds the client is capable of making his own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make his own treatment decisions.

Ⓔ L. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Uniform Probate Code [[45-1-101 NMSA](#) 1978] pursuant to provisions of [Section 45-5-303 NMSA](#) 1978. Any person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

Ⓕ M. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm which would occur while the provisions of Subsection B of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm. Upon the sworn application of the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed, if the requirements of Subsection B of this section for appointment of a treatment guardian are in the process of being satisfied in a timely manner.

43-1-19. Disclosure of information.

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client.

B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on the client's self or another;

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the client does not have a guardian or treatment guardian appointed by a court, the person seeking such authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the client, except that if the client is less than fourteen years of age, the client's parent or guardian is authorized to consent to disclosure on behalf of the client.

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the code shall limit the confidentiality rights afforded by federal statute or regulation.

H. A person appointed as treatment guardian in accordance with this Act may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act, Sections 1171- 1179 of the Social Security Act, 42 USC Section 1320d, as amended, and applicable regulations to obtain access to the client's protected health information as such is defined therein, including mental health information and relevant physical health information, and to communicate with the client's health care providers in furtherance of such treatment.

HISTORY: 1953 Comp., § 34-2A-18, enacted by Laws 1977, ch. 279, § 18; 1978, ch. 161, § 12; 1979, ch. 140, § 2; [1989, ch. 128, § 10](#); [1993, ch. 77, § 233](#); [1998, ch. 32, § 2](#); [2007, ch. 46, § 44](#).

Chapter 45 Uniform Probate Code Article 1 Uniform Probate Code

45-1-201 Definitions.

A. As used in the Uniform Probate Code [45-1-101 NMSA 1978], unless the context otherwise requires:

(6) "claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort or otherwise and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes or demands or disputes regarding title of a decedent, an incapacitated person or a minor ~~ward~~ protected person to specific assets alleged to be included in the estate;

(7) "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated person or a minor ~~ward~~ protected person;

(23) "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, a minor ~~ward~~ protected person or an incapacitated person. "Interested person" also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. "Interested person" does not apply to the provisions of Chapter 45, Article 5 NMSA 1978;

(52) ~~“ward”~~ “protected person” means a person for whom a guardian has been appointed; and

45-1-303. Venues; multiple proceedings; transfer.

B. If proceedings concerning the same estate, protected person, ~~ward~~ or trust are commenced in more than one court of New Mexico, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

45-1-305. Records and certified copies.

A. The clerks of the district court and of the probate court shall each keep a record for each decedent, ~~ward~~ protected person or trust involved in any document which may be filed with their respective court under the [Uniform] Probate Code [45-1-101 NMSA 1978], including petitions and applications, demands for notices or bonds and any orders by the respective courts, and any responses relating thereto, and shall establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in New Mexico and whether the probate was formal or informal. Such certificates shall also indicate the names and addresses of any known heirs. Certificates relating to letters must show the date of appointment.

45-1-402. Notice; waiver.

A person, including a guardian ad litem, conservator or other fiduciary, may waive notice either by a writing signed by him and filed in the proceeding or by appearance in the proceeding. A person for whom a guardianship or other protective order is sought, a ~~ward~~ or a protected person may not waive notice.

45-1-403. Pleadings; when parties bound by others; notice.

In judicial proceedings involving trusts, or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply:

(b) orders binding a guardian bind the ~~ward~~ protected person if no conservator of his estate has been appointed;

Article 3 Probate of Wills and Administration

45-3-203. Priority among persons seeking appointment as personal representative.

D. Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person ~~or ward~~ would have if qualified for appointment.

Article 5 Protection of Persons Under Disability and Their Property

45-5-101. Definitions and use of terms.

Unless otherwise apparent from the context, in Chapter 45, Article 5 NMSA 1978:

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

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

S. "protected person" means a minor or other person for whom a guardian or conservator has been appointed or other protective order has been made; and

U. ~~"ward" means a person for whom a guardian has been appointed; and~~

~~V-U~~ "visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, social worker, developmental incapacity professional, physical and occupational therapist, an educator and a rehabilitation worker.

45-5-104. Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody or property of the minor child or ~~ward~~ protected person, except his power to consent to marriage or adoption of a minor ~~ward~~ protected person.

45-5-201. Appointment and status of guardian of minor; general.

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward protected person.

45-5-209. Powers and duties of guardian of minor.

A. A guardian of a minor ward protected person has the powers and responsibilities of a parent regarding the ward's protected person's support, care and education, but a guardian is not personally liable for the ward's protected person's expenses and is not liable to third persons by reason of the relationship for acts of the ward protected person.

B. In particular and without qualifying the foregoing, a guardian shall:

(1) become or remain personally acquainted with the ward protected person and maintain sufficient contact with the ward protected person to know of the ward's protected person's capacities, limitations, needs, opportunities and physical and mental health;

(2) take reasonable care of the ward's protected person's personal effects and commence protective proceedings if necessary to protect other property of the ward protected person;

(3) apply any available money of the ward protected person to the ward's protected person's current needs for support, care and education;

(4) conserve any excess money of the ward protected person for the ward's protected person's future needs, but if a conservator has been appointed for the estate of the ward protected person, the guardian, at least quarterly, shall pay to the conservator money of the ward protected person to be conserved for the ward's protected person's future needs; and

(5) report the condition of the ward protected person and of the ward's- protected person's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's protected person's welfare or as required by court rule.

C. A guardian may:

(1) receive money payable for the support of the ward protected person to the ward's protected person's parent, guardian or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship or custodianship and money or property of the ward protected person paid or delivered pursuant to the provisions of Section 45-5-103 NMSA 1978 or any other statute;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward protected person, take custody of the

person of the ward protected person and establish the ward's protected person's place of abode within or without New Mexico;

(3) if no conservator for the estate of the ward protected person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward protected person or to pay sums for the welfare of the ward protected person;

(4) consent to medical or other professional care, treatment or advice for the ward protected person without liability by reason of the consent for injury to the ward protected person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the ward protected person; and

(6) if reasonable under all of the circumstances, delegate to the ward protected person certain responsibilities for decisions affecting the ward's protected person's well-being.

D. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward protected person, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward protected person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

E. In the interest of developing self-reliance on the part of a ward protected person or for other good cause, the court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued.

45-5-210. Termination of appointment of guardian; general.

A guardian's authority and responsibility terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for money and property of his ward protected person. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

45-5-211. Proceedings subsequent to appointment; venue.

A. The court where the ward protected person resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

B. If the court located where the ward protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in New Mexico or another state, and, after consultation with that court, determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the ward protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

45-5-212. Resignation, removal and other post-appointment proceedings.

A. Any person interested in the welfare of a ward protected person, or the ward protected person if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward protected person. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

B. Notice of hearing on a petition for an order after the appointment of a guardian must be given to the ward protected person, the guardian and any other person as ordered by the court.

C. After notice pursuant to Section 45-1-401 NMSA 1978 and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

D. If at any time in the proceeding the court finds that the interest of the ward protected person is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.

§ 45-5-303. Procedure for court appointment of a guardian of an incapacitated person.

A. Any interested person may file a petition for the appointment of a person to serve as guardian for an alleged incapacitated person under the Uniform Probate Code [[45-1-101 NMSA](#) 1978]. The petition shall state the following:

- (1) the name, date of birth, and address of the alleged incapacitated person for whom

the guardian is sought to be appointed;

(2) the nature of the alleged incapacity as it relates to the functional limitations and physical and mental condition of the alleged incapacitated person and the reasons why guardianship is being requested;

(3) if a limited guardianship is sought, the particular limitations requested;

(4) whether a guardian has been appointed or is acting in any state for the alleged incapacitated person;

(5) efforts made which demonstrate due diligence to locate other court appointed guardians, agents or surrogates designated by the alleged incapacitated person.

~~(5)~~ the name and address of the proposed guardian;

(7) the name and address of two persons that would be able to contact the proposed guardian if address or phone contact information of the proposed guardian changes;

~~(6-8)~~ the names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

~~(7-9)~~ the name and address of the person or institution having the care and custody of the alleged incapacitated person;

~~(8) the names and addresses of any other incapacitated person for whom the proposed guardian is acting if the proposed guardian is an individual~~

(10) the number of other protected persons served by the proposed guardian, their relationship to the proposed guardian, and the types of guardianship held if the proposed guardian is an individual;

~~(9-11)~~ the reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment;

~~(10-12)~~ the steps taken to find less restrictive alternatives to the proposed guardianship; and

~~(11-13)~~ the qualifications of the proposed guardian including if the proposed guardian has ever been convicted of a felony.

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

C. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of his own choice, the court shall appoint an attorney to represent him. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

D. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

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

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

E. The court shall also appoint a visitor who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed he will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the court shall also include recommendations regarding:

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

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

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

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from his duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian.

F. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court.

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

H. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof shall be established

by clear and convincing evidence.

I. A record of the proceedings shall be made if requested by the alleged incapacitated person or his attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential, except that the public shall be granted access to the following information:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration of the guardianship; and

(4) the name and other information necessary to identify the alleged incapacitated person.

J. Notwithstanding the provisions of Subsection I of this section, any disclosure of information shall not include any diagnostic information, treatment information or other medical or psychological information.

K. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at a closed hearing unless the alleged incapacitated person requests otherwise.

L. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial.

HISTORY: 1978 Comp., § 45-5-303, enacted by Laws 1989, ch. 252, § 5; 1993, ch. 301, § 3; 1998, ch. 32, § 3.

45-5-304. Findings; order of appointment.

A. The court, at the hearing on the petition for appointment for a guardian under this chapter, shall:

(1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and

(2) ascertain his capacity to care for himself.

B. If it is determined that the alleged incapacitated person possesses the capacity to care for himself, the court shall dismiss the petition.

C. Alternatively, the court may appoint a full guardian as requested in the petition or a limited guardian and confer specific powers of guardianship after finding in the record based on clear and convincing evidence that:

(1) the person for whom a guardian is sought is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;

(3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;

(4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and

(5) the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment, and is willing to serve.

D. The court may enter any other appropriate order consistent with the findings of this section.

E. A copy of the order appointing the guardian shall be furnished to the proposed guardian, the incapacitated person, and his counsel.

F. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of his right to seek alteration or termination of the guardianship at any time.

HISTORY: 1978 Comp., § 45-5-304, enacted by Laws 1989, ch. 252, § 7; 1993, ch. 301, § 5.

45-5-306. ~~Termination of guardianship for incapacitated person~~ Death of protected person or guardian; incapacity of guardian.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ~~ward~~ protected person, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 5-307 [45-5-307 NMSA 1978]. Upon the death of the protected person the guardian shall submit notice to the appointing court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect a guardian's liability for prior acts nor his obligation to account for funds and assets of his ~~ward~~ protected person.

45-5-307. ~~Death, removal or resignation of guardian; termination of guardianship.~~ Substitution, review and termination of guardianship.

A. On the petition of the incapacitated person or any person interested in his welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the incapacitated person.

B. Upon death, removal or resignation of a guardian, the court may appoint another guardian or make any other order that may be appropriate. If a successor guardian is appointed, he succeeds to the title and powers of his predecessor.

C. The incapacitated person or any person interested in his welfare may petition for an order that he is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-3-303 NMSA 1978.

E. In any proceeding which increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-3-303 NMSA 1978.

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

G. At any time following the appointment of a guardian, but not later than ten years after the initial appointment of a guardian for a protected person and every ten years thereafter, the court shall hold a status hearing, after notice to the guardian, the protected person, and appropriate interested persons to review the status of the protected person's capacity and the continued need for a guardian. If the court is unable to contact either the guardian or the protected person, and neither appears for the status hearing, the court shall appoint a guardian ad litem to investigate and advise the court as to the status of the protected person and the guardian.

H. Following the status hearing or the court's having otherwise determined the status of the protected person and the guardian as provided in Subsection F, the court may enter any appropriate order, provided that, in entering any order which increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-3-303 NMSA 1978.

45-5-309. Notices in guardianship proceedings.

A. In a proceeding for the appointment or removal of a guardian of an incapacitated person, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:

(1) the person alleged to be incapacitated; ~~and~~

(2) his spouse, parents and adult children, or if there are no adult children, at least one of his closest adult relatives if any can be found

(3) the proposed guardian; and

(4) any person, as far as known or as can reasonably be ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to his incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes but is not limited to writings executed under the Uniform Health Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code, the Uniform Trust Code.

Notice of hearing shall be given to any person who is serving as the guardian or conservator of the person to be protected or who has primary responsibility for his care.

45-5-311. Who may be appointed guardian; priorities.

A. Any person deemed to be qualified by the court may be appointed guardian of an incapacitated person, except that no individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides may serve as guardian for the incapacitated person, except an employee may serve in such capacity when related by affinity or consanguinity.

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

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

(2) any person, as far as known or as can reasonably be ascertained, previously nominated to serve as guardian or designated in a writing as defined in NMSA §45-5-309A (4) signed by the incapacitated person prior to his or her incapacity that has not been revoked by the incapacitated person or terminated by a court;

(3) the spouse of the incapacitated person;

(4) an adult child of the incapacitated person;

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

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

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

(8) any other person.

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

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

(2) the geographic location of the proposed guardian;

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

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

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

45-5-312 General powers and duties of the limited guardian and guardian.

A. If the court enters judgment pursuant to Subsection C of Section 45-5- 304 NMSA 1978, it shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but not all aspects of his personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for himself commensurate with his ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise his supervisory powers over the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian of an incapacitated person has the same powers, rights and duties respecting the incapacitated person that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the incapacitated person and is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or his replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of

competent jurisdiction relating to detention or commitment of the incapacitated person, a guardian is entitled to custody of the incapacitated person and may establish the incapacitated person's place of abode within or without New Mexico;

(2) if entitled to custody of the incapacitated person, a guardian shall make provision for the care, comfort and maintenance of the incapacitated person and, whenever appropriate, arrange for his training and education. He shall take reasonable care of the incapacitated person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the incapacitated person is in need of protection;

(3) if no agent is entitled to make health-care decisions for the incapacitated person under the provisions of the Uniform Health-Care Decisions Act, then the guardian shall make health-care decisions for the incapacitated person in accordance with the provisions of that act. In exercising health-care powers, a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known;

(4) if no conservator for the estate of the incapacitated person has been appointed ~~the guardian may institute proceedings to compel any person under a duty to support the incapacitated person or to pay sums for the welfare of the incapacitated person and the court has determined that a conservatorship is not appropriate, if a guardian appointed by the court has been granted authority to make financial decisions on behalf of the protected person in the order of appointment and in the letters of guardianship pursuant to Subsection (C) 45 -5-308 NMSA, the guardian has the following powers and duties:~~

- a. institute proceedings to compel any person under a duty to support the protected person or to pay sums for the welfare of the protected person to perform that duty;
- b. receive money and tangible property deliverable to the protected person and apply the money and property for support, care, and education of the protected person, but, the guardian may not use funds from the protected person's estate for room and board which the guardian or the guardian's spouse, parent or child have furnished the protected person unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the protected person, if notice is possible;
- c. serve as advocate and decision-maker for the protected person in any disputes with persons or organizations, including financial institutions, regarding the protected person's finances;
- d. obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;
- e. file an initial inventory of all property belonging to the protected person within ninety (90) days after appointment; and

f. exercise care to conserve any excess for the protected person's needs and include in the guardian 90 day and annual report a description of decisions made regarding the protected person's finances and property.

45-5-313. Proceedings subsequent to appointment; venue.

A. The court where the ~~ward~~ protected person resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

B. If the court located where the ~~ward~~ protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interests of the ~~ward~~ protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

45-5-13. Annual Guardian Reports.

A. The guardian of an incapacitated person shall file an ~~annual~~ initial report with the appointing court within ~~thirty ninety~~ days of ~~the anniversary date of the guardian's appointment.~~ Thereafter, the guardian shall file an annual report within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or his successor, to the incapacitated person and to his conservator, if any. The court shall review this report. The report shall include information concerning the progress and condition of the incapacitated person, including but not limited to his health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out his powers and fulfilled his duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to 45-5-312.(B) (4) the report shall contain information on financial decisions made by the guardian. The report shall be substantially in the following form:

[SHOW THE CURRENT FORM DELETED IN ITS ENTIRETY, REPLACED WITH THE FOLLOWING NEW FORM]

STATE OF NEW MEXICO
COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

IN THE MATTER OF THE GUARDIANSHIP OF

_____ ,
an incapacitated adult

CAUSE NO. _____

GUARDIAN'S 90 DAY ___ **ANNUAL** ___ **FINAL** ___ (check one)

REPORT ON THE CONDITION AND WELL-BEING OF AN ADULT PROTECTED PERSON

Date of Appointment _____

Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly appointed, qualified and acting guardian of the above-mentioned protected person reports to the court as follows (attach additional sheets, if necessary):

1. **PROTECTED PERSON:** Name _____
Residential Address _____
Facility Name _____
City, State, Zip Code _____
Telephone _____ Date of Birth _____

Name of person primarily responsible at protected person's place of residence:

2. **GUARDIAN:** Name _____
Business Name (if any) _____
Address _____
City, State, Zip Code _____
Telephone _____ /Alternate phone # _____
Relation to Protected Person _____

3. **FINAL REPORTS ONLY** (otherwise, go to #4)

I am filing a Final Report because of: ___ my resignation ___ death of the Protected Person
___ court order ___ Other (please explain): _____

A. If because of **resignation**, Name of successor, if appointed: _____

Address _____
City, State, Zip Code _____

B. If because of **Protected Person's death**: (attach copy of death certificate, if available)

Date and place of death: _____

Name of personal representative if appointed _____

Address _____

City, State, Zip Code _____

4. During the past year or 90 days (if initial report), I have visited the Protected Person _____ times. The date of my last personal visit was _____

5. (A) Describe the residence of the Protected Person: Hospital/medical facility Protected Person's home Guardian's home Relative's home (explain below) Nursing home Boarding/Foster/Group Home Other: _____

(B) During the past year or 90 days (if first report), has the protected person changed his/her residence? _____ Do you anticipate a change of residence for the protected person in the next year? _____

6. The name and address of any hospital or other institution (if any) where the Protected Person is now admitted: _____
_____.

7. The Protected Person is under a physician's regular care. Yes No
Identify the health care providers.

- Physician:** _____
- Dentist (if any)** _____
- Mental Health Professional (i.e., psychiatrist, counselor):** _____
- Other** _____

8. (A). During the past year or 90 days (if initial report), the Protected Person's physical health:

- Primary diagnosis: _____
- remained the same
 - improved
 - deteriorated (explain)

(B) During the past year or 90 days (if initial report), the Protected Person's mental health:

- Major diagnosis, if any: _____
- remained the same
 - improved
 - deteriorated (explain)

If physical or mental health has deteriorated, please explain: _____

9. Describe any significant hospitalizations or mental or medical events during the past year or 90 days (if initial report):

10. List the Protected Person's activities and changes, if any, over the past year or 90 days (if initial report):

- Recreational activities _____
- Educational activities _____
- Social activities _____
- List Active Friends and/or Relatives _____
- Occupational activities _____

Other _____

11. Describe briefly any contracts entered into and major decisions made on behalf of the Protected Person during the past year or 90 days (if initial report):

12. The Protected Person has made the following statements regarding his/her living arrangements and the guardianship over him/her: _____

13. I believe the Protected Person has unmet needs. Yes (explain) No
If yes, indicate efforts made to meet these needs: _____

14. The Protected Person continues to require the assistance of a guardian: yes no
Explain why or why not:

15. The authority given to me by the Court should: remain the same
 be decreased
 be increased
Why:

16. Additional information concerning the Protected Person or myself (the guardian) which I wish to share with the Court:

17. If the court has granted you the authority to make financial decisions on behalf of the Protected Person, then please describe the decisions you have made for the protected person: _____

Signature of Guardian: _____ Date: _____
Printed Name: _____

Chapter 46A Uniform Trust Code Article 3 Representation.

46A-3-303. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- A. a conservator may represent and bind the estate that the conservator controls;
- B. a guardian may represent and bind the ~~ward~~ protected person if a conservator of the ~~ward's~~ protected person's estate has not been appointed;