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GUARDIANSHIP SYSTEM CHANGES PROTECT VULNERABLE NEW MEXICANS

ALBUQUERQUE – Court-appointed guardians and conservators are subject to audits and more extensive reporting requirements under a new state law to help protect vulnerable New Mexicans no longer able to make decisions about their finances and personal affairs.

Today, Supreme Court Chief Justice Judith K. Nakamura, State Auditor Wayne Johnson, Sen. James White and Rep. Damon Ely along with Second Judicial District Judges Shannon Bacon and Nancy Franchini highlighted changes in state law and court rules for the adult guardianship system. Newly enacted legislation (Senate Bill 19) took effect on July 1 along with court procedural rules and forms to carry out the law's requirements.

"All three branches of government – Legislative, Executive and Judicial – came together and worked cooperatively on guardianship reforms to promote and protect the well-being of New Mexicans unable to manage their own affairs," said Chief Justice Nakamura.

In addition to new court rules and forms that must be used by guardians and conservators, a pilot project for auditing and reviewing guardianship and conservatorship cases is provided for under terms of a memorandum of understanding between the State Auditor and the Administrative Office of the Courts (AOC).

"This audit partnership between the courts and the state auditor's office in the guardianship program is a critical safeguard for people who are relying on strangers to manage their life-savings and expend it responsibly on their behalf," said State Auditor Johnson. "I strongly believe in openness and accountability in government spending. A similar standard applies when a guardian or conservator is appointed for someone who can't manage their own affairs. This partnership between our office, New Mexico families, judges, and legislators is a good step towards protecting our seniors and other vulnerable adults."

"The new law does much to correct problems in our guardianship system," said Sen. White, who sponsored SB19. "It opens hearings, expands access to records, ensures that protected persons can continue to receive visitors and communicate with others, and prevents guardians from

revoking or amending a power of attorney for health care or finances that was previously entered into by a protected person."

Rep. Ely said, "It has been very impressive to see the partnership between the State Auditor and the Courts. In my view, they are doing an excellent job of working together to solve this problem."

A steering committee with representatives from all branches of state government was formed by the Supreme Court to assist in the implementation of SB19 and make recommendations about $1 million allocated to the AOC by the Legislature for guardianship reforms. The State Auditor, Sen. White and Rep. Ely serve on the committee. Judge Bacon chairs the committee and Judge Franchini is vice chair. Part of the $1 million will cover the costs of the audits.

Judges Bacon and Franchini said a project manager has been named for a statewide review by the courts of the more than 20,000 guardianship and conservatorship cases filed over the years.

"A review of older case files is critical because it will help the courts identify the guardianship and conservatorship proceedings that require ongoing judicial monitoring," said Judge Bacon.

Judge Franchini said, "New forms that must be used by conservators and guardians for reports to courts will provide better information to judges about the status of protected persons and provide for more accountability of guardians and conservators."

Among other changes to the guardianship system:

- Guardians and conservators must keep a protected person's financial records for seven years and fully comply with the requirements of any audit of the protected person's account, inventory, report, or property.
- Bonding requirements on conservators to help safeguard a protected person's assets.
- Additional information about a protected person's finances and health must be submitted by guardians and conservators in reports to district courts.
- Open court hearings in guardianship and conservatorship proceedings, which were previously closed.
- Expanded access to court records for family members and others entitled to notice of guardianship proceedings under the new statutory requirements.

District courts will be able to refer conservatorship cases to the State Auditor's Office for a review and evaluation of a protected person's estate and financial affairs. The Auditor also can randomly conduct financial and compliance audits of guardians for adults served by a publicly funded program administered through the New Mexico Developmental Disabilities Planning Council and Office of Guardianship.

Court-appointed guardians make personal and health care decisions for individuals who are incapacitated. Conservators manage the finances and possibly the property of an incapacitated person, including those who may have dementia, traumatic brain injuries, a developmental disability or mental illness.

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