

West's New Mexico Statutes Annotated [Currentness](#)

Chapter 45. Uniform Probate Code

[Article 5](#). Protection of Persons Under Disability and Their Property ([Refs & Annos](#))

→ [Part 3](#). Guardians of Incapacitated Persons ([Refs & Annos](#))

→ **§ 45-5-301. Appointment of guardian for incapacitated person; notice**

A. The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian of the incapacitated person. If both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged incapacitated, appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated, or in the case of a non-testamentary instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. If both parents are dead, an effective appointment by the parent who died later has priority.

B. The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least two witnesses, a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. An effective appointment by a spouse has priority over an appointment by a parent.

C. An appointment effected by filing the guardian's acceptance under a will probated in the state of testator's domicile is effective in New Mexico.

D. On the filing in the court in which the will was probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under [Sections 45-5-301.1](#) through [45-5-315 NMSA 1978](#).

#### **§ 45-5-301.1. When guardianship is to be used**

Guardianship for an incapacitated person shall be used only as is necessary to promote and to protect the well being of the person, shall be designed to encourage the development of maximum self reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

#### **§ 45-5-301.2. Foreign guardian; proof of authority; bond; powers**

If no local guardian has been appointed or no petition therefor is pending in New Mexico, a foreign guardian may file with

the district court in the county in which the incapacitated person resides authenticated copies of his appointment and of any official bond he has given and a statement of his address and telephone number. Thereafter, he may exercise in New Mexico all powers and shall have the duties of a local guardian and may maintain actions and proceedings in New Mexico subject to any conditions imposed upon nonresident parties generally.

**§ 45-5-302. Venue**

Venue for guardianship proceedings for an alleged incapacitated person is in the judicial district where the alleged incapacitated person resides or is present. If the alleged incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits.

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

A. An 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. 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) the efforts that have been made that demonstrate due diligence to locate the other court-appointed guardian, agent or surrogate designated by the allegedly incapacitated person;
- (6) the name and address of the proposed guardian;
- (7) the name and address of two persons able to contact the proposed guardian if address or telephone contact information of the proposed guardian changes;
- (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;
- (9) the name and address of the person or institution having the care and custody of the alleged incapacitated person;
- (10) the number of other protected persons served by the proposed guardian, the other protected persons' relationships to the proposed guardian and the types of guardianship held if the proposed guardian is an individual;
- (11) the reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment;
- (12) the steps taken to find less restrictive alternatives to the proposed guardianship; and
- (13) the qualifications of the proposed guardian, including whether the 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 the alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. 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 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 the alleged incapacitated person 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 personal care that the alleged incapacitated person can manage without supervision or assistance;
- (2) those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and
- (3) those aspects of 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 the visitor's duties upon entry of an order appointing a 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 the alleged incapacitated person's 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, a disclosure of information shall not include 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.

**§ 45-5-303.1. Duties of guardian ad litem**

A. The guardian ad litem shall:

- (1) interview in person the alleged incapacitated person prior to the hearing;
- (2) present the alleged incapacitated person's declared position to the court;
- (3) interview the qualified health care professional, the visitor and the proposed guardian;
- (4) review both the medical report submitted by the qualified health care professional and the report by the visitor; and
- (5) obtain independent medical or psychological assessments, or both, if necessary.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from his duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian.

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

A. The court, at the hearing on the petition for appointment for a guardian pursuant to provisions of Chapter 45, Article 5 NMSA 1978, shall:

- (1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and
- (2) ascertain the alleged incapacitated person's capacity to care for the alleged incapacitated person's own self.

B. If it is determined that the alleged incapacitated person possesses the capacity to care for the alleged incapacitated person's own self, 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 the incapacitated person's 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 the right to seek alteration or termination of the guardianship at any time.

**§ 45-5-305. Acceptance of appointment; consent to jurisdiction**

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him at his address as listed in the court records and to his address as then known to the petitioner.

**§ 45-5-306. 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 protected person, the determination of incapacity of the guardian or upon removal or resignation as provided in [Section 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 the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person.

**§ 45-5-307. Substitution, review and termination of guardianship**

A. On the petition of the incapacitated person or any person interested in the incapacitated person's 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, the successor guardian succeeds to the title and powers of the successor guardian's predecessor.

C. The incapacitated person or any person interested in the incapacitated person's welfare may petition for an order that the incapacitated person 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 45-5-303 NMSA 1978](#).

E. In a proceeding that 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 45-5-303 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 45-5-303 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 report from the guardian ad litem on the status of the protected person and the guardian as provided in Subsection G of this section, the court may enter an appropriate order; provided that, in entering an order that 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 45-5-303 NMSA 1978](#).

#### **§ 45-5-308. Letters of guardianship**

Letters of guardianship shall contain:

A. the names, addresses and telephone numbers of the guardian;

B. the name, address and telephone number of the incapacitated person; and

C. the scope of the guardianship including the specific legal limitations imposed by the court on the powers of the guardian.

**§ 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;
- (2) the person's spouse, parents and adult children, or if there are no adult children, at least one of the person's closest adult relatives if any can be found;
- (3) the proposed guardian; and
- (4) a 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 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 and the Uniform Trust Code.

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

B. Notice shall be served personally on the alleged incapacitated person and the person's spouse if they can be found within New Mexico. Notice to an out-of-state spouse, the parents and to all other persons, except the alleged incapacitated person, shall be given as provided in [Section 45-1-401 NMSA 1978](#).

C. At least fourteen days' notice shall be given before the hearing takes place. The notice shall be in plain language and large type and shall include the following information and shall be substantially in the following form:

“NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed for (name of alleged incapacitated person). The purpose of this proceeding is to protect (name of alleged incapacitated person). A copy of the petition requesting appointment of a guardian is attached to this notice.

At the hearing, the court will determine whether (name of alleged incapacitated person) is an incapacitated person under New Mexico law.

If the court finds that (name of alleged incapacitated person) is incapacitated, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person).

The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person) to retain control over certain activities.

(Name of alleged incapacitated person) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not possible. If (name of alleged incapacitated person) attends the hearing and is not represented by an attorney, the court must appoint an attorney to represent the alleged incapacitated person.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

\_\_\_\_\_ (signature of petitioner)".

#### **§ 45-5-310. Temporary guardians**

A. When a petition for guardianship has been filed, but adherence to the procedures set out in this section would cause immediate and irreparable harm to the alleged incapacitated person's physical health, the court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the court shall schedule a hearing on the appointment of a temporary guardian for the earliest possible date, appoint counsel for the alleged incapacitated person and give notice as provided in [Section 45-5-309 NMSA 1978](#). Upon a finding that serious and irreparable harm to the alleged incapacitated person's health would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not exceed sixty days, except that upon order of the court, the temporary guardianship may be extended for not more than thirty days.

C. A temporary guardian may be appointed without notice to the alleged incapacitated person and his attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate and irreparable harm will result to the alleged incapacitated person before a hearing on the appointment of a temporary guardian can be held. The alleged incapacitated person shall be notified within twenty-four hours of the appointment of a temporary guardian by the petitioner as provided in [Subsection C of Section 45-5-309 NMSA 1978](#). On two days' notice to the party who obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the court may prescribe, the alleged incapacitated person or his counsel may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. A temporary guardian is entitled to the care and custody of the alleged incapacitated person, and the authority of any permanent guardian previously appointed by the court is suspended as to those specific matters granted to the temporary guardian by the court. A temporary guardian may be removed by the court at any time. A temporary guardian shall make any report the court requires. In all other respects, the provisions of the Probate Code concerning guardians apply to temporary guardians.

E. Appointment of a temporary guardian shall have the effect of limiting the legal rights of the individual as specified in the court order. Appointment of a temporary guardian shall not be evidence of incapacity.

#### **§ 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) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing as defined in Paragraph (4) of [Subsection A of Section 45-5-309 NMSA 1978](#) to serve as guardian or agent in a writing signed by the incapacitated person prior to the incapacitated person's 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 the incapacitated person 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 the incapacitated person; 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 guar-

dian if it determines that the incapacitated person is able to manage some but not all aspects of 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 the incapacitated person's own self commensurate with the incapacitated person's 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 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 an unemancipated minor child, except that a guardian is not legally obligated to provide from the guardian's 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 the guardian's 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 training and education. The guardian 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, if the court has determined that a conservatorship is not appropriate and 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 of Section 45-5-308 NMSA 1978](#), the guardian has the following powers and duties, including the power:

(a) to 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) to 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 shall not use funds from the protected person's estate for room and board that the guardian or the guardian's spouse, parent or child has 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) to 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) to obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;

- (e) to file an initial inventory of all property belonging to the protected person within ninety days after appointment; and
  - (f) to exercise care to conserve any excess for the protected person's needs and include in the guardian's ninety-day and annual reports a description of decisions made regarding the protected person's finances and property; and
- (5) the guardian shall exercise the guardian's supervisory powers over the incapacitated person in a manner that is least restrictive of the incapacitated person's personal freedom and consistent with the need for supervision.

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

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

- A. The court where the protected person resides has concurrent jurisdiction with the court that 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 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 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.

**§ 45-5-314. Annual report**

A. The guardian of an incapacitated person shall file an initial report with the appointing court within ninety days 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 the judge's successor, to the incapacitated person and to the incapacitated person's 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 the incapacitated person's health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to Paragraph (4) of [Subsection B of Section 45-5-312 NMSA 1978](#), the report shall contain information on financial decisions made by the guardian. The report shall be substantially in the following form:

**“STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT  
IN THE MATTER OF THE GUARDIANSHIP OF**

---

CAUSE NO. \_\_\_\_\_

an incapacitated adult

**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**

Name \_\_\_\_\_

**PERSON:**

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 Telephone #

\_\_\_\_\_

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:

Remained the same \_\_\_\_\_

Primary diagnosis: \_\_\_\_\_

\_\_\_\_\_ improved \_\_\_\_\_ deteriorated

(explain) \_\_\_\_\_

(B) During the past year or 90 days (if initial report), the Protected Person's mental health: Remained the same \_\_\_\_\_ Major diagnosis, if any: \_\_\_\_\_

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) that 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: \_\_\_\_\_.”

A. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in items 7, 8, 9, 14 and 15 of the annual report as specified in Subsection A of this section.

B. The guardian may be fined five dollars (\$5.00) per day for an overdue annual report. The fine shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code.

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

**§ 45-5-315. Consent to guardianship not permitted**

An alleged incapacitated person shall not be permitted by the court to consent to the appointment of a guardian. All the procedural safeguards contained in Chapter 45, Article 5 NMSA 1978 pursuant to the appointment of a guardian for an incapacitated person shall apply in every guardianship proceeding.

END OF DOCUMENT