

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1117

Introduced by

Representatives Klemin, Buffalo, Hanson, Heinert, Jones, Karls, Roers Jones

Senators Bakke, Dwyer, Larson

1 A BILL for an Act to create and enact sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and
 2 30.1-28-19 of the North Dakota Century Code, relating to involuntary treatment of a ward with
 3 prescribed medication; and to amend and reenact sections 25-03.1-03.1, 25-03.1-06,
 4 25-03.1-08, 25-03.1-15, 25-03.1-18.2, and 25-03.1-19, subsection 2 of section 25-03.1-21, ~~and~~
 5 sections 25-03.1-22, 25-03.1-23, and 25-03.1-29, subsection 2 of section 30.1-28-03, and
 6 sections 30.1-28-04, 30.1-28-12, and 30.1-28-14 of the North Dakota Century Code, relating to
 7 commitment procedures and involuntary treatment of a ward with prescribed medication.

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

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

11 **25-03.1-03.1. Disclosure of health information.**

12 A treating facility or mental health professional may disclose individually identifiable health
 13 information to a court, regional human service center, state's attorney, appointed counsel,
 14 retained counsel, or other mental health professional, including an expert examiner, and the
 15 disclosure is a disclosure for treatment, including the provision, coordination, and management
 16 of health care and to carry out the purposes of ~~chapter 25-03.1~~this chapter.

17 **SECTION 2. AMENDMENT.** Section 25-03.1-06 of the North Dakota Century Code is
 18 amended and reenacted as follows:

19 **25-03.1-06. Right to release on application - Exception - Judicial proceedings.**

20 ~~Any~~An individual voluntarily admitted for inpatient treatment to ~~any~~a treatment facility or the
 21 state hospital must be orally advised of the right to release and must be further advised in
 22 writing of the rights under this chapter. A voluntary patient who requests release must be
 23 immediately released. However, if the superintendent or the director determines ~~that~~ the patient
 24 is a person requiring treatment, the release may be postponed until a petition for involuntary

1 commitment has been filed with the clerk of court and judicial proceedings for involuntary
2 treatment have been held in the county wherein which the hospital or facility is located. The
3 patient must be served the petition within twenty-four hours, exclusive of weekends and
4 holidays, from the time release is requested, unless extended by the magistrate for good cause
5 shown. The treatment hearing must be held within seven days from the time the petition is
6 served.

7 **SECTION 3. AMENDMENT.** Section 25-03.1-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **25-03.1-08. Application to state's attorney or retained attorney - Petition for**
10 **involuntary treatment - Investigation by mental health professional.**

- 11 1. ~~Any~~An individual eighteen years of age or over shall present, in good faith, the
12 information necessary for the commitment of an individual for involuntary treatment to
13 the state's attorney of the county wherein which the respondent is presently located, or
14 which is the respondent's place of residence, or to an attorney retained by ~~that~~
15 ~~applicant~~the petitioner to represent the ~~applicant~~petitioner throughout the proceedings.
16 The attorney shall assist the ~~applicant~~petitioner in completing the petition. The petition
17 must be verified by affidavit of the ~~applicant~~petitioner and contain assertions that the
18 respondent is a person requiring the treatment; the facts, in detail, that are the basis of
19 that assertion; the names, telephone numbers, and addresses, if known, of any
20 witnesses to those facts; and, if known, the name, telephone number, and address of
21 the nearest relative or guardian of the respondent, or, if none, of a friend of the
22 respondent.
- 23 2. The petition may be accompanied by any of the following:
- 24 a. A written statement supporting the petition from a tier 1 mental health
25 professional or an addiction counselor who is practicing within the professional
26 scope of practice and who has personally examined the respondent within
27 forty-five days of the date of the petition.
- 28 b. One or more supporting affidavits otherwise corroborating the petition.
- 29 3. In assisting the ~~applicant~~petitioner in completing the petition, the state's attorney may
30 direct a tier 1 or tier 2 mental health professional designated by the regional human
31 service center to investigate and evaluate the specific facts alleged by the

1 ~~applicant~~petitioner. The investigation must be completed as promptly as possible and
2 include observations of and conversation with the respondent, unless the respondent
3 cannot be found or refuses to meet with the mental health professional. A written
4 report of the results of the investigation must be delivered to the state's attorney.
5 Copies of the report must be made available upon request to the respondent, the
6 respondent's counsel, and any expert examiner conducting an examination under
7 section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the
8 information provided by the petitioner or gathered by investigation provides probable
9 cause to believe the subject of the petition is a person requiring treatment. A state's
10 attorney who determines there are insufficient grounds for filing a petition may refer
11 the ~~applicant~~individual to other community resources. A state's attorney's decision not
12 to institute proceedings may be reviewed under section 11-16-06.

13 **SECTION 4. AMENDMENT.** Section 25-03.1-15 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **25-03.1-15. Respondent's attendance at hearings.**

16 The respondent must be present at all hearings unless the respondent waives the right to
17 be present either orally or in writing. A respondent's refusal to attend a hearing is presumed to
18 be a waiver of the right to be present at the hearing. The judge must be notified if the
19 respondent has been medicated within twenty-four hours of the beginning of the hearing or an
20 adjourned session ~~thereof~~of the hearing, and of the probable effects of the medication.

21 **SECTION 5. AMENDMENT.** Section 25-03.1-18.2 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **25-03.1-18.2. Guardian consent to involuntary treatment with prescribed medication.**

24 Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses
25 treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or
26 advanced practice registered nurse may treat the patient with prescribed medication upon
27 consent of the patient's guardian pursuant to ~~subsection 6 of section 30.1-28-12~~sections
28 30.1-28-16, 30.1-28-17, 30.1-28-18, and 30.1-28-19.

29 ~~1. The guardian's consent for involuntary treatment with prescribed medication may not~~
30 ~~be in effect for more than ninety days without receiving another recommendation and~~
31 ~~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.~~

SECTION 6. AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing.

1. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

2. The hearing must be held in the county of the respondent's residence or location or the county wherein which the state hospital or treatment facility treating the respondent is located, if the respondent requests a change of venue. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent 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. All individuals not necessary for the conduct of the proceeding must be excluded, except ~~that~~ the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence that may be

1 offered as governed by the North Dakota Rules of Evidence. There is a presumption in
2 favor of the respondent, and the burden of proof in support of the petition is upon the
3 petitioner.

4 3. If, upon completion of the hearing, the court finds ~~that~~ the petition has not been
5 sustained by clear and convincing evidence, the court shall deny the petition,
6 terminate the proceeding, and order ~~that~~ the respondent be discharged if the
7 respondent has been hospitalized before the hearing.

8 **SECTION 7. AMENDMENT.** Subsection 2 of section 25-03.1-21 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 2. If the respondent is not complying with the alternative treatment order or the
11 alternative treatment has not been sufficient to prevent serious risk of harm, the
12 department, a representative of the treatment program involved in the alternative
13 treatment order, the petitioner's retained attorney, or the state's attorney may apply to
14 the court or to the district court of a different judicial district in which the respondent is
15 located to modify the alternative treatment order. The court shall hold a hearing within
16 seven days after the application is filed and served on the respondent. Based upon the
17 evidence presented at the hearing and other available information, the court may:
18 a. Continue the alternative treatment order;
19 b. Consider other alternatives to hospitalization, modify the court's original order,
20 and direct the respondent undergo another program of alternative treatment for
21 the remainder of the ninety-day period; or
22 c. Enter a new order directing the respondent be hospitalized until discharged from
23 the hospital under section 25-03.1-30. If the respondent refuses to comply with
24 this hospitalization order, the court may direct a peace officer to take the
25 respondent into protective custody and transport the respondent to a treatment
26 facility.

27 **SECTION 8. AMENDMENT.** Section 25-03.1-22 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **25-03.1-22. Length of involuntary and continuing treatment orders.**

- 2 1. An initial order for involuntary treatment following a preliminary hearing may not
3 exceed ~~ninetyfourteen~~ days. An order for involuntary treatment following a treatment
4 hearing may not exceed ninety days.
- 5 2. If the director or superintendent believes that a patient continues to require treatment,
6 the director or superintendent shall, not less than fourteen days before the expiration
7 of the initial order, shall petition the court where the facility is located for a
8 determination that the patient continues to be a person requiring treatment and for an
9 order of continuing treatment, which order may be for a period not to exceed one year.
10 The court shall set a hearing date that must be within fourteen days after the petition
11 was filed, unless extended for good cause shown.
- 12 3. ~~Unless extended under section 25-03.1-31, continuing treatment orders of indefinite-~~
13 ~~duration issued before August 1, 1993, expire as follows:~~
- 14 a. ~~Those orders issued before August 1, 1991, expire September 30, 1993.~~
- 15 b. ~~Those orders issued from August 1, 1991, through July 31, 1992, expire-~~
16 ~~December 31, 1993.~~
- 17 c. ~~Those orders issued from August 1, 1992, through August 1, 1993, expire on-~~
18 ~~their first anniversaries or on March 31, 1994, whichever is later.~~
- 19 4. A respondent subject to a continuing treatment order of indefinite duration retains the
20 rights to periodic review and to petition for discharge under section 25-03.1-31 as that
21 section existed on July 31, 1993.

22 **SECTION 9. AMENDMENT.** Section 25-03.1-23 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **25-03.1-23. Petition for continuing treatment orders.**

25 A petition for an order authorizing continuing treatment must contain a statement setting
26 forth the ~~reasons for~~ specific facts that are the basis of the determination that the patient
27 continues to be a person requiring treatment; a statement describing the treatment program
28 provided to the patient and the results of that treatment; and a clinical estimate as to how long
29 further treatment will be required. The petition must be accompanied by a certificate executed
30 by a physician, physician assistant, psychiatrist, psychologist, advanced practice registered

1 nurse, or licensed addiction counselor, any of whom is practicing within that individual's
2 professional scope of practice.

3 **SECTION 10. AMENDMENT.** Section 25-03.1-29 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-03.1-29. Appeal.**

6 1. The respondent has the right to an expedited appeal from an order of involuntary
7 commitment or alternative treatment, an order modifying a treatment order, an
8 alternative treatment order or less restrictive treatment order, a continuing treatment
9 order, an order denying a petition for discharge, or an order of transfer. Upon entry of
10 an appealable order, the court shall notify the respondent of the right of appeal and the
11 right to counsel. The notice of appeal must be filed within thirty days after the order
12 has been entered. Such appeal must be to the supreme court and the hearing must be
13 commenced within fourteen days of filing of the notice of appeal. The hearing must be
14 limited to a review of the procedures, findings, and conclusions of the lower court. The
15 name of the respondent may not appear on the record on appeal.

16 2. Pending appeal, the order appealed from ~~shall remain~~remains in effect, unless the
17 supreme court determines otherwise. The respondent may not be denied the
18 opportunity to be present at the appeal hearing, and the court conducting the appeal
19 may issue such interim order as will assure this opportunity to the respondent while
20 protecting the interest sought to be served by the order appealed from.

21 **SECTION 11. AMENDMENT.** Subsection 2 of section 30.1-28-03 of the North Dakota
22 Century Code is amended and reenacted as follows:

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

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

29 **SECTION 12. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is
30 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.

1 5. The order appointing a guardian confers upon the guardian only those powers and
2 duties specified in the order. In addition to any other powers conferred upon the
3 guardian, the court's order must state whether the guardian has no authority, general
4 authority, or limited authority to make decisions on behalf of the ward in each of the
5 areas of residential, educational, medical, legal, vocational, and financial
6 decisionmaking. A grant of limited authority must specify the limitations upon the
7 authority of the guardian or the authority retained by the ward. The court's order must
8 require the guardian to provide within ninety days from the date of the order a
9 beginning inventory of all assets owned by the ward or in which the ward has an
10 interest. The guardian shall provide a copy of the beginning inventory to the ward and
11 any interested persons designated by the court in its order. Unless terminated earlier
12 by the court, an order appointing or reappointing a guardian under this section is
13 effective for up to five years. At least ninety days before the expiration of the initial
14 order of appointment or any following order of reappointment, the court shall request
15 and consider information submitted by the guardian, ward, ward's attorney, if any, and
16 any interested persons regarding whether the need for a guardian continues to exist. If
17 it is recommended that the guardianship continue, the court may appoint a guardian
18 ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold
19 a hearing on whether the guardianship should continue. Following the hearing and
20 consideration of submitted information, the court may reappoint the guardian for up to
21 another five years, allow the existing order to expire, or appoint a new guardian in
22 accordance with this section. The supreme court, by rule or order, shall provide for the
23 regular review of guardianship in existence on August 1, 2015.

24 6. Unless a court of competent jurisdiction determines otherwise, a durable power of
25 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over
26 any authority to make medical decisions granted to a guardian pursuant to chapter
27 30.1-28.

28 ~~7. A grant of general authority to make medical decisions includes the authority to~~
29 ~~consent to involuntary treatment with prescribed medications. Except upon specific~~
30 ~~findings of the court, a grant of limited authority does not include authority to consent~~
31 ~~to involuntary treatment with prescribed medications.~~

1 | **SECTION 13. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **30.1-28-12. (5-312) General powers and duties of guardian.**

- 4 1. A guardian of an incapacitated person has only the powers and duties specified by the
5 court.
- 6 2. To the extent that it is consistent with the terms of an order by a court of competent
7 jurisdiction, the guardian is entitled to custody of the person of the ward and may
8 establish the ward's place of residence within or without this state. However, no
9 guardian may voluntarily admit a ward to a mental health facility or state institution for
10 a period of more than forty-five days without a mental health commitment proceeding
11 or other court order. Notwithstanding the other provisions of this subsection, the
12 guardian may readmit a ward to a mental health facility or a state institution within sixty
13 days of discharge from that institution, if the original admission to the facility or
14 institution had been authorized by the court.
- 15 3. If entitled to custody of the ward, the guardian should make provision for the care,
16 comfort, and maintenance of the ward and, whenever appropriate, arrange for the
17 ward's training, education, or habilitative services. The guardian shall take reasonable
18 care of the ward's clothing, furniture, vehicles, and personal effects.
- 19 4. Notwithstanding general or limited authority to make medical decisions on behalf of
20 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or
21 experimental treatment of any kind unless the procedure is first approved by order of
22 the court.
- 23 5. When exercising the authority granted by the court, the guardian shall safeguard the
24 civil rights and personal autonomy of the ward to the fullest extent possible by:
- 25 a. Meeting with the ward following the hearing, unless the ward is represented by
26 an attorney, and explaining to the fullest extent possible the contents of the
27 court's order and the extent of the guardian's authority;
- 28 b. Involving the ward as fully as is practicable in making decisions with respect to
29 the ward's living arrangements, health care, and other aspects of the ward's care;
30 and

1 c. Ensuring the ward's maximum personal freedom by using the least restrictive
2 forms of intervention and only as necessary for the safety of the ward or others.

3 6. ~~A guardian with authority to consent to involuntary treatment with prescribed
4 medications may not provide consent without receiving a recommendation and
5 determination from the ward's treating physician, physician assistant, psychiatrist, or
6 advanced practice registered nurse that:~~

7 ~~a. The proposed prescribed medication is clinically appropriate and necessary to
8 effectively treat the ward and that the ward requires treatment;~~

9 ~~b. The ward was offered that treatment and refused it or that the ward lacks the
10 capacity to make or communicate a responsible decision about that treatment;~~

11 ~~c. Prescribed medication is the least restrictive form of intervention necessary to
12 meet the treatment needs of the ward; and~~

13 ~~d. The benefits of the treatment outweigh the known risks to the ward.~~

14 ~~7.~~ If no conservator for the estate of the ward has been appointed and if the guardian
15 has been granted authority to make financial decisions on behalf of the ward, the
16 guardian may:

17 a. Institute proceedings to compel any person under a duty to support the ward or to
18 pay sums for the welfare of the ward to perform that duty.

19 b. Receive money and tangible property deliverable to the ward and apply the
20 money and property for support, care, and education of the ward; but, the
21 guardian may not use funds from the ward's estate for room and board which the
22 guardian or the guardian's spouse, parent, or child have furnished the ward
23 unless a charge for the service is approved by order of the court made upon
24 notice to at least one of the next of kin of the ward, if notice is possible. The
25 guardian shall exercise care to conserve any excess for the ward's needs.

26 ~~8.7.~~ If a conservator has been appointed, all of the ward's estate received by the guardian
27 in excess of those funds expended to meet current expenses for support, care, and
28 education of the ward must be paid to the conservator for management as provided in
29 this title, and the guardian must account to the conservator for funds expended.

30 ~~9.8.~~ A guardian shall file an annual report with the court regarding the exercise of powers
31 and duties in areas of authority specified in the court's order of appointment. The

1 report must describe the status or condition of the ward, including any change of
2 residence and reasons for the change, any medical treatment received by or withheld
3 from the ward, any expenditure and income affecting the ward, any sale or transfer of
4 property affecting the ward, and any exercise of legal authority by the guardian
5 affecting the ward. The report must include changes that have occurred since the
6 previous reporting period and an accounting of the ward's estate. The guardian also
7 shall report whether the ward continues to require guardianship and whether any
8 powers of the guardian should be increased or limited. The report must be filed with
9 the clerk of district court. The filing of the report does not constitute an adjudication or
10 a determination of the merits of the report nor does the filing of the report constitute
11 the court's approval of the report. The court may approve a report and allow and settle
12 an accounting only upon notice to the ward's guardian ad litem and other interested
13 persons who have made an appearance or requested notice of proceedings. The
14 office of the state court administrator shall provide printed forms that may be used to
15 fulfill reporting requirements. Any report must be similar in substance to the state court
16 administrator's form. The forms must be available in the office of clerk of district court
17 or obtainable through the supreme court's internet website.

18 ~~10.9.~~ Copies of the guardian's annual report to the court and of any other reports required
19 by the court must be mailed to the ward and any interested persons designated by the
20 court in its order. The ward's copy must be accompanied by a statement, printed with
21 not less than double-spaced twelve-point type, of the ward's right to seek alteration,
22 limitation, or termination of the guardianship at any time.

23 ~~11.10.~~ The guardian is entitled to receive reasonable sums for services and for room and
24 board furnished to the ward as approved by the court or as agreed upon between the
25 guardian and the conservator, provided the amounts agreed upon are reasonable
26 under the circumstances. The guardian may request the conservator to expend the
27 ward's estate by payment to third persons or institutions for the ward's care and
28 maintenance.

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

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

2 The powers and duties of guardians and the rights and privileges of wards under
3 guardianships established before July 1, 1990, are as provided by this chapter as it existed on
4 June 30, 1990, and are not affected by chapter 405 of the 1989 Session Laws, except that
5 guardians appointed before July 1, 1990, must comply with the requirements of subsections 2,
6 4, 5, and 98 of section 30.1-28-12.

7 **SECTION 15.** Section 30.1-28-16 of the North Dakota Century Code is created and enacted
8 as follows:

9 **30.1-28-16. Court-authorized involuntary treatment with prescribed medication.**

10 1. Upon notice and a hearing, a guardian may request authorization from the court for a
11 ward to be treated with prescribed medication. The court may consider the petition in
12 the initial procedure for court appointment of a guardian or at a separate involuntary
13 treatment hearing.

14 2. As a part of a petition, the guardian shall provide a report from the treating expert
15 examiner which must certify:

16 a. The proposed prescribed medication is clinically appropriate and necessary to
17 treat the ward effectively and that the ward is a person requiring treatment;

18 b. The ward was offered that treatment and refused the treatment or that the ward
19 lacks the capacity to make or communicate a responsible decision about that
20 treatment;

21 c. Prescribed medication is the least restrictive form of intervention necessary to
22 meet the treatment needs of the ward; and

23 d. The benefits of the treatment outweigh the known risks to the ward.

24 3. a. Evidence of the factors certified under subsection 1 may be presented to the
25 court within the petition and during the initial hearing for court appointment of a
26 guardian under section 30.1-28-03 or at a separate involuntary treatment hearing
27 under this section. The court in ruling on the requested authorization for
28 involuntary treatment with prescribed medication shall consider all relevant
29 evidence presented at the hearing, including:

30 (1) The danger the ward presents to self or others;

31 (2) The ward's current condition;

1 (3) The ward's treatment history;

2 (4) The results of previous medication trials;

3 (5) The efficacy of current or past treatment modalities concerning the ward;

4 (6) The ward's prognosis; and

5 (7) The effect of the ward's mental condition on the ward's capacity to consent.

6 b. Involuntary treatment with prescribed medication may not be authorized by the
7 court solely for the convenience of facility staff or for the purpose of punishment.

8 4. If the factors certified under subsection 1 have been demonstrated by clear and
9 convincing evidence, the court may include in the court's findings on the petition, or
10 the court may issue a separate order after notice and hearing, authoring the treating
11 medical professional to involuntarily treat the ward with prescribed medication on such
12 terms and conditions as are appropriate. However, unless specifically authorized by
13 the court, the order for involuntary treatment with prescribed medication may not be in
14 effect for more than ninety days.

15 **SECTION 16.** Section 30.1-28-17 of the North Dakota Century Code is created and enacted
16 as follows:

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

18 1. The involuntary treatment with prescribed medication hearing, unless waived by the
19 ward or the ward has been released as a person not requiring treatment, must be held
20 within three days, exclusive of weekends and holidays, of the date of the filing of the
21 petition. The court may extend the time for hearing for good cause.

22 2. The ward has the right to an examination by an independent expert examiner if so
23 requested. If the ward is indigent, the county of residence of the ward shall pay for the
24 cost of the examination and the ward may choose an independent expert examiner.

25 3. The hearing must be held in the county of the ward's residence or location or the
26 county in which the state hospital or treatment facility treating the ward is located. At
27 the hearing, evidence in support of the request must be presented by the guardian or
28 guardian's private counsel. During the hearing, the guardian and the ward must be
29 afforded an opportunity to testify and to present and cross-examine witnesses. The
30 court may receive the testimony of any other interested person. All individuals not
31 necessary for the conduct of the proceeding must be excluded except that the court

1 may admit individuals having a legitimate interest in the proceeding. The hearing must
2 be conducted in as informal a manner as practical, but the issue must be tried as a
3 civil matter. Discovery and the power of subpoena permitted under the North Dakota
4 Rules of Civil Procedure are available to the ward. The court shall receive all relevant
5 and material evidence that may be offered as governed by the North Dakota Rules of
6 Evidence. There is a presumption in favor of the ward, and the burden of proof in
7 support of the petition is upon the petitioner. If, upon completion of the hearing, the
8 court finds the petition has not been sustained by clear and convincing evidence, the
9 court shall deny the petition.

10 **SECTION 17.** Section 30.1-28-18 of the North Dakota Century Code is created and enacted
11 as follows:

12 **30.1-28-18. Length of involuntary treatment with prescribed medication and**
13 **continuing treatment orders.**

14 An initial order for involuntary treatment with prescribed medication may not exceed ninety
15 days unless the court is presented with evidence the ward will continue to require treatment
16 beyond the ninety-day period with the prescribed medication and the ward habitually has
17 refused the treatment. If the court determines the ward will continue to require treatment with
18 the prescribed medication beyond the ninety-day period and orders continuing treatment, the
19 order for continuing treatment may be for a period not to exceed the term of the appointment of
20 the guardian.

21 **SECTION 18.** Section 30.1-28-19 of the North Dakota Century Code is created and enacted
22 as follows:

23 **30.1-28-19. Application.**

24 This chapter does not prohibit a hospital or treatment facility from rendering medical care
25 without consultation, if in the exercise of sound medical judgment that care is immediately
26 necessary and delay would endanger the life of or adversely and substantially affect the health
27 of the ward.