
Guardianship and Conservatorship for Adults in New Mexico: A Decision-Maker's Manual



**Guardianship
Alliance**

New Mexico

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A Decision-Making Manual

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Introduction

If you have been appointed guardian or conservator for an adult, are considering petitioning for guardianship, or work with guardians or adults who have or may need guardians, this Manual can help answer questions regarding guardianship and conservatorship in New Mexico.

Guardianship is designed to protect vulnerable adults from abuse, neglect (including self-neglect) and exploitation. Conservatorship does the same, but for property.

New Mexico law does not always clearly define the powers and duties of a guardian or conservator. This Manual provides some information on areas in which the laws are unclear and includes suggestions on how a guardian can be an effective decision-maker and advocate, as well as how to fulfill the court's requirements. This information and suggestions are based on the opinions of the authors and are not to be considered the only opinions on the subject.

The terms "guardian" and "guardianship" are used in this Manual when referring to proceedings for both guardianship and conservatorship. Information that is relevant only to conservatorship will be identified as such.

Use of Feminine Pronouns in this Manual.

The pronouns "she" and "her" are used throughout this manual in order to simplify the language. Both men and women serve as guardians and conservators, and both are subject to guardianship. However, women are more often the subject of guardianship cases, and therefore the feminine pronouns are used.

Acknowledgments

Many resources were consulted during the process of creating this Manual, including publications produced by more than 20 states. We are particularly grateful for the inspiration we received from the following publications:

"Conservatorship and Guardianship in Minnesota," Minnesota Conference of Chief Judges, 2003.

"The Guardianship Handbook," University of Maryland School of Law, 1998.

"The Handbook for Guardians and Conservators: A Practical Guide to New Mexico law," published by the Office of the New Mexico Attorney General, 1997.

"Making Medical Decisions for Someone Else: A New Hampshire Handbook," Division of Behavioral Health/Developmental Services, 2007.

"NebGuide," University of Nebraska, Lincoln Extension, 2005.

Special Thanks to attorneys Robert Richards and Mary Lawton for their assistance in editing this Manual.

Disclaimer: This manual is intended for use by the general public as a practical guide to information concerning guardianship, conservatorship and alternatives. It should not be used as a substitute for legal or other professional services, and readers are urged to seek professional advice regarding any specific question or situation. Opinions expressed should not be construed as representing the opinions of staff or board members of **Guardianship Alliance New Mexico**.

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Chapter 1

Guardianship and Conservatorship

Under New Mexico law, any person over the age of 18 years is legally an adult and is presumed to be able to manage her own affairs and exercise her own legal rights. As an adult, she is the only person who can legally make decisions regarding her own care and finances. This does not automatically change just because the person has a disability or becomes cognitively impaired. It may be necessary for someone who is concerned about the person's safety and well-being to petition the court for guardianship and/or conservatorship.

Adult guardianship is a legal procedure in which a district court judge decides whether an adult has severe impairment which limits the person's ability to make her own decisions. This impairment can be due to dementia, brain injury, developmental disability, mental illness, substance abuse or extreme physical disability that prevents the person from communicating her preferences. Guardianship should be considered as a last resort, after all other alternatives have been considered. After exploring all other options (see Chapter 7), a guardian and/or conservator can be appointed by the court.

A person who has a guardian was formerly known as a "ward" but is now referred to as a "protected person." The

guardian makes decisions to ensure that the protected person's basic needs are met and makes life decisions for her in accordance with the preferences of the protected person and the authority granted to the guardian in the court order. A conservator is appointed when the person is unable to make decisions about or manage her own finances and property. The guardian and conservator may be the same person or organization, but this is not required.

A guardian may have **limited** or **full (plenary)** authority, as set forth in the court's order that appointed the guardian.

Under New Mexico law, a **full** guardian has the same powers, rights and duties that a parent has toward a minor child.

The guardian "makes provision for the care, comfort and maintenance" of the protected person by making sure her needs are met. However, the guardian is not personally

responsible for providing direct care for the protected person or providing financial support from the guardian's own funds. Nor is the guardian legally liable for the protected person's actions merely because she is the guardian. In order to be liable, the guardian would need to be negligent in carrying out her duties. A guardian is required to help promote independence and freedom of choice by encouraging the

The guardian "makes provision for the care, comfort and maintenance" of the protected person by making sure her needs are met.

protected person to do as much as possible for herself.

Informed Consent

In order to make legally valid decisions, an adult must be able to give informed consent. For any person's consent to be valid, it must meet certain legal requirements. The person must:

- Be of legal age
- Not have been adjudicated incapacitated (as in a judgment of guardianship) or otherwise had the right to consent limited.
- Know and understand the nature, purpose, consequences, risks, benefits and alternatives to the service or treatment for which consent is being given
- Give the consent voluntarily, without coercion or undue influence from others

(Source: Fundamentals of Guardianship: What Every Guardian Needs to Know, published by the National Guardianship Association.) If the person does not have the ability or capability to make informed decisions, they may require the assistance of a legally-appointed decision maker, such as a power of attorney or a guardian.

Difference Between Authority of Power of Attorney and Guardian

A power of attorney is a document signed by a competent adult ("principal") that appoints another competent adult ("agent" or "attorney-in-fact," although often referred to as "POA") to act on the principal's behalf. The authority granted to the agent can be general and broad, or it can be limited to one specific area or task

(for example, a power of attorney to sell a particular piece of property).

"Durable" powers of attorney remain valid after the principal becomes incompetent, unless revoked by the principal while she still has capacity. Under New Mexico law, unless it says otherwise, a power of attorney is durable. The authority of an agent appointed in a power of attorney remains in effect even after a

A guardian has much greater authority than a POA.

guardian is appointed, unless it is specifically revoked by the court's order. It may be advisable to ask the court to revoke the authority of any agent named in prior powers of attorney as

part of the order appointing the guardian, but not the preferences, so there will not be more than one person with similar authority to make decisions on behalf of the protected person.

Both the POA and the guardian must seriously consider the preferences of the person they are appointed to assist as decision-maker. Both are acknowledged by state and federal laws (such as HIPAA) as the legal representative authorized to give informed consent and have access to confidential records.

The POA and the guardian have no duty to financially support the person they serve, merely by reason of their role as legally-appointed decision maker. A guardian has much greater authority than a POA. All authority of the POA and guardian terminates upon death of the person for whom they make decisions. The differences between the authority of a guardian and a POA are summarized as follows:

<u>POA/Agent for Health Care</u>	<u>Guardian</u>
Authority created by document signed by competent principal	Guardianship established by court at hearing after giving notice to proposed protected person and family and reviewing reports of professionals
Principal retains all rights to self-determination	Guardianship removes some of the protected person's rights to self-determination and gives the guardian authority to exercise those rights on the protected person's behalf
Principal retains all decision-making authority, including right to give own informed consent, and can overrule decisions made by the agent	The protected person retains only the decision-making authority not granted to the guardian in the court order signed by the judge
Authority of power of attorney can be revoked by principal at any time (verbally or in writing), in some cases even after she has been deemed incompetent by health care professionals	Guardianship can only be terminated or modified by the court that appointed guardian
POA's authority is limited to the powers specified in document signed by competent principal	Authority of guardian is limited to powers specified in order signed by judge
POA must make decisions according to what principal would have done when competent	Guardian must consider the wishes and preferences of the protected person but may overrule her wishes if necessary to ensure her safety and care
POA cannot force principal to abide by her decisions made against her will	Guardian has the authority to make decisions that are against protected person's will, if necessary
POA has no authority to control movements or visitors of principal	With good cause, the guardian can restrict visitors and the movements of the protected person
POA cannot delegate authority to someone else who is not named in power of attorney document	Guardian can delegate her authority (but not responsibility) to someone else for a specific period of time, up to six months, using a power of attorney (see form in Appendix F)
POA not subject to court supervision; no report to court required	Guardian is accountable to the court; she is required to make written reports to the court on a regular basis

Is a Power of Attorney Enough?

Many competent adults sign a power of attorney in order to avoid ever having to have a guardian or conservator appointed. Once a person is found to be incompetent by medical care providers, the agent can continue to act on her behalf. If an adult cannot understand the consequences of her actions (or if she never was competent), she cannot sign a power of attorney or any other documents, because a person must be competent to sign a power of attorney. Therefore, it will be necessary to ask the court to appoint a guardian and/or conservator as legal decision-maker. Sometimes it is necessary to appoint a guardian or conservator for someone who has a POA, such as when:

- The agent appointed in the power of attorney is unwilling or unable to act as agent.
- Power of attorney is invalid or unenforceable, and principal is no longer competent to sign a new one.
- The power of attorney signed by the principal does not include the authority required by the agent to make a decision
- The principal is not aware that she needs assistance, refuses to cooperate with the appointed agent and obstructs or revokes the power of attorney, thereby putting the principal at risk
- The agent is not acting in the best interests of the principal

Once a court has found a person to be legally incapacitated, only the court can change that decision.

Advantages and Disadvantages of Guardianship

A guardianship can be an important tool for protecting a person who is unable to protect herself or to understand and exercise her rights. For example,

- She may be unable to understand how to apply for benefits that could provide assistance with money, food, medical care or other services. A guardian could help them locate and apply for assistance, and appeal the decision if benefits are denied.
- She may require surgery or other treatment but may be unable to understand the available options and the associated risks.

A guardian can consult with medical professionals and the protected person and then give or withhold consent to medical treatment.

- She may not understand that she has limited funds and may give away her monthly check, lose or misplace the money, or spend it on non-essential items. This could result in eviction, disconnection of utilities, or lack of food. A conservator can control how a person's funds are spent and limit her access to money that is needed for essentials.

However, a guardianship also has costs:

- An adult who is found to be incapacitated by the court ("protected person") loses many basic rights and may also feel a loss of dignity because

she must seek consent from the guardian for many activities.

- The process of obtaining guardianship can be stressful and unpleasant, both for the person in need of protection as well as for family and friends. If family members strongly disagree regarding the need for guardianship, it can be a source of conflict within the family.
- The guardianship process may be expensive and lengthy, especially if it is contested.

Determining Whether a Guardian is Needed

When a guardianship case is filed, the judge will decide if that person has legal “capacity.” In order for a guardian to be appointed, the judge must find that the person is legally “incapacitated” due to the fact that her everyday decision-making ability is severely impaired and there is no other alternative to appointing a guardian. In particular, the judge will consider whether the person can make informed decisions about personal care, food, shelter, safety, hygiene and medical care.

In a conservatorship proceeding, the judge will examine the person’s decision-making ability with regard to money and property. When determining whether a person has legal capacity, a judge will seek the opinions and recommendations of various professionals appointed by the court in a guardianship proceeding (see Chapter 8).

Once a court has found a person to be legally incapacitated, only the court can change that decision. Health care professionals, such as a doctor or psychologist, cannot reverse the court’s decision; however, they could submit their findings to the court for consideration and request that the court reverse the finding of incapacity if they believe such a change is warranted. In that event, the court may require reports from other professionals to assist with the determination of the person’s capacity, and also may require that a hearing be held.

Rights Retained by Protected Person

When an adult is appointed a guardian and/or conservator, this removes some of the legal and civil rights that we all enjoy, yet the protected person retains some of these rights, as well as her basic human rights. A protected person may not be denied certain rights solely because she has a guardian. For example, the protected person retains the right to:

- Marry
- Have a sexual relationship
- Vote
- Make or change an estate plan
- Have privacy
- Receive personal mail
- Be represented by an attorney
- Practice religion of her choice
- Choose her own occupation
- Receive good care
- Be free from physical and sexual abuse, neglect, and financial exploitation

The protected person retains all rights not specifically limited by the court order. She is entitled to be treated with respect and courtesy and to have her opinion heard and considered.

- Spend any allowance granted to her
- Request that the court end or modify the guardianship/conservatorship or appoint a different guardian or conservator.

The protected person’s ability to exercise these rights depends on her level of incapacity. For example, the protected person may have the right to marry, but if she does not comprehend the meaning of marriage, then any marriage she enters into would not be valid. Similarly, although the protected person has the right to make or change a will, that will would not be valid if she does not understand what assets she owns or remember her heirs. If the protected person is represented by an attorney yet is unable to understand and consent to legal decisions, the attorney should work with the guardian (see Comment 4, Rule 16-114, Rules of Professional Conduct).

While residing in a long-term care facility, the protected person retains any rights granted by state and federal law, including those listed in the Patient’s Bill of Rights, such as privacy, the right to visitors and phone calls. However, the guardian may obtain the authority to restrict these rights in order to ensure the safety of the protected person, if the court believes it is necessary. For example, with good cause a guardian can place restrictions on phone calls and visits with certain persons who pose a threat to the protected person’s care, safety or assets.

A guardian has the “same powers, rights and duties respecting the protected person that a parent has respecting his unemancipated minor child.”

The protected person retains all rights not specifically limited by the court order. She is always entitled to be treated with respect and courtesy and to have her opinion heard and considered. To the greatest extent possible, the protected person should be allowed to choose her own friends, clothing, hair styles, social activities and food. The guardian should always encourage the protected person to

ask questions and give input regarding decisions being made on her behalf.

Types of Guardianship and Conservatorship

A guardian has the “same powers, rights and duties respecting the protected person that a parent has respecting his unemancipated minor child.” One important difference is the fact that a legally-incapacitated adult retains some rights that a child does not have. Unlike a parent, the guardian has no duty to financially support the protected person and is also not liable for her actions solely by reason of her appointment as guardian. However, a guardian or conservator may be held liable if she has been negligent or careless in the performance of her duties. The authority of the guardian varies, depending on the type of guardianship established by the court.

Temporary/Emergency Guardianship and/or Conservatorship

This type of guardianship is used when taking the time to go through normal court procedures (Due Process) to appoint a guardian could cause “immediate and

irreparable harm” to the health, safety or finances of the alleged incapacitated adult. One example could be when there is an urgent need for surgery, yet the patient has no legally-appointed decision maker and is unable to understand the options and consequences presented to her in order to give informed consent to the recommended treatment.

Another example is when the alleged incapacitated adult is being financially exploited by others, and it is necessary to act quickly in order to prevent depletion of her resources. In such cases, the court is asked to appoint a guardian and/or conservator immediately, with the understanding that notice will be sent to all appropriate parties and a full hearing will be scheduled later so that the court can consider all of the evidence and decide whether a permanent guardianship or conservatorship is needed. The alleged incapacitated person must receive copies of court documents appointing a guardian and/or conservator within 24 hours, and she has the right to request that the court modify or terminate the guardianship.

Pending the full hearing on a permanent guardianship (see Chapter 8), temporary authority is granted to the guardian and/or conservator for up to 60 days, and can be extended for another 30 days with court approval. This time limit is imposed in order to ensure that the alleged incapacitated adult will be given an

opportunity to be heard by the court regarding any objection to the establishment of a guardianship and/or conservatorship. The temporary guardianship or conservatorship will not automatically expire in 60-90 days, unless an expiration date or time limit is noted in the order granting temporary authority. Instead, it will be necessary to return to court to terminate the temporary

guardianship or grant permanent guardianship.

Limited Guardianship and/or Conservatorship

A limited guardian is appointed by the court when the protected person has the ability to manage some, but not all, aspects of her personal life. When a limited guardian is appointed, the court may limit the guardian’s

authority to certain areas. Limited guardianships and conservatorships are preferred under the law, as this allows the protected person to retain more of her right to self-determination. A person with a limited guardian retains “all legal and civil rights except those that have been specifically granted to the limited guardian by the court.” 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.” For example,

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.”

the court may grant the authority to choose the protected person's place of residence, but may retain her right to make minor medical decisions.

In a conservatorship, the court may limit the conservator's authority to decisions involving finances or property exceeding \$1,000. Since the courts want to preserve the rights of the protected person to the greatest extent possible, limited guardianships and conservatorships are preferred. The limited guardian and conservator must file regular reports to the court.

Full/Plenary Guardianship and/or Conservatorship

A full or plenary guardianship is granted as a last resort only when the protected person needs assistance making all decisions regarding her affairs and care. A full guardian and/or conservator has authority over virtually all decisions to be made in the protected person's life, although the guardian must consider her preferences when making decisions. The guardian is not responsible for personally providing direct care or meeting all of the protected person's needs, but she is responsible for ensuring that the protected person's needs are met.

If there are no limitations on the guardian's authority, the protected person has no legal capacity to act or give consent, and she can only legally act through the guardian. Since the protected person has been declared legally incapacitated by the

court, she can no longer sign releases or consent forms.

The protected person can still make decisions regarding her daily life, such as what clothes to wear and food to eat, unless the guardian has good reasons to control how she is dressed or to impose dietary restrictions in order to ensure her safety. This type of guardianship is used only when the protected person is severely impaired and requires assistance with decision-making in all areas of her life. The guardian and conservator must file regular reports to the court.

Treatment Guardianship

This type of guardianship is created pursuant to the New Mexico Mental Health and Developmental Disabilities Code instead of the Probate Code, which governs

temporary, limited and full guardianships. A treatment guardian's authority is limited to decisions regarding psychiatric care, including psychotropic medications.

A treatment guardianship is usually established as part of an involuntary commitment to a psychiatric hospital or treatment facility in which the person is determined to be incapable of making her own decisions regarding psychiatric treatment. It is designed to handle a temporary mental health crisis and generally lasts no more than one year, unless extended by the court.

Similar to other types of guardianship, the treatment guardian must consult with and follow the preferences of the person she is making decisions for "to the extent reasonably practical." The treatment

A treatment guardian's authority is limited to decisions regarding psychiatric care, including psychotropic medications.

guardian is given statutory authority to request court approval to enforce psychiatric treatment against the will of the person she is appointed to serve. The plenary guardian can request such authority from the court only if she has been given specific authority over medication enforcement by the court order appointing her as plenary guardian.

If a plenary guardian has already been appointed to make decisions on behalf of the protected person, the plenary guardian must receive notice of the commitment proceedings, must be allowed an opportunity to state her opinion, and has priority to be chosen for appointment as treatment guardian. The treatment guardian is not required to file reports with the court.

Chapter 2

Before a Guardian/Conservator is Appointed

It is important to proceed with caution when obtaining a guardianship or conservatorship. Prior to the appointment of a guardian, be sure to consider the following:

Explore Alternatives to Guardianship

Guardianship is intended to be used as a last resort, after all available alternatives have been ruled out. The law requires that the “least restrictive alternative” be used to provide assistance for adults who are unable to make their own decisions. The most common alternatives to guardianship and conservatorship are outlined in Chapter 7. If any of these alternatives could serve the purpose of providing adequate protection and obtaining care and services, then it is not necessary to file a petition for guardianship or conservatorship.

Guardianship is intended to be used as a last resort, after all available alternatives have been ruled out.

Obtain Competency Evaluation

Before deciding to file a petition to obtain a guardian or conservator, it may be helpful to request that the alleged incapacitated person’s doctor perform an evaluation to assess her level of competency. Making this request in advance can help determine whether the person is, in fact, likely to need the assistance of a court-appointed decision maker. A report obtained prior to filing the petition could be accepted by the court as the report by a health care professional that is required as part of the guardianship proceeding, especially if it is very recent. Be

sure to notify the health care professional performing the evaluation in advance that her report may be used in a guardianship case and request that she address in her report the question of whether a guardianship and/or conservatorship is appropriate.

Decide Who Will Be the Proposed Guardian/Conservator

Serving as guardian and/or conservator is a very serious responsibility and can be very time consuming and emotionally

exhausting. It requires a strong commitment to be available whenever needed, and to make decisions by putting the needs of the protected person first. Often the protected person resents the fact that the court has appointed someone else to make decisions for her

and to handle her affairs. She may become angry, and even verbally or physically abusive, toward the guardian or conservator, even if they have enjoyed a harmonious and cooperative relationship in the past.

It is not necessary for the guardian and conservator to be the same person. For example, one family member may be a nurse and have extensive experience with the medical system, and she may be a good choice as guardian. Another family member may have a background in bookkeeping or accounting, and she may be a better choice as conservator. If two different persons will

be proposed as guardian and conservator, it is imperative that they meet to discuss their ideas about what is best for the alleged incapacitated person and determine how they can work together cooperatively.

The guardian must be willing to make life-and-death decisions, including giving or withholding consent for medical treatment, and whenever possible must make such decisions in accordance with the wishes of the protected person. The guardian and conservator must be able to make decisions that the protected person does not agree with, if necessary, in order to ensure that she is safe and receives good care. She must also be willing and able to file annual or more frequent reports with the court regarding the condition of the protected person, as required by law. Family members will want to consider all of these factors when choosing an appropriate person to name as proposed guardian or conservator.

[T]he parent must be willing to recognize that her child is now an adult and has certain rights that were not present prior to the age of 18.

If a parent is seeking guardianship for a young adult with a developmental disability, the parent must be willing to recognize that her child is now an adult and has certain rights that were not present prior to the age of 18. The parent will need to modify her relationship with the protected person in order to allow greater autonomy and freedom of choice, even though that child has the same disability she has always had.

When a petition for guardianship is filed, a proposed guardian must be named (see Chapter 8). A family member is usually nominated, if the alleged incapacitated person has family members who are

available and appropriate to serve as guardian and/or conservator. Co-guardianships (when two people simultaneously serve as guardian) are discouraged, as it can be problematic to have two decision-makers with equal authority (especially when they do not agree and a decision needs to be made quickly in an emergency). It is preferable to have one person as guardian and a second person as successor guardian, in the event that the primary guardian becomes unavailable for any reason. If there is disagreement among family members as to who should be appointed, it is best to work out any differences and reach a consensus

within the family before filing the petition. In cases where there is a great deal of conflict within the family, a judge will often appoint a guardian who is not a family member, such as a professional guardian.

If it is necessary to appoint a professional guardian because there

are no family members available to fulfill the duties of a guardian and/or conservator, asking certain questions can help determine the suitability of the proposed guardian:

- What type of training and experience does the proposed guardian have?
- Has she served as guardian and/or conservator for others? How many?
- Is she prepared for the specific challenges that she can expect to encounter?
- Does she understand her duty to respect the rights of the protected person?

- Has she taken a certification exam offered by the Centers for Guardianship Certification? (See Appendix B)
- Is she bonded and insured?
- Has she (and her staff) had criminal history background checks?
- What are her fees, and will she require a contract to provide services?

Meet With Proposed Protected Person

The proposed guardian should meet with the proposed protected person prior to agreeing to appointment, especially if she is not a family member. She should ask questions regarding the person’s diagnoses, history, and medical and behavioral issues. If possible, she should also meet with any case manager, social worker or caregivers who have been involved in the protected person’s care. This allows the proposed guardian to make an informed decision as to whether she is qualified to fill the role of court-appointed decision maker and meet the needs of the protected person. These service providers may require some form of release in order to share confidential information with the proposed guardian. If no one is available to sign such a release and the proposed guardian is unable to obtain this information prior to appointment, she should meet with these providers immediately after being appointed as guardian.

The guardian should not hesitate to ask any questions she has about the proposed order.

The guardian should not hesitate to ask any questions she has about the proposed order. If the language in the court order signed by the judge is unclear or ambiguous, it could become necessary to incur the

expense of returning to court in the future to seek clarification.

In reviewing the language contained in the order, the guardian should be aware that it is much easier to return to court to clarify her authority than it is to request that the court grant additional authority not contained in the original order. Requesting new authority can trigger a repeat of the full court procedure to appoint a guardian, including appointment of a court visitor, guardian ad litem and qualified health care professional (see Chapter 8). A request for clarification of the guardian’s current authority can be accomplished by asking the judge to schedule a status conference or short hearing (see Chapter 5).

Some factors to consider when reviewing the proposed order include:

- Check to be sure the order is as specific as possible regarding rights to be retained by the protected person and/or any limitations on the authority

it is presented to the court. The proposed guardian should ensure that the order includes language granting her the authority she will need in order to fulfill her responsibilities as court-appointed decision maker. The guardian will rely on adequate authority in the court order to ensure that health care professionals and others will accept the court documents as evidence of her authority as decision maker.

granted to the guardian and/or conservator.

- Avoid the word “limited.” A court order that is entitled “Order Appointing Limited Guardian” may be problematic, as non-attorneys may interpret this as meaning that all authority granted to the guardian is limited. In order to avoid liability, health care professionals may decide not to acknowledge that the guardian has any decision-making authority at all. It is preferable to clearly set forth limitations in a guardian’s authority without using the word “limited.”
- Include in the order language revoking the authority of agents appointed under any former powers of attorney or advance directives. The creation of a guardianship does not automatically validate these documents, and this could create a situation in which there are two decision makers with similar authority who have conflicting ideas as to the best course of action to follow. Even though the agent’s authority is revoked, the preferences of the protected person that were stated in these documents while still competent must be honored by the guardian.
- Seek court approval for any special situations that can be anticipated. For example, if the court visitor and/or health care professional have recommended in their reports that the protected person should be moved from her home to a long-term care facility, it is advisable to ask the court to include authorization for this move in the court order. Similarly, if others have been abusing or exploiting the protected person, be sure the court order includes authority to restrict visitors and contact

with others who may place the protected person in jeopardy.

- Specifically indicate that the guardian has authority over psychiatric treatment and psychotropic medications, even if the protected person does not have a mental health diagnosis. Otherwise, if the protected person becomes depressed or anxious, the guardian can authorize the appropriate treatment. Otherwise, some health care professionals will erroneously conclude that the guardian does not have authority over mental health treatment unless she is appointed as treatment guardian.
- In a temporary guardianship, be sure that the order contains an expiration date or time limit, in order to ensure that the matter is brought back to the court before the temporary guardianship exceeds 60-90 days.

In preparation for the hearing, both the petitioning attorney and guardian ad litem will draft an order describing the outcome they expect from the hearing. In most cases, these attorneys can agree on the language to be included in one proposed court order.

Once the order has been reviewed by the guardian and approved by the attorneys in the proceeding, then it will be presented to the judge at the hearing for signature. The judge may sign the order as drafted, or may ask that the order be revised to accurately reflect the judge’s actual ruling at the hearing.

Chapter 3

Role of a Guardian

Once the guardian is appointed, she is accountable to the court for decisions made on behalf of the protected person. The guardian acts as an agent, or representative, of the protected person. She is accountable to the court, and her actions are subject to review and direction by the court. The guardian must be aware at all times that the only authority she has over the protected person is what has been granted by the court, and no more. The court may remove a guardian at any time if she fails to obey the court's order or does not fulfill her duty to the protected person.

Respect for the rights maintained by the protected person must remain a primary concern of the guardian in all matters and in all decisions. The guardian must exercise her powers in a way which allows the protected person as much independence as possible.

Responsibilities as Guardian

Overall, the ongoing responsibilities of the guardian include:

- Carrying out the duties and responsibilities granted to her by the court.
- Abiding by any restrictions, either by statute or court order, placed on her powers. For example, a guardian is not allowed to consent to sterilization, psychosurgery, electroshock,

experimental procedures, or any other medical procedure which violates known conscientious, religious or moral beliefs of the protected person without prior order from the court.

- Consulting with the protected person regarding decisions to be made on her behalf, to the greatest extent possible, considering her level of impairment.
- Maintaining a current understanding of the needs of the protected person. This includes having current knowledge of the protected person's diagnosis, prognosis, actual and recommended treatments, care plan and needs through regular visits with the protected person as well as frequent contacts with service providers.
- Monitoring the care being provided to the protected person, arranging for appropriate care, and intervening on behalf of the protected person if neglect or abuse is occurring.
- Seeking out services and benefits/entitlements which the protected person may need or is eligible for, and ensuring that the protected person receives all services and benefits to which she is entitled.

Respect for the rights maintained by the protected person must remain a primary concern of the guardian in all matters and in all decisions.

- Advocating for the rights of the protected person and speaking for her in situations where she cannot speak up for herself.
- Respecting the freedom of choice of the protected person and encouraging her independence and autonomy, to the greatest extent possible.
- Regularly reassessing the protected person’s need for a guardian and the appropriate level of guardianship. It is the guardian’s duty to return to court to legally reduce or remove the guardianship if her condition improves.
- Initiating or responding to a request to conduct a review of the guardianship at least once every 10 years.

As soon as practical following appointment, the guardian should visit the protected person at her residence.

has the authority to make decisions on behalf of the protected person. The Letters contain the same powers of the guardian outlined in the Order. Wherever possible, the guardian provides only the Letters when asked for evidence of authority, and provides the full court Order only when absolutely necessary, in order to preserve the privacy and confidentiality of the protected person. If it is necessary to produce a copy of the full court order, the guardian should “redact,” or black out, any

names or other confidential information in the order that is not required to prove the guardian’s authority in a specific situation.

It is recommended that the guardian obtain at least two certified copies of the Letters

(with the court’s seal) when this document is issued and conformed by the Clerk.¹ Some courts will provide one certified copy at no charge, while others will charge a per-copy fee. In most instances, a certified copy will not be required in order to show evidence of authority, but it is advisable to have a certified copy on hand in case one is requested, as this can help avoid another trip to the courthouse. Some individuals or organizations who request a certified copy can make a copy for their files and then return the original.

First Steps as Guardian

Accept Appointment as Guardian

After the court order is signed by the judge, the guardian must sign an Acceptance in which she agrees to fulfill the duties assigned to her by the court order. Once the Acceptance has been signed and notarized, Letters of Guardianship will be issued by the court Clerk.

Obtain Letters of Guardianship

Upon filing the Acceptance of appointment, the court Clerk will issue Letters of Guardianship describing the authority granted to the guardian by the court. These Letters are the document the guardian gives to health care professionals and others in order to demonstrate that she

Read NGA Guidelines

Once the guardian has been appointed, she should become familiar with the

¹ A conformed copy is a stamp showing that the document was filed. All documents filed with the Court Clerk are conformed.

National Guardianship Association's Code of Ethics (see Appendix C) and Standards of Practice for Guardians (see Appendix D). She may also want to take advantage of other resources on the NGA website, including publications, ethics hotline and ListServ.

Review Records and Meet with the Protected Person

As soon as practical following appointment, the guardian should visit the protected person at her residence. If she is not a relative or is not familiar with the protected person's history, it is a good idea to review her plan of care and medical and psychiatric history prior to the first meeting.

The guardian should request copies of recent assessments and medical reports, and look for evidence of any allergies to medicines or foods. She should also determine whether a "Do Not Resuscitate" (DNR) order has been signed by the protected person's doctor, or whether she has ever signed an advance directive stating a preference regarding using heroic measures to revive her in the event she stopped breathing.

The guardian will want to obtain copies of any documents that she will need to perform her duties as guardian, including:

- Birth certificate
- Social Security card
- Medicare and/or Medicaid cards
- Health insurance cards
- Senior ID cards
- Military ID
- Estate planning documents
- Advance directives
- Military discharge papers

- Any other forms of documentation and identification that the protected person possesses.

Obtaining copies of these documents will also be helpful in the event that the originals of such documents are lost and need to be replaced.

If possible, consult with the protected person's care providers and ask about her current condition, mood and behavioral issues (if any). This is a good way to get some clues as to how to best approach her during the first meeting. If the guardian is not a friend or family member, or if the protected person does not remember who she is, she will need to introduce herself and describe her role. What the guardian says to the protected person depends on her relationship with her, as well as her level of understanding.

The protected person may believe that she does not need any help, and in many cases does not want to have a guardian. The guardian will have to build trust by speaking in a calm, reassuring voice. It may help to include the protected person in plans and decisions as much as possible and give her authority over any areas of her life that she can handle well.

Take Photos/Videos of Protected Person

If the guardian does not currently have a very recent photo of the protected person, she should obtain a photo and keep it in a safe place. This will be very useful in the event the protected person ever becomes lost.

Establish Communication with Others

The guardian should establish respectful lines of communication with the natural support system of the protected person (if any), including: family, friends, neighbors, and caregivers. Some of these people may believe that they, instead of the guardian, should be making decisions on behalf of the protected person. The guardian should explain that the court has chosen her as the legal decision-maker, but that the guardian welcomes the assistance of the pre-existing support system in getting to know the needs and preferences of the protected person.

Family members, and especially those who were denied appointment as guardian, may expect the guardian to share every detail of the protected person's life with them. The guardian must make it clear that she can only share confidential information on a "need to know basis"—that is, only when it would be beneficial

to the protected person to do so. If family conflict becomes a major issue, it may be a good idea for the guardian to communicate with one family member who in turn communicates with everyone else. If the family or friends continue to be opposed to the guardian's presence in the life of the protected person, the guardian may have to establish and hold strong boundaries regarding how much information is shared, and with whom.

The guardian must make it clear that she can only share confidential information on a "need to know basis"—that is, only when it would be beneficial to the protected person to do so.

Meet with Financial Decision-Maker, if Any

If someone else is making decisions regarding the protected person's finances and property (such as a conservator or trustee of a trust), the guardian should arrange to meet with her to discuss the protected person's needs and the resources available to meet those needs. The guardian should become familiar with the duties and responsibilities of the trustee or agent under a power of attorney (by reading the terms of the document that appointed her) or the conservator (see Chapter 4). If someone contacts the

guardian regarding any matter over which the conservator or other financial decision maker has authority, the guardian should refer that person to her.

The guardian should consult with the financial decision-maker before making plans that require the expenditure of funds, in

order to ensure that she approves of the cost of the proposed plans.

Notify Others of Appointment as Guardian

Once the guardian has been appointed, it is necessary to let the rest of the world know that she now has the authority to make decisions on behalf of the protected person by sending her Letters of Guardianship to some key places (see samples in Appendix F). The authority given to the guardian in the court order will help

determine the appropriate people to notify of her appointment. Some examples of the individuals and organizations the guardian may want to notify are:

- Any family members who may be unaware that the guardian has been appointed
- Protected person's care providers, including clinics, hospitals, rehab centers, doctors, dentists, hospice, physical therapist, other medical specialists, mental health therapist, case manager, caregivers, etc. The guardian may also want to accompany the protected person on her first visit to each care provider following the guardian's appointment and introduce herself as the newly-appointed decision maker.
- The facility where the protected person resides, if any (such as a nursing home)
- Any government agency which provides benefits or services to the protected person, such as Social Security, Veterans Administration, or pension plans.
- If the protected person does not have a conservator, the guardian should notify Human Services Department's Income Support Division, Division of Vocational Rehabilitation, any housing authority or other agency providing rental assistance, etc.
- Health insurance companies.
- The post office may need a copy of the Letters of Guardianship in order to

release packages or certified mail belonging to the protected person. If it is necessary, the guardian can also file a change of address form with the post office so that the protected person's mail can be sent directly to the guardian. If the guardian has the mail forwarded, it is imperative that this not interfere with the protected person's right to receive personal mail from friends and family.

Plan for Protected Person's Needs

Once the guardian becomes familiar with the needs of the protected person, she should begin to create a plan to meet those needs. This plan can vary widely, depending on how much she can do without assistance and whether the protected person lives at home or in a facility. If the protected person has a case manager or resides in a facility with a social services coordinator of some sort, the guardian should consult with the case manager regarding her current level of functioning and established goals and objectives.

If the protected person does not already have a case manager available to her, the guardian may want to consider obtaining such services, if they are available in her area (usually from private professionals and community-based agencies.) In some cases, case management services can be paid for by Medicare or Medicaid programs.

Some general areas that should be included in the guardian's plan are:

- Level of Functioning—Is the protected person able to spend some time alone, or is it necessary for the guardian to arrange for 24-hour supervision or care?
- Dementia—Does the protected person have a diagnosis of dementia? If so, the guardian may want to consult with the doctor as to whether she is a good candidate for prescription medications for dementia.
- Can the protected person safely operate a motor vehicle? If not, the guardian may need to consult with her physician (and her conservator, if any) regarding whether it is advisable to take steps to remove her access to a running vehicle or to request revocation of her license with the Department of Motor Vehicles.
- Behavioral Issues—Is the protected person sometimes uncooperative, violent, or abusive toward others? If so, this needs to be addressed in the plan. Possible issues would include medication management, housing or placement, therapy or other mental health treatment.
- Living situation—The guardian should consider whether the protected person’s current living situation is meeting her needs. The protected person has the right to remain independent and stay at home as long as she wants, if there are sufficient resources and assistance available to ensure she will be safe.
- Health care—Are there any health care concerns that need to be addressed?
- Dietary needs—Is the protected person receiving nutritious meals on a regular basis, and are there any special dietary needs that must be considered?
- Food Supply—If the protected person has limited resources, the guardian should consider applying for food stamps or arranging to obtain supplies from food banks.
- Personal care/hygiene—The guardian may need to arrange for care, including bathing/showering, toileting, dressing, nail care, hair care, shaving etc. The guardian must ensure that any care providers’ references and background are checked.
- Medications—Is the protected person able to take her medications as prescribed? If not, what arrangements must be made to remind her or administer the medications?
- Clothing—Does the protected person have clothing that fits, is in good condition, and is seasonally appropriate? The protected person should be allowed to select her own clothing, to the greatest extent possible. If the protected person’s resources are limited, the guardian could consider obtaining clothing from garage sales, thrift stores, churches and other charitable organizations. If the protected person lives in a facility with others, such as a nursing home, the

If the protected person does not already have a case manager or social services available to her, the guardian may want to consider obtaining case management services.

guardian should make sure that each item of clothing is marked with the protected person's name or initials in permanent ink.

- Personal property—Are the protected person's belongings sufficient to satisfy her needs, and are they secure and in good repair?
- Paying bills—Is the protected able to pay important bills on a timely basis? If not (and she has no conservator), the guardian will need to be sure that someone provides this service.
- Benefits—Are there any financial or other benefits available to the protected person? This could include food stamps, food banks, housing subsidies, assistance with utility bills, in-home care, as well as others.
- Transportation to appointments and other events—Can the protected person travel safely to appointments and other events? Is she able to use public transportation alone? Does she use a cane, walker or wheelchair, and if so, can transportation be arranged to accommodate these assistive devices?
- Housekeeping—If the protected person lives at home, does she have help with housekeeping and yard work?
- Recreation and hobbies—Is the protected person able to participate in recreational activities, and if so, how can this be arranged?
- Religion—Does the protected person attend religious services? If so, the

The specific authority granted to a guardian by the court should be described in the Letters of Guardianship, as well as in the court's order.

guardian should help maintain such participation as long as desired.

- Education—Is the protected person capable of, and interested in, attending classes and other educational events?
- Telephone Usage—If the protected person is unable to use the telephone in an emergency situation, the guardian may need to consider a medical alert system of some kind.
- Care of pets, if any—Is the protected person able to feed, groom and exercise her pets? Is the animal in need of veterinary care or a check-up? Is she under- or over-feeding the pet or being neglectful or abusive toward it?

Powers and Duties of Guardian

The specific authority granted to a guardian by the court should be described in the Letters of Guardianship, as well as in the court's order. When in doubt, check the order to determine whether the guardian's authority is limited to specific areas of the protected person's life. If the order merely states that the guardian has "full" or "plenary" authority, then the guardian's authority is very broad and extends to every area of life. Please read the court order carefully, and be willing to contact the attorney who prepared it if something is unclear.

New Mexico law states that "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 the guardian (1) is not legally obligated to provide from the guardian's own funds for the incapacitated person and (2) is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship." Some specific powers and duties assigned to the guardian in the Probate Code include:

- The guardian is entitled to "custody" of the protected person and can choose her "place of abode, either "within or without New Mexico." This does not mean that the guardian must take physical custody of the protected person, only that the guardian has the right to determine where she lives.
- The guardian is required to "make provision for" the "care, comfort and maintenance" of the protected person and, wherever possible, arrange for her training and education. This means that the guardian ensures that the protected person receives the care and services she needs.
- The guardian must "take reasonable care" of the protected person's property, including furniture, clothing, vehicles and other personal effects, and to begin a conservatorship proceeding if there is property that needs protection.
- If there is no agent appointed by the protected person while competent, then the guardian must make health care decisions for the protected person, unless the court order limits this authority.

If no conservator has been appointed for the protected person, the guardian can be given authority by the court over some basic financial issues.

- A guardian may consent or withhold consent that may be necessary to enable the protected person to receive or refuse "medical or professional care, counsel, treatment or service."
- The guardian must exercise authority over the protected person in a manner that is "least restrictive" of her personal freedom and consistent with her need for supervision.
- The guardian makes decisions in accordance with the values of the protected person, or her best interests if the values are not known.
- The guardian also has the power to bring a lawsuit on behalf of the protected person, or to defend a suit if the protected person is sued by someone else.
- The guardian should keep a summary of visits with the protected person and also maintain notes about these visits and any meaningful conversations with others regarding her care.
- Until recent changes were made to the guardianship laws in 2009, the guardian could not handle the finances of a protected person. As of 2009, if no conservator has been appointed, the guardian can be given authority by the court over some basic financial issues. This includes:
 - Compelling someone who has a duty to support the protected

person or owes her money to pay what is owed

- Receiving money or property on behalf of the protected person and using it for her support, care and education
- Serving as advocate and decision-maker for the protected person in disputes with persons or organizations, including financial institutions, regarding finances.
- Obtaining information on the protected person's assets and income from other persons and organizations handling her finances.
- Preparing an inventory of all property within 90 days.
 - Including in her annual reports a description of financial decisions made on behalf of the protected person.
 - Conserving any excess funds and using them for the protected person's needs.
- If a conservator has also been appointed, the guardian still controls the protected person's "care and custody."
- The guardian may request funds from the conservator to pay for the protected person's care and other needs.
- The court can grant the guardian other authority, if the judge decides it is necessary.

The guardian must file an initial report with the court within 90 days of appointment, followed by annual reports...

Reporting Requirements

The guardian must file an initial report with the court within 90 days of appointment, followed by annual reports due within 30 days of the anniversary date of the date of appointment. Once it has been filed with the court, a copy of the report must be sent to the protected person, to the judge assigned to the guardianship case, and to her conservator, if one has been appointed.

The annual report of the guardian must contain information about the protected person's mental and physical health, a description of any important contracts or other agreements signed by the guardian,

and a recommendation as to whether the guardianship should continue. The guardian should keep a copy of the reports (and inventory, if any) for her files. If the report is not filed on time, the guardian can be charged a fee of \$5 per day that it is late. A sample report appears in Appendix F, and it is also available on the Guardianship Alliance New Mexico website.

Handling the Protected Person's Finances

If a conservator has been appointed to handle the protected person's money and property, then the guardian must work together with the conservator when making arrangements for the protected person's lodging and care. If the guardian was not appointed as conservator and was not named in the protected person's power of attorney for financial matters, she must consult with the conservator or other

financial decision maker in order to determine what the protected person can afford. Be sure to get the conservator's approval before advancing expenses for the protected person, in order to confirm that the conservator can reimburse any costs.

New Mexico law recognizes that a guardian has the authority to collect monies due to the protected person and to apply those funds to her care, as well as the obligation to protect the protected person's property. If no conservator has been appointed and the protected person's estate and income level are not large enough to justify the expense of establishing a conservatorship, the guardian may be required to handle some limited financial matters that arise, such as:

- Applying for benefits, such as Medicaid, Social Security disability benefits, Veterans benefits or Food Stamps, and having access to bank statements and other financial information when making such applications.
- Arranging for preparation and signing of tax returns.
- Setting aside funds in a burial account and setting up a burial policy for the protected person (together with the conservator, if one has been appointed).
- Entering into contracts, such as leases or long-term care contracts.
- Working with the protected person's representative payee to determine the best way to "spend down" bank

The guardian is expected to follow certain standards of conduct when making financial decisions on behalf of the protected person.

accounts that are in danger of exceeding eligibility limits.

- Paying necessary expenses, such as the cost of moving residences.
- Resolving unauthorized charges on credit cards, or intervening when the protected person has been extended credit and is incurring debts she is unable to pay.
- Investigating possible exploitation of the protected person by others, including gaining access to bank records and the authority to examine other financial records.
- Advocating for protected person by disputing and resolving any discrepancies in finances.
- Restricting the protected person's access to large amounts of money, in the event that she is losing funds or being exploited.

Changes in guardianship laws in 2009 allow this type of authority to be specifically granted to the guardian in the court order. The guardian or her attorney can request that the order appointing guardian include language that grants the guardian authority over everyday management of finances. Otherwise, the guardian may be required to return to court for a specific order every time such a situation arises. This may not be feasible if the protected person does not have sufficient resources to pay legal costs.

If the guardian is assigned the obligation of handling the protected person's finances, she must file an inventory of assets within

90 days of her appointment as guardian and thereafter an annual report to the court which should include a detailed description of financial decisions made on the protected person's behalf, as well as an accounting of funds received and spent by the guardian. The guardian is expected to follow certain standards of conduct when making financial decisions on behalf of the protected person:

- Avoid even the appearance of a conflict of interest or inappropriate behavior that can be perceived as self-serving or not in the protected person's best interest. One example: purchasing the protected person's real or personal property.
- Allow the protected person to enjoy as much freedom as possible in managing her funds, in accordance with the protected person's abilities.
- Keep clear and accurate accountings of the protected person's funds.
- Do not commingle the guardian's funds with the protected person's funds.
- Do not borrow money from the protected person.
- Consider the protected person's history when determining whether to give gifts on behalf of the protected person.
- Do not allow the protected person to make gifts or bequests that would benefit the guardian or her family without court approval.

If the guardian is appointed for a protected person with little or no assets and a very low fixed income, she has an obligation to make her best effort to obtain whatever benefits and services are available...

- Obtain court approval before using the protected person's funds to pay for room and board provided by the guardian or her family.

Providing for Needs of Person with Limited Resources

If the guardian is appointed for a protected person with little or no assets and a very low fixed income, she has an obligation to make her best effort to obtain whatever benefits and services are available to the protected person from federal, state and local resources. Assistance in the search for

appropriate care and services can be obtained from a case manager, such as in a clinic, shelter, school or non-profit agency. Useful resources to obtain care and services for the protected person with limited resources include:

- Resource Center, New Mexico Aging & Long-Term Services Department—for information on all

types of services, including institutional care as well as home-based care through Disabled and Elderly ("D&E") Waiver, CoLTS, Mi Via Waiver, or Personal Care Option (PCO). They can also help with choosing a Medicare drug plan or finding a low-cost prescription program, and more.

- Local Civic Housing Authority or other low-income housing organization, and/or an agency accepting applications for Section 8 housing subsidy.

- Social Security Administration—to apply for SSI and Medicaid for a protected person who cannot work, or to get retirement benefits and Medicare coverage for a protected person with a work history. If the protected person is approved for SSI, she will also receive a Medicaid card for free doctor visits, medications and other medical needs.
- Income Support Division (ISD)—to obtain food stamps or to apply for Institutional Medicaid that pays for nursing home or other residential care. ISD also handles DD Waiver and other Medicaid-related programs.
- Division of Vocational Rehabilitation—for job coaching and for referral to jobs and/or training.
- Veterans Administration offers pensions, low-cost medication, in-home care, as well as medical treatment and equipment. Veterans are also eligible for a burial plot.
- Churches and other non-profit organizations can provide small donations for necessities such as rent, utilities, furniture, furnishings and food. Churches also can assist with burial expenses if there is no other money available.
- Local food banks or meal delivery services.
- Clothing can be purchased at thrift stores, or at garage sales (the guardian can offer to take away clothing that

The guardian has no responsibility to personally provide a service if there are no programs or funding available....

does not sell and would have to be taken to Goodwill). Churches and community organizations also are good sources for meeting clothing needs.

- Community clinics for physical and mental health outpatient treatment.
- Hospice services for protected persons who are terminally ill (paid for by Medicare or Medicaid).
- Dayhab for seniors or for adults with developmental disabilities.
- Summer camps for adults with developmental disabilities (scholarships are available).
- Government and non-profit agencies specializing in a particular area of interest shared by the protected person, such as the Alzheimer’s Association, National Alliance for the Mentally Ill, or Traumatic Brain Injury Association. The guardian can locate many of these organizations on the DisabilityInfo.gov website.
- Safe Ride and/or other programs available through communities or seniors centers that provide free or low-cost transportation to and from medical appointments and other events.
- Legal Aid offices (although some may only provide free services to seniors).
- Free tax return preparation is available through the New Mexico Department of Taxation and Revenue, AARP, some colleges and community organizations.

- If there is no family member or other person available to serve the role of guardian, a professional guardian can be appointed who is paid through a contract with the Office of Guardianship, at the New Mexico Developmental Disabilities Planning Council.

The guardian can search on the Internet for these services, or see Appendix E for details on how to contact useful resources.

The guardian is expected to do her best to obtain services for the protected person. She should carefully document her efforts to locate services, including the individuals and organizations she has contacted, who she spoke to, and the reason for denial of services or for determining that the services available were inadequate or not appropriate. The guardian has no responsibility to personally provide a service if there are no programs or funding available to obtain it, or if the guardian's best, diligent efforts fail to secure needed services.

The guardian owes a duty of undivided loyalty to the protected person and must act in the best interests of the protected person and her property.

Guardian's Role as Representative Payee

If the protected person has a **representative payee** who receives and manages her Social Security, Veterans or Railroad Benefits checks, that person only has authority over those funds. Federal agencies such as the Social Security Administration, Medicare and the Veterans Administration do not recognize the

authority of a guardian (or someone who is appointed as power of attorney) unless she is also approved as representative payee.

If the guardian is not the representative payee, she must make every effort to work cooperatively with the representative payee to share information and documentation relevant to the protected person's financial situation. If it is not possible to establish a cooperative relationship with the representative payee, this could make it impossible for the guardian to perform some of her duties, and therefore it may be necessary for the guardian to consider making an application to take over as the protected person's representative payee.

For example, the representative payee should provide a copy of the protected person's award letter from Social Security when needed by the guardian for income verification. This allows the guardian to obtain benefits for the protected person such as food stamps and housing subsidies. Also, pursuant to Social Security guidelines, the representative payee must provide the 1099 she receives for the protected person to the person who will arrange for preparation of annual returns (usually done by the guardian if there is no conservator).

Guardians, conservators and powers of attorney are given priority when a representative payee must be appointed. Representative payees are required to submit an annual report and are not allowed to use the protected person's Social Security benefits to pay themselves

for their services, unless they have obtained prior approval from the Social Security Administration.

For a protected persons who is receiving institutional Medicaid, the facility where she lives often becomes her representative payee, since her Social Security benefit check must be given to that facility anyway (to contribute to her care and to provide a small spending allowance).

If the protected person has a representative payee, the guardian can submit a written request to the Social Security Administration asking that she receive a copy of anything mailed to the representative payee or the protected person (see form in Appendix F).

Guardian's Relationship to Protected Person and Others

The guardian owes a duty of undivided loyalty to the protected person and must act in the best interests of the protected person and her property. It is also the guardian's duty to assist the protected person in improving and developing any talents, skills or abilities she may have and to help her maintain dignity, self-confidence and as much independence as may be appropriate in any given situation.

The guardian makes decisions using "substituted judgment," meaning she does what the protected person would have done when competent. If the guardian does not know what the protected person would have done, then she uses the principal of "best interests," which means that the guardian makes the decision that is

in the best interest of the protected person. Sometimes the guardian must make a decision which is believed to be in the protected person's best interest, even if the protected person objects.

The guardian must never have a romantic or sexual relationship with the protected person, unless of course such a relationship existed prior to the guardianship.

The guardian should strive to build and maintain relationships of mutual respect and cooperation with the protected person and others involved in her life and care. For more information about guidelines

governing these relationships, see the New Mexico Best Practices for Guardianship in Chapter 10, and the National Guardianship Association Standards of Practice in Appendix D.

If at all possible, it is best to keep the protected person living in her own home as long as she can.

Moving the Protected Person

If at all possible, it is best to keep the protected person living in her own home as long as she can. The guardian can often find local services to take care of basic needs, such as meals, transportation, or even in-home assistance. If it becomes absolutely necessary to move the protected person from home in order to ensure her safety or care, consult with her (to the greatest extent possible), as well as with her doctor(s).

Once the guardian has concluded that it is absolutely necessary to move the protected person, the move needs to be planned and conducted in a manner that is likely to result in the least upset and disruption to the protected person. To the

greatest extent possible, include the protected person in the process of locating the new residence, packing and unpacking. If the protected person is vigorously resisting the move and is likely to become distraught, then the guardian should consider obtaining a court order authorizing the move. The court may grant such an order if the guardian can provide sufficient documentation that the move is necessary, such as letters from doctors and other care providers.

If there is no conservator, the guardian should sign any contract, lease or admission documents in her capacity as guardian when moving the protected person to the new location. The guardian must be careful not to sign any documents which require her to personally guarantee payment of the services provided to the protected person.

Even though the guardian will need to sign legal consent forms, the protected person should still sign the plan of care, indicating her agreement with the goals and objectives it contains.

If at all possible, bring some of the protected person's furniture and favorite personal items to the new location. It is also good to be aware of the fact that personal items often are lost or taken in a facility setting, such as a nursing home. Be sure that the protected person's clothing and other personal items are clearly marked with her name or initials in permanent ink.

Following placement in the new location, the guardian should regularly visit the protected person and consult with staff to assure that her needs are being met. The guardian needs to provide a copy of her Letters of Guardianship to the facility, and notify the appropriate staff member that

she wishes to be notified of and attend any care conferences and inter-disciplinary team meetings held regarding the protected person.

The guardian must also provide the new address of the protected person to the court having jurisdiction over the guardianship proceeding.

Guardian's Role on Interdisciplinary Team

An interdisciplinary team (IDT) is composed of professionals who play a role in the care of the protected person. Other names for such a team include "multidisciplinary team," "treatment team," and "care team." Members of the team may include a case manager, physical or occupational therapists, behavioral therapist, nurse, dietician, activities director, and others.

Long-term care and other regulations require that team meetings be held at certain intervals: nursing homes must hold a "care conference" within 14 days of admission and then once every quarter; assisted living facilities must hold a "care conference" for every resident who has a care plan at least semi-annually. Some IDTs meet according to a schedule agreed upon by the team members at any given time.

When the IDT serves an adult who does not have a guardian, she is a member of the team and must be invited to attend all meetings and be kept fully informed regarding updates on her condition and her

care. She has the right to request that the team meet to address concerns or questions she may have regarding her care, especially if there is a change in her condition. Team members give her input and may make suggestions for her care, but ultimately she has final decision-making authority, including approving any treatment or care plan, releasing confidential information and records, or giving informed consent.

The guardian represents the protected person's interests as a member of the IDT and exercises her rights, even if she is also present at the meeting. Because the Court has found the protected person to be incapacitated, she is no longer able to give legally valid informed consent; however, she should still be involved in planning her care. Even though the guardian will need to sign legal consent forms, the protected person should still sign the plan of care, indicating her inclusion and agreement with the goals and objectives it describes.

The guardian must be notified and invited to every IDT meeting. The guardian has the right to request that a team meeting be scheduled to address concerns or questions. Team members must ensure that the guardian has access to all available history and updates on the protected person, and also offer their input and suggestions, in order that the guardian can feel confident deciding whether or not to give informed consent (see National Guardianship Standards of Practice, Appendix D).

The guardian must strive to establish and maintain mutually respectful, cooperative relationships with the other members of the IDT. In addition to mutual respect, there are two other keys to a successful IDT: (1) keeping lines of

communication open among all members of the team; and (2) setting and maintaining clear boundaries as to the role and authority of each team member.

Although the guardian has the power to choose to replace members of the IDT or the agency providing services to the protected person, this

should be done only for a very good reason and only after making every attempt to resolve any differences. When selecting service providers for the protected person, the guardian must make a decision based on what is best for the protected person, and not be influenced by personality conflicts that the guardian may have with some team members.

The addition of a guardian to a pre-existing IDT can bring special challenges. In some cases, the IDT may have been meeting for years prior to the guardian's appointment. Team members may have grown accustomed to the protected person's tendency to approve every suggestion the team made, without asking any questions. In some cases, the team has been basically making the decisions for the protected person, although she has been signing her own consent forms. When the guardian suddenly joins the team and becomes the primary decision-maker, the role of some members of the IDT may

If problems do arise, each team member should be frank and open with the others, in an effort to understand each other's positions and attempt to reach a consensus...

change, and there may be resistance to this among some team members.

It is imperative that the guardian schedule a meeting with other members of the IDT as soon as possible after being appointed. At this meeting, the team members can discuss their understanding of the different roles on the team. They can share their expectations of other team members and set the stage for a harmonious, productive team relationship. It may also be helpful to give the team something in writing about the role of the guardian and when she should be contacted. This document can be placed in the protected person's file so that it is available for all staff members to consult (see sample "Guardian Notification/Consent Guidelines" form in Appendix F).

All team members must be careful not to make assumptions or jump to conclusions regarding statements made or actions taken (or not taken) by the guardian or other team members. If problems do arise, each team member should be frank and open with the others, in an effort to understand each other's positions and attempt to reach a consensus on the care and services to be provided to the protected person. However, the guardian makes the final decision.

As a member of the IDT, it is the guardian's responsibility to:

- Attend as many meetings as possible. If an IDT meeting is held without the guardian being invited, the guardian has the right to request that another meeting be held right away. If the guardian cannot personally attend, it may be possible for her to participate by phone. If she is totally unavailable, she can give written authorization to a

representative who could collect and share information but could not give consent or make decisions (unless that person has a power of attorney from the guardian delegating that authority).

- Respond as quickly as possible to phone calls and all communications from other IDT members, especially when it is important that a decision be made or informed consent be given. If the guardian does not respond, and therefore basically leaves it to the IDT members to make the required decision on behalf of the protected person, the guardian is still responsible for the outcome. The guardian cannot delegate her decision-making authority to the other IDT members.
- Visit the protected person at least once a month and become familiar with her history, care needs, preferences, and any special issues.
- Ensure that the IDT develops an appropriate plan of care for the protected person, and also take whatever steps are necessary to be sure the plan is being properly implemented
- Act as advocate for the protected person when her care is deficient, and to file a grievance on her behalf if necessary. (See National Guardianship Association Standards of Practice, Appendix D.)

Team members have the responsibility to:

- Invite the guardian to all IDT meetings, and make every effort to schedule meetings at a time when the guardian can attend

- Include the guardian in discussions and meetings regarding development of a plan of care for the protected person
- Notify the guardian of appointments scheduled with protected person’s care providers, teachers and others, so that the guardian has an opportunity to attend
- Keep the guardian informed of any changes in the protected person’s physical or mental health
- Obtain the guardian’s prior consent for changes in medication or treatment, room changes, or any deviation from the plan of care
- Provide documentation and answer the guardian’s questions regarding the protected person’s care and maintenance
- If the facility is serving as representative payee for the protected person, the team should consult with the guardian about financial decisions being made on the protected person’s behalf, including how to “spend down” her account or whether to establish a trust in order to qualify for benefits of any kind

The guardian needs to carefully consider the input and suggestions of all IDT members; in return, the team members need to acknowledge that the guardian is the final decision maker.

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If the team disagrees with a decision made by the guardian, the team could consider mediation. If all else fails, the team can write a letter to the judge in the guardianship case expressing concern that

the guardian is not carrying out the known preferences of the protected person or is not acting in her best interests. If the team members are concerned that the guardian’s decision constitutes abuse, neglect or exploitation, they can also report the incident to Adult Protective Services. If the

protected person lives in a long-term care facility and the team believes the guardian is violating the protected person’s rights, they can make a complaint to the Ombudsman Program.

Again, the keys to a successful and productive IDT are open, respectful communication and boundaries regarding the roles of each team member. The guardian needs to carefully consider the input and suggestions of all IDT members; in return, the team members need to

Chapter 4

Role of a Conservator

A court-appointed conservator has an obligation and duty to protect and manage the finances of an adult who cannot handle her own financial affairs. In some states, the person appointed by the court to manage finances is referred to as “guardian of the estate.” Just as a guardian makes personal decisions for an incapacitated adult, conservators are responsible for protecting the conservatee’s property and using her money and property for her benefit.

Appointment of a conservator is appropriate when an adult is unable to pay her bills or keep track of her finances, or when she is giving away large sums of money to strangers or telemarketers. A conservator can be a family member or friend, or a bank or trust company. The conservator has a fiduciary duty to act wisely and for the benefit of the conservatee.

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Responsibilities as Conservator

Overall, the ongoing responsibilities of the conservator include:

- Carrying out the duties and responsibilities granted to her by the court.
- Abiding by any restrictions, either by statute or court order, placed on her powers.
- Consulting with the conservatee regarding decision to be made on her behalf, to the greatest extent possible, considering her level of impairment.
- Maintaining a current understanding of the financial needs of the conservatee.
- Verifying that the conservatee is receiving all the income and benefits she is entitled to.
- Making sure the conservatee’s bills are paid in a timely fashion.
- Investing the conservatee’s money wisely.
- Confirming that the conservatee’s tax returns are filed on time.
- Making sure that the conservatee’s property is safe and insured when necessary or appropriate.
- Advocating for the financial rights of the conservatee and speaking for her in situations where she cannot speak up for herself.
- Respecting the freedom of choice of the conservatee and encouraging her independence and autonomy, to the greatest extent possible.
- Maintaining confidentiality regarding the conservatee’s income, assets, estate plan, and any other private matters. If family members request confidential information, the conservator should explain that she has a duty to protect the conservatee’s privacy and that she can only release the information if ordered by the court to do so.

First Steps as Conservator

Accept Appointment as Conservator

After the court order is signed by the judge, the conservator must sign a notarized Acceptance of Appointment in which she agrees to fulfill the duties and obligations assigned to her by the court order.

The court may require that the conservator provide a bond or other security in an amount equal to the total value of the conservatee's estate. The cost of the bond is usually paid by the estate.

Obtain Letters of Conservatorship

Once an Acceptance of appointment has been filed, the court Clerk will issue Letters of Conservatorship describing the authority granted to the conservator by the court.

These Letters are the document the conservator gives to financial institutions and others in order to demonstrate that she has the authority to make decisions on behalf of the conservatee.

The Letters contain a shortened description of the powers of the conservator, as outlined in the Order.

The Letters contain the same powers of the conservator, as outlined in the Order. Wherever possible, the conservator provides the Letters when asked for evidence of authority. The conservator should only provide the full court Order when absolutely necessary, in order to preserve the privacy and confidentiality of the conservatee. If it is necessary to produce a copy of the full court order, the conservator should "redact," or black out, any names or other confidential

information in the order that is not required.

It is recommended that the conservator obtain multiple certified copies of the Letters (with the court's seal) when they are issued by the Clerk. Some courts will provide one certified copy at no charge, while others will charge a per-copy fee. In most instances, a certified copy will not be required in order to show evidence of authority, but it is advisable to have two or three certified copies on hand in case one is requested. Financial institutions may want to have a certified copy for their files. Some individuals or organizations who request a certified copy can make a copy for their files and then return the original.

Read NGA Guidelines

Once the conservator has been

appointed, she should become familiar with the National Guardianship Association's Code of Ethics (see Appendix C) and Standards of Practice (see Appendix D). She may also want to take advantage of other resources on the NGA

website, including publications, ethics hotline and ListServ.

Review Records and Meet with the Conservatee

As soon as practical following appointment, the conservator should visit the conservatee at her residence. If she is not a relative or is not familiar with the conservatee's finances and property, it is a good idea to review her financial records, including tax returns. The conservator will want to obtain copies of any documents

that she will need to perform her duties as conservator, including:

- Birth certificate
- Social Security card
- Military discharge papers
- Any powers of attorney
- Any other forms of documentation and identification that the conservatee possesses.

Obtaining copies of these documents will also be helpful in the event that such documents are lost and need to be replaced.

If possible, consult with her financial advisor or accountant, if any, and ask about her current assets and financial status, as well as any concerns such advisors may have. This is a good way to get some clues as to how to best approach the conservatee during the first meeting.

If the conservator is not a friend or family member, or if the conservatee does not remember who she is, the conservator will need to introduce herself and describe her role. What the conservator says to the conservatee depends on her relationship with her, as well as her level of understanding. It is important to allow the conservatee to have some spending money that she alone controls, even if it is likely that she will lose or give away the money. This helps the conservatee to feel more powerful and to preserve her sense of dignity.

Take Photos/Videos

If the conservator does not currently have a very recent photo of the

conservatee, she should take a photo or video and keep it in a safe place. This will be very useful in the event the conservatee ever becomes lost. It is also helpful for the conservator to take photos of any important items, so that they can be appraised or recovered if lost.

Establish Communication with Others

The conservator should follow similar guidelines as those described for the guardian (see Chapter 3) for establishing respectful lines of communication with the natural support system of the conservatee.

It is important to allow the conservatee to have some spending money that she alone controls, even if it is likely that she will lose or give away the money.

Meet with Other Decision-Maker, if Any

If someone else is making decisions regarding the conservatee's care and safety (such as a power of attorney or guardian), the conservator should arrange to meet with them to discuss the conservatee's needs and the resources available to meet those needs. The conservator should consult with the power of attorney or guardian (if any) regarding the resources that are available to pay for the conservatee's care and set guidelines regarding working together as a team to serve the best interests of the conservatee.

The conservator should become familiar with the rights and duties of the guardian or power of attorney and honor her authority. If someone contacts the conservator regarding any matter over which the guardian or other decision maker has

authority, the conservator should refer that person to her.

Locate and Identify Assets and Income

As soon as possible after appointment, the conservator should locate and identify all of the conservatee's assets and income. Some assets may need to be appraised, such as valuable jewelry, artwork or collectibles. The conservatee's mail and records may contain information regarding the nature and location of assets and sources of income. Conservatee's prior tax returns can also provide clues as to what accounts and other property are owned by the conservatee.

Bank accounts should be retitled to read: "Conservatorship of [conservatee's name], [conservator's name], Conservator. All accounts should be opened using the conservator's social security number as the taxpayer ID.

As soon as possible after appointment, the conservator should locate and identify all of the conservatee's assets and income.

If the conservator discovers that the conservatee owns stocks and bonds, the certificates must be reissued in the name of the conservatorship. The conservator should contact each company and inquire as to the appropriate document required to retitle the stocks and bonds. If some of the stock certificates are missing, the conservator should contact the conservatee's stock broker to ask whether she is holding the missing certificates for safekeeping. If not, the conservator will need to contact each company in which the conservatee owns stock and request a replacement certificate. This should be done as soon as possible, since some

companies will require that the conservator submit Letters that have been issued within the last 60 days. All stocks should be titled as follows: "Conservatorship of [conservatee's name], [conservator's name], Conservator.

If the conservator discovers that other people owe money to the conservatee, she should contact that person and make arrangements for repayment of the debt. If the person owing the debt refuses to pay it, the conservator may need to consult with an attorney regarding collecting the debt.

The conservator should also determine whether there are any health, life or

property insurance claims that need to be made on behalf of the conservatee.

Once assets are located, it is important to determine how the assets are titled and whether there are any other persons who own a joint interest in the asset(s) with the conservatee. If

the conservatee owns funds jointly with a person who is not her spouse, the conservator will need to find out who originally deposited the funds in order to determine how much of the funds belong to which joint owner. It may be necessary for the conservator to separate the funds belonging to the conservatee and deposit them into a conservatorship account.

If the conservatee has established accounts that will automatically pass to a joint account holder upon her death, then the conservator has the responsibility to preserve those accounts, as they are part of the conservatee's estate plan. If the

conservatee owns accounts as community property and the conservator is not the spouse, the conservator will need to work cooperatively with the spouse in order to manage those funds.

Identify and Pay Valid Debts

As soon as possible, the conservator should make a list of all debts owed by the conservatee, including mortgages, insurance premiums, loans, credit card debts, taxes, utility bills, and others. If the conservatee has overdue bills, credit card companies and other creditors may agree to waive accrued late fees or lower the finance rate. This can also be true of back taxes owed to the Internal Revenue Service.

The conservator must determine whether each debt is valid and challenge any debts that the conservator believes are not owed by the conservatee. For example, the conservator may need to challenge amounts charged to the conservatee's credit card by someone else. If the conservator is unsure as to whether a debt is valid, she should consult an attorney.

Prepare an Inventory of Conservatee's Estate

The conservator must immediately begin compiling information regarding bank accounts, property and other assets belonging to the conservatee. An initial inventory is due to the court within 90 days of the conservator's appointment (see sample in Appendix F). All assets and property belonging to the conservatee as of the date of appointment of the conservator

must be included on the inventory, together with the asset's current value. In addition to bank deposits and real property, the inventory should include promissory notes owed to the conservatee by others, businesses and items of tangible personal property owned by the conservatee, including every type of vehicle.

It is not necessary for the conservator to list every appliance, piece of furniture and article of clothing in the inventory. Instead, the conservator can include all such items in one category entitled "household furniture, furnishings and personal belongings" and assign a value that is estimated to equal the value of such items if sold at a garage sale.

The conservator must immediately begin compiling information regarding bank accounts, property and other assets belonging to the conservatee.

The conservator should also make an inventory of items contained in any safe deposit box belonging to the conservatee. A bank officer may be available to be a witness for the conducting of this initial inventory. The safe deposit box should be

retitled in the same way as bank accounts and stock certificates.

Anything that could be converted to cash, including pension funds and insurance policies with cash surrender value, should be included in the inventory. It may be necessary to obtain appraisals of certain items (such as artwork, antiques, jewelry or coin collections) in order to ascertain an estimated value. It is usually sufficient to estimate the value of real property rather than obtaining an official appraisal. However, real estate appraisals should be obtained prior to selling any real property. In some cases, it may be necessary to obtain court approval of the sales price of

real estate and other large assets. The conservator should keep sufficient documentation in her files to support the values she has assigned to items listed in the inventory.

Notify Others of Appointment as Conservator

Once the conservator has been appointed, it is necessary to let the rest of the world know that she now has the authority to make decisions on behalf of the conservatee by sending her Letters of Conservatorship to some key places (see samples in Appendix F). Some examples of the individuals and organizations she may want to notify are:

- Any family members who are unaware that a conservator has been appointed.
- Conservatee's financial institutions, including bank(s), savings and loans, credit unions, investment firms, stock brokers, and anyone else who maintains financial accounts for the conservatee. It will be necessary for the conservator to open new accounts that only she can access and transfer the conservatee's assets into those accounts. The conservator will need to change the title on assets belonging to the conservatee to read: "Conservatorship of [Conservatee's name], [Conservator's name], Conservator."
- Tenants or property managers handling conservatee's real property.

Once the conservator has been appointed, it is necessary to let the rest of the world know that she now has the authority to make decisions on behalf of the conservatee...

- Bank where conservatee's safe deposit box is located.
- Any attorneys retained by the conservatee in any legal matters other than the conservatorship.
- Trustees of any trusts of which the conservator is a beneficiary or a settlor.
- The conservatee's employer, if any.
- Conservatee's mortgage company or landlord.
- Any storage units where property is kept.
- The facility where the conservatee resides, if any (such as a nursing home).
- Any governmental or other agency which provides benefits or services to the conservatee, such as Social Security, Veterans Administration, etc.
- Any pension or retirement plans.
- Insurance companies and/or agents.
- People who owe the conservatee money or to whom the conservatee owes money.
- The conservator should record a copy of her Letters at the County Clerk's office in every county in which the conservatee owns (or may own) land.
- Financial institutions at which the conservatee has charge accounts, credit cards, or ATM cards.
- The post office may need a copy of the conservator's Letters in order to release

packages or certified mail belonging to the conservatee. If it is necessary, the conservator can also file a change of address form with the post office so that the conservatee's mail can be sent directly to the conservator. If the conservator has the mail forwarded, it is imperative that this not interfere with the conservatee's right to receive personal mail from friends and family.

Plan for Conservatee's Needs

Once the conservator has become familiar with the finances and property of the conservatee, she can begin to create an inventory and prepare a budget to meet ongoing needs. This budget can vary widely, depending on how much the conservatee can do without assistance and whether she lives at home or in a facility (see sample budget in Appendix F).

Some general areas that should be included in the conservator's plan include:

- Level of Functioning—Is the conservatee able to handle small amounts of money on her own?
- Can the conservatee actively participate in any part of her financial planning?
- Health care—Are there any unreimbursed health care needs that need to be addressed in the budget?
- Medications—Does the conservatee have the best insurance plan available to cover her specific medications?
- Personal property—Are the conservatee's furniture and personal belongings sufficient to satisfy her

The conservator may need to cancel all credit cards, charge accounts and ATM cards, especially if there is a danger they will be misused by the conservatee or others.

the necessary steps to obtain any financial or other benefits available to the conservatee?

- needs, and are they secure and in good repair?
- Determine living expenses—Make a list of monthly expenses that will need to be included in the budget, such as groceries, transportation, entertainment, medications, and spending allowance.
- Paying bills--The conservator will need to pay the conservatee's bills or arrange for someone to provide this service. Credit cards—The conservator may need to cancel all credit cards, charge accounts and ATM cards, especially if there is a danger they will be misused by the conservatee or others.
- Benefits—The conservator should take the necessary steps to obtain any financial or other benefits available to the conservatee?
 - IRAs/Pensions—The conservator may not be able to change the title to these accounts without triggering a taxable event. In this event, the conservator should send the account holder a certified copy of her Letters of appointment and give written notice that she is now the only one who can access the account. Remember that substantial penalties could be charged if the funds are withdrawn too early or late.
- Accounts in FSLIC and FDIC institutions may be withdrawn prior to maturity and no early withdrawal penalty may be imposed if a court of proper jurisdiction

has declared that a person is no longer capable of managing his or her own estate affairs, and the account was issued before the date of such determination and not extended or renewed after that date.

- Are all of the conservatee’s real property, automobiles and other valuable assets insured and kept in a safe place?
- Driving—Can the conservatee safely operate a motor vehicle? If not, the conservator may need to consult with the guardian regarding whether it is advisable to take steps to remove her access to a running vehicle (and sell the vehicle) or take steps to request that her license with the Department of Motor Vehicles be suspended.
- Tax Returns—If the conservatee owes back taxes or has not filed income tax returns for years, the conservator can ask the Internal Revenue Service to waive any penalties due to the conservatee’s disability.
- Burial Plans—Does the conservatee have a burial account. If not, is it possible to determine what her wishes for her burial would have been and purchase a policy on her behalf?
- Housekeeping—If the conservatee lives at home, the budget may need to include money for housekeeping and yard work.
- Payments for Benefit of Dependents—The conservator may pay money for the support of persons who are legally dependent on the conservatee, including the spouse, minor children or others who live in the conservatee’s

home and are unable to support themselves.

- Recreation and hobbies—Is the conservatee able to participate in recreational activities, and if so, how much should be included in the budget for these events?
- Education—Is the conservatee capable of, and interested in, attending classes and other educational events, and if so, how much should be budgeted for this?
- Care of pets, if any—How much should be set forth in the budget for pet expenses? include the cost of hiring someone to feed, groom and exercise pets, if the conservatee is not able.

Powers and Duties of Conservator

The specific authority granted to a conservator by the court should be described in the Letters of Conservatorship, as well as in the court’s order. When in doubt, check the order to determine whether the conservator’s authority is limited to specific areas of the conservatee’s life. If the order merely states that the conservator has “full” authority, then the conservator’s authority is very broad and extends to every area of the conservatee’s finances and property. Read the court order carefully, and be willing to contact the attorney who prepared it if something is unclear.

New Mexico law states that a conservator has all of the powers described in the Probate Code, as well as any additional powers given by law to trustees in New Mexico. The conservator is not legally obligated to provide from the conservator’s own funds for the

conservatee and is not individually liable on contracts that the conservator properly signs in her fiduciary capacity as conservator.

The conservator can be held liable for obligations arising from ownership or control of property only if she is personally negligent. For example, if the conservator knows that it is unsafe for the conservatee to drive a vehicle, yet allows her to continue to drive, and she gets into an accident and gets hurt, the conservator could be legally responsible due to carelessness and neglect.

Some specific powers and duties assigned to the conservator include:

- Investing and reinvesting funds.
- If the estate is ample enough, making gifts to charity or other persons as the conservatee might have been expected to make when competent, in an amount not to exceed twenty percent of the annual income of the estate.
- Collecting, holding and retaining assets until sold, gifted or otherwise disposed of.
- Keeping conservatee's assets separate—This includes not keeping estate assets in the conservator's safe deposit box.
- Making repairs or alterations to buildings or other structures owned by the conservatee.

Once a conservator has been appointed, she must work together with the guardian when making arrangements for the conservatee's lodging and care.

- Continuing or participating in the operation of any business or enterprise belonging to the conservatee.
- Selling an estate asset, or borrowing against it, in order to pay conservatee's expenses. (Sometimes it is advisable for the conservator to obtain a court order approving the sale of large items, such as real estate.)
- Entering into leases or contracts. The conservator should be sure sign documents as "[Conservator's name], as Conservator for [Conservatee's name]." She should not individually guarantee payment of any amounts due under contracts signed on behalf of the conservatee.
- Employing persons, including attorneys, auditors, or advisors, as needed.
- Bring or defend any action or claim for the protection of estate assets, including insurance claims.
- Using the estate to support legal dependents of the conservatee, including a spouse, minor children, or others who live in the home and cannot support themselves.
- The conservator has the right to be paid a reasonable fee for her services and is not required to obtain court approval before doing so. Family members usually do not charge for conservatorship services. If the conservator is paid, she should keep detailed records of services provided

and should also pay gross receipts tax on any fees earned.

- Deciding whether claims for payment submitted by creditors are valid, and if so, paying the debt.
- Reviewing conservatee's estate plan and managing the estate in a way that does not change who inherits her estate.
- Considering the recommendations made by the guardian, if any, as to an appropriate standard of support, care, education or benefit for the protected person.
- Returning all funds and properties to the former conservatee, in the event that the conservatorship is terminated and she is restored to full legal capacity.
- Notifying court of death of conservatee and delivering to the court for safekeeping any will in the possession of the conservator, informing the personal representative named in the will
- Delivering the remaining estate to the personal representative of the conservatee's probate estate once duly appointed.
- The court can grant the conservator other authority, if the judge decides it is necessary.

Handling the Conservatee's Finances

Once a conservator has been appointed, she must work together with the guardian when making arrangements for the conservatee's lodging and care. If the conservator was not appointed as guardian and was not named in the conservatee's power of attorney for financial matters, she

must consult with the guardian or POA in order to determine what the conservatee needs. Be sure to get the guardian's approval before signing a contract to admit the conservatee to a facility, so that the guardian can approve the placement.

The conservator or her attorney can request that the order appointing the conservator include language that grants the conservator the authority she needs to protect and manage the conservatee's assets. Otherwise, the conservator may be required to return to court for a specific order every time such a situation arises. This can be very costly and result in further depletion of the conservatee's estate.

If it becomes necessary for the conservator to liquidate assets in the conservatorship estate, it is important to remember that selling assets may affect her eligibility for some government benefits, including some types of Social Security, Veterans' and Medicaid benefits. The conservator must also consider whether selling the asset will have adverse capital gains or other tax consequences.

Before selling the conservatee's home, the conservator should consider whether there is another available alternative for accessing the equity in the home. For example, the conservatee may be eligible for a home equity loan or a reverse mortgage.

When selling estate assets, the conservator should always obtain the best price possible. The conservator may not sell any asset to a family member or friend of the conservatee at a reduced price, unless she first obtains court approval for the sale.

In creating a budget and plan for the conservatee's support, education, care or

benefit, the conservator should consider the size of the estate, the conservatee's accustomed standard of living, and any other sources of funds or support available to the conservatee.

The conservator is expected to follow certain standards of conduct when making financial decisions on behalf of the conservatee:

- Avoid even the appearance of a conflict of interest or inappropriate behavior that can be perceived as self-serving or not in the conservatee's best interest. One example: purchasing the conservatee's real or personal property.
- Exercise authority over the conservatee's finances and property only to the extent necessary to protect the estate.
- Allow the conservatee to enjoy as much freedom as possible in managing his/her funds, in accordance with the conservatee's abilities.
- Keep clear and accurate accountings of the conservatee's funds.
- Do not commingle the conservator's funds with the conservatee's funds.
- Do not borrow money from the conservatee.
- Consider the conservatee's history when determining whether to give gifts on behalf of the conservatee.
- Do not encourage the conservatee to make gifts or bequests that would benefit the conservator or her family. The conservator should not make gifts

The conservator must file an initial inventory with the court within 90 days of appointment...

from the estate to herself without court approval.

- Obtain court approval before using the conservatee's funds to pay for room and board provided by the conservator or her family.

Reporting Requirements

The conservator must file an initial inventory with the court within 90 days of appointment (see sample in Appendix F), including a statement that it is correct to the best of the conservator's knowledge. Once it has been filed with the court, a copy of the inventory must be sent to the judge assigned to the guardianship, to the conservatee and to her guardian. The conservator must also prepare and file

annual accounts and reports due within 30 days of the anniversary date of the date of appointment, and a final account and report upon the death of the conservatee. These reports must contain

information about any contracts or other agreements signed by the conservator, any changes in the conservatee's income, and a listing of the current estate assets. The conservator should keep a copy of the inventory and reports for her files. If the report is not filed on time, the conservator can be charged a fee of \$5 per day that it is late. (See a sample report in Appendix F.)

Conservator's Role as Representative Payee

If the conservatee has a **representative payee** who receives and manages her benefits, such as Social Security, Veterans, or Railroad Benefits checks, that person

only has authority over those funds. Federal agencies such as the Social Security Administration, Medicare and the Veterans Administration do not recognize the authority of a conservator (or someone who is appointed agent under a power of attorney) unless she is also approved as representative payee.

If the conservator is not the representative payee, she must make every effort to work cooperatively with the representative payee to share information and documentation relevant to the conservatee's financial situation. If it is not possible to establish a cooperative relationship with the representative payee, this could make it impossible for the conservator to perform some of her duties, and therefore it may be necessary for the conservator to consider making an application to take over as the conservatee's representative payee.

For example, the representative payee should provide a copy of the conservatee's award letter from Social Security when needed by the conservator for income verification. This allows the conservator to obtain benefits for the conservatee. Also, pursuant to Social Security guidelines, the representative payee must provide the 1099 she receives for the conservatee to the person who will arrange for preparation of her tax returns (sometimes done by the conservator).

Conservators, guardians and powers of attorney are given priority when a representative payee must be appointed. Representative payees are not allowed to use the conservatee's Social Security

benefits to pay themselves for their services, unless they have obtained prior approval from the Social Security Administration.

If the conservatee has a representative payee, the conservator can submit a written request to the Social Security

Administration asking that she receive a copy of anything mailed to the representative payee or the conservatee (see form in Appendix F).

Whether or not the conservator serves as representative payee for the conservatee, she

needs to be aware that selling an estate asset can result in the conservatee becoming ineligible for SSI, Medicaid or other government benefits. The conservator should consult with an estate planning attorney regarding ways to avoid jeopardizing the conservatee's benefits in the event that there is a large infusion of cash into the estate.

Conservatee's Estate Plan

The conservator has an obligation to ensure that her decisions to sell certain parts of the estate do not change bequests made by the conservatee in her estate plan. For example, if it becomes necessary for the conservator to sell a piece of real estate that has been left in the will to a certain heir, then that heir is still entitled to inherit the net amount the conservator received from that sale, if there are sufficient funds remaining in the estate. Of course, if it becomes necessary for the conservator to liquidate all estate assets to pay for the conservatee's care during her lifetime, then there will be no estate left for anyone to

Conservators, guardians and powers of attorney are given priority when a representative payee must be appointed.

inherit upon her death. The conservator has a duty to consider the needs of the conservatee above the needs of any potential heirs of her estate.

The conservator should become familiar with the any estate plan established by the conservatee when she was competent and should keep the original estate planning documents in a safe place, such as in a fireproof safe or in the conservatee’s safe deposit box. She does not have the authority to create or modify a will or trust on behalf of the conservatee.

Conservator’s Relationship to Conservatee and Others

The conservator should strive to build and maintain relationships of mutual respect and cooperation with the conservatee and others involved in her life and care. For more information about guidelines governing these relationships, see the New Mexico Best Practices for Conservatorship in Chapter 10.

If the conservatee has a guardian or power of attorney, the conservator must work closely with her...

Conservatee

The conservator owes a duty of undivided loyalty to the conservatee and must act in the best interests of the conservatee and her property. It is also the conservator’s duty to assist the conservatee in maintaining dignity, self-confidence and as much independence as may be appropriate in any given situation.

Sometimes the conservator must make a decision which is believed to be in the

conservatee’s best interest, even if the conservatee objects.

The conservator must never have a romantic or sexual relationship with the conservatee, unless of course such a relationship existed prior to the conservatorship.

Guardian

If the conservatee has a guardian or an agent appointed pursuant to a power of attorney, the conservator must work closely with her in order to meet the needs of the conservatee. The guardian makes personal decisions for the conservatee regarding place of residence, health care, and other services.

The conservator uses the conservatee’s estate and establishes and follows a budget to be sure the conservatee’s assets last for the conservatee’s expected lifetime. Many decisions will require cooperation between the guardian and conservator, including any contracts that involve place of residence, medical care or other services.

Trustee of Trust

If the conservatee’s assets are held in a trust managed by a trustee, the roles of the conservator and trustee will be established by the terms of the trust and the court order, as well as by state and federal law. The conservator should ensure that the order appointing her clarifies her role, as compared to that of the trustee. The trustee may control the assets held in the name of the trust, but the conservator should have access to information about

the trustee's actions and has the right to challenge such actions.

Agent Under Financial POA

If the conservatee has appointed an agent under a power of attorney to handle her finances, the conservatorship does not automatically revoke that POA. In order to avoid confusion as to who has authority over what financial decisions, the conservator may want to ask the court to revoke the prior POA (but not the preferences of the conservatee expressed in the POA) as part of the order appointing the conservator. If the POA is not revoked, then it will be crucial that a cooperative relationship be established.

Conservatee's Spouse

If the conservatee has a spouse who lives in the household, the conservator and the spouse will share the responsibility of managing jointly owned or community property. Also, if the spouse is the primary caregiver or is directing the care of the conservatee, it is important that the conservator and spouse work closely together.

If the conservator believes that the spouse is behaving unwisely or not in the best interest of the conservatee, she can ask the court to separate the property of the conservatee and spouse. Thereafter, the conservator would be solely responsible for the management of the conservatee's portion of the property.

If the conservatee is receiving Medicare or Medicaid benefits to pay for care in a nursing facility, the conservator must

become familiar with rules regarding protection of the assets for the at-home spouse. The conservator should help protect the assets of the at-home spouse, as long as doing so does not cause financial loss for the conservatee. However, the conservator should generally obtain court approval to make gifts or transfer assets to the at-home spouse.

Moving the Conservatee

Since a conservator has authority over finances and property only, the conservator does not have the power to make the

If at all possible, bring some of the conservatee's furniture and favorite personal items to the new location.

decision to move the conservatee from her home, unless the conservator has also been appointed as guardian. If at all possible, it is best to keep the conservatee living in her own home as long as she can. The conservator

can work together with the guardian to find local services to take care of basic needs, such as meals, transportation, or even in-home assistance.

The conservator should cooperate with the guardian to negotiate and sign any contract, lease or admission documents in her capacity as conservator when moving the conservatee to the new location. The conservator must be careful not to sign any documents which require her to personally guarantee payment of the services provided to the conservatee.

If at all possible, bring some of the conservatee's furniture and favorite personal items to the new location. It is also good to be aware of the fact that personal items often are lost or taken in a facility setting, such as a nursing home. Be

sure that the conservatee's clothing and other personal items are clearly marked with her name or initials in permanent ink.

Following placement in the new location, the conservator should regularly visit the conservatee and consult with staff to assure that her financial needs are being met. The conservator needs to provide a copy of her Letters of Conservatorship to the facility and be sure the staff members know how to contact her at all times of the day. The conservator also has the responsibility of reporting the conservatee's new address to the court having jurisdiction over the conservatorship.

Chapter 5

Enforcement of Authority of Guardian or Conservator

There is often confusion among health care professionals, financial institutions and others regarding the role of the guardian or conservator as the legal representative. As a result of this confusion, some service providers and others may refuse to acknowledge the authority of the guardian or conservator out of concern about liability. Instead, they may allow or insist that the protected person make decisions and sign contracts and medical releases, although she is not able to legally give informed consent (see Chapter 1).

Unfortunately, it is not uncommon for a protected person to be admitted to a hospital, be treated or have surgery, and be discharged, all without the guardian being consulted, or even notified. It is also not uncommon for health care providers to ask a guardian, "Where's your power of attorney?" If the service providers have not been trained about working with adults who have guardians, they may not know that a guardian has much greater authority than a power of attorney.

It is also not uncommon for banks and other financial institutions to refuse to honor Letters of Conservatorship as evidence of authority to control bank accounts and other assets, or to continue to require the conservatee's signature even

though she has been found to be legally incapacitated by the court.

Enforcing Authority in General

There are some steps the guardian or conservator can take to avoid confusion and help clarify the extent of her authority as decision-maker for the protected person:

- Make sure that the order and Letters of Guardianship or Conservatorship clearly define the authority the court has granted (see Chapter 2, "Review Proposed Order").
- Become familiar with her rights and responsibilities as decision-maker. It helps to be well informed.
- Consider attending a workshop or other form of training on guardianship or conservatorship, and share information on such training with others (see Appendix B).
- Ask an attorney for a courtesy opinion.
- Be sure all service providers have a copy of the Letters of Guardianship or Conservatorship.
- The guardian or conservator should keep a copy of the Letters issued by the court with her at all times.

If the service providers have not been trained about working with adults who have guardians, they may not know that a guardian has much greater authority than a power of attorney.

- Sometimes a service provider may give information or decision-making authority to family members, even though they are not the guardian or conservator. In this case, the guardian may need to meet with the provider and/or her supervisor to clarify the role of the guardian or conservator and the family in the protected person's or conservatee's life.
- Be cordial and respectful to service providers who are confused about the role and authority of the guardian or conservator.
- In most cases the guardian can build a cooperative relationship with the service provider and work together for the benefit of the protected person. In most cases, they, too, are trying to act in what they believe are the best interests of the protected person.
- If a service provider becomes rude or verbally abusive, then discontinue the conversation and contact the person's supervisor for assistance.
- If a provider refuses to work with the guardian or conservator as the legal decision-maker, then she should ask to speak to the supervisor or, if necessary, the manager or administrator.
- If a provider organization has a legal department or in-house counsel, then ask that they be consulted or ask to speak with them.

Sometimes a service provider may give information or decision-making authority to a family member, even though they are not the conservator of the protected person.

- In the event that an individual or organization refuses to acknowledge the authority of the guardian or conservator, even after she has provided a certified copy of her Letters, it is important that she stand up for her (and the protected person's) rights and insist that she alone is empowered by the court to make decisions on her behalf.
- The guardian or conservator should carefully document all of her attempts to resolve the situation, so that this documentation can be provided to the judge in the event of a status hearing.
- If the guardian or conservator is unable to resolve the situation, she can ask her attorney to write a letter clarifying her authority.
- If the guardian or conservator believes it will be necessary to return to court to resolve the matter, she (or her attorney) can write a letter to the individual or organization and attempt to clarify her authority as decision-maker.
- If such a letter does not convince them to honor the guardian's or conservator's authority, she (or her attorney) can ask the judge to schedule a status hearing (see instructions and suggested forms in Appendix F). She can also request that the judge subpoena the individual or organization who is refusing to accept her authority.

- If the guardian or conservator is required to return to court because the service provider has consistently refused to honor her authority, she can ask the judge to order the service provider to reimburse her for expenses incurred in the process (including attorney's fees). At the status hearing, the judge will make a ruling to help clarify the role and authority of the guardian or conservator, and will also rule on any other questions presented by the parties (such as the question of reimbursement of costs).
- The guardian or conservator should file a report every year updating the court as to the current condition and status of the protected person and decisions she is making on her behalf. This helps to keep the court well informed about the guardian's performance of her duties, in case the guardian ever needs to request the court's intervention on an authority issue.

[The guardian or conservator] can ask the judge to schedule a status hearing and subpoena the individual or organization who is refusing to accept her authority.

Enforcing Authority of a Guardian

The guardian has a duty to be fully informed about the protected person's medical condition and the risks, benefits, side effects and expected outcome for any recommended care and treatment. If the guardian is not fully informed, she cannot give "informed consent," as required by the NGA Standards of Practice (see Appendix D). It is the guardian's responsibility to be

sure that health professionals who are treating the protected person (especially in an emergency situation) understand that the guardian alone can make health care decisions on her behalf.

- Bring copies of the Letters of Guardianship to every doctor's visit or trip to the hospital.
 - Speak to the records department of the hospital about noting in their computer records for the protected person that she has a guardian and listing the guardian's contact information
 - If a hospital refuses to accept the guardian's authority, she should contact the bio-ethics committee and request a meeting.
- If the guardian encounters repeated problems being acknowledged as the legal decision maker for the protected person by certain individuals or organizations, she can send a copy of her Letters, by certified mail, return receipt requested, to the Administrator of the hospital or clinic involved. In a cover letter the guardian can state that she has been appointed as legal guardian and that she is putting the service provider on notice that she is now the only person who can make decisions on the protected person's behalf.
- If a health care professional seems confused about the extent of the guardian's authority as medical decision-maker, explain that the

protected person has the legal status of being the guardian’s minor child. Ask them to treat the protected person as though she is a 10-year-old child who cannot make medical decisions or give informed consent, and to act accordingly. Medical professionals receive training regarding the difference between the legal requirements for treating minors and adults.

- Merely including the words “full guardian” or “full authority” in the Letters of Guardianship does not guarantee that the guardian’s authority will be accepted. For example, if the guardian’s Letters do not include authority over psychiatric care and psychotropic medications, some service providers may not allow the guardian to make decisions of this type for the protected person. The guardian may be told that only a “treatment guardian” can make decisions regarding psychiatric care and medications.
- Some service providers do not understand that a treatment guardian is usually appointed as part of an involuntary commitment proceeding in which the protected person is ordered to be held against her will for treatment in a psychiatric hospital or other facility. If a person has not been the subject of an involuntary commitment, chances are she does not have a treatment guardian. It seems logical that in such cases the guardian’s authority over decisions regarding health care should

Merely including the words “full guardian” or “full authority” in the Letters of Guardianship does not guarantee that the guardian’s authority will be accepted.

include psychiatric care, but the guardian may encounter confusion about this topic with service providers.

Enforcing Authority of a Conservator

The conservator has a duty to become familiar with the finances and property of the conservatee. It is the conservator’s responsibility to make it clear that she alone can make financial decisions and that the conservatee cannot sign any documents or liquidate any assets.

- The conservator should record a copy of the Letters of Guardianship with the County Clerk in every county where the conservatee may own property. Then, if there are any transactions involving that property, all other parties will have evidence that the conservatee is unable to make legally binding financial decisions.
- The conservator must title bank accounts and other assets in the name of the conservatorship (see Chapter 4). She should be sure that financial institutions and other understand that the conservatee is not an authorized signer on accounts or other assets such as stocks and bonds.
- The conservator should make a claim for reimbursement if a financial institution allows the conservatee to withdraw funds or liquidate other assets.

Chapter 6

Guidelines for Decision-Making by Guardian and Conservator

Guardians and conservators are required to make many decisions on behalf of the incapacitated adult they serve. In order to make these decisions, the guardian must utilize adequate information and exercise independent judgment in order to make unbiased choices. This includes getting to know the protected person or conservatee and her needs, so that the guardian can understand her preferences and how the decisions made will impact her life and care.

There are standards and guidelines for decision-making included in both the NGA Code of Ethics (Appendix C) and the NGA Standards of Practice (Appendix D). Making decisions for an incapacitated adult is likely to be very challenging at first, but will become easier with practice and increased knowledge and confidence.

Making decisions for an incapacitated adult is likely to be very challenging at first, but will become easier with practice and increased knowledge and confidence.

Responsibilities Toward Protected Person or Conservatee

The guardian or conservator's primary duty is to the protected person or conservatee, and no one else. She may consult with family and friends, but must put the needs of the protected person before all others.

When making decisions, the guardian and conservator have the following

responsibilities toward the person they were appointed to serve:

- Become familiar with the wishes and preferences of the protected person or conservatee before there is a crisis, so that they can be taken into consideration when making decisions on her behalf.
- Advocate for the protected person or conservatee by being assertive with the medical team or financial institutions in order to ensure that her personal and/or financial interests are protected.
- Stand in the shoes of the protected person and advocate for her preferences rather than the guardian's own preferences.
- Be respectful toward the protected person or conservatee and always seek to include her in decision making to the fullest extent possible.
- Stay informed about the protected person's overall condition and any changes that occur.
- Review the plan for treatment or care often enough to be aware of any changes. The guardian cannot always rely on staff members to communicate changes in the protected person's condition.
- Keep information regarding the protected person or conservatee

confidential and release it on a “need to know” basis only. That means that sharing the information would be beneficial for the protected person, not just for family members or others.

- While maintaining as much confidentiality as possible, the guardian who is not a family member should keep family members informed of protected person’s current condition, especially if her condition is critical.
- Support the protected person or conservatee in preserving her dignity, exercising personal preferences and fostering self-reliance and self-esteem.
- Protect the rights of the protected person or conservatee and exercise rights on her behalf that she is unable to exercise on her own.
- Assist the protected person or conservatee in acquiring new skills and continuing to grow as an individual.
- Recognize that, in order to have a full and satisfying life, everyone takes some risks, balanced with the need to remain safe.
- Ensure the protected person is placed in the least restrictive environment possible.
- Consider the protected person’s or conservatee’s ability to understand and overall level of confusion or anxiety when deciding the kind of information or documentation to share with her.

The guardian can use the protected person’s previously stated preferences to determine how she would have made the decision herself...

Substituted Judgment

When using this standard, the guardian makes the decision based on what the protected person would have decided when competent. The guardian can use the protected person’s previously stated preferences to determine how she would have made the decision herself, if able to do so. In making this determination, the guardian can draw upon written statements made by the protected person when competent, or conversations that family, friends, and neighbors had with her while competent. Using this standard promotes the protected person’s dignity and sense of self-determination.

Best Interests

Sometimes it is not possible for the guardian to determine what the protected person’s prior wishes were, or if following those wishes would cause substantial harm to her. In that case, the guardian uses the standard of best interests, when the guardian makes the decision that serves the best interests of the protected person. This principle promotes the well-being of the protected person by making the decision that any reasonable person might make for herself if she were in the same position.

For example, if the protected person made a written directive when she was competent stating that she did not ever want to have dialysis, then the guardian would have the duty to decide as she would have decided, i.e., to refuse consent for dialysis, even though this decision would

probably result in an earlier death for the protected person.

On the other hand, if the protected person made no such statement, verbally or in writing, and the guardian has no way of knowing what her preferences would have been regarding dialysis, then the guardian is obligated to make the decision to consent to dialysis because that is the decision that would prolong the protected person's life, and that serves her best interests.

Making Medical Decisions

The guardian has a responsibility to make informed decisions for the adult she has been appointed to serve, based on:

- Adequate information on the issue;
- Voluntary action; and
- Lack of coercion.

In other words, she consults with medical professionals and asks the questions on behalf of the protected person to obtain the needed information to make a sound decision. The guardian is entitled to have any information or records that the protected person would be entitled to have if she were competent. If she is denied access to medical records, the guardian should contact the Ombudsman Program (See Appendix E).

Some information to gather when making medical decisions includes:

- In lay language, what exactly is the decision that needs to be made?

- If there is no definite diagnosis, what are the possibilities?
- Why is the treatment or action necessary?
- What are the possible side effects?
- Are any tests needed to obtain more information?
- Has the protected person been informed and consulted (if possible)?
- Does the protected person have any preferences relevant to the decision, either currently or when formerly competent?

The guardian is entitled to have any information or records that the protected person would be entitled to have if she were competent.

- What is the expected outcome of the various options under consideration, including the option of withholding treatment?
- What would be the benefits of each option?
- What would be the risks of each option?
- Do the potential benefits outweigh the risks?
- What are the expected time frames for each option?
- What happens if no decision is made?
- Are there any alternative options available for consideration?
- How would a "successful outcome" be defined for each option?
- Is the chosen option the least restrictive alternative?

- Is a second opinion needed or recommended?
- What additional information is required from family, friends or professionals to make this decision?
- Is the protected person in pain, and if so, what can be done to minimize her pain and enhance her quality of life?
- If it appears that the protected person's condition is terminal, should hospice services be obtained for her?

The guardian must establish harmonious communication with the medical staff and make her role as decision-maker known to them. Health care providers are notoriously busy and overwhelmed. She cannot assume that staff members have seen her Letters of Guardianship just because it is in the protected person's medical file. The guardian may have to verbally remind staff members that they must consult her when a decision needs to be made.

The guardian should make a list of questions and...present her key points and questions as efficiently as possible.

The guardian should make a list of questions and, when she is able to arrange a short meeting with medical staff, she should present her key points and questions as efficiently as possible. The guardian should take notes to be sure she retains the information provided to her in such meetings.

The guardian may want to provide the medical staff with a written list of situations or events in which the guardian should be consulted, including moving her to another room or medical setting. The guardian has

the right to request a meeting of the protected person's care team in order to gather enough information to make an informed decision on her behalf.

It is important that the guardian be actively involved in the preparation of the protected person's plan of care. This plan describes her medical issues and treatment goals, and outlines how these goals will be achieved. Key components to be included in a plan of care include, but are not limited to:

- A description of all of the protected person's diagnoses.
- A copy of her "history and physical" indicating previous medical conditions and surgeries.
- An assessment of her current level of functioning.
- A list of all medications prescribed for the protected person, including dosage and frequency, and a record of when her medications were given to her.
- The main goals of care.
- A copy of any advance directive or Letters of Guardianship, together with contact information for any legally-appointed decision maker.
- Code status explaining how care providers should respond if her heart or breathing stop. "Do Not Resuscitate" (DNR) status means no effort will be made to revive the protected person. "Full Code" status means that every effort will be made to revive her.

- Any life-sustaining issues that may be particularly important to the protected person.
- Whether she should be given artificial hydration and/or nutrition in the event she cannot eat or drink enough, and whether these measures should only be used temporarily.
- Whether a ventilator (breathing machine) should be used in the event she stops breathing, and if so, whether it should only be used temporarily.
- Whether she should be transferred to another facility.
- What tests have been done and should be done if her condition worsens.
- Whether antibiotics should be used in the event of infection.

Once the guardian has gathered all relevant information, she can make the decision to either give or withhold consent for any recommended tests, treatments or procedures. If the guardian believes it is warranted, she can change health care providers or request a referral to a specialist. To the greatest extent possible, the guardian should consult with the protected person before making decisions.

More information can be found in Chapter 3, “Role of a Conservator,” in Chapter 10, “New Mexico Best Practices for Guardianship,” and in the NGA Standards of Practice (Appendix D).

The guardian or conservator must avoid even the slightest appearance of a conflict of interest or impropriety...

Making Financial Decisions

The conservator manages the finances and property of the conservatee in order to ensure that her estate will last for the rest of her life, if at all possible, while at the same time providing her with the highest quality of care and support available.

When making financial decisions, the conservator should consider the size of the estate, the conservatee’s accustomed standard of living, and any other sources of funds or support available to the conservatee. More information can be found in Chapter 4, “Role of a Conservator,” in Chapter 10, “New Mexico Best Practices for Guardianship,” and in the NGA Standards of Practice (Appendix D).

Conflicts of Interest

In making decisions, the guardian and conservator must focus on the effect the decisions will have on the protected person, not the decision-maker. The guardian or conservator must avoid even the slightest appearance of a conflict of interest or impropriety when making arrangements to meet the needs of the protected person.

A conflict of interest arises when the guardian or conservator has a personal or business interest that might be perceived as self-serving or adverse to the best interests of the protected person. Some general guidelines for avoiding conflicts are:

- The guardian or conservator must remain free to advocate for quality services and must be independent from

all service providers or financial institutions.

- It is the guardian's or conservator's duty to coordinate and assure the provision of services rather than to provide them directly.
- The conservator cannot pay herself or her family to provide room and board for the conservatee, without prior court approval.
- The conservator must not commingle funds or property of the protected person with her own funds or property.
- The conservator must not sell or transfer any of the conservatee's property to herself or her friends or relatives, without court approval.

A parent who is appointed as guardian upon the child attaining the age of 18 faces a major change in roles.

Parent as Guardian

A parent who is appointed as guardian upon the child attaining the age of 18 faces a major change in roles. The guardian must understand that her child is now an adult with rights she did not have as a minor. The parent must make every effort to see the protected person as an adult who has the right to live in the least-restrictive environment and to be given the opportunity to experience autonomy to the fullest extent possible.

Chapter 7

Alternatives to Guardianship and Conservatorship

Many people who have a physical or mental disability can actively participate in making their own life decisions. Because guardianship results in the restriction of freedom and self-determination for an individual, less restrictive alternatives must be considered before seeking guardianship or conservatorship. Guardianship proceedings should only be initiated after a problem has been identified for which there is no alternative solution.

Alternatives to Guardianship

Care/Case

Management - *For help with daily tasks and with obtaining benefits and services.* Many people are able to make their own responsible decisions but are unable to carry them out due to disability or limited mobility. These people do not need a guardian or conservator if they can work with a case manager to set goals and objectives and then carry them out.

Care managers can make home visits and provide assistance with obtaining benefits and services, paying bills and balancing bank statements, referrals to local resources, treatment coordination and advocacy, escorting to appointments, running errands, planning long-term care, and other services, as needed. Care managers can "check in" on those who are homebound or who have limited mobility to

help assess their needs and monitor their care and safety.

Advance Health Care

Directives - *For help with medical treatment only.* Any adult who has capacity (a "principal") can create a legal document appointing someone (an "agent") to carry out her wishes with regard to medical treatment in the event she is no longer capable of making or communicating such decisions (advance health care directives). The agent's authority can take

effect immediately, if specified in the document, or upon the incapacity of the principal

A person can also state her preferences as to the use of death-delaying medical procedures and comfort care, and

can choose who she would prefer to serve as her guardian in the event that one is appointed in the future. (See statutory form on the Guardianship Alliance New Mexico website, or call (505) 216-1133 to request a printed copy.)

Advance directives can only be created or changed by the individual personally; no one else can do it for them. An individual chooses whether her agent's authority to make decisions begins when she signs the directive, or only when she becomes incapacitated, and she can revoke it (or override the agent's decision) at any time. The agent may not be an owner, operator or employee of the health facility where the patient is receiving care, unless she is also a blood relative. Copies must be

Many people are able to make their own responsible decisions but are unable to carry them out due to disability or limited mobility.

provided to all named agents, as well as to the primary care physician. No court appointment is necessary. All authority terminates upon death of the individual. For more information, see the New Mexico Uniform Health Care Decisions Act.

Surrogate Decision Makers – If a person has signed an advance directive appointing someone as agent to make decisions on her behalf, then that person can act as her “surrogate.” If no advance directive is created prior to a person becoming incapacitated, or the directive is found to be invalid, New Mexico state law (Uniform Health Care Decisions Act, section 24-7A-5) sets forth the order in which individuals are given priority as surrogates in making health care decisions. If there is no advance directive and no guardian, or the guardian and all agents named in the Directive are unavailable, then a surrogate can serve as agent for the person requiring care (“patient”), in the following order of priority:

- Spouse (unless legally separated or pending divorce)
- Significant other (no gender restrictions)
- Adult child
- Parent
- Adult sibling
- Grandparent
- Adult friend who has demonstrated care and concern and knows the wishes of the patient.

The surrogate may not be an owner, operator or employee of the health facility where the patient is receiving care, unless she is also a blood relative.

In some cases there may be more than one family member in a category (such as adult children or siblings). If possible, it is best that the family members reach agreement as to who should act as surrogate. If they are unable to agree, then the medical care providers will accept the decision of the majority. If they are evenly divided concerning the health care decision to be made, then all such persons, and all others having lower priority, are disqualified from making the decision. In such a case, it may be necessary to appoint a guardian for the patient.

The surrogate may not be an owner, operator or employee of the health facility where the patient is receiving care, unless she is also a blood relative. The patient may also disqualify any proposed surrogate by informing her health care providers, verbally or in writing.

Once a surrogate decision maker has been selected (see instructions and suggested forms in Appendix F), she must promptly notify the patient and any family members that she has taken on the authority of making medical decisions for the patient. Some care providers may not want to recognize a surrogate decision maker’s authority on a long-term basis (although there is nothing in the statute that limits a surrogate’s authority to emergencies or short-term treatment). All authority terminates upon death of the patient.

Advance Directives for Mental Health Treatment - *For help with psychiatric treatment only.* This document is similar to the advance health care directive described above, except that it contains instructions regarding mental

health treatment. A competent person can state her preferences as to psychiatric treatment, and can appoint an agent to make decisions on her behalf. The agent may not be an attending qualified health care professional or an owner, operator or employee of the facility where the patient is receiving care, unless she is also a blood relative.

This directive covers a wide range of preferences, including medications, doctors, and care for minor children in the event of a psychiatric emergency. Unless the document states that the agent's authority takes effect immediately, such authority takes effect only upon a certification that the principal lacks capacity and ceases to be effective upon a determination that the principal has regained capacity. All authority terminates upon death of the principal. (See statutory form on the Guardianship Alliance New Mexico website, or call (505) 216-1133 to request a printed copy.)

For more information, see the New Mexico Mental Health Care Treatment Decisions Act.

Alternatives to Conservatorship

Durable Powers of Attorney -

For help with legal and financial matters. Any adult who has capacity (the "principal") can create a legal document appointing someone (an "agent") to carry out her wishes with regard to her legal and financial affairs in the event she is no longer capable of making or communicating such decisions. The principal decides whether the power of attorney (POA) becomes effective when she signs it or only after she becomes incapacitated. (See statutory form

POA's can only be created or changed by the principal (no one else can do it for her), and the principal can revoke it at any time (as long as she has capacity).

on the Guardianship Alliance New Mexico website, or call (505) 216-1133 to request a printed copy.)

The POA gives the agent authority to act on the principal's behalf, but it does not take away the power of the principal to continue to act on her own behalf. The principal chooses the areas in which the agent has authority, or states that the agent has full authority. She can also choose who she would prefer to serve as her guardian in the event that one is appointed in the future.

POA's can only be created or changed by the principal (no one else can do it for her), and the principal can revoke it at any time (as long as she has capacity).

"Durable" powers of attorney remain in effect even after the principal has become incapacitated. No court appointment is necessary. All of the agent's authority

terminates upon the death of the principal. For more information, see the New Mexico Uniform Power of Attorney Act.

Representative Payee - *For help managing Social Security, VA or other pension benefits.* This may be an appropriate choice for people who receive only Social Security benefits, Veterans (VA) benefits or pensions that allow another person to serve as representative payee. Benefits are paid directly to the "rep payee," who signs an agreement with the relevant agency (i.e., Social Security) to manage the benefits of an individual who is unable to handle her own finances. The funds are deposited into an account in the

individual's name, but only the rep payee has access to the account. No court appointment is required. An annual accounting must be filed with Social Security.

Trusts - *For handling finances and/or property on someone else's behalf.* Anyone who has capacity can create a "revocable trust" in which she appoints someone ("successor trustee") who she wants to take over her affairs when she becomes incapacitated and/or upon her death. If the person who created the trust becomes incapacitated, the successor trustee can begin managing her finances by obtaining two letters from

physicians confirming the incapacity. No court appointment is required, and the trustee has no obligation to make any reports to the court.

If certain criteria are met, a "special needs trust" can be established for a disabled person who is receiving SSI benefits without jeopardizing her eligibility for such benefits. The funds are not paid directly to the disabled person, but are paid to others on her behalf. No court appointment is required.

For more information on trusts and other estate planning options, please consult an attorney.

Chapter 8

Legal Procedure for Appointment of Guardians and Conservators

If an adult is unable to manage her own affairs or understand the consequences of her actions, she may be considered "incapacitated." Family members, friends or others who are concerned for her safety can ask the court to appoint a guardian to make decisions for her and to monitor her care and safety.

Alternatives to guardianship must be thoroughly considered before a petition for guardianship is filed with the court (see Chapter 7). Once the decision has been made to pursue guardianship, the following steps are followed:

Family members, friends or others who are concerned for her safety can ask the court to appoint a guardian to make decisions for her and to monitor her care and safety.

- A family member, friend or other interested party files a petition for appointment of a guardian with the district court in the county where the "alleged incapacitated person" resides (usually through an attorney). The petition must include:
 - The names of family members and any formerly-appointed decision makers for the alleged incapacitated person.
 - A description of diligent efforts made by the petitioner to locate relatives and current or former decision makers for the alleged incapacitated person.
 - The birth date of the alleged incapacitated person.

- The names and contact information for two persons who would be able to contact the proposed guardian if her contact information changes.
- A statement as to whether the proposed guardian has ever been convicted of a felony.

- A statement as to whether the proposed guardian is currently serving as guardian for any other persons, and if so, the number of such persons, the type of guardianships, and their relationship

to the proposed guardian.

- The following persons are nominated in the petition for guardianship:
 - Proposed guardian—The person who is asking the court to appoint a guardian (usually a family member). This is often, but not always, the petitioner and can be a person or an organization.
 - Guardian ad litem—An attorney appointed by the court to communicate the alleged incapacitated person's preferences to the court and to protect her interests. She can choose to be represented by an attorney of her choice instead of a guardian ad litem.
 - Court visitor—A professional who is qualified to assess the level of

functioning of the alleged incapacitated person. She interviews family members, caregivers, service providers and anyone else who can provide information regarding the proposed protected person's history and current condition. The visitor is usually a nurse or a mental health professional, such as a social worker, counselor or psychologist, although other qualified professionals can also serve this role.

- Qualified health care professional— A physician, psychologist, nurse practitioner or other health care provider who assesses the alleged

incapacitated person's level of functional impairment and submits a report to the court stating an opinion as to whether she requires the assistance of a guardian or conservator.

The alleged incapacitated person must be personally served with a copy of the petition for guardianship.

- The alleged incapacitated person is entitled to a trial by jury.
- If there is an emergency situation that threatens the safety of the alleged incapacitated person, a temporary guardian may be appointed to take care of immediate and pressing needs pending determination on whether she is an "incapacitated adult" and a permanent guardian is needed.
- If the alleged incapacitated person has limited funds, court fees for filing the petition for guardianship can be waived upon the filing of an Affidavit of

Indigency with the court. The judge may also appoint a guardian ad litem who is paid by the court.

- If the alleged incapacitated person has very limited resources and income, the Office of Guardianship may provide an attorney, guardian ad litem and/or court visitor for the guardianship proceeding. If there are no family members or others who can serve as guardian, the Office of Guardianship may also provide a guardian who is paid by the state. (See Appendix E)

- The alleged incapacitated person must be personally served with a copy of the petition for guardianship.

- The person(s) who petitioned the court, the alleged incapacitated person's immediate family members, any formerly appointed decision makers (such as an agent under a

power of attorney or a trustee), the guardian ad litem, the court visitor, the qualified health care professional and the proposed guardian all receive copies of the petition and notice of the hearing date, and are entitled to attend the hearing.

- A hearing date is set, and the guardian ad litem, court visitor, and qualified health care professional are appointed by the court to do interviews and assessments prior to the hearing. In their reports they will make recommendations as to whether a guardian is needed and, if so, whether the proposed guardian is the most appropriate choice.

- The court visitor and qualified health care professional are required to file reports with the court. The guardian ad litem's report to the court can be given verbally at the hearing, although it is recommended that a written report also be filed.
- Guardianship hearings are "sequestered," meaning that no one will be allowed in the courtroom who is not directly involved in the guardianship proceeding.
- The judge may ask anyone at the hearing to testify or answer questions about the alleged incapacitated person's ability to care for herself and her level of functioning. The guardianship will only be granted if the court is satisfied that there is clear and convincing evidence of incapacity.
- If the judge agrees that a guardian is needed, the court will approve an order that has been prepared by the attorneys in the case, and Letters of Guardianship will be issued giving the guardian authority to act. If the alleged incapacitated person can make some decisions on her own, the guardianship should be limited to only certain areas of her life ("limited guardianship").
- The process for initiating a conservatorship is similar to that for appointing a guardian. The court may require that a conservator provide a bond in the amount of the value of the conservatee's estate.

The court may require that a conservator provide a bond in the amount of the value of the conservatee's estate.

- A legally incapacitated adult can write to the court at any time requesting a change or termination of guardianship. Once guardianship is ordered, only the court can restore an incapacitated adult to limited or full legal capacity.

The New Mexico Probate Code governs guardianship and conservatorship proceedings.

Who Can Be Appointed Guardian

The proposed guardian must be a competent adult who is deemed by the court to be qualified for appointment. The priority for appointment is set forth in the statute in the following order:

- Guardian or like fiduciary appointed by another court
- Person previously nominated or designated in writing to serve as guardian or agent
- Spouse
- Adult child
- Parent
- Relative with whom resided for over six months
- Person nominated by a person caring for the alleged incapacitated person or paying benefits to her
- Any other person.

If at all possible, the family members should reach an agreement as to who should be nominated as the proposed guardian. If there is a great deal of conflict and disagreement among family members, the judge may decide to appoint a guardian

who is not a family member, such as a professional guardian.

Criteria for Selecting Guardian

When determining who is best qualified to be appointed as guardian, the judge must consider:

- Preferences of the alleged incapacitated adult, giving the most weight to written documents signed when she was still competent
- The geographical location of the guardian, as compared to that of the alleged incapacitated adult
- The relationship between the proposed guardian and the alleged incapacitated adult
- The proposed guardian's ability to carry out the duties of guardian
- Any potential financial conflicts of interest

The judge may pass over anyone having priority to be appointed as guardian and choose someone with a lower priority.

The judge may pass over anyone having priority to be appointed as guardian and choose someone with a lower priority. The final decision as to who is the most appropriate choice as guardian rests with the judge.

Procedure for Appointment of Treatment Guardian

A treatment guardian is appointed by a Mental Health Court when the judge determines that the "client" is found to be unable to make her own mental health decisions. Usually the treatment guardian is appointed in connection with the involuntary commitment to a psychiatric

hospital of a person who is assessed as being a danger to herself or others.

If a mental health professional or any other "interested person" believes that the client is incapable of giving informed consent, he or she may file a petition with the Mental Health Court asking that the client be involuntarily committed to a psychiatric hospital and a treatment guardian be appointed to make mental health decisions on the client's behalf.

The treatment guardian must make decisions based on whether the proposed treatment appears to be in the client's best interest and is the least drastic option available. When making decisions, the

treatment guardian must consult with the client, to the greatest extent possible, and consider the client's expressed opinions and preferences. She must also give consideration to any previous decisions made by the client in similar situations when the client

was able to make her own decisions.

An involuntary commitment requires an assessment of the client by a mental health professional, such as a psychologist or psychiatrist, and a determination that there is the likelihood of serious harm to herself or others and that she would probably benefit from psychiatric treatment. Once this determination has been made, the client can be admitted to a psychiatric hospital for observation and treatment.

If the health care professional determines that the client requires involuntary commitment to the psychiatric hospital, a petition must be filed within five

days of admission. If the court determines that the client would most likely benefit from further treatment, it may appoint a treatment guardian and authorize involuntary commitment for up to 30 days. A petition may be filed requesting an extension of the commitment for longer periods of time, up to six months per extension, for a total of one year. The client is entitled to be represented by an attorney, and if she cannot retain counsel, an attorney will be provided for her.

If the client already has a full (plenary) guardian at the time of the commitment proceeding, then that guardian must receive a copy of the petition for appointment of a treatment guardian and also has priority to be selected as treatment guardian. The Mental Health Court must consider the opinion of the guardian in involuntary commitment proceedings.

For more information, see the New Mexico Mental Health and Developmental Disabilities Code.

Chapter 9

Modification or Termination of Guardianship

A guardianship can only be terminated or modified by the Court. The guardian, the protected person, or anyone interested in her well-being can request modification or termination of a guardianship (and the same is true in conservatorships).

Change in Level of Guardianship

The protected person or anyone interested in her well-being can ask the Court to terminate the guardianship or to change from full guardianship to limited guardianship. In order to do so, it must be shown that the protected person has regained partial or full capacity for decision-making. This is usually accomplished by obtaining a psychological evaluation (preferably a neuropsychological evaluation) from a health care professional who is treating the protected person.

A guardianship may be modified if circumstances change, such as an increase or decrease in the protected person's ability to make decisions on her own. For example, a protected person who has had a traumatic brain injury may recover some of her cognitive abilities and may need a limited guardian instead of a full/plenary guardian. Or, a protected person who has dementia may lose more of her cognitive abilities due to the progression of the dementia.

Recent changes to the Probate Code in 2009 made it easier for the Court to change the level of guardianship from full to limited, by allowing the judge to do so by

The protected person or anyone interested in her well-being can ask the Court to terminate the guardianship or to change from full guardianship to limited guardianship.

way of an informal process that does not require appointment of a court visitor or guardian ad litem. Changing the level of guardianship from limited to full still requires the full process, including appointment of a court visitor and guardian ad litem, as well as a noticed hearing.

Replacement of Guardian or Conservator

Only the Court has authority to remove the appointed guardian and/or conservator. This may be done at the request of the

protected person, the guardian or conservator, or an interested third party who asks the Court to make such a change.

The protected person has the right to request that the court remove an appointed guardian or conservator and replace her with someone else. However, the Court can decide to deny her

request if it determines after reviewing all of the evidence and hearing relevant testimony that the current guardian is the most appropriate choice available.

The guardian or conservator can petition the Court to resign (withdraw) and be replaced by someone else. Some judges are hesitant to allow a guardian or conservator to resign unless there is another appropriate person available to be appointed in her place. The guardian and conservator must file a final report with the Court as soon as possible after she resigns.

The Court can also replace the guardian if she becomes incapacitated or dies. In the

case of a parent who is guardian for an adult child, the parent can specify her choice for successor guardian in her will. Of course, the person nominated as successor by the parent/guardian must be approved by the Court.

A guardian or conservator can also be replaced by the Court pursuant to the request of any person who is interested in her welfare. For example, a care provider who believes that the guardian or conservator is not acting in the best interests of the protected person or conservatee can write a letter to the judge with jurisdiction over the guardianship and request that the judge set a hearing date and determine whether the guardian or conservator should be replaced.

Death of Protected Person

Upon the death of the protected person, the guardian's authority ends. The guardian must notify family members and any other appropriate persons, including service providers. The guardian must also notify the Court of the death by filing a final report and attaching a certified copy of the death certificate. The guardian (or her attorney) must also file a formal motion to terminate the guardianship and submit a proposed order for the judge to sign making the termination official (see forms in Appendix F).

If the guardian has the protected person's will or knows where it is stored, she must deliver it to the Court for safekeeping and inform the personal representative named in that will that this has been done.

If the protected person is not survived by a competent family member or other interested person is not available, the guardian may need to arrange for the body to be transported to a funeral home and make funeral and burial arrangements for the protected person (unless a burial plan already exists). The guardian may seek burial services through the Veterans Administration, if the protected person was a veteran. She may also apply for assistance with burial costs from state or local agencies and community organizations if the protected person did not have sufficient funds to pay for the burial.

If the guardian was also representative payee for pension, Social Security or Veterans' benefits for the protected person, she must send a copy of the death certificate to the pension fund, Social Security Administration or Veterans' Administration and follow the guidelines for handling such benefits upon the death of the beneficiary.

The guardian must also notify the Court of the death by filing a final report.

Death of Conservatee

Upon the death of the conservatee, the conservator must notify family members and any other appropriate persons and organizations. The conservator must also notify the court of the death by filing a final report and accounting. The conservator (or her attorney) must also file a formal motion to terminate the conservatorship (with death certificate attached, if possible) and submit a proposed order for the judge to sign making the termination official.

If the conservator knows who is named as the personal representative in the conservatee's will, she should contact her

so that a probate proceeding can be initiated or legal counsel retained to help dispose of the remaining funds and property. Pending official appointment of a personal representative for the estate, the conservator has a duty to protect the estate assets and keep property safe. Once the personal representative of the conservatee's estate is appointed by the Court, the conservator must deliver to her all of the funds and property remaining in her possession.

If the conservatee is not survived by a competent family member or other interested person is not available, the conservator may need to arrange for the body to be transported to a funeral home and make funeral and burial arrangements for the conservatee (unless a burial plan already exists). The conservator could work together with the guardian (if any) to seek burial services through the Veterans Administration, if the conservatee was a veteran. She may also apply for assistance with burial costs from state or local agencies and community organizations if the conservatee did not have sufficient funds to pay for the burial.

If the conservator was also representative payee for pension, Social Security or Veterans' benefits for the conservatee, she must send a copy of the death certificate to the pension fund, Social Security Administration or Veterans' Administration and follow the guidelines for handling such benefits upon the death of the beneficiary.

Chapter 10

New Mexico Best Practices for Guardianship

Best Practices for Guardians

1. A guardian obtains authority only pursuant to establishment of a guardianship and appointment as guardian under applicable New Mexico law and the processes and procedures of the district courts of New Mexico.
2. A guardian follows the laws of the State of New Mexico and the rules of court that govern the establishment of guardianships and the rights, powers and duties of guardians.
3. A guardian exercises only those rights, powers and duties as authorized in the court's appointment and the laws of New Mexico and determined by needs of the incapacitated person ("protected person") and the type of guardianship established.
4. A guardian follows the orders of appointment and/or letters of guardianship as entered by the courts of New Mexico.

A guardian apprises the Court of changes in the status of the protected person that affect the continued need for a guardianship or lack thereof...

the specific provisions contained therein, as well as the ability of the guardian to comply with assigned duties and responsibilities. If a guardian is not in agreement with such orders or Letters, the guardian seeks clarification from the court or revision of the orders and/or Letters before such are entered by the court.

3. A guardian reports the status of the guardianship and the protected person to the court at regular intervals as determined by New

Mexico law and the rules of court.

4. A guardian apprises the court of changes in the status of the protected person that affect the continued need

for a guardianship or lack thereof (i.e., address, decreased autonomy, recovered capacity, etc.), or that warrant a change or limitation in the authority of a guardian over the protected person (i.e., rights, powers and duties), or that require termination of the guardianship (i.e., recovered capacity, death, or circumstances of the guardian which require removal).

5. A guardian initiates or responds to a request to conduct a review of the guardianship at least once every 10 years.

Relationship to Court

1. A guardian appointed by a court and given certain specific rights, powers and duties, acknowledges and respects the court's authority and supervisory role over the guardianship and the guardian.
2. A proposed guardian reviews proposed orders of appointment and/or Letters of guardianship to assure agreement with

Relationship to Protected Person

1. A guardianship is utilized only as necessary to promote and to protect the well being of a protected person. A guardian's authority is limited to the type of guardianship established by the court and the rights, powers and duties necessary to assist with a protected person's actual physical and/or mental functional limitations.
2. A guardian appointed by a court in New Mexico makes decisions regarding the care, custody or control of a protected person, as authorized by an order of appointment and/or Letters of guardianship entered by the court.
3. A guardian respects the protected person's right to privacy and confidentiality in all situations and only discloses information that is relevant and necessary in order to perform her duties and responsibilities as guardian.
4. A guardian acknowledges and respects a protected person's autonomy and self-determination by encouraging self-reliance and independence.
5. A guardian consults with the protected person and acknowledges and respects her values, beliefs, desires and wishes when making decisions on behalf of the protected person.

A guardian acknowledges and respects a protected person's autonomy and self-determination by encouraging self-reliance and independence.

regulations and the extent to which information known about a protected person may be shared with that individual's family members or friends. A guardian communicates with family and friends, to the extent permitted by such laws and regulations, in order to share information that will benefit the protected person (i.e., to maintain beneficial relationships, support of family and friends, and to advise of any significant occurrences or events that may affect the protected person).

2. A guardian utilizes the resources of a protected person's family members and friends, when appropriate and beneficial to the protected person, in determining the personal values, beliefs, desires and wishes expressed by the protected person while having capacity.
3. A guardian requests and considers information from a protected person's family members and friends, when appropriate and beneficial to the protected person, in making health care and/or mental health treatment decisions on behalf of the protected person that are in the best interests of such protected person when there is no evidence of the protected person's personal values, beliefs, desires and wishes regarding such matters.

Relationship to Family Members and Friends of Protected Person

1. A guardian acknowledges and respects confidentiality and privacy laws and

Relationship to Professionals and Service Providers

1. The guardian treats all professionals and service providers with courtesy and respect and strives to enhance cooperation on behalf of the protected person.
2. A guardian maintains the protected person's right to confidentiality in all situations and only discloses information to professionals and service providers that is relevant and necessary in order to obtain and monitor quality care and services for the protected person.
3. The guardian develops and maintains a working knowledge of the services, providers and facilities available in the community.
4. The guardian becomes familiar with prescriptions and treatments the protected person is receiving and consults with professionals and service providers regarding possible alternatives.
5. The guardian stays current with changes in community resources to ensure that the protected person receives high-quality services from the most appropriate provider.
6. A guardian who is not a family member does not provide direct services to the protected person.
7. The guardian coordinates and monitors services needed by the protected person to ensure that the protected person is receiving the appropriate care and treatment.
8. The guardian engages the services of professionals (attorneys, accountants, stockbrokers, real estate agents, doctors, case managers and others) to appropriately meet the needs of the protected person.
9. The guardian establishes contact with and develops a regular pattern of communication with the conservator of the estate of the protected person, trustee of any trust of which the protected person is a beneficiary, or with any other fiduciary for the protected person, if such persons exist.
10. The guardian maintains substantive communication with service providers, caregivers, and others attending to the protected person and promptly responds to all phone calls, correspondence, emails and other communications from service providers.
11. The guardian participates in all care or planning conferences concerning the residential, educational, vocational or rehabilitation program of the protected person.

The guardian participates in all care or planning conferences concerning the residential, educational, vocational or rehabilitation program of the protected person.

12. The guardian requires that each service provider develop an appropriate service plan for the protected person and takes appropriate action to ensure that the service plans are being implemented.

13. The guardian regularly examines all services and all charts, notes, logs, evaluations and other documents regarding the protected person at the place of residence and at any program site to ascertain that the care plan is being properly followed.

14. The guardian advocates on behalf of the protected person with staff in an institutional setting and other residential placements.

15. The guardian assesses the overall quality of services provided to the protected person, using accepted regulations and care standards as guidelines, and seeks remedies when care is found to be deficient.

16. The guardian ensures that all medical care necessary for the protected person is appropriately provided.

17. The guardian may speak directly with the treating or attending physician before authorizing or denying any medical treatment.

18. The guardian seeks a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in

circumstances where any medical intervention poses a significant risk to the protected person. The guardian may obtain a second opinion from an independent physician, if the guardian considers it necessary to do so.

19. In the event of an emergency, a guardian who has proper authority grants or denies authorization of emergency medical treatment based on a reasonable assessment of the situation, within the time allotted by the emergency.

20. Under extraordinary circumstances, in addition to assessing the situation in an emergency, the guardian

enlists ethical, legal and medical advice, with particular attention to the advice of ethics committees in hospitals or

elsewhere.

21. The guardian is responsible for protecting the rights of the protected person from infringement by third parties.

22. When necessary, an attorney or other agent shall be retained by the guardian to represent and advocate on behalf of the protected person in negotiations or litigation. In such cases, it is the guardian, acting in the best interest of the protected person, who must give informed consent for legal decisions made on behalf of the protected person. Nevertheless, it is the responsibility

The guardian is responsible for protecting the rights of the protected person from infringement by third parties.

of the guardian to use due diligence in determining and utilizing the preferences of the protected person.

Best Practices for Court Visitors

1. Prior to meeting the proposed protected person, the court visitor consults with care providers, family members, case managers or others who can provide insight regarding the need to utilize caution in approaching certain subjects with the protected person during an interview in order to minimize the potential for distress to the protected person.
2. The court visitor meets, interviews, and consults with the proposed protected person regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed protected person can reasonably be expected to understand.
3. If possible, the court visitor meets with the proposed protected person more than once in order to gain a more comprehensive understanding of her level of functioning.
4. To the greatest extent possible, the court visitor ascertains the proposed protected person's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed

If possible, the court visitor meets with the proposed protected person more than once in order to gain a more comprehensive understanding of her level of functioning.

guardianship, and the scope and duration thereof.

5. The court visitor visits the proposed protected person's present place of residence and proposed place of residence, if any.
6. The court visitor discusses a lesser restrictive alternative resource plan with the proposed protected person, if appropriate.
7. The court visitor interviews the person seeking appointment as guardian, as well as members of the proposed protected person's family, care providers, the qualified health care professional, the guardian ad litem appointed for the proposed protected person, and anyone else who may have information that can help the visitor make a recommendation to the court regarding the appropriateness of a guardianship for the proposed protected person and whether the proposed guardian is the best choice as guardian.
8. The court visitor reviews all medical records or other documents that contain information that will be useful to the visitor in making a recommendation to the court regarding the level of functioning of the proposed protected person, the appropriateness of a guardianship,

and whether the proposed guardian is the best choice as guardian.

9. The court visitor obtains other relevant information as directed by the court (such as in an emergency guardianship).
10. The court visitor submits a written report to the court containing the following:
 - a. A description of the nature and degree of any current impairment of the proposed protected person's understanding or capacity to make or communicate decisions;
 - b. A statement of the qualifications and appropriateness of the proposed guardian;
 - c. Recommendations, if any, on lesser restrictive alternatives to guardianship that may be appropriate for the proposed protected person;
 - d. A description of rights that can be retained by the proposed protected person in a limited guardianship, and the specific areas in which the guardian's authority should be limited;
 - e. An assessment of the capacity of the proposed protected person to perform his or her activities of daily living, both with and

without the assistance of a guardian; and

- f. An opinion as to whether the protected person requires the appointment of a guardian, and whether the proposed guardian is the most appropriate choice as guardian.

Best Practices for Guardians ad litem

1. In order to fulfill his statutory obligations, the guardian ad litem ascertains the proposed protected person's views and preferences concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof, and communicates these views and preferences to the court.
2. A lawyer appointed to act as a guardian ad litem by definition protects the best interests of the proposed protected person.
3. Prior to meeting the proposed protected person, the guardian ad litem consults with care providers, family members, case managers or others who can provide insight regarding the need to utilize caution in approaching certain subjects with the protected person during an interview in order to minimize the potential for distress to the protected person.

The guardian ad litem discusses a lesser restrictive alternative resource plan with the proposed protected person, if appropriate.

4. The guardian ad litem meets, interviews, and consults with the proposed protected person regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed protected person can reasonably be expected to understand.
5. If possible, the guardian ad litem meets with the proposed protected person more than once in order to gain a more comprehensive understanding of her level of functioning.
6. The guardian ad litem discusses a lesser restrictive alternative resource plan with the proposed protected person, if appropriate.
7. When allowed by the court order appointing the guardian ad litem, the guardian ad litem reviews all medical records or other documents that contain information that will be useful to the visitor in making a recommendation to the court regarding the level of functioning of the proposed protected person, the appropriateness of a guardianship, and whether the proposed guardian is the best choice as guardian.
8. The guardian ad litem may request an independent evaluation of the level of functional impairment of the proposed protected person, if she believes it is warranted.
9. The guardian ad litem should submit a written report to the court containing the following:
 - a. The stated position of the proposed protected person with regard to the appointment of a guardian;
 - b. A statement as to whether the guardian ad litem believes that the appointment of a guardian would serve the best interests of the proposed protected person; and
 - c. Recommendations, if any, on lesser restrictive alternatives to guardianship that may be appropriate for the proposed protected person.

Best Practices for Service Providers

The service provider contacts the guardian for consent in any situations in which the parent of a minor child would need to be contacted for consent.

1. A service provider acknowledges that the guardian has the same rights and responsibilities toward the protected person as a parent has toward her unemancipated minor child.
2. The service provider contacts the guardian for consent in any situations in which the parent of a minor child would need to be contacted for consent.
3. The service provider notifies the guardian in the event of an accident or a change in the condition of the protected person.
4. The service provider ensures that all staff have access to training regarding the role of the guardian in the life and care of the protected person.
5. The service provider does not ask the protected person to give informed

consent in areas where the guardian has been given authority as decision maker.

6. The service provider maintains regular communication with the guardian and invites her to all meetings concerning the protected person and promptly responds to all phone calls, correspondence, emails and other communications from the guardian.
7. The service provider makes an earnest effort to resolve any conflict or disagreements with the guardian with regard to meeting the needs of the protected person.
8. The service provider answers questions and addresses concerns of the guardian and provides the guardian with information needed to make a decision and give informed consent on behalf of the protected person.
9. The service provider includes the guardian in discussions regarding creation of a service plan (or plan of care) for the protected person.
10. If the Letters of Guardianship give the guardian authority over medical decisions, the service provider gives the guardian unrestricted access to medical records and other information regarding the protected person that may be requested by the guardian.
11. The service provider does not expect that a guardian who is not a family member to provide direct services to the protected person.
12. The service provider makes every effort to speak with the guardian regarding care options in order to provide her with the information she needs to make an informed decision.

Chapter 11

Frequently Asked Questions

Can a person be her own guardian?

No. A person who is able to make sound decisions on her own and has not been determined to be incapacitated by the Court does not need a guardian, which is different from being her own guardian. If she is incapacitated, then she is not a competent adult and therefore cannot be appointed as guardian for anyone.

When can a person give her own consent to treatment and other decisions?

A person can give her own informed consent when all of the following are true: (a) she has not been found to be legally incapacitated by a court (such as in a guardianship proceeding); (b) the person can demonstrate an understanding of the nature, purpose, consequences, risks, benefits and alternatives to the service or treatment; and (c) the decision or choice is made freely, without duress or undue influence.

Do parents automatically become or continue to be guardians for a child with a disability when that child becomes 18 years of age?

No. Parental rights over a child end when that child legally becomes an adult at the age of 18. Unless the parents go to court to be appointed as guardians, they no longer have any legal right to receive confidential information about or make decisions for an adult child.

What happens if a parent does not pursue guardianship or conservatorship when the child becomes 18 years of age?

If the child becomes an adult at age 18 and makes decisions that could result in harm, a guardianship may be needed. Unless the parent is appointed as guardian, her ability to make decisions for an adult child is limited. For example, if a parent is not her adult child's guardian, it may be difficult to make decisions if a doctor does not believe her child has the ability to consent to medical treatment. The doctor could refuse to treat her child due to lack of ability to give informed consent, and the parent would not have the legal authority to consent to the treatment on her child's behalf.

Does an incompetent adult always need a guardian?

No, there are many ways to meet the needs of an incompetent person without having to file for guardianship. (For more information on alternatives to guardianship, see Chapter 7.)

Can the protected person vote, sign a will, get married or have a sexual relationship?

Yes, unless the court has stated that she is unable to do so. A guardianship or conservatorship does not automatically remove these rights. If the guardian is unsure as to whether the protected person is able to exercise these rights, she should ask the court to make a ruling on the issue.

What is the difference between a guardian and a conservator?

A guardian makes personal decisions, such as where to live, and what medical, educational and professional services a person might need. A conservator makes

decisions regarding money and property. If a protected person is “indigent,” or has little or no property or money, and therefore has no conservator, the guardian can ask the Court to grant the guardian limited authority over the protected person’s property and money.

Can a person serve as both guardian and conservator?

Yes, and this is often the case. It is also possible for two different people to serve these roles, with the conservator handling financial matters and the guardian handling care and personal needs. In that case, it is important that the guardian and conservator communicate with each other regarding the needs of the protected person and respect each other’s authority. For example, the guardian cannot obtain the care she believes is best for the protected person if the conservator does not agree to pay for that care.

Is there a certain amount of time that a guardian is required to spend performing her duties?

No, but she should use good judgment in deciding how much time is needed to fully understand and address the protected person’s needs. The National Guardianship Association recommends that a guardian visit a protected person at least once a month. If the guardian lives far away, she can arrange to have someone else visit the protected person on her behalf. However, only the guardian can make decisions or sign consent forms.

Does the guardian or conservator have a responsibility to financially support the protected person?

No, the guardian or conservator does not have a duty to support the protected

person just because she has been appointed by the court. If the guardian is a parent, that parent’s duty to support her child ends at the age of 18. An exception would be if the guardian is a spouse, as New Mexico law does require a husband or wife to support the spouse, or if there is some other legal arrangement other than the guardianship that creates a duty to support.

Is a guardian or conservator legally liable if the ward destroys property?

No. The fact that a person is guardian or conservator does not make her personally liable for damages resulting from the acts of the ward. The only exception is when the guardian or conservator is negligent in performing her duties and this negligence causes or contributes to the loss.

Can a protected person sign powers of attorney or advance health care directives?

No, unless the court order specifically states that the protected person retains the right to make her own health care decisions. The guardian also cannot sign these documents on her behalf.

If the protected person has an advance directive for health care naming someone else to make medical decisions, and I have just been appointed as guardian, who makes the health care decisions?

Under New Mexico law, the person named in the health care directive (“agent”) will continue to make health care decisions, unless the order appointing the guardian states that the agent’s authority is revoked and the guardian is to make medical decisions.

Can the guardian admit the protected person to a long-term care facility, if appropriate?

Yes, with a doctor’s order. However, if the protected person is vigorously resisting a move to a facility, it is advisable to ask the Court for an order authorizing the move. A guardian does not have the authority to admit a protected person to a psychiatric hospital or residential treatment program against her will, but may request that she be evaluated by a psychologist or psychiatrist for involuntary commitment to such a facility.

Is it the guardian’s responsibility to obtain benefits for the protected person, such as Medicaid, Social Security, Veterans benefits or Food Stamps?

Yes. It is the guardian’s responsibility to submit applications and to file appeals when benefits are denied, if appropriate. If the protected person has a conservator, the guardian should work cooperatively with the conservator to obtain benefits.

When arranging for services, is there certain information that should be kept confidential and not be disclosed?

Yes. Although it is necessary for the guardian to discuss the protected person’s history and needs, the guardian and conservator should refrain from discussing any details regarding the protected person’s finances or care with people who are not directly involved. Information should be given out on a “need to know” basis only, if it is in the best interests of the protected person. This is also true when sharing information with family members or friends of the protected person.

What authority does the guardian have to restrict the protected person’s ability to visit or associate with others?

The protected person has the right to choose who can visit with her, unless the choices she makes proves to be harmful. Unless the court’s order specifically states that the protected person retains this right, the guardian may have authority to restrict visitors or phone calls, if there is a good reason to do so. If the guardian finds it necessary to do so, she must document the reasons that she needs to do so. It is best to have the Court address this issue and include appropriate language in the order.

Can a guardian sign a consent form which allows a care provider to not resuscitate the protected person in the event her heart stops?

If the protected person has no advance directive or she signed an advance directive giving decision-making authority to the person serving as guardian when the protected person was competent, then the guardian can make medical decisions and sign consents. When doing so, the guardian must make decisions that are consistent with the values and wishes expressed by the protected person when competent, if known. If the protected person gave written or verbal instructions regarding her care to a health care provider while she was competent, then the guardian cannot reverse such instructions without returning to the court for approval.

What if the guardian or conservator will be temporarily unable to act?

By the use of a power of attorney, a guardian may delegate to another person, for a period not exceeding six (6) months, any power she has been granted by the court regarding care, custody, or property

of a protected person (see form in Appendix F). Although the guardian can delegate her authority, she still retains full responsibility as guardian. This provision is useful if a guardian is unable to perform her duties due to health or other reasons or will be out of the geographical area for an extended period.

When must the guardian file a report with the Court?

The guardian must file an initial report with the Court within 90 days of appointment. After the initial report, the guardian must file an annual report (due within 30 days of the anniversary date of the guardian's appointment). If there is no conservator and the guardian was given authority over financial decisions by the court, then the guardian must also file an inventory of the protected person's assets within 90 days of appointment and include information on financial decisions made in her annual reports. (See sample report of guardian in Appendix F.)

When must the conservator file a report with the Court?

The conservator must file an inventory of the protected person's assets within 90 days of appointment. Thereafter, the conservator must file an annual report and accounting, including details on all receipts and expenditures made (due within 30 days of the anniversary date of the conservator's appointment. (See sample inventory and accounting in Appendix F.)

What if the protected person is being neglected or abused, or is being exploited financially?

The guardian is required to immediately make a report to Adult Protective Services whenever she believes that the protected

person is being neglected, abused or exploited. If the protected person lives in a long-term care facility, the guardian can also make a report to the Ombudsman Program at the Aging and Long-Term Services Department. For the phone number of the Ombudsman Program serving a particular area, contact the Aging and Disability Resource Center. (See Appendix E for contact information.)

What if the guardian is neglecting or abusing the protected person or is exploiting her financially? If a service provider or anyone else has good reason to believe that the protected person is being neglected, abused or exploited by the guardian, she should immediately make a report to Adult Protective Services or, if appropriate, the Ombudsman Program (as described above).

Appendix A

Glossary of Terms

Following are some words and phrases commonly used when discussing guardianships and conservatorships:

Advance Health Care Directive - An individual instruction or a power of attorney for health care made, in either case, while the individual has capacity. (See *New Mexico Uniform Health Care Decisions Act, NMSA 1978, Section 24-7A-1.*)

Advocate - A person who assists, defends, or pleads, or prosecutes for another.

Agent - An attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an individual authorized to make decisions for another under a natural death act. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-501 (1995).*) Also, an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power. (See *New Mexico Uniform Health care Decisions Act, NMSA 1978, Section 24-7A-1.*)

Alleged Incapacitated Person - Individual for whom a guardianship proceeding has been initiated. (May

also be called the proposed protected person.)

Best Interest - That course of action that maximizes what is best for a protected person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible, given the needs of the protected person.

Capacity - Legal qualification, competency, power or fitness. Ability to understand the nature of the effects of one's acts.

Care/Case Management - A person who provides client-centered services to the elderly and disabled, and their families.

Competency - The mental ability to understand problems and make decisions.

Conservatee - A person for whom a conservator has been appointed by the court.

Conservator - A person appointed by a court to manage the property or financial affairs, or both, of an incapacitated person. (See *New Mexico Probate Code, NMSA 1978, Section 45-1-201 (1995).*) In some states the person appointed to handle financial matters is referred to as the "guardian of the estate."

Continuing Care Retirement

Communities – Housing available to seniors which provides both a place to live and assistance with medical needs based on a person's ability to function alone. Residents sign long term contracts and pay substantial fees to live in this type of community.

Court Visitor - A person who is an appointee of the court who has no personal interest in the proceeding for guardianship or conservatorship 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. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (1993)*.) The visitor interviews the alleged incapacitated person, family members, caregivers, and the proposed guardian and files a report to the court as to the need for guardianship and the appropriateness of the proposed guardian.

Dementia - A category of disorders marked by progressive loss of intellectual functioning. Memory loss is the most obvious symptom. There are a variety of causes, the most common being Alzheimer's Disease.

Developmental Disability - A severe, chronic disability of an individual 5 years of age or older that:

- A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- B. Is manifested before the individual attains age 22;
- C. Is likely to continue indefinitely;
- D. Results in substantial functional limitations in three or more of the following areas of major life activity:
 1. Self-care
 2. Receptive and expressive language
 3. Learning
 4. Mobility
 5. Self-direction
 6. Capacity for independent living
 7. Economic self-sufficiency; and
- E. Reflects the individual's need for a combination and sequence of events of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

Emergency Guardianship – A legal procedure in which the court can appoint a guardian, in a very short period of time, when there is a danger of serious, irreparable harm to a person in need of protection.

Functional Impairment - An impairment that is measured by a person's inability to manage his personal care or the person's inability to manage his estate or financial

affairs, or both. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (1995).*)

Guardian - A person appointed by a court to make personal and health care decisions for an incapacitated person who is impaired because of mental illness, dementia, physical disability or injury, or substance abuse. Personal care decisions include, but are not limited to, medical care, nutrition, clothing, shelter, hygiene, education and safety. A guardian's powers should include only those limitations and restrictions on the incapacitated person's decision-making authority as are necessary. All guardians must file an annual report with the court.

Corporate Guardian - A private agency authorized to serve as a guardian for an incapacitated person pursuant to court order.

Full (Plenary) Guardian - A person appointed to make all major decisions regarding the incapacitated person's care and safety. Under New Mexico law, an incapacitated person retains all human, civil and constitutional rights. A guardian has the same authority over an incapacitated person as a parent has over a minor child, although they are not responsible for supporting them financially.

Limited Guardian - A guardian who is appointed by the court to exercise

the legal rights and powers specifically designated by a court order when the court has determined that the incapacitated person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property. The court specifies the areas in which the incapacitated person requires assistance, and the guardian has authority in those areas only. All other decision-making authority is retained.

Temporary Guardian - A guardian whose authority is temporary (maximum 60 days unless extended by the court) and usually only appointed in an emergency or when the incapacity is expected to be temporary.

Testamentary Guardian - A person named in a will of a legal guardian or parent as the person to serve as guardian after the legal guardian or parent dies. Court approval of the appointment of the person named as guardian is required.

Treatment Guardian - A term used in the *New Mexico Mental Health and Developmental Disabilities Code* to mean a person who makes a decision on behalf of a client who does not have the capacity to give informed consent to psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving

aversive stimuli or substantial deprivations. The treatment guardian shall make a decision based on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. The treatment guardian only has the authority set forth in the mental health code, unless the treatment guardian has also been appointed as guardian under the guardianship statutes. Treatment guardians are appointed under the *Mental Health Code* rather than the *Probate Code*, and it involves different procedures.

Guardian ad Litem - An attorney appointed by the court to represent and protect the interests of a minor or an incapacitated person in connection with litigation or any other court proceeding. (See *New Mexico Probate Code, NMSA 1978, Section 45-1-201 (1995).*)

Guardianship – A legal procedure in which a court determines that a person is unable to act for him/herself and that he/she is in need of protection. The court appoints another person or an agency to act for the person in matters relating to his/her person, property or both.

Incapacitated Person - Any person who demonstrates over time either partial or complete functional impairment by reason of mental

illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he is unable to manage his personal affairs or he is unable to manage his estate or financial affairs or both. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (1995).*)

Incapacity - A legal term for a person's lack of ability to understand the nature of the effects of their actions.

Incompetency – A medical term for a person's limited or impaired mental ability to remember, to reason, to see the consequences of actions, or to plan for the future.

Informed Consent – Consent to treatment or other decisions given by a competent adult. For the consent to be informed, the person must understand the nature, the dangers, and the possible side effects of the course of action to be taken. If a person is mentally incompetent, the consent may be obtained from an agent, surrogate decision maker or guardian.

Interested Person - Any person who has an interest in the welfare of the person to be protected under the article of the New Mexico Probate Code dealing with the protection of persons under a disability. (See *Ne*

Mexico Probate Code, NMSA 1978, Section 45-5-101 (1995).)

Inventory – A list of all of the assets and income of the disabled person at the time a conservator is appointed. The conservator must file the inventory with the court within 90 days of being appointed.

Least Restrictive Form of Intervention - The guardianship or conservatorship imposed on the incapacitated person must represent only those limitations necessary to provide the needed care and rehabilitative services, and that the incapacitated person enjoy the greatest amount of personal freedom and civil liberties. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (1995).*)

Letters of

Guardianship/Conservatorship -

Formal document issued by the court granting a guardian or conservatorship authority to act on the incapacitated person's behalf.

Mental Status Exam – A test to determine a person's level of mental functioning.

Mini-Mental Status Exam – A commonly used test of a person's awareness, level of consciousness, attention span, ability to think in abstract terms, ability to follow directions, memory, use of language, and mathematical ability.

Petition - A formal, written request presented to a court. For example, in

a guardianship or conservatorship proceeding, a petition is the document filed to initiate the process for appointment of a guardian or conservator.

Power of Attorney - A document created by an individual with capacity (the "principal") that gives someone else ("the agent") the legal authority to act on their behalf, as their attorney-in-fact.

Durable Power of Attorney - A power of attorney that remains in effect even after the person who created it becomes incapacitated. Defined in *New Mexico Probate Code, NMSA 1978, Section 45-5-501 (1995).*)

Limited Power of Attorney - A power of attorney that gives legal authority to handle only certain areas of a person's life, such as for sale of a specific parcel of real estate.

Springing Power of Attorney - A power of attorney that is created by a person who has capacity but only comes into effect when they become incapacitated.

Principal - A person who creates a power of attorney giving someone else the legal authority to act on their behalf.

Protected Person - A person for whom a guardian has been appointed (formerly known as "Ward"). (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (2009).*)

Qualified Health Care Professional -

A physician, psychologist, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment. Their duties include examination and evaluation of the alleged incapacitated person and submission of a report to the court describing the nature and degree of their incapacity, if any, and their level of functioning. (See *New Mexico Probate Code, NMSA 1978, Section 45-5-501 (1995).*)

Representative Payee - An individual, agency or organization named by a governmental agency (such as Social Security or Veterans Administration) or other pension program to receive benefits on behalf of, and for the benefit of, the beneficiary entitled to such benefits.

Restoration of Legal Capacity - An incapacitated person can be restored to full legal capacity if the court becomes satisfied that they no longer need a guardian. The incapacitated person can initiate a review of guardianship status by sending an informal letter to the judge.

Substituted Judgment - The principle of decision-making which requires implementation of the course of action which comports with the individual's known wishes expressed prior to the appointment of the guardian or conservator, provided

the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains. Current opinions and desires of the individual shall be examined and are relevant to a determination of their views prior to appointment of the guardian.

Surrogate - An individual, other than a patient's agent or guardian, who is authorized under the *New Mexico Uniform Health Care Decision Act* to make health care decisions for a patient when no written advance directives are available. The priorities for surrogates under New Mexico law are: (1) patient's spouse; (2) significant other in long-term relationship with patient; (3) adult child; (4) parent; (5) adult sibling; then (6) grandparent. If none of these are available, health care decisions can be made by an adult who is familiar with the patient's personal wishes and values and has exhibited special care and concern. In order to designate a surrogate decision-maker, you must obtain statements from two health care professionals stating that the patient is unable to make her own health care decisions. (See suggested form in Appendix F. Also, see *New Mexico Uniform Health Care Decisions Act, NMSA 1978, Section 24-7A-1.*)

Treatment Guardian – See Guardian, Treatment.

Trust - An estate planning tool in which a person designates someone (a "trustee") to handle their assets upon their incapacity or death. Trusts should only be set up with the assistance of a licensed New Mexico attorney.

Revocable (Living) Trust - Because a person is able to name someone (a "trustee") to act for them in the event of their incapacity or death, it can be an alternative to guardianship and/or probate.

Special Needs Trust - A trust can be established for a disabled person who is receiving SSI benefits without jeopardizing their eligibility for such benefits. The funds are not paid directly to the disabled person, but are paid to others on their behalf.

Trustee - One who, having legal title to property, holds it in trust for the

benefit of another and owes a fiduciary duty to that beneficiary. Generally, a trustee's duties are to convert to cash all debts and securities that are not qualified legal investments, to re-invest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary in accordance with the directions contained in the trust instrument.

Ward - A term formerly used to describe a person for whom a guardian has been appointed (now known as a "Protected Person"). (See *New Mexico Probate Code, NMSA 1978, Section 45-5-101 (2009)*). The term "ward" is still used in many other states.

Appendix B

Guardianship Certification and Training

Guardianship Certification

The Centers for Guardianship Certification conduct examinations to certify National Certified Guardians (NCG), as well as National Master Guardians (NMG). Details on the requirements that must be met in order to take these exams is described in the Standards of Practice published by the National Guardianship Association (see Appendix D) and are also available on its website at www.guardianship.org.

Guardianship Training

Accredited training for guardians, service providers and legal professionals is sponsored by **Guardianship Alliance New Mexico**. Training is available through live seminar or through recorded seminars on DVD. Details can be found on the **Guardianship Alliance's** website at GuardianshipAllianceNM.org, or by calling (505) 920-2871. The types of training programs available include:

“Making Life Decisions for Adults: Balancing Safety and Autonomy”—Free 2 hour Workshops for Family Members Serving as Legal Guardians. Includes: how to make decisions for adults who are not able to make sound decisions; the difference between a power of attorney and a guardian; your role as advocate and your responsibility to respect the civil rights of your loved ones; your responsibilities to the Court, including preparing and filing reports.

“Incapacity, Consent and Confidentiality”—A seminar offering 6 Ethics CEUs for Counselors, Social Workers,

Case Managers, Nurses and Guardians. Includes: Ethical standards for working with incapacitated adults; alternatives to guardianship; difference between a power of attorney and a guardian; how a guardian is appointed; the role of the guardian or power of attorney on an inter-disciplinary team.

“Guardianship and Conservatorship in New Mexico”—5 General and 1 Ethics CLEs for Legal Professionals, including Attorneys, Judges and Paralegals. Includes: recent changes in guardianship laws; how orders prepared by attorneys affect the guardian's ability to be an effective advocate for the incapacitated adult they serve; alternatives to guardianship; procedure for appointing a legal guardian when necessary; ethical issues in guardianships.

“In-Service Training”—Presentations Designed to Meet your Specific Needs Provided in Your Facility. Includes: Ethical standards for working with incapacitated adults; difference between a power of attorney and a guardian; the role of the guardian or power of attorney on an inter-disciplinary team.

(Please visit our website to register and for updates on future seminar dates.)

Appendix C

National Guardianship Association (NGA)

Model Code of Ethics for Guardians

This document can be downloaded from NGA's website at

<http://www.guardianship.org/pdf/codeEthics.pdf>

Appendix D

National Guardianship Association (NGA)

Standards of Practice for Guardians

This document can be downloaded from NGA's website at

<http://www.guardianship.org/pdf/standards.pdf>

Appendix E

Resources

If you are looking for services and/or benefits to pay for services, here are some resources to consider:

- **Adult Protective Services (To Report Abuse, Neglect or Exploitation)**

Anyone who suspects that an adult is being abused, neglected or financially exploited has a legal obligation to make a report to Adult Protective Services (APS). Any concerned party can make a complaint by calling their 24-hour toll-free number at (866) 654-3219. The more evidence that you can provide of such abuse, the easier it will be for APS to thoroughly investigate and substantiate the complaint. For more information on the guidelines for investigations conducted by APS, call (505) 841-4500, or visit their website at http://www.nmaging.state.nm.us/Adult_Protective_Services_Division.html. If you are living in a facility, such as a nursing home or assisted living facility, APS will only investigate complaints alleging abuse or exploitation by persons in the community and will not consider complaints against the facility itself, or its staff. If you have complaints regarding the way you or a loved one are being treated by the facility, you should contact your Ombudsman at (866)451-2901.

- **Aging and Disability Resource Center**

For free information on all types of services for elders and persons with disabilities, call the Aging and Disability Resource Center at the New Mexico Aging and Long Term Services Department (ALTSD) at (800) 432-2080. Their counselors can help you locate services in every part of the state and also benefits that can pay for such services. They can also assist with how to locate low-cost prescriptions and select a Medicare drug plan. There is a great deal of other useful information on the ALTSD website at www.nmaging.state.nm.us. You can also consult their Social Service Resource Directory at www.nmresourcedirectory.org.

- **Alzheimer's Association.** Website: www.alz.org. Offers information about Alzheimer's research, support and care, including a 24-hour Help Line: (800) 272-3900.

- **Alzheimer's Foundation of America.** Website: www.alzfdn.org. Provides information about improving the quality of life for persons with Alzheimer's and offers 24-hour Hotline: (866) 232-8484.

- **Brain Injury Association (BIA) of New Mexico.** Website: www.braininjurynm.org. Offers information on brain injury resources, services, research, education, treatment, legislation, and more. Phone: (888) 292-7415 or (505) 292-7414.

- **Centers for Guardianship Certification (CGC).** Website: www.guardianshipcert.org. Telephone: (717) 238-4689. For names and contact information for certified and master guardians, as well as information on how to register for an exam for national certified guardians and national master guardians. CGC's website also contains information on continuing education for guardians.

- **Disability Information Online.** www.Disability.gov. A US government website with disability-related information and resources.

- **Department of Health**

If you believe that you or a loved one are receiving substandard care from a facility where they reside or from an agency that is providing in-home care, you can make a complaint with the New Mexico Department of Health by calling (800)752-8649. For more information on care providers in New Mexico and other services offered by the Department of Health, call (505)476-8925 or visit their website at www.health.state.nm.us.

- **Food Stamps Program (SNAP), Income Support Division.** Call (800) 432-6217 or visit the website at www.hsd.state.nm.us/isd.fs.html.

- **Guardianship Alliance New Mexico**, 400 Salazar Place, Santa Fe, NM 87501; Telephone: (505) 216-1133, GuardianshipAllianceNM.org, or contact at the following email: info@GuardianshipAllianceNM.org. For information on training and support for guardians in New Mexico, as well as the incapacitated adults they serve.

- **Housing.** Information is available from the Aging and Disability Resource Center and the Social Service Resource Directory (listed above).

- **Legal Assistance.** Information is available from the Aging and Disability Resource Center and the Social Service Resource Directory (listed above).

- **Medicaid**

In order to be eligible for Medicaid, you must meet certain financial eligibility requirements. Outpatient Medicaid coverage is automatically provided to anyone who is unable to work and qualifies for SSI (Supplemental Security Income) through the Social Security Administration. This will pay for most medical care, hospitalization, and prescriptions. Institutional Medicaid is available through the Human Resources Department Medical Assistance Division. This type of Medicaid will pay for long-term care in a nursing home, but not in an assisted living facility. A person who is receiving Institutional Medicaid must pay all of their income to the facility where they reside, including Social Security benefits, VA benefits, or pensions, except for a small monthly allowance for incidentals. This allowance may be \$30 per month or \$60 per month (as of 2009), depending on how much the person has worked and paid taxes during their lifetime. For information on eligibility requirements or to apply for Institutional Medicaid, call New Mexico Human Services Department, (505)827-3100, or visit their website at <http://www.hsd.state.nm.us/mad/faqs/institutionalcare.html>.

- **Medicaid Waiver Programs**

In-home services are available to financially eligible persons who meet the criteria to receive care in an institution but prefer to remain at home. These “waiver programs” include: Coordination of Long Term Services Program (CoLTS), Disabled and Elderly Waiver, Developmental Disabilities Waiver, Medically Fragile Waiver (for children), AIDS Waiver, Mi Via Waiver and Personal Care Option (PCO). A few assisted living facilities accept CoLTS as payment for their services. For more information, contact the Aging and Long Term Services Resource Center at (800) 432-2080.

- **Medicare**

Medical Care. Medicare is available to persons who are receiving Social Security retirement benefits. You do not need to meet financial eligibility requirements in order to qualify. Medicare will pay for medical services and supplies ordered by a doctor. For more information, visit www.Medicare.gov or call 1-800-MEDICARE (1-800-633-4227).

Nursing Home Care and Therapy. When ordered by a doctor, Medicare will pay for up to 100 days in a nursing home if you are receiving services designed to rehabilitate you and improve your level of functioning, such as physical therapy, speech therapy, occupational therapy or skilled nursing. Your eligibility for Medicare must be reviewed every 30 days in order to “recertify” you for continued services. If you are not making satisfactory progress toward regaining functioning, Medicare may terminate your services. In addition, Medicare can pay for hospice care if your doctor has determined that your illness is likely to be terminal.

In-Home Care. Medicare can also pay for services received while living in your home for a limited time (once again, if ordered by a doctor). These services can include physical therapy, occupational therapy, speech therapy, skilled nursing and hospice care. If you are receiving these services, Medicare can also pay for a home health aide to visit you twice a week for an hour to shower or bathe you. Medicare does not pay for other services provided by a caregiver in your home. As with care in a nursing home, you must be periodically recertified in order to continue receiving services at home.

Prescription Drugs. Medicare also offers a prescription drug plan (Medicare D). For help determining whether to sign up for a Medicare drug plan, call the New Mexico Aging and Disability Resource Center (above). You can only sign up for or change Medicare drug plans once a year (from November 15th-December 31st of each year).

- **National Guardianship Association (NGA), Website:** www.guardianship.org, Phone: (877) 326-5992. For information on guardianship, including the Standards of Practice and Codes of Ethics for guardians. NGA also offers a ListServ and ethics hotline, as well as current events, publications and conferences.
- **New Mexico Commission for the Blind.** Website: www.cfb.state.nm.us. Offers information on resources for New Mexicans with visual impairment. Phone: (888) 513-7968.
- **New Mexico Commission for the Deaf and Hard of Hearing Persons.** Website: www.cdhh.state.nm.us. Provides education, advocacy and programs for New Mexicans with hearing impairment. Phone: (800) 489-8536.
- **New Mexico Traumatic Brain Injury Trust Fund.** Offers short-term case management, life skills coaching and funding for home care for individuals who have been diagnosed with a traumatic brain injury. For information, call (505) 476-4782 or visit the website at www.nmaging.state.nm.us/Brain_Injury_Services_Program.html.
- **Office of Guardianship, New Mexico Developmental Disabilities Planning Council,** (505) 476-7324. Assistance for financially eligible persons who need legal help setting up a guardianship. If no one else is available to serve as guardian, the Office of Guardianship can also provide a professional guardian who is paid by the state.

- **Ombudsman Program (For Help Advocating for a Resident's Rights)**

The Ombudsman advocates for the rights of persons residing in long-term care facilities, such as nursing homes and assisted living facilities. Volunteers regularly visit residents and help them address concerns and complaints about their rights, including the right to choice, privacy and dignity. Posters describing residents' rights and listing the phone number for the Ombudsman in your area are required to be prominently displayed in an obvious location in each facility. If you believe your rights, or those of a loved one, are being violated, call the number on this poster, or call (866)451-2901 to locate the Ombudsman in your area. You can find more information on the Ombudsman Program on the website for the New Mexico Aging and Long Term Services Department at http://www.nmaging.state.nm.us/Ombudsman_bureau.html.

- **Prescription Drug Assistance.** Information is available from the Aging and Disability Resource Center and the Social Service Resource Directory (listed above).

- **Senior Services Departments**

Albuquerque. Albuquerque Department of Senior Affairs can be reached at (505) 764-6400 or through their website at www.cabq.gov/seniors. Services include information on transportation assistance, sports and fitness activities, classes, income tax preparation, care coordination, home retrofits and repairs, assistance with household chores, Senior Citizen's Law Office, in-home care, clinics (including medication management), senior day services, and referrals to senior centers and other sites in the area that offer nutritious meals and a variety of activities.

Las Cruces. City of Las Cruces Senior Programs can be reached at (575) 528-3000 or (800) 420-3482 (from outside the Las Cruces area), or through their website at www.las-cruces.org/public-services/senior-programs/default.shtm. Services include information on recreation, education, home care, local resources and referrals to senior centers and other sites in the area that offer nutritious meals and a variety of activities.

Santa Fe. Santa Fe Senior Services Division can be reached at (505) 955-4721 or through their website online at www.santafenm.gov/index.aspx?nid=311. There are volunteer and other services available through the City of Santa Fe. They also offer transportation services, Meals on Wheels, respite and non-medical care, homemaker services, computer classes, benefits counseling, defensive driving courses, health education, caregiver support programs, income tax preparation, and referrals to a senior center in the area that offers nutritious meals and a variety of activities.

Other Areas. For those who live in other areas, check with your city government to see if they offer similar services.

- **Social Security Administration.** Call (800) 772-1213, or visit the website at www.ssa.gov. Benefits are available for seniors age 62 or over, as well as persons of all ages with disabilities. Eligibility requirements vary, depending on the type of benefits sought.

- **Veterans Benefits**

A veteran can receive medical and dental care and prescriptions at very low cost through clinics approved by the Veterans Administration (VA) and can also be eligible for nursing home care. For more information on veterans' benefits that may be available, visit the VA website at

<https://www.va.gov/healtheligibility/application/>. In-home assistance is also available for a veteran or surviving spouse through the VA Aide and Attendance Program. In order to qualify for in-home services, the veteran must have served during wartime, but is not required to have served in combat or have been injured. The veteran or surviving spouse must meet financial eligibility and level of care requirements and must be receiving a pension from the VA. For more information, call the VA at (800)827-1000 or visit these websites for useful information and answers to common questions about eligibility requirements for veterans' pensions and other benefits: <http://www.vba.va.gov/bln/21/pension/vetpen.htm#7> or <http://www.veteranaid.org/program.php>.

- **Vocational Rehabilitation, Division of (DVR)**

This state agency provides assistance with education, job coaching and locating employment. DVR also offers assistance with business start-up expenses. Call (800) 224-7004 or visit the website at www.dvrgetsjobs.com.

Appendix F

Sample Forms

Contents

Alternative to Guardianship: Appointment of Surrogate

Acknowledgment of Surrogate and Certification of Two Health Care Professionals

(NOTE: Advance Directive statutory forms available on Guardianship Alliance New Mexico’s website under “Alternatives to Guardianship,” by in hard copy by calling (505) 216-1133.)

Guardianship Forms

Letter Enclosing Letters of Guardianship

Guardian Notification/Consent Guidelines.....

Guardian’s Report (statutory form).....

Cover letter to Clerk of Court when filing reports

Letter to Social Security/Veterans Administration.....

Power of Attorney to Transfer Guardianship.....

Notice of Change of Address

Instructions and Forms for Requesting a Status Conference

Motion to Terminate Guardianship (and Conservatorship).....

Order Terminating Guardianship (and Conservatorship)

Conservatorship Forms

Letter Enclosing Letters of Conservatorship

Letter to Securities Transfer Agent.....

Letter to County Recorder

Letter Canceling Credit Card or Charge Account

Inventory of Estate

Proposed Monthly Budget for Conservatee.....

Conservator’s Report.....

Letter to Internal Revenue Service

Letter to Social Security/Veterans Administration.....

The forms provided in this Manual are samples only. You must customize the forms to meet the needs in your individual case.

ACKNOWLEDGMENT OF SURROGATE FOR _____

(Name)

I, _____ (print name), hereby acknowledge that in accordance with the Uniform Health Care Decisions Act, Section 24-7A-1, et seq., NMSA 1978 (1996 Cumm. Supp.), I have assumed authority to make health care decisions on behalf of

_____ (Name of Patient), who is my:

- Spouse Significant Other Parent Adult Child Adult Sibling
 Grandparent Friend/Neighbor Other: _____

The primary care physician and another qualified health care professional have determined that _____ (Name of Patient) lacks capacity to make health care decisions. (Note: If the patient lacks capacity due to mental illness or developmental disability, one of the health care professionals making a determination of incapacity must have training or expertise which will aid in the assessment of functional impairment.)

I am eligible to act as surrogate decision maker because I have the following relationship with the patient: (Initial one)

- () Spouse () Significant Other () Adult Child () Parent
() Adult Sibling () Grandparent
() A reasonably available adult who has exhibited special care and concern for the patient and is familiar with the patient's personal values

Date: _____

Signature of Surrogate

CERTIFICATION OF TWO HEALTH CARE PROFESSIONALS

We, the undersigned, certify that _____ (Name of Patient) is incapacitated within the meaning of the Uniform Health Care Decisions Act, section 24-7A-1, et seq. NMSA 1978 (1996 Cumm. Supp.), in that this patient is unable to make health care decisions for himself/herself because of the following medical, mental or developmental limitations:

Date

Signature Attending Physician

Date

Signature Physician/Nurse

Date

Social Worker/Case Manager
Other Title: _____

Date: _____

Dr. John Smith
123 Main Street
Anywhere, NM 87000

Re Guardianship of Jane Doe, Cause No. _____

Dear Dr. Smith,

Please be advised that I have been appointed as the guardian of Mrs. Doe. Enclosed for your records is a copy of the Letters of Guardianship setting forth my authority as legal decision-maker for Mrs. Doe. Please note that Mrs. Doe is no longer able to give informed consent for her care and treatment. Please direct all future phone calls and correspondence regarding the services you provide to Mrs. Doe to me at the phone number and address on this letter. Also, please let me know when Mrs. Doe is scheduled to visit you next, so that I may accompany her on that visit.

I would like to make an appointment to meet with you and/or your staff to review Mrs. Doe's records and discuss her history, as well as any current concerns you may have.

Thank you for your assistance.

Sincerely,

[NAME OF GUARDIAN], Guardian
[Address]
[Phone]

enclosure

GUARDIAN NOTIFICATION/CONSENT GUIDELINES

DO NOT PURGE FROM CHART

Client Name: _____ DOB: _____

The above-named client has a court-appointed guardian who is the only person with legal authority to provide consent (verbal or written) for medical treatment or for any other reason:

(NAME OF GUARDIAN)
(ADDRESS OF GUARDIAN)
(GUARDIAN'S DAYTIME PHONE NUMBER)
(GUARDIAN'S EMERGENCY/AFTER HOURS PHONE NUMBER)

Please adhere to the following protocol for notification/consent purposes:

- 1. EMERGENCY MEDICAL TREATMENT.** In an emergency, immediately administer appropriate treatment, then notify **(GUARDIAN)** as soon as possible regarding status of client and continued treatment.
- 2. HOSPITALIZATION.** Should client require hospitalization, **(GUARDIAN) must be notified immediately. Please verbally notify the med tech who picks up the client that they have a legal guardian.** A copy of the Letters of Guardianship (located in client's chart) **must** be sent to the hospital along with client, together with information on client's medical and physical history, including known allergies and a description of client's code status (Full Code or DNR).
- 3. INJURY OR ILLNESS.** **(GUARDIAN) must be notified immediately** of any incidents resulting in injury to client or of any significant change in their condition. Such incidents may include, but are not limited to, the following: **falls, bruises, skin tears, pressure wounds, significant weight loss, abnormally high temperature, seizures, illness of any kind, or other changes in condition.**
- 4. CHANGES IN BEHAVIOR.** **(GUARDIAN) must be notified immediately** if there is a significant change in client's behavior. Such changes may include, but are not limited to, the following: **elopement, problems with hygiene, loss of appetite, aggression toward others, self-abuse, damage to property, alleged criminal offenses, or other changes in behavior.**
- 5. MEDICATION CHANGES.** **(GUARDIAN) must be notified** and give verbal or written authorization prior to client's medication being modified (this includes new and discontinued medication, as well as changes in dosage).
- 6. LEGAL DOCUMENTS REQUIRING SIGNATURE** **must** be signed by Janice Ladnier, as Executive Manager of **(GUARDIAN)**, as client's court-appointed guardian.
- 7. NOTICE OF CARE PLAN MEETINGS AND OTHER EVENTS** involving client **must** be provided to **(GUARDIAN)** with sufficient notice to attend.
- 8. RELEASE OF CONFIDENTIAL INFORMATION.** All information on client is to be held strictly confidential. No information may be released without prior consent of **(GUARDIAN)**.

Signature: _____ Date: _____

_____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

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

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
___ 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, I have visited the Protected Person _____ times.
The date of my last personal visit was _____

5. 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: _____

6. The name and address of any hospital or other institution 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, the Protected Person's physical health: remained the same
Primary diagnosis: _____ improved
deteriorated (explain)
(B) During the past year, 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 history events during the past year: _____

10. List the Protected Person's activities and changes, if any, over the past year:

- ◆Recreational activities _____
- ◆Educational activities _____
- ◆Social activities _____
- ◆Occupational activities _____
- ◆Other _____

11. Describe briefly any contracts entered into and major decisions made on behalf of the Protected Person during the past year: _____

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 which I wish to share with the Court:

17. *If the guardian has made financial decisions on behalf of the Protected Person pursuant to Probate Code Section 45-5-312, then please describe:* _____
_____.

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

Date: _____

Clerk of Court
_____ Judicial District Court
(Address)
(City/State/Zip)

Re: Guardianship of (NAME OF PROTECTED PERSON), Cause No. _____

Dear Sir/Madam:

Enclosed you will find the original and two copies of an Annual Report of Guardian. Please:

1. File the original Inventory and endorse the two copies.
2. Give one copy to Judge _____ for his/her review.
3. Return one copy to this office in the self-addressed, stamped envelope provided.

Thank you for your assistance.

Sincerely,

(NAME OF GUARDIAN)
(Address)
(City/State/Zip)
(Phone)

enclosures

Date: _____

Social Security Office
123 Main Street
Anywhere, NM 87000

Re Guardianship of Jane Doe, Cause No. _____

Dear Sir or Madame,

Please be advised that I have been appointed as the guardian of Mrs. Doe (see enclosed copy of the Letters of Guardianship). Please send a copy of all future notices and correspondence regarding Mrs. Doe's benefits to me at the address on this letter.

Thank you for your assistance.

Sincerely,

[NAME OF GUARDIAN], Guardian
[Address]
[Phone]

enclosure

POWER OF ATTORNEY TO TRANSFER GUARDIANSHIP

As per § 45-5-104 of the New Mexico Uniform Probate Code, where “...a guardian of a[n] ... 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 ... of the...protected person, except his power to consent to marriage ...”, I, (NAME OF GUARDIAN) hereby transfer my powers of guardianship over (NAME OF PROTECTED PERSON) for six months, effective _____ through _____ to (NAME OF PERSON GUARDIANSHIP TRANSFERRED TO), who is willing to serve without remuneration.

(NAME OF GUARDIAN)

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

I, (NAME OF GUARDIAN), having read the above, acknowledge that this is our intent to transfer my guardianship powers over (NAME OF PROTECTED PERSON) to (NAME OF PERSON BEING TRANSFERRED TO), effective _____ through _____.

(NAME OF GUARDIAN)

Subscribed and sworn to before me this
____ day of _____, 20____.

(seal/stamp)

Notary Public for New Mexico

My Commission Expires: _____

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In Re: Guardianship
 and Conservatorship

Cause No. _____

of _____,
An Incapacitated Adult.

NOTICE OF CHANGE OF ADDRESS
OF GUARDIAN/CONSERVATOR AND/OR PROTECTED PERSON

Please be advised of the following change(s) of address:

Protected Person: The new address and phone number for the Protected Person are:

Address: _____

Phone: _____

Guardian: The new address and phone number for the Guardian are:

Address: _____

Phone: _____

Conservator: The new address and phone number for the Conservator are:

Address: _____

Phone: _____

Respectfully submitted,

Name: _____

Instructions for Requesting a Status Conference.

Purpose of this form:

- 1) Anyone who is interested in the welfare of a protected person can ask for a meeting with the judge by requesting a status conference.
- 2) Because the judge is a very busy person, **THIS SHOULD ONLY BE USED IF YOU CANNOT RESOLVE THE PROBLEM IN ANY OTHER WAY AND THE PROBLEM IS VERY IMPORTANT.** Think before you ask for a status conference. Ask yourself whether you done everything you can to try to resolve this matter before you ask the Court for help, and whether you have documented those attempts at resolution?
- 3) Some examples of when to ask for a status conference:
 - a) Anyone who is interested in the well-being of a protected person can ask the Court for a status conference to review the protected person's ability to make some or all of his/her own decisions;
 - b) Anyone who is interested in the well-being of a protected person can ask the Court for a status conference to review concerns regarding the actions being taken (or not taken) by the Guardian and/or Conservator;
 - c) A Guardian or Conservator can ask the Court for a status conference to review questions about the extent of his/her authority or to ask for instructions on how to perform his/her duties;
 - d) In 2009, the New Mexico legislature decided that the court that appointed a guardian must have a status hearing to review the status of the protected person's capacity and continued need for a guardian, no later than ten years after the first hearing and every ten years thereafter.

Completing and Filing the Forms:

- 1) Fill out the name of the county and the number of the court case. If you do not have a copy of document filed in the guardianship or conservatorship proceeding, you will have to call the district court in the county where the protected person lived when the guardianship case was first filed, and ask for the number of the case by giving the clerk the name of the protected person.
- 2) Complete the **Request for Status Conference** form by filling in your name and checking the box that describes your relationship to the protected person. Then briefly describe the help that you need from the court.
- 3) Complete the **Request for Hearing** form, in which you ask the judge to schedule a hearing to discuss your request for assistance. Fill in your name, the judge's name, and a very brief explanation of your request (use only a few words, if possible), and an approximate time that the hearing will last. Keep it as brief as possible, preferably no more than 15 to 30 minutes. Then list everyone (including name and address) who is entitled to notice of the hearing, including the protected person, the guardian and/or conservator, any guardian ad litem or attorney representing the protected person, and yourself.
- 4) Complete the **Notice of Hearing** form, and under "Proof of Service" list the same people you listed in the Request for Hearing.
- 5) Give the original and two copies of the **Request for Status Conference** and **Request for Hearing** to the Clerk for filing. He/she will give you back the copies, stamped with the date. Give one copy each of the **Request for Status Conference** and **Request for Hearing** to the judge assigned to the case, together with the original **Notice of Hearing** and enough copies of the **Notice** and pre-addressed and stamped envelopes for everyone listed in the Proof of Service. The judge will assign a date and time for the hearing and will add this information to the **Notice of Hearing** and mail copies to everyone, including you.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In Re: Guardianship
 and Conservatorship

Cause No. _____

of _____,
An Incapacitated Adult.

REQUEST FOR STATUS CONFERENCE

COMES NOW _____, as

- the Protected Person in this proceeding;
- the Guardian of the Protected Person;
- the Conservator of the Protected Person; or
- a person interested in the welfare of the Protected Person,

and respectfully requests that this Court schedule a status conference for the purpose of:

I have filed a Request for Hearing along with this Request for Status Conference.

Respectfully submitted,

Name: _____

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

Cause No. _____

**IN THE MATTER OF A GUARDIANSHIP
AND CONSERVATORSHIP FOR**

_____,
an Incapacitated Adult.

REQUEST FOR HEARING

Comes now, _____ (Name of Guardian/Interested person) and, pursuant to NMSA 1978, § 45-5-307 or for other cause requests a hearing:

1. Type of case: Civil Jury: Non Jury: X
2. Judge to whom assigned: Honorable _____
3. Specific matters to be heard: Status Conference
4. Short summary of purpose of hearing by:

Guardian Protected Person Other

Explain (very short summary):

5. Estimated total time required: Approximately ____ minutes
6. Names, addresses and telephone numbers of all counsel and other people entitled to notice:

Respectfully Submitted,

Name

Address

City State zip

Telephone number

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

CAUSE No. _____

**IN THE MATTER OF A GUARDIANSHIP
AND CONSERVATORSHIP FOR**
_____,
an Incapacitated Adult.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this matter has been called for hearing before the Court, for the time place and purpose indicated:

DATE:

TIME:

PLACE: _____ judicial district court house, located at

PURPOSE OF HEARING: Status Conference

TIME ALLOCATED:

JUDGE ASSIGNED: Honorable _____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice as mailed to the following parties/counsel(s) of record at the following addresses this ____ day of _____, _____.

Person sending notice

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In Re: Guardianship
 and Conservatorship

Cause No. _____

of _____,
An Incapacitated Adult.

MOTION TO TERMINATE GUARDIANSHIP (AND CONSERVATORSHIP)

(NAME OF GUARDIAN), hereby moves the Court for an Order terminating this guardianship and conservatorship, and as grounds therefor states that (NAME OF PROTECTED PERSON) passed away on (DATE OF DEATH).

Respectfully submitted,

(NAME OF GUARDIAN)
(ADDRESS)
(PHONE)

Date

STATE OF NEW MEXICO)
)
) ss.
COUNTY OF SANTA FE)

On the ____ day of _____, 20____, appeared before me (NAME OF GUARDIAN), who is personally known to me to be the person who signed the above document and thereby do acknowledge his/her signature.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

In Re: **Guardianship**
 and Conservatorship

Cause No. _____

of _____,
An Incapacitated Adult.

ORDER TERMINATING GUARDIANSHIP (AND CONSERVATORSHIP)

THIS MATTER came before the Court on (NAME OF GUARDIAN)'s motion to terminate the guardianship and conservatorship of (NAME OF PROTECTED PERSON), and the Court being fully advised,

FINDS that (NAME OF PROTECTED PERSON) passed away on (DATE OF DEATH).

THE COURT ORDERS that the guardianship (and conservatorship) of (NAME OF PROTECTED PERSON) is hereby terminated.

Dated: _____

DISTRICT COURT JUDGE

Submitted by:

(NAME OF GUARDIAN)
(ADDRESS)
(PHONE)

Date: _____

First National Bank
123 Main Street
Anywhere, NM 87000

Re Conservatorship of Jane Doe, Cause No. _____

Dear Sir or Madame,

Please be advised that I have been appointed as the conservator of Mrs. Doe. Enclosed for your records is a copy of the Letters of Conservatorship setting forth my authority as financial decision-maker for Mrs. Doe.

Please review your records to verify whether Mrs. Doe has any accounts or safe deposit boxes at any of the branches of your institution. If so, please inform me of the account number and branch where the account(s) and/or safe deposit box are located.

Please note that Mrs. Doe is no longer able to legally manage her own finances and property. Please direct all future phone calls and correspondence regarding any accounts you currently hold for Mrs. Doe's benefit to me at the address on this letter. I also hereby revoke any other signature authorizations in connection with any of these accounts.

Also, please provide me with the information and documentation you will need to transfer Mrs. Doe's assets to a conservatorship account. It is my understand that all accounts in FSLIC and FDIC institutions may be withdrawn prior to maturity and no early withdrawal penalty may be imposed if a court of proper jurisdiction has declared that a person is no longer capable of managing his or her own estate affairs, and the account was issued before the date of such determination and not extended or renewed after that date. If these regulations do not apply to the account(s) in your institution, please let me know.

Thank you for your assistance.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure

Date: _____

Securities Transfer Agent
123 Main Street
Anywhere, NM 87000

Attn: Stock Transfer Department

Re: Conservatorship of Jane Doe, Cause No. _____
Shares of Stock in [NAME OF COMPANY]
Certificate No. _____ (List all Numbers)

Dear Sir or Madame,

Please be advised that I have been appointed as the conservator of the estate the above-named conservatee. Enclosed is a certified copy of my Letters of Conservatorship.

It appears the Conservatee owns the stock listed above. Please advise as to the number of shares now owned by Mrs. Doe, and whether these are held in the form of a certificate or an account with your company. Please make sure that the account title for the stock is changed to "Conservatorship of Jane Doe, [conservator's name], Conservator."

Also please send all future dividend checks or issues of stock to me at the address below, made payable to the conservatorship as described above.

I would also appreciate information as to your company's requirements for transfer of the stock.

Thank you for your assistance in this matter.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure

Date: _____

_____ County Recorder
123 Main Street
Anywhere, NM 87000

Re Conservatorship of Jane Doe, Cause No. _____

Dear Sir or Madame,

Please record the enclosed certified copy of my Letters of Conservatorship and return the recorded original to me in the enclosed stamped, self-addressed envelope.

I have enclosed a check in the amount of \$_____ for recording fees.

Thank you for your assistance.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure

Date: _____

Credit Card Company
123 Main Street
Anywhere, USA

Re: Conservatorship of Jane Doe, Cause No. _____
Account No. _____

Dear Sir or Madame,

Please be advised that I have been appointed as the conservator of Mrs. Doe (see enclosed certified copy of the Letters of Conservatorship issued by the District Court of the State of New Mexico).

Please immediately cancel the above account so that no further charges may be made.

Thank you for your assistance.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT COURT

NO. _____

IN RE THE CONSERVATORSHIP FOR [NAME OF CONSERVATEE],
AN ADULT INCAPACITATED PERSON.

INVENTORY OF ESTATE

Pursuant to Section 45-5-418 NMSA 1978, [NAME OF CONSERVATOR], conservator for [NAME OF CONSERVATEE], states that the following represents all of the property owned by [NAME OF CONSERVATEE]. as of [DATE OF APPOINTMENT], which has come to the knowledge of the aforesaid named conservator. The estimated value of the property is shown, together with any known encumbrances thereon.

Assets of [NAME OF CONSERVATEE].

The known assets of [NAME OF CONSERVATEE] are as follows:

A. IMPROVED REAL PROPERTY located at [CONSERVATEE'S ADDRESS]:

Estimated (or Appraised) Value: \$ _____

Balance due on Mortgage: \$ _____

Net Value of Real Property \$ _____

B. BANK ACCOUNTS HELD IN NAME OF [NAME OF CONSERVATEE].

<u>Description of Account</u>	<u>Value</u>
Checking account # _____, _____ Bank	\$ _____
Savings account # _____, _____ Bank	\$ _____
Certificate of Deposit# _____, _____ Bank	\$ _____
Certificate of Deposit# _____, _____ Bank	\$ _____

Total value of accounts held in name of [NAME OF CONSERVATEE] \$ _____

C. VEHICLES (automobiles, boats, motorcycles, etc.):

_____ \$ _____
_____ \$ _____

Total value of vehicles held in name of [NAME OF CONSERVATEE] \$ _____

D. PERSONAL PROPERTY LOCATED IN CONSERVATEE’S HOME.

Furniture, furnishings and personal belongings (estimated value) \$ _____

E. COLLECTIBLE ITEMS:

Artwork and antiques (estimated/appraised value) \$ _____

Coin collection (estimated/appraised value) \$ _____

Total value of collectible items \$ _____

TOTAL VALUE OF ESTATE OF [NAME OF CONSERVATEE]: \$ _____

Monthly Income of [NAME OF CONSERVATEE].

<u>Source of Income</u>	<u>Amount</u>
Social Security	\$ _____
Veterans’ Benefits	\$ _____
Pension:	\$ _____
Total monthly income of [NAME OF CONSERVATEE]	\$ _____

VERIFICATION

I, the undersigned, state upon oath that I have reviewed the foregoing Inventory of the Estate of [NAME OF CONSERVATEE], and that it is complete and accurate.

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public
My commission expires: _____

Proposed Monthly Budget for _____
(Name of Conservatee)

Monthly Income

SSA \$ _____
 SSI \$ _____
 VA Benefits \$ _____
 Pension \$ _____
 Public Assistance \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
Monthly Total \$ _____

Monthly Expenses

Cost of Care \$ _____
 Rent/Mortgage \$ _____
 Food/Supplies \$ _____
 Utilities \$ _____
 Telephone \$ _____
 Medical \$ _____
 Prescriptions \$ _____
 Cable/Satellite \$ _____
 Spending Money \$ _____
 Professional Fees \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
Total Expenses \$ _____

Other Periodic Income

_____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____

Other Periodic Expenses

_____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____

Debts Owed

_____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
Total Debts Owed \$ _____

_____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

CAUSE NO. _____

IN THE MATTER OF THE GUARDIANSHIP
AND CONSERVATORSHIP PROCEEDINGS
FOR (WARD)

FIRST (AND FINAL) CONSERVATORSHIP REPORT AND ACCOUNT

Pursuant to Section 45-5-407 NMSA 1978, the undersigned duly appointed, qualified and acting conservator of the above-mentioned protected person reports to the court regarding the period

_____ through _____, as follows:

1. My name is (CONSERVATOR). I am the duly appointed conservator for (CONSERVATEE).
2. The mailing address and telephone number for (CONSERVATOR) are: 123 Main Street, Santa Fe, NM 87502; (505) 555-3333.
3. The name, if applicable, and address of the place where the incapacitated person now resides are: _____, Santa Fe, NM 87505.
4. The name of the person primarily responsible for the care of the protected person at such person's place of residence is: _____.
5. The name and address of any hospital or other institution where the protected person is now admitted on a temporary basis are: _____.
6. A brief description of the protected person's physical condition is: (CONSERVATEE) has been diagnosed with _____.
7. A brief description of the protected person's mental condition is: (CONSERVATEE) has been diagnosed with: _____.
8. A brief description of contracts made on behalf of the person under conservatorship during the past year is: _____

SUMMARY

PART I

Total beginning balance (Schedule A) \$ _____

Total additional assets (Schedule B) \$ _____

Total income received during accounting period (Schedule C) \$ _____

Total Part I \$ _____

PART II

Total losses during accounting period (Schedule D) \$ _____

Total disbursements (Schedule E) \$ _____

Total Part II \$ _____

BALANCE ON HAND AT END OF ACCOUNTING PERIOD

(Total Part I minus Total Part II) \$ _____

[THIS AMOUNT SHOULD EQUAL THE TOTAL OF SCHEDULE F]

SCHEDULE A
Assets on Hand at Beginning of Accounting Period

1. BANK ACCOUNTS AND CASH

<u>Name and Address of Bank/Financial Institution</u>	<u>Account #</u>	<u>Balance</u>
-----------------------------------------------------------	------------------	----------------

2. STOCKS AND BONDS

<u>Name and Address of Stock or Bond</u>	<u>Account #</u>	<u>Balance</u>
----------------------------------------------	------------------	----------------

3. REAL PROPERTY

<u>Type and Location of Property</u>	<u>Interest Owned</u>	<u>Market Value</u>
--------------------------------------	-----------------------	---------------------

4. OTHER PROPERTY (i.e., furniture, jewelry, artwork)

<u>Type and Location of Property</u>	<u>Estimated Market Value</u>
--------------------------------------	-------------------------------

TOTAL ASSETS ON HAND AT BEGINNING OF ACCOUNTING PERIOD: \$ _____

SCHEDULE B
Assets Received During Accounting Period

<u>Date Asset Received</u>	<u>Source</u>	<u>Amount/Value</u>
----------------------------	---------------	---------------------

SCHEDULE C
Income Received During Accounting Period

<u>Date Received</u>	<u>Source</u>	<u>Amount</u>
----------------------	---------------	---------------

SCHEDULE D
Losses Incurred During Accounting Period

<u>Date</u>	<u>Asset</u>	<u>Amount of Loss</u>
-------------	--------------	-----------------------

SCHEDULE E
Disbursements Made During Accounting Period

<u>Date Paid</u>	<u>Paid To</u>	<u>Amount</u>
------------------	----------------	---------------

SCHEDULE F
Assets on Hand at End of Accounting Period

1. BANK ACCOUNTS AND CASH

<u>Name and Address of Bank/Financial Institution</u>	<u>Account #</u>	<u>Balance</u>
-----------------------------------------------------------	------------------	----------------

2. STOCKS AND BONDS

<u>Name and Address of Stock or Bond</u>	<u>Account #</u>	<u>Balance</u>
----------------------------------------------	------------------	----------------

3. REAL PROPERTY

<u>Type and Location of Property</u>	<u>Interest Owned</u>	<u>Market Value</u>
--------------------------------------	-----------------------	---------------------

4. OTHER PROPERTY (i.e., furniture, jewelry, artwork)

<u>Type and Location of Property</u>	<u>Estimated Market Value</u>
--------------------------------------	-------------------------------

TOTAL ASSETS ON HAND AT END OF ACCOUNTING PERIOD: \$ _____

Date: _____

Internal Revenue Service
Fresno, CA 93888

Re: Conservatorship of Jane Doe
Social Security No.: _____

Dear Sir or Madame,

Please be advised that I have been appointed as the conservator of the estate of the above-named conservatee. Enclosed is a certified copy of my Letters of Conservatorship.

Please send all future notices and correspondence regarding Mrs. Doe to me at the address on this letter.

Also, please send me a copy of the last two income tax returns that were filed by Mrs. Doe, or a copy of any form necessary to obtain these returns.

Thank you for your assistance.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure

Date: _____

Social Security Office
123 Main Street
Anywhere, NM 87000

Re Conservatorship of Jane Doe, Cause No. _____

Dear Sir or Madame,

Please be advised that I have been appointed as the conservator of Mrs. Doe (see enclosed copy of the Letters of Conservatorship). Please send a copy of all future notices and correspondence regarding Mrs. Doe's benefits to me at the address on this letter.

Thank you for your assistance.

Sincerely,

[NAME OF CONSERVATOR], Conservator
[Address]
[Phone]

enclosure