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SENATE MEMORIAL 94

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Gerald Ortiz y Pino

A MEMORIAL

REQUESTING THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL TO  
CONVENE A WORKING GROUP TO EVALUATE CHANGING THE UNIFORM  
PROBATE CODE TO PROVIDE FOR GREATER TRANSPARENCY AND  
ACCOUNTABILITY ON THE PART OF GUARDIANS AND CONSERVATORS IN THE  
MANAGEMENT OF A PROTECTED PERSON'S ESTATE AND TO REQUIRE  
GREATER NOTICE TO AND CONSULTATION WITH A PROTECTED PERSON'S  
FAMILY UPON THE DEATH OF THE PROTECTED PERSON UNDER THE  
SUPERVISION OF A GUARDIAN OR CONSERVATOR.

WHEREAS, conservatorship and guardianship are becoming  
more common due to the aging of the baby boomer population; and

WHEREAS, the appointment of a guardian or conservator can  
be a very complex and emotionally charged event for families  
and for the individual who is the subject of the proceeding;  
and

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1           WHEREAS, in New Mexico, there is limited regulation of  
2 what is known as "corporate guardianship", which involves the  
3 appointment by a court of a for-profit or nonprofit entity to  
4 serve, with compensation, as the legal guardian of a protected  
5 person in New Mexico; and

6           WHEREAS, the family of a protected person for whom a  
7 guardian or conservator has been appointed may not be in  
8 regular contact with the protected person and often experiences  
9 difficulty in acquiring information regarding activities of the  
10 guardian or conservator that might not be in the best interest  
11 of the protected person or the protected person's estate; and

12           WHEREAS, there is a need for transparency and  
13 accountability in the conduct of a guardian or conservator in  
14 the management of the affairs of a protected person,  
15 particularly when the protected person's family poses no threat  
16 to the well-being of the protected person; and

17           WHEREAS, a guardian or conservator may fail to provide  
18 notice to, and consult with, the family upon the death of a  
19 protected person on matters such as the performance of an  
20 autopsy, burial and the windup of the protected person's  
21 estate; and

22           WHEREAS, challenging a guardianship or conservatorship can  
23 be an extremely costly and intimidating process for a protected  
24 person or for the family of a protected person;

25           NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF

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1 NEW MEXICO that the developmental disabilities planning council be  
2 requested to convene, no later than August 1, 2013, a working  
3 group to develop recommended changes to the Uniform Probate Code  
4 that would provide:

5 A. greater transparency in a guardian's or  
6 conservator's management of a protected person's affairs to  
7 provide families with accurate and timely information on which to  
8 evaluate the guardian's or conservator's performance;

9 B. greater accountability on the part of a guardian or  
10 conservator for the management of a protected person's affairs;  
11 and

12 C. requirements for greater notice to, and  
13 consultation with, the family of a protected person upon that  
14 person's death, particularly in matters involving autopsy, funeral  
15 arrangements and the extent and disposition of the protected  
16 person's estate; and

17 BE IT FURTHER RESOLVED that the working group include  
18 representatives from the administrative office of the courts, the  
19 office of the attorney general, the office of guardianship of the  
20 developmental disabilities planning council, the aging and long-  
21 term services department, the national alliance on mental illness  
22 New Mexico, disability rights New Mexico, the arc of New Mexico,  
23 ayudando guardians, an attorney licensed to practice law in New  
24 Mexico with expertise in probate matters and advocates of families  
25 of protected persons; and

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1 BE IT FURTHER RESOLVED that the working group report its  
2 findings and recommendations to the legislative health and human  
3 services committee, the legislative finance committee and the  
4 appropriate interim legislative committee that studies courts and  
5 corrections by October 31, 2013; and

6 BE IT FURTHER RESOLVED that copies of this memorial be  
7 transmitted to the administrative office of the courts, the  
8 executive director of the developmental disabilities planning  
9 council, the attorney general, the secretary of aging and long-  
10 term services and the president of the national alliance on mental  
11 illness New Mexico.