

**FIRST ENGROSSMENT  
with House Amendments**

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2327**

Introduced by

Senator W. Stenehjem

1 A BILL for an Act to create and enact a new subsection to section 30.1-28-03 and a new  
2 subsection to section 30.1-28-04 of the North Dakota Century Code, relating to authority of  
3 guardians to make health care decisions and compensation for services in guardianship  
4 proceedings; and to amend and reenact subsection 2 of section 30.1-28-04 of the North Dakota  
5 Century Code, relating to authority of guardians to make health care decisions.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new subsection to section 30.1-28-03 of the North Dakota Century  
8 Code is created and enacted as follows:

9 If the court approves a visitor, lawyer, physician, guardian, or temporary guardian  
10 appointed in a guardianship proceeding, that person may receive reasonable  
11 compensation from the ward's estate if the compensation will not unreasonably  
12 jeopardize the ward's well-being.

13 **SECTION 2. AMENDMENT.** Subsection 2 of section 30.1-28-04 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15 2. At a hearing held under this chapter, the court shall:
  - 16 a. Hear evidence that the proposed ward is an incapacitated person. Age,
  - 17 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a
  - 18 finding of incapacity;
  - 19 b. Hear evidence and determine whether there are any existing general durable
  - 20 powers of attorney and durable powers of attorney for health care. If there
  - 21 are validly executed durable powers of attorney, the court shall consider the
  - 22 appointed attorneys in fact and agents appointed thereunder when assessing
  - 23 alternative resource plans and the need for a guardian; and

- 1            c.    Appoint a guardian and confer specific powers of guardianship only after  
2                    finding in the record based on clear and convincing evidence that:
- 3                    (1)    The proposed ward is an incapacitated person;
- 4                    (2)    There is no available alternative resource plan that is suitable to  
5                    safeguard the proposed ward's health, safety, or habilitation which  
6                    could be used instead of a guardianship;
- 7                    (3)    The guardianship is necessary as the best means of providing care,  
8                    supervision, or habilitation of the ward; and
- 9                    (4)    The powers and duties conferred upon the guardian are appropriate as  
10                   the least restrictive form of intervention consistent with the ability of the  
11                   ward for self-care.

12            **SECTION 3.** A new subsection to section 30.1-28-04 of the North Dakota Century  
13 Code is created and enacted as follows:

14                    A durable power of attorney for health care executed pursuant to chapter 23-06.5  
15                    takes precedence over any authority to make medical decisions granted to a  
16                    guardian pursuant to chapter 30.1-28.