



NEW MEXICO
**Developmental Disabilities
Planning Council**

810 W. San Mateo Street, Suite C
Santa Fe, NM 87505-4144
Website: www.nmddpc.com

Bill Richardson
Governor

Liz Thompson
Chairperson

Patrick Putnam
Executive Director

505-476-7321 VOICE/TTY

(800)-311-2229 TOLL FREE

505-476-7320 FAX

HOUSE MEMORIAL 6 GUARDIANSHIP TASK FORCE

A Report to the Interim Legislative Health and Human Services Committee

October 16, 2008

This report was compiled and edited by Protection and Advocacy System with funding from the Developmental Disabilities Planning Council. P&A and DDPC are both funded in part by the Administration on Developmental Disabilities in the U.S. Department of Health and Human Services. P&A gratefully acknowledges the assistance of Pat Putnam (Director of the DDPC), Frank Fajardo, (Director of the Office of Guardianship at DDPC), Greg McKenzie (President of the NM Guardianship Association) and Dennis Drucker (Staff Attorney at P&A) in developing this report.

BACKGROUND, MEMBERSHIP AND METHDOLOGY

This report presents the conclusions and recommendations of a Guardianship Task Force that has met over the past two years to address concerns regarding New Mexico's system of guardianship arrangements for adults with limited capacity to make and communicate their own decisions.

The Task Force began its work in 2007 based on House Joint Memorial 34, sponsored by Rep. Jim Trujillo of Santa Fe. The Task Force presented a comprehensive report in October, 2007, which included proposed amendments to several state statutes and other recommendations and identified a number of issues that required further deliberation. Pursuant to House Memorial 6 in the 2008 state legislature (Appendix A), also sponsored by Rep. Trujillo, the Task Force continued its work in 2008.

Pursuant to each of the two Memorials, the Developmental Disabilities Planning Council (DDPC) invited representatives from the Administrative Office of the Courts, the Adult Protective Services Division of the Aging and Long-term Services Department, the Department of Health, the Attorney General's Office, other appropriate state agencies, New Mexico district court judges, the New Mexico Guardianship Association, Protection and Advocacy System, the Senior Citizens Law Office, individual and corporate guardians, elders, individuals with disabilities, advocates or other representatives of elders or adults with disabilities and other interested individuals to serve on the Task Force. The participant list is attached as Appendix B.

Logistical support to the Task Force was provided by Protection and Advocacy System pursuant to a contract from the DDPC. Task Force meetings were facilitated by Linda Siegel. The Task Force met on a regular basis and established work groups which also met regularly to discuss issues and develop recommendations. Meetings of the Task Force and the work groups were open to all interested parties.

This report reflects the cumulative work of the Task Force over these two years. It focuses on the key issues and the final recommendations of the Task Force. The 2007 report contains a more detailed discussion of these issues, and copies of the report are available from the DDPC or from P&A.

The Memorials directed the Task Force to "consider potential statutory or regulatory changes, training requirements, identification and dissemination of best practices and other recommendations that would improve New Mexico's system for qualification, appointment and oversight of guardians of adults with limited capacity."

This report fulfills the mandate of the Memorials by presenting recommendations for both short-term and long-term action by the legislature, the judiciary, and by other agencies and entities involved in guardianship issues.

It is important to note that the Task Force reached its decisions by consensus or, on occasion, by votes indicating support by a very significant majority of the Task Force. The result is that the recommendations presented here reflect unanimous or nearly unanimous support from a very diverse group of all major stakeholders in the guardianship arena. However, it also means that many worthwhile suggestions for improving the ways that New Mexico addresses guardianship issues were structured as longer term issues or are not presented in this report at all due to the fact that the Task Force was unable to reach agreement on them.

Finally, it is important to note that although the Task Force focused on guardianship issues as called for in the Memorials, many of the issues addressed in this report apply equally to conservatorship arrangements, and further work in that area is also warranted.

AN URGENT CALL TO ACTION

After two years of research and discussions, the Guardianship Task Force is clear that New Mexico needs a comprehensive program or system addressing the qualification, appointment and oversight of guardians of adults with limited capacity. Unfortunately, we do not have such a comprehensive system, and are missing a few very critical pieces altogether, such as active monitoring of private/family guardians and training and support for everyone involved in guardianship matters.

It is symptomatic of the problem that no one even knows how many guardianship orders and active guardianship cases currently exist in the state, although a new case management software program being rolled out by the courts holds much promise for meeting the need for this and related data in the long run.

The Task Force recognizes that a comprehensive program cannot be created immediately. The group does not have all the answers for what a model program should look like – or at least can't agree on the answers – but this very diverse group of all the key stakeholders have reached agreement on a variety of specific recommendations for short-term and long-term action that will take the state, step by step, toward a comprehensive program in the long run.

Some of the components of the state's current system are fundamentally sound. The Probate Code reflects a commitment to protection of the rights of incapacitated adults, although there are many areas where the Code can be improved and strengthened. There are many individual judges who are creative and diligent in providing oversight of guardians, and there are many other players throughout the state working hard to make the system function.

Nonetheless, the Task Force is united in seeing this report as an urgent call to action. The need for an on-going program to monitor guardians, who hold such extensive power over the most vulnerable residents of our state, must be addressed as both a programmatic and budget priority. In the past month we have all seen the calamitous results of a lack of regulation and oversight in America's financial/mortgage markets. The Task Force believes we must take the opportunity to begin developing a system for oversight that would prevent problems, or address individual situations that may already have become calamitous without our knowledge.

With the projected aging of New Mexico's population in the near future, the number of persons who will be involved in guardianship proceedings in one way or another is going to continue to grow. In hopes that this report will promote prompt action, the Task Force presents a summary of issues and a series of recommendations within the following categories:

1. Lack of Oversight and Accountability of Private/Family Guardians
2. Need for Training and Support
3. Maximizing Autonomy and Self-determination
4. Clarifying the Role and Authority of Guardians
5. Guardianship Administration

1. LACK OF OVERSIGHT AND ACCOUNTABILITY OF PRIVATE GUARDIANS

There is no system in place in New Mexico that assures effective oversight and monitoring of all court-appointed guardians¹. An effective monitoring system would include:

- practices to ensure the timely filing and court review of guardian reports, accountings and plans, including sanctions for failure to file required reports;
- the periodic investigation of the circumstances of protected persons and review of the continuing need for guardianship;
- investigation of complaints or problems, and informal visits based on information provided by friends, relatives or neighbors, related to specific protected persons or guardians; and
- techniques to protect assets; and
- the triggering of court action as needed to address the outcomes of monitoring activities.

The only accountability mechanism provided for by law in New Mexico is a requirement for guardians to provide an annual report to the court. Unfortunately, it appears that the vast majority of private/family guardians are not filing the required annual report, often because they are not aware of the requirement to do so and are not reminded or prompted to do so. Penalties for failure to file reports are rarely imposed. Because of shortcomings in the current model report form, even when reports *are* filed, they may be of little value in assessing the protected person's status. Moreover, there are indications that these forms are not consistently reviewed by the courts. Follow-up or on-site monitoring on an individual basis of guardians, and the adults for whom they are guardian, is rarely if ever pursued, since the courts are not funded or staffed to provide this level of review.

There is no mechanism in New Mexico that produces a regularly scheduled hearing or other court review of guardianship arrangements; such a review does not typically occur unless some interested party brings a case or issue to the court's attention. Such legal proceedings are generally formal and can be expensive for the initiating party. Guardianship orders may thus stand for years or even decades without review, even though the situation of the protected adult may have changed over the years and an increase, decrease or elimination of the authority of the guardian is warranted.

Fortunately, New Mexico provides a variety of legal protections when the potential need for guardianship, and the resulting loss of autonomy for the allegedly incapacitated adult, is first addressed through the legal system. These include the appointment of a visitor, guardian *ad litem* and a qualified health care professional who each play a role in determining the need for guardianship, and legal processes intended to create a significant burden of proof before a person's decision-making authority is limited or taken away altogether. As noted below, some of these protections need to be strengthened and fine tuned to fully meet their intended purpose, but they do provide important protections for the adult in question.

Yet once a guardianship arrangement is established, these protections effectively disappear and there is no alternative system to take their place. The lack of any real system for oversight of guardians is not common in the U.S. but is certainly not unique to New Mexico. Unfortunately, states without a comprehensive system of guardianship monitoring and accountability provide abundant opportunity for undetected abuse, neglect and exploitation. This

¹ The Office of Guardianship in the DD Planning Council oversees the work of corporate guardianship agencies that provide guardianship services to certain indigent adults under contract to the Office, but this represents no more than 5 – 10% of all guardians in New Mexico.

is exacerbated by the fact that there is no criminal background check for prospective guardians and no exclusion for convicted felons. It may be just a matter of time before New Mexico is featured in the kind of stories that have appeared in the *Washington Post*² and *Los Angeles Times* in recent years, the latter of which found many cases in which court-appointed fiduciaries “ignored the needs of their wards, plundered estates, and charged hefty fees...”³

The extent of such potential problems in New Mexico is unclear, but the experience of many Task Force members, and the results of very limited case reviews, indicate that there are serious problems in our system. The Task Force strongly supports the idea of a pilot guardianship monitoring in the 2nd Judicial District, which would provide statistically significant data about the extent of these problems as well as provide information about the type of monitoring system that would be effective and appropriate on a state-wide basis.

Recommendations for Prompt Action

For the Legislature:

- Appropriate \$200,000 for a pilot program of in-depth review and monitoring of guardians and guardianship cases in the 2nd Judicial District.
- Amend the Uniform Probate Code in order to:
 - Create a new and more useful Annual Report form to be completed by guardians
 - Require an initial report to be filed by a new guardian within 90 days of appointment
 - Require the court to review each Annual Report
 - Require petitioners for guardianship to disclose whether the proposed guardian has been convicted of a felony
 - Require guardians to notify the appointing court in the event of the death of the protected person.
 - Require the appointing court to convene a status conference to review each active guardianship case at least every ten years after an initial order, and more promptly if circumstances warrant.

For the Judiciary:

- Require that newly appointed or prospective guardians receive basic training and information about their responsibilities, provide them a copy of the Annual Report and instructions, and require written acknowledgement of the training and forms from the guardian.
- Assure that all Annual Reports are reviewed, with follow-up action considered if information in the report warrants this
- Use the courts’ emerging new case management software to:
 - Collect and track data relating to the number, type and status of guardianship cases across the state, using a revised cover sheet for each case. The Task Force appreciates the openness of the Administrative Office of the Courts to input on appropriate uses of the software and encourages the AOC to continue to solicit input from guardianship stakeholders.
 - Produce a reminder letter to each guardian in advance of the due date for their Annual Report
 - Track whether required Annual Reports have been received and whether follow-up action is necessary

² *Misplaced Trust, Guardians in the District*, Washington Post, June 15, 2003.

³ *Guardians for Profit*, Los Angeles Times, November 2005.

Recommendations for Future Action

- Disseminate the results of the proposed pilot project for guardianship monitoring to all interested parties, including the district courts, the state Supreme Court, and the Administrative Office of the Courts.
- Develop and implement a guardianship monitoring program in (or covering) each judicial district, whereby court employees or contractors review annual reports, perform site visits, and conduct investigations as needed. Such a program might utilize volunteers as appropriate.
- Require criminal background checks for prospective guardians
- Consider the possibility of establishing specialized probate courts in the state's larger metropolitan areas that could provide greater focus on guardianship cases
- Encourage courts to impose sanctions as needed to assure compliance with guardianship reporting requirements
- Require guardians and conservators to develop a basic estate management plan and/or care plan for the protected person for whom they are responsible, and to complete and maintain an inventory of major assets and possessions.
- Give priority to guardianship/conservatorship monitoring as a component of on-going judicial education
- Encourage and allow the sharing of information between the courts, the Social Security Administration, the Veterans Administration, and Adult Protective Services related to confirmed determinations of abuse, neglect or exploitation by guardians, conservators, Representative Payees and VA fiduciaries
- Consider extending the role of a Guardian ad Litem past the adjudication phase of a guardianship proceeding to ensure the guardian's compliance with reporting requirements and other responsibilities.

2. NEED FOR TRAINING AND SUPPORT

New Mexico does not consistently assure that newly appointed guardians receive training and orientation on their duties and responsibilities prior to or at the time of their appointment. Although some individual courts and judges are careful and consistent in addressing this need, the more typical result is that new guardians are unaware of the nature of their duties as a guardian or basic responsibilities such as the need to file an annual report or what the report looks like, and are not reminded or prompted by phone or mail at a later date to file a report.

Once appointed, the typical private guardian, often a volunteer family member, has no one to turn to for information, assistance or support. There is no state agency designated – or funded – to provide such assistance to private/family guardians.

Fortunately, the state has many potential training resources. A number of organizations or agencies do, or can do, training in this issue, including but not limited to the New Mexico Guardianship Association, The Arc, Protection and Advocacy System, the Office of Guardianship within the DD Planning Council, the Adult Protective Services Division of the Aging and Long Term Services Department, and many others. There are also useful training materials available, such as the Guardianship Handbook originally developed through the Attorney General's Office and revised by the NM Guardianship Association. Although there are

some flaws and limitations to the Handbook, it may be the single most relevant training resource available on this topic.

Training and information can be provided in person at the time of appointment, as well as through the internet. Assistance and information can be just a phone call away if the resource is designated and made available and guardians are made aware of it.

The Task Force recognizes that different standards are appropriate for corporate (professional) guardians compared to private/family, voluntary guardians, and that training resources must be developed with an understanding that the users of the material will be of varying economic and cultural backgrounds, may communicate in languages other than English and will possess varying literacy skills. Nonetheless, each new guardian should be required to complete an initial training and orientation appropriate to their role.

Training and support is not relevant only to the guardian. Judges, attorneys, visitors and health care professionals all play important roles in the guardianship process, and all would benefit from additional training and education that addresses the complexities and subtleties of this area of law and the roles and responsibilities of these particular players. In the long run, training and education on guardianship issues is also important for public schools and other educational institutions, health care facilities, residential facilities, social service organizations, community programs, and local government agencies, because these are the agencies and facilities that often set in motion the processes that lead to requests for guardianship arrangements and which are in a position to encourage and support appropriate alternatives.

Recommendations for Prompt Action

For the Legislature:

- Appropriate \$348,700 to the Office of Guardianship in the Developmental Disabilities Planning Council for guardianship training and support initiatives:
 - \$200,000 in non-recurring funds to contract for the development of a web-based training program and resource center, revision of the Guardianship Handbook, and the development of a guardianship information package suitable for providing to all newly appointed guardians; and
 - \$148,700 in recurring funds to support two additional staff and operational expenses for an on-going training program for attorneys, court officials, guardians, family members and others.

For the Judiciary:

- Encourage the dissemination of the existing Guardianship Handbook to all newly appointed guardians, and collaborate with other entities that can support training of guardians.
- Encourage continuing education programs for judges that address reviews of annual reports, including potential “red flags” and potential follow-up actions. Educational programs may be available from state agencies and/or non-profit organizations with expertise in this area, including but not limited to the New Mexico Guardianship Association.

Recommendations for Future Action

- Update the Guardianship Handbook
- Provide Continuing Education programs on guardianship/conservatorship issues for attorneys, Visitors and others involved in the adult guardianship system.

- Provide a telephone hot-line or similar support to assist guardians who need help completing required Annual Reports or carrying out other responsibilities.

3. MAXIMIZING AUTONOMY AND SELF-DETERMINATION.

Guardianship involves taking away the legal rights of adults to make their own decisions about where to live, whether to buy something, with whom they can visit, and other critical day to day decisions. Throughout the guardianship process, the adult's autonomy and self-determination should be maximized to the greatest possible level consistent with the person's capacity. The current system often does not meet this standard at the time guardianship is established and does not provide for a regular review when circumstances change.

Alternatives to guardianship, such as power of attorney, advance directives, representative payee, or informal arrangements with family members should be used when possible but these alternatives are not widely known or utilized.

When guardianship does become necessary, legal practice in New Mexico is not always consistent with the "least restrictive" philosophy of the Probate Code. The Code gives preference to limited guardianships that maximize the autonomy and self-determination of adults with limited capacity, but a frequent result of guardianship proceedings is the appointment of a "plenary" guardian with complete control over all aspects of the disabled adult's life. Clarifying the role of Visitors, guardians ad litem and the assessing health care professionals to emphasize least restrictive arrangements is one mechanism that may improve guardianship proceedings in the long run.

Another barrier to self-determination is that guardianship proceedings do not consistently honor a protected person's previous choices, if any. For instance, if the person was previously competent and had designated an agent to make health care decisions in the event of incapacity, the designated agent may be unaware of guardianship proceedings and not considered as a potential guardian. The agent's authority may be eliminated by court order in a guardianship proceeding simply for the convenience of the newly appointed guardian.

Recognizing the importance of language, the Task Force finds that the use of the term "ward" in the law and in common usage to refer to an individual with diminished capacity reinforces a negative and demeaning stereotype. The Task Force recommends that the term be changed in state law to "protected person".

Once a guardianship order has been entered, the complications and expense of court proceedings tend to discourage periodic adjustment of guardianship arrangements to suit an individual's changing circumstances.

Even after a guardianship arrangement has been established, the Task Force suggests that individuals under guardianship should be encouraged and assisted to exercise and improve their decision-making skills whenever possible, and guardians should be encouraged to involve them in decision-making to the extent feasible.

Recommendations for Prompt Action

For the Legislature:

- Amend the Uniform Probate Code in order to:
 - Clarify the authority of the district court to make an existing guardianship more limited in scope, and thus increase the autonomy of the protected adult, pursuant to a

simplified status hearing. Increasing the authority of a guardian would still require a more formal process.

- Assure that persons known to have been designated as power of attorney or named as a health care or mental health treatment agent in an advance directive are given notice of any guardianship petition involving the adult in question, and should be given a high priority by the court when considering whom to appoint as guardian. This honors the preferences of the adult and simplifies the substitute decision-making process.
- Amend the Uniform Health-Care Decisions Act, and the Mental Health Care Treatment Decisions Act, in order to specify and limit the circumstances when a court can override the provisions of advance health care and mental health treatment directives.
- Amend the Uniform Probate Code and other relevant state laws in order to change the term “ward” to “protected person” when the term is applied to an individual who is the subject of a guardianship order.

For the New Mexico Bar Association:

- Consider supporting a voluntary certification program whereby private attorneys meeting agreed-upon qualifications could identify their interest and expertise in guardianship matters, allowing potential consumers to exercise more informed choice in the selection of an attorney.

For State Agencies:

- Increase awareness among state employees about alternatives to guardianship, and support outreach and training efforts directed to persons with disabilities, family members, and service providers related to alternatives to guardianship.

Recommendations for Future Action

- Clarify the role of the court Visitor in guardianship proceedings to include observations and recommendations concerning areas, if any, where the proposed protected person should retain some or all decision-making authority.
- Strengthen the role of the Guardian ad Litem (GAL) as an advocate for the proposed protected person’s maximum autonomy consistent with the level of incapacity as determined by the court.
- Require more information from the health care provider who performs the initial medical assessment of the allegedly incapacitated person to stress capacity and areas of functionality as well as incapacity and areas of functional deficits.
- Consider providing statutory authority for an incapacitated person to access his or her own court records as well as health records, as needed to allow for a potential challenge to the person’s guardianship arrangements or the action/inaction of a guardian.
- Seek funding for skill-development and decisional training for persons with disabilities

4. CLARIFYING THE ROLE AND AUTHORITY OF GUARDIANS

New Mexico has several different state laws that address substitute decision-making on behalf of adults who lack capacity to make their own decisions. Unfortunately, there are areas of ambiguity in some of these laws and potential conflict between these laws, and this leads to confusion regarding issues such as the role of the guardian, the guardian’s authority, and who

should be considered as a possible guardian at the time of appointment. Information on the role and responsibility of guardians is not widely available and may conflict, depending on which agency or organization provides the information. A court's guardianship orders or letters of guardianship may not resolve these uncertainties and in some cases may exacerbate them.

A typical example of confusion or conflict involves the authority of a guardian to make mental health treatment decisions for the protected person, and the relationship to a treatment guardian if one has been appointed. Another example is a guardian for a person who has previously designated an agent to make health care decisions pursuant to an advance directive.

In some cases, the law is clear but unnecessarily restricts the authority of a guardian. For instance, the Task Force believes it would be in the best interest of certain protected persons if a guardian could exercise limited financial decision-making for them in circumstances where a conservator for the person is unnecessary or inappropriate.

Finally, the Task Force notes that even when the legitimate authority of a guardian is clear, it is not always recognized or respected by third parties who need or should be seeking consent from the guardian. Unfortunately, there is no clear mechanism for enforcement of this decision-making authority.

Recommendations for Prompt Action

For the Legislature:

- Amend the Uniform Probate Code in order to:
 - Allow the court to give the guardian limited authority over a protected person's financial affairs, in cases where resources are limited and the court determines that a conservator is unnecessary
 - Give the proposed guardian notice when a petition is filed, and a chance to review the proposed guardianship order prior to its issuance
- Amend the Mental Health and Developmental Disabilities Code in order to:
 - Give a Probate Code guardian notice of any involuntary commitment proceedings pursuant to the Mental Health and Developmental Disabilities Code related to the adult for whom they are guardian, allow the guardian to appear and testify if desired, and provide the guardian with an opportunity to provide an opinion on the need for involuntary treatment
 - Give treatment guardians the authority to access the protected person's health records and consult with treating health care providers, to the extent consistent with the treatment guardian's area of decision-making authority.

For the Judiciary:

- Encourage the district courts to make guardianship orders clear about the specific powers and authority granted to the guardian.

Recommendations for Future Action

- Establish a private right of action for guardians allowing enforcement of their decision-making authority in the event such authority is knowingly disregarded by third parties.
- Provide a less formal mechanism for a guardian to seek clarification from the court on the scope of the guardian's powers and authority when this is not clear in the original order.

5. GUARDIANSHIP ADMINISTRATION

The principal entities in state government with a role in the administration of guardianship matters are the district courts and the Office of Guardianship in the DD Planning Council.

The district courts are the legal forum for the determination of an adult's incapacity and the appointment of a guardian as appropriate to the needs of the individual. They also have an implicit responsibility for the on-going monitoring and oversight of guardians appointed by the court, but the courts currently have neither the organizational structure nor the funding for a monitoring program that goes beyond a review of the guardian's annual report in the event that it is filed.

The Office of Guardianship provides guardianship services for a number of indigent adults through contract with private providers around the state. This accounts for around 5 – 10% at most of all current guardianship arrangements in New Mexico. The Office also provides for the legal and other professional services rendered in a limited number of guardianship proceedings involving indigent adults, as well as the training and recruitment of mental health treatment guardians, also through contracts with private providers. As the scope of services of the Office has expanded in recent years, some have suggested that a different organizational home for the Office would be appropriate. The Office is not involved in any way with the oversight of private/family guardians who are not under contract to the state, and does not currently have funding to provide training to the guardians, attorneys, judges, visitors, family members and other persons involved in guardianship issues around the state.

In short, there is no state agency with the mandate or the funding to conduct on-going monitoring and oversight of private/family guardians, or the mandate or funding to provide training to the various players involved in guardianship procedures and arrangements.

The Task Force notes that in most states it is the court system that has the responsibility for monitoring and oversight of guardians after they are appointed. Most - but not all - Task Force participants believe this to be a judicial function, but one that could be performed either internally by court employees, by another state agency through interagency agreements, or through contract with an independent third party.

The pilot project recommended by the Task Force for monitoring approximately 500 guardians in Bernalillo County would provide an opportunity to test this approach, determine the extent of problems and the level of monitoring that would appear prudent, and provide a basis for recommendations on the best way to proceed further on a state-wide basis.

In its budget submission for the FY 2010 fiscal year, the Office of Guardianship is seeking funding to develop its training capacity so that it could begin to take on responsibility for some of the training activities that are needed in the guardianship area.

The Task Force has no short-term recommendations for organizing the administration of guardianship in New Mexico, but recognizes that this issue must be addressed in the long run.

Recommendations for Future Action

- Determine the optimal organizational location in state government for a program that would monitor the performance and activities of guardians for incapacitated adults appointed under the Probate Code, and provide sufficient funding to operate such a program.

- Consider the creation of an independent state entity or placement in an existing agency for operation of the program currently operated by the Office of Guardianship in the DD Planning Council, with or without potential additional responsibility such as training and monitoring and oversight of private/family guardians who do not contract for services through the Office. The Task Force believes that any such new entity, or any existing entity to which the Office might be moved, should not provide other direct services to elders or persons with disabilities, in order to avoid potential conflicts of interest.
- Designate an entity other than the Human Services Department to investigate complaints against the current Office of Guardianship, in order to avoid the appearance of a conflict of interest related to HSD's authority over programs providing direct services to persons whose guardians are funded through the Office of Guardianship.
- Review issues involving conservatorship, which are similar to the guardianship issues examined by the Task Force, and consider ways to integrate responsibility for training and oversight of conservatorship functions with the organizational structures that address guardianship matters.

APPENDIX A

HOUSE MEMORIAL 6
SPONSOR: REP. JIM TRUJILLO

A MEMORIAL

REQUESTING THAT THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL CONVENE A TASK FORCE TO REVIEW THE PROCESSES BY WHICH GUARDIANS OF ADULTS ARE APPOINTED, TRAINED, SUPERVISED AND REVIEWED.

WHEREAS, the appointment of a guardian pursuant to the Uniform Probate Code for an adult with diminished capacity limits or eliminates the legal authority of the adult to make decisions and control the adult's own life; and

WHEREAS, appointment of plenary guardians, with authority to control all aspects of a ward's life, is still the typical outcome of guardianship petitions to the district courts, despite the preference in New Mexico law for limited guardianships that would maximize the autonomy and authority of adults with limited capacity; and

WHEREAS, recent studies have demonstrated that there is very little effective oversight of guardianship arrangements once they have been established, including one study that showed that only twelve percent of private guardians have filed required annual reports; and

WHEREAS, there is no systematic process through which existing guardianship orders and arrangements are reviewed to determine whether such arrangements are still needed or appropriate, even though some existing orders are twenty years old or more and the ward's circumstances or capacity may have changed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the developmental disabilities planning council be directed to convene a task force to review the processes by which guardians of adults under the Uniform Probate Code are appointed, trained, supervised and reviewed; and

BE IT FURTHER RESOLVED that the task force be composed of persons who have sufficient authority to engage in policy planning and implementation on behalf of the departments or agencies they represent. The participants shall include representatives of the developmental disabilities planning council, the administrative office of the courts, the adult protective services division of the aging and long-term services department, the department of health, the attorney general's office, other appropriate state agencies, New Mexico district court judges, the New Mexico guardianship association, the protection and advocacy system, the senior citizens law office, individual and corporate guardians, elders, individuals with disabilities, advocates or other representatives of elders or adults with disabilities and other interested individuals; and

BE IT FURTHER RESOLVED that representatives of state agencies constitute less than fifty percent of the membership of the task force; and

BE IT FURTHER RESOLVED that the task force consider potential statutory or regulatory changes, training requirements, identification and dissemination of best practices and other recommendations that would improve New Mexico's system for qualification, appointment and oversight of guardians of adults with limited capacity; and

BE IT FURTHER RESOLVED that the task force present its recommendations no later than October 31, 2008 to the interim legislative health and human services committee and the courts, corrections and justice interim committee; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the developmental disabilities planning council.