

# A in the albuquerque journal there were stories

[Business](#), [Industries](#)



A guardian is defined as a “ person who is appointed by the court to make healthcare and some money decisions 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 about 1.

5 million adults are under guardianship, and that number has increased in the last four years. New Mexico law states that guardianship “ should encourage the individual’s independence and should be limited to the powers necessary to help with the person’s mental and physical limitations.” A conservator is defined as a person or entity appointed by a court to make financial decisions for an incapacitated person. Unlike a guardian who may be nominated under a will, only a court may appoint a conservator. According to the current state law the person who will be a ward and their relatives (children) have to be informed by letter by the court that there will be a hearing to determine the mental and physical capability of a person to take care of themselves financially and physically. If it is determined the family is not suitable to take care of the person then another person who is associated with the 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 a five-part series in the Albuquerque Journal there were stories from family members who were found to be not “ suitable” to take care of their family member because the lawyers told the court the family members were fighting or some other excuse.

New Mexico law states a letter must be sent to family members and the person involved fourteen days in advance of the hearing. This is only

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for permanent guardianship. If an emergency hearing is asked for no such letter has to be sent. In the case of one family, an adopted child of an elderly mother went to court and had a guardian and conservator appointed to the mother without the mother's and other children's knowledge. According to the family they did not receive any such letter for the hearing. In the article elder advocate groups and other sources said there are many things wrong with the current system that make it easy for a person to go to court and have someone declared not competent.

The New Mexico Courts website says it is a complicated process, as reported in the Journal this process doesn't seem complicated. It is also a complicated process to reverse. In the New Mexico Journal articles family members had a lot of money and/or property and this can make a person more likely to be targeted by a company that does business by providing guardian/conservatorship services. In Nevada these types of services have become an industry and have attracted businesses because of the number 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 attractiveness to retirees". Albuquerque is a place seniors have retired and now has become a place where conservatorship/guardianship businesses have begun to locate.

Financial, mental, physical, and emotional abuse is becoming more prevalent with these types of businesses because they isolate the person from all family and friends. In both articles, the excuse that seeing the family or friends would "upset mom or dad" was very commonly used by the company

so the family didn't know if the elderly person was being abused or not. Also the family would not know even where the person was living or if they did the conservator would not allow them to see the elderly person the company would threaten the family member who wanted to visit them with trespassing. The elderly person most likely ends up being abused because they end up in a facility where medical care and their surroundings are substandard.

With this situation the person can be overly medicated and can be a target of all kinds of abuse including sexual abuse. In all cases described in the Forbes article the company awarded conservatorship would sell off the assets of the wards they were overseeing including cars, houses, family heirlooms and other property. In both article sources if family members wanted any family heirlooms they would have to buy them from the estate. The Journal was not able to get a lot of information about the cases described in the article because of confidentiality. This indicates another problem with the current system. There is no transparency or way to check the information of what the court decides or what care and how the money is being spent so the businesses associated with the conservatorships do not have to reveal any information except to report to the court. Conservatorship and guardianship should only be done if there is no other way to help the incapacitated person. With these kinds of decisions the person's rights are literally taken away; the right to make financial decisions, medical decisions, and in some cases even the right to vote or do other things.

This type of decision literally isolates the person from everything. According to state law however the person overseeing the incapacitated person is not supposed to do this, but since the courts have appointed people who are not family members the incapacitated person is not able to see family or friends because "it would upset mom". This kind of isolation amounts to elder abuse. The family doesn't know whether the person is being taken to places like a senior center or to other outside activities for stimulation or if their medical needs are being met; doctor and dental appointments.

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

The court 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 members whose elderly loved

ones had been declared “incapacitated” by the court, had their civil rights terminated and placed under court-controlled guardianship. A sixteen member taskforce was appointed. NO interested family 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 care industry. The task force decided that the Uniform Probate Code did not need any changes except one; clarification about the after-death process.

They decided that the industry did not need to provide family members additional financial information to family members”. This is another problem with the system. Legislators are unwilling to change already existing laws because they are either part of the problem or have ties to the industry. Other problems with the system are few judges to hear cases and no money for courts to spend on resources, and laws to make those who have conservatorships be made to be more transparent with financial records and what kind of care the person is getting, make conservators be licensed (there is more involved with hairdressers getting a license than getting certification as a conservator).

Medical records are not going to be available because of doctor/patient confidentiality but they should be available to a family 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 taken seriously and published publicly; Require specific training and state licenses for guardians and conservators; additional court funding; and transparency with money for care and how the conservator is using the

money. Advocates, medical personnel, and family lawyers should be aware of what guardianship/conservatorship entails because of abuse. Families can use legal means to protect themselves from this type of situation. One lawyer in Albuquerque who is a lawyer who helps family members with guardianship suggests that families meet together and sign an agreement to not challenge the estate plans and if they do, they forfeit their inheritance. The elderly person should also meet with their children and answer any questions they might have regarding what the person wants to do with their finances and what they should do in a medical emergency. Questions about power of attorney and end of life decisions should also be addressed. This way all family members know what the elderly person wants and no one can say "but I didn't know".

There are many ways of communicating visually so they don't have to be in the room. My mother inherited financial investments and will have some money from property transactions. I don't know how much and it's not my business to know until the appropriate time, it is her money to live on and spend. She and I have talked about these articles and what she is going to do in order to help make it easier for my sister and me when she is gone.

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