

UNIFORM PROBATE CODE

CHAPTER 308

SENATE BILL NO. 2224

(Senators Dwyer, Lee, Sickler)
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact a new section to chapter 30.1-28 and a new subsection to section 30.1-28-10.1 of the North Dakota Century Code, relating to guardianship proceedings for minors becoming incapacitated adults and emergency guardianship; to amend and reenact section 27-20.1-02, subsection 1 of section 27-20.1-09, subsection 2 of section 27-20.1-17, subsection 60 of section 30.1-01-06, subsection 1 of section 30.1-26-01, subsection 2 of section 30.1-27-05, sections 30.1-28-03, 30.1-28-04, and 30.1-28-07, subsection 2 of section 30.1-28-09, and subsection 7 of section 30.1-28-12 of the North Dakota Century Code, relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardians ad litem.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-20.1-02. Jurisdiction.

The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or terminate guardianship for a child, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27 and the appointment of a guardian for a minor becoming an incapacitated adult under section 7 of this Act.

¹⁸⁰ **SECTION 2. AMENDMENT.** Subsection 1 of section 27-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. If, at any time in the proceeding, the court determines the child is of sufficient age and competency to assist counsel and the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child. The court shall make appropriate findings to support the appointment of counsel.

SECTION 3. AMENDMENT. Subsection 2 of section 27-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for

¹⁸⁰ Section 27-20.1-09 was also amended by section 4 of House Bill No. 1137, chapter 294.

funds and assets of the child. ~~For cases arising under section 27-20.3-16, the age of majority is age twenty-one.~~

SECTION 4. AMENDMENT. Subsection 60 of section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

60. "Visitor" means an individual, in guardianship proceedings, who is trained in nursing or social work, medical care, mental health care, or rehabilitation and is an ~~officer,~~ employee, or special appointee of the court with no personal interest in the proceedings.

¹⁸¹ **SECTION 5. AMENDMENT.** Subsection 1 of section 30.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, and adult day care and multipurpose senior citizen centers; home and community-based care, human service zones, and developmental disability services; powers of attorney, durable powers of attorney, health care directives, and supported decisionmaking; representative and protective payees; and licensed congregate care facilities.

SECTION 6. AMENDMENT. Subsection 2 of section 30.1-27-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over proceedings to consider objections to the testamentary appointment under section 30.1-27-07 and over the court appointment of a guardian of a minor except the appointment of a guardian for a minor becoming an incapacitated adult under section 7 of this Act. Any person interested in the welfare of a minor may petition the juvenile court for the appointment of a guardian under section 27-20.1-05 in the following situations:
- a. If there is a living parent of the minor, known or unknown;
 - b. If the testamentary guardian fails to accept appointment as guardian within sixty days after the death of the minor's last living parent;
 - c. If both parents are dead or the surviving parent's rights have been terminated by prior court order, but there has been no appointment of a guardian for the minor by will; or
 - d. If a guardianship of a minor is sought for any other reason.

SECTION 7. A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

Guardianship proceedings for minor becoming an incapacitated adult.

1. As used in this section:

¹⁸¹ Section 30.1-26-01 was also amended by section 2 of Senate Bill No. 2225, chapter 310.

- a. "Legal decisionmaking" means the legal right and responsibility to make all legal decisions for a child including those regarding education, health care, and personal care decisions.
 - b. "Child" means an individual who is under the age of eighteen and is not married.
 - c. "Child becoming an incapacitated adult" means a child who has reached age seventeen years and six months and is proposed to become an incapacitated adult at age eighteen.
2. A petition to establish a guardianship for a child becoming an incapacitated adult may be filed by any person interested in the welfare of the child and having knowledge of the facts alleged or information and belief the facts are true.
 3. The procedure in this chapter for appointment of a guardian of an incapacitated adult must be the procedure used for appointment of a guardian for a child becoming an incapacitated adult except the court shall appoint as the guardian any person that had legal decisionmaking responsibility for the child when the child turned seventeen years and six months of age. If the court finds the appointment of the person with legal decisionmaking authority would be contrary to the best interests of the incapacitated adult, the priorities listed in section 30.1-28-11 may be followed.
 4. A guardianship order under this section may take effect immediately on the day the child turns eighteen years of age.

¹⁸² **SECTION 8. AMENDMENT.** Section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual treatment plan team for the alleged incapacitated person or by any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;

¹⁸² Section 30.1-28-03 was also amended by section 3 of Senate Bill No. 2225, chapter 310.

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- d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;
 - e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
 - f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
 - g. The occupation and qualifications of the proposed guardian;
 - h. The name and address of the attorney, if known, who most recently represented the proposed ward;
 - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
 - j. The name and address of any current conservator appointed for the proposed ward;
 - k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
 - l. The name and address of any representative payee for the proposed ward;
 - m. That less intrusive alternatives to guardianship have been considered;
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward from an expert examiner, if available; and
 - o. Whether the petition seeks to restrict any of the following rights:
 - (1) To vote;
 - (2) To seek to change marital status; or
 - (3) To obtain or retain a motor vehicle operator's license.
3. Upon the filing of a petition, the court promptly shall set a date for hearing on the issues of incapacity, appoint an attorney to act as guardian ad litem, appoint an expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward. The proposed guardian shall attend the hearing on the petition unless excused by the court for good cause.
 4. The duties of the guardian ad litem include:
 - a. Personally interviewing the proposed ward;

- b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward;
 - c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity;
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the proposed ward's ability to attend the hearing either in person or by remote means; and
 - e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.
5. The expert examiner shall examine the proposed ward and submit a written report to the court. The written report must contain:
- a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication or physical or mental condition affects the demeanor of the proposed ward or the ability of the proposed ward to attend and participate fully in any court proceeding or in any other procedure required by the court or by court rule.
6. The visitor shall have the following duties:
- a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
 - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To interview other persons interested in the welfare of the proposed ward.
 - e. To visit the proposed ward's present place of residence.

- f. To discuss an alternative resource plan with the proposed ward, if appropriate.
- g. To obtain other relevant information as directed by the court.
- h. To submit a written report to the court.
- i. The visitor's written report must contain:
 - (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;
 - (3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative individual or entity that should be appointed as guardian;
 - (4) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and
 - (5) An assessment of the capacity of the proposed ward to perform the activities of daily living; and
 - (6) An assessment of the proposed ward's ability to attend the hearing either in person or by remote means.
7. In determining whether appointment of a guardian is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem, visitor, and an expert examiner. The court, guardian ad litem, petitioner, or proposed ward may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined.
8. The proposed ward must be present at the hearing in person or by remote means, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed expert examiner and the visitor. ~~The issue may be determined at a closed hearing if the proposed ward or the proposed ward's counsel so requests.~~
9. Every hearing under this chapter must be closed to the public unless the proposed ward, the ward, the attorney, or guardian ad litem of the proposed ward or ward requests it remain open. An individual or entity may request permission to observe or participate in the hearing and the request must be granted if the court determines the applicant's participation would be in the best interest of the proposed ward or ward.
10. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly,

the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.

- ~~40-11.~~ If the court ~~approves~~appoints a visitor, lawyer, or expert examiner, ~~guardian, or emergency guardian appointed~~ in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.
12. If the court approves a guardian or emergency guardian in a guardianship proceeding, that person may receive reasonable compensation and reimbursement from the ward's estate if the compensation and reimbursement will not unreasonably jeopardize the ward's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:
- a. The size and nature of the ward's estate;
 - b. The benefit to the ward, or the ward's estate, of the guardian's services;
 - c. The necessity for the services performed;
 - d. The ward's anticipated future needs and income;
 - e. The time spent by the guardian in the performance of the services;
 - f. Whether the services were routine or required more than ordinary skill or judgment;
 - g. Any unusual skill, expertise, or experience brought to the performance of the services;
 - h. The guardian's estimate of the value of the services performed;
 - i. The fee customarily charged in the community for similar services;
 - j. The nature and length of the relationship with the ward;
 - k. The experience, reputation, diligence, and ability of the person performing the service;
 - l. Any conflict of interest the guardian may have; and
 - m. Whether the appointment as guardian precluded the guardian from other employment.
13. The court may determine the weight to be given to each factor under subsection 12, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
14. The court must approve compensation and reimbursement before payment to the guardian is made.

¹⁸³ **SECTION 9. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:
 - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
 - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
 - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
 - (1) The proposed ward is an incapacitated person;
 - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
 - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
 - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, a ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license.
4. The court may find that the ward retains other specific rights.
5. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority

¹⁸³ Section 30.1-28-04 was also amended by section 4 of Senate Bill No. 2225, chapter 310.

retained by the ward. The court's order must require the guardian to provide within ninety days from the date of the order a beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to the ward and any interested persons designated by the court in its order. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.
8. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.
9. After the hearing, the guardian ad litem must be discharged of the person's duties as guardian ad litem.

SECTION 10. AMENDMENT. Section 30.1-28-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-07. (5-307) Removal or resignation of guardian - ~~Termination~~Change in or termination of guardianship.

1. On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.
2. The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated or no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that the duties and authority of the guardian require modification, and for removal or resignation of the guardian, termination of the guardianship, or change in the duties and authority of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

3. Before removing a guardian, changing the guardian's duties and authority, accepting the resignation of a guardian, or on finding that the ward is no longer incapacitated, or no longer incapacitated to the same extent and ordering the guardianship terminated or modified, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.
4. A hearing must be held no later than sixty days following the filing of the petition or informal request, unless good cause is shown. Following the hearing, the court shall make written findings of fact. Before terminating or modifying the guardianship, the court shall find by a preponderance of the evidence that the ward is no longer incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.
5. In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.
6. If the guardian dies, or if on the basis of a petition filed under this section or a report or other information, there is probable cause to believe a guardian is not performing the guardian's duties effectively and there is an imminent danger the ward's physical, mental, or emotional health or safety will be seriously impaired, the court shall take whatever action is necessary to protect the ward, including dismissal of the guardian and appointment of an emergency guardian as provided in section 30.1-28-10.1.
7. On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section 30.1-28-09. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice to the ward and other interested persons who have made an appearance or requested notice of the proceedings.

SECTION 11. AMENDMENT. Subsection 2 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The petitioning party, unless otherwise directed by the court, shall cause notice to be served personally on the ward or proposed ward, and the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or proposed ward must be given as provided in section 30.1-03-01. ~~Waiver of notice by the ward or proposed ward is not effective unless the ward or proposed ward attends the hearing or the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor.~~

SECTION 12. A new subsection to section 30.1-28-10.1 of the North Dakota Century Code is created and enacted as follows:

The petitioner may request the court extend the emergency order for up to an additional ninety days upon good cause shown. The request must be filed with the court at least fourteen days before the expiration of the emergency order and served on the alleged incapacitated individual, the individual's spouse, if any, and any other persons as the court directs. The court shall hold a hearing on the appropriateness of the extension within ten days of the request. No additional extensions of the emergency guardianship may be granted.

184 SECTION 13. AMENDMENT. Subsection 7 of section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian may shall:
 - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
 - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.
 - c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:
 - (1) The real property of the ward; or
 - (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
 - d. Move the court under section 30.1-28-03.2 for authority to lease the real or personal property of the ward.
 - e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.

Approved March 27, 2023

Filed March 28, 2023

¹⁸⁴ Section 30.1-28-12 was also amended by section 5 of Senate Bill No. 2225, chapter 310.

CHAPTER 309

SENATE BILL NO. 2381

(Senator Cleary)

AN ACT to amend and reenact section 30.1-11-01 of the North Dakota Century Code, relating to the deposit of a will.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-11-01. (2-515) Deposit of will in testator's lifetime.

A will may be deposited by the testator or the testator's agent with a recorder for safekeeping. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the recorder shall notify any person designated to receive the will and deliver it to that person on request or the recorder may deliver the will to the appropriate court. The recorder shall deliver the will to the appropriate court on the written request of an interested person as defined in section 30.1-01-06. The written request must contain the complete address of the appropriate court along with a copy of the death certificate or obituary. The will must be either hand delivered upon acceptance from the court if the appropriate court is in the same county or delivered by certified mail with a return receipt if the appropriate court is in another county.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 310

SENATE BILL NO. 2225

(Senators Dwyer, Lee, Sickler)
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and 30.1-28-19 of the North Dakota Century Code, relating to court-authorized involuntary treatment of a ward; to amend and reenact sections 25-03.1-18.2 and 30.1-26-01, subsection 2 of section 30.1-28-03, and sections 30.1-28-04, 30.1-28-12, and 30.1-28-14 of the North Dakota Century Code, relating to involuntary treatment of a ward with prescribed medication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-18.2 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.2. Guardian consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, clinical nurse specialist, or advanced practice registered nurse may treat the patient with prescribed mood stabilizer or antipsychotic medication upon consent of the patient's guardian pursuant to subsection 6 of section ~~30.1-28-12~~ sections 30.1-28-16 through 30.1-28-18.

- ~~1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to subsection 6 of section 30.1-28-12.~~
- ~~2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.~~

¹⁸⁵ **SECTION 2. AMENDMENT.** Section 30.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-26-01. (5-101) Definitions and use of terms.

Unless otherwise apparent from the context, in this title:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use

¹⁸⁵ Section 30.1-26-01 was also amended by section 5 of Senate Bill No. 2224, chapter 308.

of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multipurpose senior citizen centers; home and community-based care, human service zones, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities.

2. "Incapacitated person" means any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.
3. "Least restrictive form of intervention" means that the guardianship imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.
4. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.
5. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.
6. "Refusal" means a clear and unequivocal response declining to accept prescribed mood stabilizer or antipsychotic medication.
7. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

186 SECTION 3. AMENDMENT. Subsection 2 of section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;
 - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

¹⁸⁶ Section 30.1-28-03 was also amended by section 8 of Senate Bill No. 2224, chapter 308.

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
- f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
- g. The occupation and qualifications of the proposed guardian;
- h. The name and address of the attorney, if known, who most recently represented the proposed ward;
- i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
- j. The name and address of any current conservator appointed for the proposed ward;
- k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
- l. The name and address of any representative payee for the proposed ward;
- m. That less intrusive alternatives to guardianship have been considered;
- n. In the form of an attached recent statement, the physical, ~~mental~~neurological, and ~~emotional~~psychological limitations of the proposed ward from an expert examiner, if available; ~~and~~
- o. Whether the petition seeks to restrict any of the following rights:
 - (1) To vote;
 - (2) To seek to change marital status; ~~or~~
 - (3) To obtain or retain a motor vehicle operator's license; ~~or~~
 - (4) To use, own, control, or possess a firearm; and
- p. If the proposed guardian seeks authority for involuntary treatment with prescribed mood stabilizer or antipsychotic medication under section 30.1-28-16, facts specified under subsection 3 of section 30.1-28-16. The petitioner also shall attach a recent report under subsection 2 of section 30.1-28-16.

¹⁸⁷ **SECTION 4. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

¹⁸⁷ Section 30.1-28-04 was also amended by section 9 of Senate Bill No. 2224, chapter 308.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:
 - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
 - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
 - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
 - (1) The proposed ward is an incapacitated person;
 - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
 - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
 - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, a ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license.
4. The court may find that the ward retains other specific rights.
5. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority retained by the ward. The court's order must require the guardian to provide within ninety days from the date of the order a beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to the ward and any interested persons designated by the court in its order. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the

initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. ~~A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.~~
8. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.

¹⁸⁸ **SECTION 5. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-12. (5-312) General powers and duties of guardian.

1. A guardian of an incapacitated person has only the powers and duties specified by the court.
2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility or state institution for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subsection, the guardian may readmit a ward to a mental health facility or a state institution within sixty days of discharge from that institution, if the original admission to the facility or institution had been authorized by the court.
3. If entitled to custody of the ward, the guardian should make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training, education, or rehabilitative services. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and personal effects.
4. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psychosurgery, abortion,

¹⁸⁸ Section 30.1-28-12 was also amended by section 13 of Senate Bill No. 2224, chapter 308.

sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.

5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:
 - a. Meeting with the ward following the hearing, unless the ward is represented by an attorney, and explaining to the fullest extent possible the contents of the court's order and the extent of the guardian's authority;
 - b. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
 - c. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.
6. ~~A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:~~
 - ~~a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;~~
 - ~~b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;~~
 - ~~c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and~~
 - ~~d. The benefits of the treatment outweigh the known risks to the ward.~~
7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian may:
 - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
 - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.
 - c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:

- (1) The real property of the ward; or
 - (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
- d. Move the court under section 30.1-28-03.2 for authority to lease the real or personal property of the ward.
 - e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.
- ~~8-7.~~ If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.
- ~~9-8.~~ A guardian shall file an annual report with the court regarding the exercise of powers and duties in areas of authority specified in the court's order of appointment. The report must describe the status or condition of the ward, including any change of residence and reasons for the change, any medical treatment received by or withheld from the ward, any expenditure and income affecting the ward, any sale or transfer of property affecting the ward, and any exercise of legal authority by the guardian affecting the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian also shall report whether the ward continues to require guardianship and whether any powers of the guardian should be increased or limited. The report must be filed with the clerk of district court. The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
- ~~10-9.~~ Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to the ward and any interested persons designated by the court in its order. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.
- ~~11-10.~~ The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon

between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

SECTION 6. AMENDMENT. Section 30.1-28-14 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-14. Guardianships established before July 1, 1990.

The powers and duties of guardians and the rights and privileges of wards under guardianships established before July 1, 1990, are as provided by this chapter as it existed on June 30, 1990, and are not affected by chapter 405 of the 1989 Session Laws, except that guardians appointed before July 1, 1990, must comply with the requirements of subsections 2, 4, 5, and ~~9~~8 of section 30.1-28-12.

SECTION 7. Section 30.1-28-16 of the North Dakota Century Code is created and enacted as follows:

30.1-28-16. Court-authorized involuntary treatment with prescribed medication.

1. A guardian, upon notice and hearing, may request authorization from the court to consent to a ward to be treated with prescribed mood stabilizer or antipsychotic medication. The petition may be considered by the court in the initial procedure for court appointment of a guardian or at a separate involuntary treatment hearing pursuant to section 30.1-28-17. Upon filing a petition, the court shall set a hearing date on the issues and appoint an attorney guardian ad litem for the ward.
2. The guardian, as part of the petition, shall provide a report from the treatment expert examiner, treating physician, physician assistant, clinical nurse specialist, or advanced practice registered nurse which must certify:
 - a. The ward is a person requiring treatment;
 - b. The proposed prescribed mood stabilizer or antipsychotic medication is clinically appropriate and necessary to effectively treat the ward;
 - c. The ward was offered the treatment and refused;
 - d. The prescribed mood stabilizer or antipsychotic medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
 - e. The benefits of the treatment outweigh the known risks to the ward.
3. Evidence of the factors certified under subsection 2 may be presented to the court within the petition, during the initial hearing for court appointment of a guardian under section 30.1-28-03, or at a separate involuntary treatment hearing under section 30.1-28-17. Involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be authorized by the court solely for the convenience of the facility staff or for the purpose of punishment. The court in ruling on the requested authorization to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication shall consider all relevant evidence presented at the hearing including:

- a. The danger the ward presents to self or others;
 - b. The ward's current conditions;
 - c. The ward's treatment history;
 - d. The results of previous medication trials;
 - e. The efficacy of current or past treatment modalities concerning the ward;
 - f. The ward's prognosis; and
 - g. The effect of the ward's mental condition on the ward's capacity to consent.
4. If the factors certified under subsection 2 have been demonstrated by clear and convincing evidence, the court may include a finding in its findings on the petition, or issue a separate order after notice and hearing, authorizing the guardian to provide consent to the treating medical professional to involuntarily treat the ward with prescribed mood stabilizer or antipsychotic medication. The order to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be in effect for more than ninety days, unless specifically authorized by the court.

SECTION 8. Section 30.1-28-17 of the North Dakota Century Code is created and enacted as follows:

30.1-28-17. Involuntary treatment with prescribed medication hearing.

1. The involuntary treatment with prescribed mood stabilizer or antipsychotic medication hearing must be held within three business days of the date of the filing of the petition unless waived by the ward or the ward has been released as a person not requiring treatment. The court may extend the time for hearing for good cause.
2. The hearing must be held in the county of the ward's residence or location, or the county in which the state hospital or treatment facility treating the ward is located.
3. At the hearing, evidence in support of the request must be presented by the guardian or guardian's counsel. During the hearing, the guardian and the ward must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person.
4. All individuals not necessary for the conduct of the proceeding must be excluded, however, individuals having a legitimate interest in the proceeding may be admitted by the court. The hearing must be conducted as informal as practicable, but the issue must be tried as a civil matter.
5. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the ward. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the ward, and the burden of proof is upon the petitioner to rebut the presumption in support

of the petition. If the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition.

SECTION 9. Section 30.1-28-18 of the North Dakota Century Code is created and enacted as follows:

30.1-28-18. Length of involuntary treatment with prescribed medication and continuing treatment orders.

An initial order for a guardian to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not exceed ninety days, unless the court is presented with evidence that the ward will continue to require treatment beyond the ninety-day period with the prescribed medication and the ward has historically declined treatment with subsequent harm to self or others. If the court determines the ward will continue to require treatment beyond the ninety-day period and orders continuing treatment, the order for a guardian to consent to continuing treatment may not exceed the term of the appointment of the guardian.

SECTION 10. Section 30.1-28-19 of the North Dakota Century Code is created and enacted as follows:

30.1-28-19. Application.

This chapter does not limit the use of medications pursuant to sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, or prohibit a hospital or treatment facility from rendering medical care without consultation, if care is immediately necessary and delay would endanger the life of or adversely and substantially affect the health of the ward or others.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 311

SENATE BILL NO. 2222

(Senators Dwyer, Lee, Sickler)
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact a new section to chapter 30.1-29 of the North Dakota Century Code, relating to emergency conservators; to amend and reenact section 30.1-03-02, subsection 1 of section 30.1-29-05, sections 30.1-29-07 and 30.1-29-08, subsection 1 of section 30.1-29-09, and sections 30.1-29-18, 30.1-29-19, 30.1-29-22, 30.1-29-24, and 30.1-29-25 of the North Dakota Century Code, relating to a conservatorship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-03-02. (1-402) Notice - Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A ward or protected person, for whom a guardianship, conservatorship, or other protective order is sought may not waive notice.

SECTION 2. AMENDMENT. Subsection 1 of section 30.1-29-05 of the North Dakota Century Code is amended and reenacted as follows:

1. On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, ~~must be served personally by the petitioning party with notice of the proceeding or any guardian or conservator, at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they, any other guardian or conservator, and, if none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans' administration benefits, the person to be protected attends the hearing, or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.~~

SECTION 3. AMENDMENT. Section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.

1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters

alleged in the petition. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older. The duties of a guardian ad litem include:

- a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
 - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
 - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
 - g. Attending the hearing unless excused by the court for good cause.
2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, the court shall appoint an attorney to serve as guardian ad litem for the person to be protected. The duties of a guardian ad litem include:
- a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
 - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;

- c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
 - g. Attending the hearing unless excused by the court for good cause.
3. If the petition seeks appointment of a conservator or other protective order for reasons other than minority and the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall direct the person to be protected be examined by an expert examiner designated by the court. The expert examiner preferably should be someone who is not connected with any institution in which the person is a patient or is detained.
- a. An expert examiner appointed under this subsection shall examine the person to be protected and submit a written report to the court. The report must contain:
 - (1) A description of the nature and degree of any current disability, including the medical or ~~psychological~~ psychological history, if reasonably available;
 - (2) A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current disability;
 - (3) A statement about how or in what manner any underlying condition of physical or mental health affects the ability of the person to be protected to provide for personal needs; and
 - (4) A statement about whether any current medication ~~affects~~ or physical or mental conditions affect the demeanor of the person to be protected or the ability of the person to attend and participate fully in any court proceeding or in any other procedure required by the court or by court rule.
 - b. ~~In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this subsection from a guardian ad litem and an expert examiner.~~ The court, guardian ad litem, petitioner, or person to be protected may subpoena the expert examiner who prepared and submitted the report to appear, testify, and be cross-examined.
4. The person to be protected must be present at the hearing in person or by remote means, unless good cause is shown for the absence. Good cause does not consist of the physical difficulty of the person to be protected to attend the hearing. The court shall take all necessary steps to make the courts

and court proceedings accessible and understandable to impaired persons. The court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the person to be protected.

5. In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem and an expert examiner. In any case in which the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling ~~the~~their benefits payable on examination in accordance with the laws and regulations governing the veterans' administration is prima facie evidence of the necessity for a conservator or other protective order.
6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. After the hearing, the guardian ad litem must be discharged of the duties as guardian ad litem.
7. If the court approves a conservator, that person may receive reasonable compensation and reimbursement from the protected person's estate if the compensation and reimbursement will not unreasonably jeopardize the protected person's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:
 - a. The size and nature of the protected person's estate;
 - b. The benefit to the protected person, or the protected person's estate, of the conservator's services;
 - c. The necessity for the services performed;
 - d. The protected person's anticipated future needs and income;
 - e. The time spent by the conservator in the performance of the services;
 - f. Whether the services were routine or required more than ordinary skill or judgment;
 - g. Any unusual skill, expertise, or experience brought to the performance of the services;
 - h. The conservator's estimate of the value of the services performed;
 - i. The fee customarily charged in the community for similar services;
 - j. The nature and length of the relationship with the protected person;
 - k. The experience, reputation, diligence, and ability of the person performing the service;
 - l. Any conflict of interest the conservator may have; and

- m. Whether the appointment as conservator precluded the conservator from other employment.
8. The court may determine the weight to be given to each factor under subsection 7, if any, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
9. The court shall approve compensation and reimbursement before payment to the conservator is made.

SECTION 4. AMENDMENT. Section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-08. (5-408) Permissible court orders.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.
2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
 - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
 - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor ~~without other disability~~, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
 - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the

- person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.
- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.
 - e. An order made pursuant to this section determining that appointment of a conservator or other protective order is appropriate has no effect on the capacity of the protected person.
3. Unless terminated earlier by the court, an order appointing or reappointing a conservator under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the conservator, the protected person, the protected person's attorney, if any, and any interested persons regarding whether the need for a conservator continues to exist. If it is recommended the conservatorship continue, the court may appoint a guardian ad litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether the conservatorship should continue. Following the hearing and consideration of submitted information, the court may reappoint the conservator for up to another five years, allow the existing order to expire, or appoint a new conservator in accordance with this section. The supreme court, by rule or order, shall provide for regular review of conservatorships in existence on August 1, 2017.

SECTION 5. AMENDMENT. Subsection 1 of section 30.1-29-09 of the North Dakota Century Code is amended and reenacted as follows:

1. If it is established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust. The sale of real property is subject to section 30.1-29-22.

SECTION 6. AMENDMENT. Section 30.1-29-18 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-18. (5-418) Inventory and records.

Within ninety days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy thereof to the protected person if the protected person can be located, has attained the age of

fourteen years, and has sufficient mental capacity to understand these matters, and ~~to any parent or guardian with whom the protected person resides and to any guardian, spouse, or parent, if the protected person is a minor, and to any interested persons designated by the court in its order.~~ The conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

SECTION 7. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-19. (5-419) Annual reports and accounts.

1. At least once annually and at other times as the court may direct, a conservator shall file a report and account with the court regarding the exercise of powers and duties specified in the court's order of appointment. The report must describe any expenditure and income affecting the protected person, any sale or transfer of property affecting the protected person, and any exercise of authority by the conservator affecting the protected person.
2. On termination of the protected person's minority ~~or disability, or on termination by a court with jurisdiction,~~ a conservator shall file a final report and accounting and provide a copy of the report or accounting to the protected person ~~and other parties as indicated in section 30.1-29-18.~~ The report or accounting must be filed with the clerk of district court. The filing of the report or accounting does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. ~~Subject to appeal or vacation within the time permitted, an~~ An order, ~~made upon~~ after notice and hearing, allowing an intermediate account of a conservator, adjudicates ~~as to~~ liabilities concerning the matters considered in connection therewith, ~~adequately disclosed in the accounting.~~ An order, ~~made upon~~ after notice and hearing, allowing a final account, adjudicates ~~as to~~ all previously unsettled liabilities of the conservator ~~to the protected person or the protected person's successors~~ relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and ~~any interested persons designated by the court in its order~~ other parties as required under section 30.1-29-18. The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

SECTION 8. AMENDMENT. Section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-22. (5-422) ~~Sale, encumbrance, or transaction involving conflict of interest – Voidable exceptions~~ Authorization of single transaction to sell real property of the protected person.

1. Any sale or encumbrance to a conservator, the conservator's spouse, agent, or attorney, or any corporation, limited liability company, or trust in which the conservator has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court, after notice to interested persons and others as directed by the court.
2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
 - a. The motion must contain:
 - (1) A description of the property;
 - (2) The details of the sale;
 - (3) The reason for the transaction;
 - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
 - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
 - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
 - b. The motion must be served upon the protected person, the spouse of the person to be protected, and all interested persons.
 - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.
 - d. The court's order must include specific findings regarding whether the transaction is in the best interests of the person to be protected.

SECTION 9. AMENDMENT. Section 30.1-29-24 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-24. (5-424) Powers of conservator in administration.

1. A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. ~~In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has~~

~~the duties and powers of a guardian of a minor described in section 30.1-27-09 until the minor marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by chapter 30.1-27.~~

2. A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.
3. A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, except as provided in section 30.1-29-22, may act without court authorization or confirmation, to:
 - a. Collect, hold, and retain assets of the estate, including land in another state, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.
 - b. Receive additions to the estate.
 - c. Continue or participate in the operation of any business or other enterprise.
 - d. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
 - e. Invest and reinvest estate assets in accordance with subsection 2.
 - f. Deposit estate funds in a bank, including a bank operated by the conservator.
 - g. Acquire or dispose of an estate asset, including land in another state for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.
 - h. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings.
 - i. Subdivide, develop, or dedicate land to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or to partition by giving or receiving considerations, and to dedicate easements to public use without consideration.
 - j. Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.
 - k. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
 - l. Grant an option involving disposition of an estate asset, except the sale of real property, to take an option for the acquisition of any asset.
 - m. Vote a security, in person or by general or limited proxy.

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- n. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
 - o. Sell or exercise stock or membership interest, subscription or conversion rights, to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation, limited liability company, or other business enterprise.
 - p. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.
 - q. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.
 - r. Borrow money to be repaid from estate assets or otherwise, to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made.
 - s. Pay or contest any claim, to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.
 - t. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate.
 - u. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.
 - v. Pay any sum distributable to a protected person or the protected person's dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian or, if none, to a relative or other person with custody of the distributee's person.
 - w. Employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of the conservator's administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.
 - x. Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties.

- y. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

SECTION 10. AMENDMENT. Section 30.1-29-25 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-25. (5-425) Distributive duties and powers of conservator.

1. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and the protected person's dependents in accordance with the following principles:
 - a. The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
 - b. The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:
 - (1) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person.
 - (2) The accustomed standard of living of the protected person and members of the protected person's household.
 - (3) Other funds or sources used for the support of the protected person.
 - c. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves, and who are in need of support.
 - d. Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and advance payments are customary or reasonably necessary under the circumstances.
2. If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsection, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate.

3. When a minor who has not been adjudged disabled under subsection 2 of section 30.1-29-01 attains majority, the minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
4. ~~When the conservator is satisfied that a protected person's disability other than minority has ceased~~When the court has determined the conservatorship is no longer needed, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
5. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the executor or a beneficiary named therein that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30.1-13-04 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section ~~shall have~~has the effect of an order of appointment of a personal representative as provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

SECTION 11. A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

Emergency conservator.

1. On petition by a person interested in the estate of the person to be protected, the court may appoint an emergency conservator if the court finds that compliance with the procedures in this chapter likely will result in substantial harm to the estate of the person to be protected, and that no other person appears to have authority and willingness to act in the circumstances. The court may appoint the conservator for a specified period of time, not to exceed ninety days. Immediately upon receipt of the petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs.

2. An emergency conservator may be appointed without notice only if the court finds from affidavit or other sworn testimony that the estate of the person to be protected will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice, the person whose estate is to be protected and the person's spouse, if any, must be given notice of the appointment within forty-eight hours. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment.
3. Appointment of an emergency conservator, with or without notice, is not a determination of the person or the estate of the person's need for protection.
4. The court may remove an emergency conservator at any time. An emergency conservator shall make any report the court requires. In all other respects, the provisions of this chapter concerning conservators apply to an emergency conservator.

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