

# [A in the albuquerque journal there were stories](https://assignbuster.com/a-in-the-albuquerque-journal-there-were-stories/)

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A guardian is defined asa “ person who is appointed by the court to make healthcare and some moneydecisions for someone who cannot make decisions for themselves because of injury, mental illness, dementia, physical or mental disability, or substance abuse.”  AARP estimates in a 2013 estimate that about1.

5 million adults are under guardianship, and that number has increased in thelast four years.  New Mexico law statesthat guardianship “ should encourage the individual’s independence and should belimited to the powers necessary to help with the person’s mental and physicallimitations.” A conservator is defined as a person or entity appointed by acourt to make financial decisions for an incapacitated person.  Unlike a guardian who may be nominated undera will, only a court may appoint a conservator. According to the current state law the person who will be a ward andtheir relatives (children) have to be informed by letter by the court thatthere will be a hearing to determine the mental and physical capability of aperson to take care of themselves financially and physically.  If it is determined the family is notsuitable to take care of the person then another person who is associated withthe court is appointed to be a guardian. The court also appoints a person called a court visitor or an entity(business) to be conservator.  In afive-part series in the Albuquerque Journal there were stories from familymembers who were found to be not “ suitable” to take care of their family memberbecause the lawyers told the court the family members were fighting or someother excuse.

New Mexico law states aletter must be sent to family members and the person involved fourteen days inadvance of the hearing.  This is only forpermanent guardianship.  If an emergencyhearing is asked for no such letter has to be sent.  In the case of one family, an adopted childof an elderly mother went to court and had a guardian and conservator appointedto the mother without the mother’s and other children’s knowledge.  According to the family they did not receive anysuch letter for the hearing.  In thearticle elder advocate groups and other sources said there are many thingswrong with the current system that make it easy for a person to go to court andhave someone declared not competent.

TheNew Mexico Courts website says it is a complicated process, as reported in theJournal this process doesn’t seem complicated. It is also a complicated process to reverse.  In the New Mexico Journal articles familymembers had a lot of money and/or property and this can make a person morelikely to be targeted by a company that does business by providing guardian/conservatorshipservices.  In Nevada these types ofservices have become an industry and have attracted businesses because of thenumber of seniors who have retired there. According to an article in Forbes Magazine, Albuquerque has become a” hot spot where guardianship abuse is prevalent, because of the attractivenessto retirees”.  Albuquerque is a placeseniors have retired and now has become a place where conservatorship/guardianshipbusinesses have begun to locate.

Financial, mental, physical, and emotional abuse is becoming more prevalent with thesetypes of businesses because they isolate the person from all family andfriends.  In both articles, the excusethat seeing the family or friends would “ upset mom or dad” was very commonlyused by the company so the family didn’t know if the elderly person was beingabused or not.  Also the family would notknow even where the person was living or if they did the conservator would notallow them to see the elderly person the company would threaten the familymember who wanted to visit them with trespassing.  The elderly person most likely ends up beingabused because they end up in a facility where medical care and theirsurroundings are substandard.

With thissituation the person can be overly medicated and can be a target of all kindsof abuse including sexual abuse.  In allcases described in the Forbes article the company awarded conservatorship wouldsell off the assets of the wards they were overseeing including cars, houses, family heirlooms and other property.  Inboth article sources if family members wanted any family heirlooms they wouldhave to buy them from the estate.  TheJournal was not able to get a lot of information about the cases described inthe article because of confidentiality.  Thisindicates another problem with the current system.  There is no transparency or way to check theinformation of what the court decides or what care and how the money is beingspent so the businesses associated with the conservatorships do not have toreveal any information except to report to the court.  Conservatorship and guardianship should onlybe done if there is no other way to help the incapacitated person.  With these kinds of decisions the person’srights are literally taken away; the right to make financial decisions, medicaldecisions, and in some cases even the right to vote or do other things.

This type of decision literally isolates theperson from everything.  According tostate law however the person overseeing the incapacitated person is notsupposed to do this, but since the courts have appointed people who are notfamily members the incapacitated person is not able to see family or friendsbecause “ it would upset mom”.  This kindof isolation amounts to elder abuse.  Thefamily doesn’t know whether the person is being taken to places like a seniorcenter or to other outside activities for stimulation or if their medical needsare being met; doctor and dental appointments.

A lot of the family members also said they don’t know if the familymember is even able to see friends.  Theyalso don’t know how the family member’s money is being spent until the familymember dies and they can see how much money has been spent on the person’scare.  In the article, thousands ofdollars were supposedly spent on care for the person but families are not ableto verify it because of confidentiality.  In one case, the family had a financial trustand a daughter had power of attorney. The daughter who went to court to have a guardian and conservatorappointed to her mother accused another daughter who had financial power ofattorney of taking money and spending it for herself and had also made someproperty transactions without the family’s knowledge. The other siblingsrefuted this and said it was not true and that all the siblings had a say onthe property transactions including the accuser.

Thecourt did not order an audit and so the court decision was not overturned.  In 2013 Senator Jerry Ortiz y Pino, D-Albuquerque, sponsored a measure to “ look into complaints by family memberswhose elderly loved ones had been declared “ incapacitated” by the court, hadtheir civil rights terminated and places under court-controlledguardianship.  A sixteen member taskforce was appointed.  NO interestedfamily members or elder advocacy groups were appointed seats.  All members were from inside the industry; state bureaucrats and people who worked inside for-profit elder careindustry.  The task force decided thatthe Uniform Probate Code did not need any changes except one; clarificationabout the after-death process.

Theydecided that the industry did not need to provide family members additionalfinancial information to family members”. This is another problem with the system. Legislators are unwilling to change already existing laws because theyare either part of the problem or have ties to the industry.  Otherproblems with the system are few judges to hear cases and no money for courtsto spend on resources, and laws to make those who have conservatorships be madeto be more transparent with financial records and what kind of care the personis getting, make conservators be licensed (there is more involved withhairdressers getting a license than getting certification as a conservator).

Medical records are not going to be availablebecause of doctor/patient confidentiality but they should be available to afamily member who has medical power of attorney.  There are also some things the state can do: Create a disciplinary board where family complaints can be heard and takenseriously and published publicly; Require specific training and state licensesfor guardians and conservators; additional court funding; and transparency withmoney for care and how the conservator is using the money.  Advocates, medical personnel, and family lawyers should be aware of whatguardianship/conservatorship entails because of abuse.  Families can use legal means to protectthemselves from this type of situation.  Onelawyer in Albuquerque who is a lawyer who helps family members withguardianship suggests that families meet together and sign an agreement to notchallenge the estate plans and if they do, they forfeit their inheritance.  The elderly person should also meet withtheir children and answer any questions they might have regarding what theperson wants to do with their finances and what they should do in a medicalemergency.  Questions about power ofattorney and end of life decisions should also be addressed.  This way all family members know what theelderly person wants and no one can say “ but I didn’t know”.

There are many ways of communicating visuallyso they don’t have to be in the room.  Mymother inherited financial investments and will have some money from propertytransactions.  I don’t know how much andit’s not my business to know until the appropriate time, it is her money tolive on and spend.  She and I have talkedabout these articles and what she is going to do in order to help make iteasier for my sister and me when she is gone.

My dad and I have also talked aboutif I want a share in the house.  Thereare four of us and my dad and Nancy have set up a trust.   My dad and his sisters each have a role intaking care of my grandmother. Fortunately they get along!