

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2327
(Senator W. Stenehjem)

AN ACT to create and enact a new subsection to section 30.1-28-03 and a new subsection to section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions and compensation for services in guardianship proceedings; and to amend and reenact subsection 2 of section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

If the court approves a visitor, lawyer, physician, guardian, or temporary 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.

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

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.

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

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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2327.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 96 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State