

2017 HOUSE JUDICIARY

HB 1095

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1095
1/4/2017
26548

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1095.

Cynthia Feland, District Court Judge: Went through the testimony. (See Testimony #1) (1:51-13.54) There will be an amendment coming on how it is worded. Defined and discussed guardianships and conservatorships and how they work. Explained conservatorship. Usually with dementia. Process starts with the filing of a petition. It will appoint a guardian for this person. A conservatorship can be appointed. Explained the process of competency of a ward and the restriction of rights. We were trying to make sure we were providing the information and authority.

Representative Vetter: In the rural areas they have to determine that this person needs a guardian or conservatorship. The physician does that now. Do you want to change it?

Cynthia Feland: Gives the court a broad understanding of this person's current status in life and what decisions this person can make or what physical or mental things they may have that might make this impossible. (14:00) Finding people to do this in the rural area is not easy. Now there isn't a definition in the code that will allow for people other than an MD or a clinical psychologist to be able to provide this type of report.

Representative Vetter: Now there are three different individuals that determine this.

Cynthia Feland: We get reports from all three. The situation was who was going to provide that report. The person that has the most medical contact with the person is who the court would like to hear from.

Representative Paur: You mentioned physician's assistant. That doesn't appear in the bill?

Cynthia Feland: I agreed to add physician assistant in to the proposed amendment.

Representative Klemin: (18:23) Why include an advanced practice nurse under the definition of physician or clinical psychologist?

Cynthia Feland: (19:08) That is the person who actually has contact with the proposed ward. This is the definition of a physician's report and who can prepare that report.

Representative Klemin: Does the amendment propose to delete that definition in there.

Cynthia Feland: It proposes to define positions report and who may prepare it. So we are not creating a definition for physician but we are taking and defining the physician report.

Representative Roers-Jones: Clarification on difference between a guardian and clinical psychologist on those two?

Cynthia Feland: It specifies who can be appointed within that statute. There is a list attached of who those people and who they can be. It has to be an attorney appointed to that position as opposed to a visitor, which is a different list of individuals that can be appointed, like a social worker.

Representative Jones: I did not know who the visitor was in this bill. We need to put that in the bill so the general public can understand it.

Cynthia Feland: Typically we have a definition section when words are used and they are put at the beginning they pertain to the entire chapter.

Chairman K. Koppelman: The concern is when we define this stuff under the definition can be confusing.

Cynthia Feland: (27:18-29:50) Continued going through her testimony.

Representative Simons: From what I just heard the person that would be in court would not be able to testify. Is that right?

Cynthia Feland: (30:00) We would presuppose that a person could or could not testify in court. Making a determination on the spot with a person for competency. Did not want to predetermine whether they were able to testify or not. So it made no sense since we would ever make that decision earlier.

Representative Simons: So what you are saying is before they were not allowed to testify?

Cynthia Feland: (32:32) Discussed how this would work at this time so that a decision is not made ahead of time. Continuing on testimony at Section 4 (33:29-34:33).

Chairman K. Koppelman: Explain the burdens of proof to the new members.

Cynthia Feland: (34:47-37:27) Think of a linear line on burdens of proof. Explaining the process rule of proof. It is determining what level of proof a person bringing in the action has to establish.

Representative Klemin: On page 11 lines 5 & 6 there is new language there that has nothing to do with the burden of proof, but it is new language about the person being unable to manage the personal property and affairs for the reasons of confinement, detention by a foreign power or disappearance. Why do we have that?

Cynthia Feland: If you look before we just through the wording was easier and does not change anything. Should not be in that category. That is why subsection B was created. Continuing with testimony on Section 5 (39:19-42:37)

Chairman K. Koppelman: Have guardian ad litem always been restricted to attorney's?

Cynthia Feland: Yes within this provision. When it related to guardianship and conservatorship. If an attorney is appointed for an individual that gives the impression to represent what the person wants. When an attorney is put in a position of a guardian ad litem their role is to represent the best interest of the party, which may not always be what that individual wants. It is not an attorney being appointed to represent the ward; it is an attorney being appointed as the guardian ad litem to provide information to the court. Continuing with testimony at 44:10-45:06.

Representative Klemin: On Page 14, line 18 I am wondering if the word clinical should be inserted ahead of physiologist.

Cynthia Feland: It appears that was an oversight when this was put in. That change should be made.

Representative Satrom: It says a physician can attend, but they rarely attend. If you are going to subpoena them; are we going to have trouble with some of these rural locations of physicians not wanting to serve in these locations?

Cynthia Feland: I have never seen a physician at one of these court proceedings. Started on Page 15, lines 14-19 (48:09-49:00) Continuing on testimony.

Representative Klemin: Who pays all these people?

Cynthia Feland: The petitioning party pays for those costs. Typically, with a conservatorship there are substantial assets. Section 8: (50:13-50:53) Continuing on testimony. There are no expiration dates so they went on forever. This puts in an expiration date so the court is able to review things on up to a five-year basis.

Chairman K. Koppelman: Most conservatorships don't span a long time. When you put a 5-year window; does it put a burden when people have to come back then?

Cynthia Feland: They are given a notice 90 days in advance when the authority under the conservatorship will expire? It gives the court the background information. The court can then extend the conservatorship.

Rep. Roers-Jones: Who's responsibility is it to watch for that five-year period?

Cynthia Feland: Everything is computerized so we don't have actually paper files but computer systems generate this information so a notice is mailed out.

Representative Klemin: Are we looking at all the current conservatorships out there and nobody has looked at those for a long time so now we are looking at them?

Cynthia Feland: That is exactly what we are doing. (55:06-56:48) Explained how they are being handled now. Reviews now are five years. Need to address the old cases.

Representative Nelson: People who are a conservator; are they required to inform the court of all changes of address etc. How do you know where to send the notices?

Cynthia Feland: Yes people have to file annual reports. The Clerk's office is very resourceful. Section 9 deals with term of apt. Continuing on testimony. (57:45-58:19)

Representative Klemin: Section 9 term of appointments which is the same as your title in Section 8. On the report what happens if the conservator doesn't file a report. Does the same thing happen to guardians too?

Cynthia Feland: They are brought up before the court on what is called an order to show cause. There is training for a proposed guardianship or conservatorship on line. Continuing on testimony. (1:02:06-1:03)

Representative Maragos: How would we go about putting in the proper (mike not on)

Cynthia Feland: The court will designate who those other interested persons are. A third person can assist the court. When a court gets a report they do not know all the details and so they would not notice, but another interested party would. They can file with the court if there are problems with the guardianship.

Representative Paur (1:07:05) How was the definition of visitor resolved?

Cynthia Feland: We are proposing here adding some additional duties. Code defines who can be a visitor like a social worker who are required by the court to go out and do certain things and provide a report to the court as to whether or not this guardianship is in the best interest of the proposed ward.

Representative Jones: I did some research as well and could not find it either. We need a definition of who the visitor is and how they came into play.

Representative Simons: A social worker can call to see if there is going to need to be a guardianship in a situation. Is that what you are saying?

Cynthia Feland: A social worker can be appointed to be a visitor by the court. Sometimes it can be nurses too and can bring it forward to the court.

Chairman K. Koppelman: What does the court do to try to keep tabs on this?

Cynthia Feland: In 2013 when we were tasked to check this last session we put in a pilot program to check on this. Given the current financial status of this that isn't going to continue. Now we don't see the person unless someone brings it to the courts attention. The court can then reappoint a guardian ad litem and send people out to check on it.

Chairman K. Koppelman: What sanctions are possible?

Cynthia Feland: Removal. It does not legate persons seek criminal charges for exploitation of a vulnerable adult. That would be a completely separate proceeding that would take place.

Chairman K. Koppelman: Does the court red flag that in some way so they would look at that thing or is it left to family?

Cynthia Feland: I don't have any examples now. We do have had cases where charges have been filed and criminal charges have been files and another guardian has been put in.

Chairman K. Koppelman: That would continue to happen when this five-year window goes into affect. Can they petition the court when there is a problem?

Cynthia Feland: Usually lay people do it is in the form of a letter. We would then set up a hearing and have any interested parties attend.

Representative Paur: (1:20:05) Would that be needed to include conservatorship?

Chairman K. Koppelman: Would you look at that Judge and see if there needs to be a clarifying amendment on this and for you to work with the intern to do an amendment.

Representative Klemin: Does the court have any independent inclination to order a conservator to refund the assets if they were taken?

Cynthia Feland: The court doesn't have enforcement mechanism this code to cover that. This is for protection for this person so we need to appoint someone. The proceeding really focuses on that particular procedure as opposed to looking at it. That enforcement is outside of enforcement and conservatorship proceedings.

Representative Jones: I assume it usually is a family member. What percentage of it would be other than a family member?

Cynthia Feland: Most of the time it is a family member.

Representative Jones: Who is initiating the request to the court to establish this?

Cynthia Feland: Yes. Sometimes it can be an agency because there isn't a family member that sees what is going on.

Representative Nelson: Who has jurisdiction like with the tribe for guardianship?

Cynthia Feland: That is not an easy question. Minors is a different issue. Discussed that it is a complex issue with tribal issues. Usually it comes in when they live outside the reservation.

Recessed the hearing.

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Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes:

Testimony 1,2. Proposed amendment #3

Chairman K. Koppelman: Reopened the hearing on HB 1095 in PM.

Courtney Koebele: ND Medical Assoc: (Testimony #1) (Amendment on back)
Went through proposed amendment (00:51-4:57)

Representative Paur: Why not just make that a medical report?

Courtney Koebele: Very good question and that maybe a good thing. I agree with you. We need to check the whole code.

Chairman K. Koppelman: Would you work with our intern and make those changes?

Representative Nelson: What are Physician?

Courtney Koebele: A physician is a MD and DO.

Chairman K. Koppelman: Item D #42, page 5 are there still people who are approved by the board or all just licensed?

Courtney Koebele: I will check on what is accurate and be sure the person is licensed.

David Boeck, State Employee and lawyer: (12:00) (See testimony #2. #3 proposed amendment) Went through the handouts and the proposed amendment.

Representative Paur: Did you serve on that work group that proposed this bill? I would propose you proposed these amendments to the work group and they rejected them?

David Boeck: No this was covered at a meeting I could not attend.

Representative Klemin: Why are you focusing on advanced practice registered nurse here in your testimony?

David Boeck: I am pointing out it doesn't fit with the definition of physician or clinical psychologist.

Representative Klemin: Who can prepare the report would propose to include this list without it being a part of the definition of physician. They are proposing that the existing language that registered advanced practice nurse could prepare that report and also a physician assistant. What is your feeling on that?

David Boeck: I am fine with that.

Chairman K. Koppelman: The wording on page 8 maybe it could be as simple as whether the proposed ward shall be denied any of the following rights. What is an independent state agency?

David Boeck: Other agencies of the state report to the governor's office and he doesn't have authority to interfere with decisions made by the protection side.

Opposition: None

Closed

Representative Jones: There has been a shame that has been going around the nation which includes an organization coming into the nursing homes and volunteering assistance to elderly people and then taking over as guardian or conservatorship and then cleaning out their bank accounts and vanishing so that has been what has keyed off this whole review.

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Explanation or reason for introduction of bill/resolution:

Relating to guardianship & conservatorship proceedings.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1095. Passed out proposed amendments and went through them. (See #1). (1:00-3:10)

Representative Klemin: These are David Boeck's?

Representative Paur: On page 9 he inserted a whole new section. On page 10 he inserted a whole new section.

Chairman K. Koppelman: These were brought to us by a working group that had done a lot of work on it. If we pass those out without those changes they can come to the Senate with additional changes they want. (5:35-7:24) Explained how the conference committee works.

Representative Klemin: When I recall the testimony by Judge Feland I understood that she was in agreement with the amendments that were proposed by the ND Medical Association; which deals with who can submit the report to the clerk. They provide a list of who could submit a written report and that would make moot some of Mr. Boeck's amendments on capacity examiner because they don't have that anymore

Representative Paur: Courtney Koebele said if we changed the definition from physician or clinical psychologist to something like expert examiner then she said we did not have to make any other changes.

Chairman K. Koppelman: The medical association was defining physician as something other than a physician. They had heartburn with changing it to healthcare providers report?

Representative Klemin: We are talking about the definition and cannot have that term used elsewhere.

Representative Nelson: That is what this amendment is.

Representative Roers Jones: Need to check other areas of the code.

Chairman K. Koppelman: Personally I like medical examiners. Medical report makes sense to me.

Representative Jones: A medical person from out in the rural areas was interested in this because we have nurses that are caring for these people and they have to got to be the ones able to do this. We just simply call it an examiner.

Representative Jones: Can't we just call it an examiner?

Chairman K. Koppelman: The current bill on page 5 defines physician. We need to identify the definition of the examiner. (14:00-14:50) Going over the bill. Can we get someone to work with them now; Rep. Hanson will work with Courtney Koebele on this in conjunction with the bill changes to be done with an amendment.

Courtney Koebele: ND Medical Association: It was some sort of members of the Supreme Court that did that and it would be in Judge Feland's report.

Chairman K. Koppelman: Reviewed the changes we want to make. (15:50-19:52)

Representative Klemin: Need to add clinical.

Chairman K. Koppelman: Can you get this together Rep. Hanson with Courtney Koebele.

Representative Klemin: The report of the examiner reported by the court is something we could say.

Courtney Koebele: The Court appoints someone that is going to do the examine. They are not going to appoint someone that doesn't have the correct background to do a report.

Chairman K. Koppelman: I don't see nurse here? Can you get this together by tomorrow?

Courtney Koebele: Yes I will get this together by tomorrow.

Closed.

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Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes:

1,2,3,4

Chairman K. Koppelman: Reopened the meeting on HB 1095.

Representative Hanson: Passing out documents (#1,2,3, 4)

Discussed them with people from Judge Feland's office and Courtney Koebele the terminology to make for sure all the potential amendments that have been discussed were reflected in this document.

Chairman K. Koppelman: We are not reopening the hearing

Representative Hanson: Went through the amendments # 2 with the #1: (4:03-8:33)

Chairman K. Koppelman: You indicated expert examiners also used elsewhere in law.

Representative Hanson: Discussed the best term to use for the healthcare physician (9:00-11:00)

Representative Klemin: Maybe we should specify who can do this.

Representative Hanson: In discussing this the court would never appoint someone who isn't appropriately trained to do the examination.

Representative Jones: The nurse PA said they really are having a hard time in rural area to cover this report. Sometimes they have no choices so I would not want to take any tools out of their tool box. I would like to see that left in.

Representative Hanson: (13:17-16:16) Continuing going through the proposal.

Representative Vetter: So section 2 was redone?

Representative Hanson: Explained the changes on the new version.

Representative Klemin: I know it is a marked up version.

Representative Hanson: (17:27-17:57) Page 11 of the bill I forgot add page 11, line 26 add the words expert examiner, if available. Those are the primary changes.

Chairman K. Koppelman: (18:50-20:08) Continuing going through the proposed amendment.

Representative Roers Jones: Because the original language in the bill we were concerned about the automatic removal of the right to testify and this is no longer an automatic removal of those rights; would it be appropriate to add that back as a consideration whether or not they are competent to testify?

Lindsey Nieuwsma, Staff Attorney at the Supreme Court: (21:00-22:00) Additional information on the law. You cannot restrict these rights unless there is a specific finding. So we translated that into the petition so that the proposed ward has notice up front in the petition that the petitioner or the guardian knows.

Representative Roers Jones: This will create the language in the petition is that right? Would there be a situation where you would restrict the petitioner or potential ward to testify on their own behalf?

Lindsey Nieuwsma: If we are including that as one of the rights that is going to be restricted, yes it should be included in that petition as well.

Chairman K. Koppelman: I am not seeing that in the original bill.

Representative Hanson: Because of the strike out on page 10 of our original bill line 14 we don't restrict it off the bat.

Chairman K. Koppelman: Because this language is not absolute now if we make the change, your point is that perhaps to ability to testify should be listed there was one of those questions as part of that process.

Representative Roers Jones: The question it brings up is we don't want to restrict is automatically.

Chairman K. Koppelman: (25:10) Do we need to list it or would the court make that determination on its own.

Lindsey Nieuwsma: (26:10) The reason you are not seeing it in the petition point is because we are recommending it be removed from the statute also. If the committee determines that they like that back in the statute, then yes it should be in the petition.

Chairman K. Koppelman: So to reinsert it here it would be a policy decision on our part to say oh yes the court should consider it but they are asking us not to do that.

Representative Hanson: (27:10) Of the additional amendments we talked about do we want to consider the first one whether or not we want to delete psychiatrist.

Chairman K. Koppelman: (27:37) See #2; went on page 4 of the amendments 4 e; went over this.

Representative Hanson: Those were part of Judge Feland's recommendations. Continuing going through the amendment changes.

Representative Jones: On the definition of visitor; why was the conservatorship deleted.

Representative Hanson: They only apply to guardianships. It is not applicable. A visitor is supposed to recognize the well-being and health on conservatorship side only applies to money.

Representative Klemin: Looking at the proposed amendment, page 6 Section 4, Sub d; I need clarification on where this is going after line 15 where is this going? We are amending the original bill.

Chairman K. Koppelman: (35:38-38:09) Problems with the amending of the original bill. The Section of code it identified so discussion on getting it changed right. Any further comments on this?

Motion Made to adopt the amendments 17.8022.01001 by Rep. Roers Jones; Seconded by Rep. Hanson. Voice vote carried.

Motion Made to adopt the proposed amendment 17.8022.01002 by Rep. Hanson; Seconded by Rep. Roers Jones.

Rep. Hanson: Went over the changes on #1 (stopped 44:40) We basically have 5 things, page 3, line 16; page 3, line 17; page 7 adding visitor between lines 28 & 29; page 11 line 26 adding that left out phase an expert examiner. And then the discussion Rep. Klemin brought up about the renumbering.

Representative Klemin: We need to use the original bill for the floor.

Representative Vetter: I think we are in agreement with a lot of these.

Chairman K. Koppelman: Your concern is whether psychologist should be removed or not?

Voice vote carried.

Motion made by Rep. Vetter that we re-insert the term psycholgist on page 3, line 16 of the marked up bill on page 5, line 18 of the original bill; Seconded by Rep. Klemin.

Discussion:

Representative Satrom: (51:00) Do we need to clarify this? Do lay persons know psychologist is a medical doctor is a physician.

Chairman K. Koppelman: I don't think it hurts to say a physician or psychologist.

Voice Vote Carried.

Do Pass as Amended Motion Made by Rep. Maragos; Seconded by Rep. Satrom;

Roll Call Vote: 14 Yes 0 No 1 Absent: Carrier: Rep. Hanson

Closed.

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Virginia Emineth

Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes:

Chairman Koppelman: Reopened the hearing on HB 1095.

Rep. Hanson: This is the guardianship and conservatorship bill which we recommended a do pass on. Someone alerted me to a typo in the amended version, it was correct in the original version but in the engrossed version on line 29 a word was left out and it is an important word the word not was left out it changes the meaning of the sentence. On Page 10 line 29 insert not after the word should.

Rep. Paur: They withdrew the bill but that was before the amendment was adopted.

Chairman Koppelman: That is correct so we will have to correct the amendment.

Rep. Hanson: I move to reconsider our action.

Rep. Roers Jones: Seconds the motion.

Chairman Koppelman: Discussion on the motion voice vote the motion carries. We have the original bill before us unamended and we have the amendment to look at.4:05

Rep. Klemin: We had a markup version.

Rep. Hanson: I don't if we passed out any one single thing because we talked through them.

Chairman Koppelman: There were a couple of amendments that were proposed and we adopted one motion and it was the amendments that Rep. Hanson proposed after her discussion with her interested with the interested parties and then there was another sheet that had some additional amendments but we did it all in one motion.

Rep. Klemin: I took notes as we went along. We passed separately through different amendments. One was the Koppelman amendment, the second one was the Hanson amendment and the third one was also on the Hanson sheet and that was to delete a psychologist and that amendment was to reinsert psychologist as so I am not sure where the word not is. From my notes I think we passed 3 different amendments so now we are going to reconsider all 3 of them?

Chairman. Koppelman: I don't think it is necessary. I think we should reconsider the motion that we just passed which reconsidered our amendment to HB1095 and defeat that, that gives us the bill back the way we got it from the floor with the amendment on it and engrossed. In other words, the motion that we just passed we have to undo.

Rep. Nelson: I make a motion.

Rep. Roers Jones: Do we have a motion on the proposed amendment from Rep. Hanson?

Chairman Koppelman: 8:40 We didn't have that motion yet. I said you reconsider your action by which you amended a bill and then you reamend. I think with what we have, the 3 amendments its simpler to amend the engrossed bill.

Rep. Maragos: I second the motion.

Chairman Koppelman: What we have before us is HB 1095 as 3 times amended in the committee and returned to us from the house floor. Voice vote motion passed. Now we have house HB 1095 as it was sent out from the committee with 3 amendments and a do pass recommendation to the house floor and as it was returned to us today from the house floor.

Rep. Maragos: Where is the typo? And where is that in the original bill?

Chairman Koppelman: On page 10 of the engrossed bill and after the word should online 29. I am not sure it is the original bill.

Rep. Klemin: What we are doing is amending one of the amendments. Section 2 of bill 30.1 2803 and it is under subsection 6-I-3.

Chairman Koppelman: 12:43 It is page 5 That reads "if the visitor recommends the proposed guardian should be appointed a recommendation regarding an alternative person or entity who should be appointed as a guardian." Which makes no sense. That was a typo.

Rep. Roers Jones: If the word was not in the amendment can we make a new amendment?

Chairman Koppelman: What we are doing is working from the engrossed bill. We are amending section 30.1-28-03 of the North Dakota Century Code under subsection 4 letter I sub sub 3 so that not be inserted after the word should and before the word be and is found in the engrossed bill on page 10 line 29 and if you are looking at the Koppelman amendment it would on page 5 under I 3 the first line of that section.

Rep. Hanson: I so move.

Rep. Simons: Second.

Chairman Koppelman: We will do that by voice vote. Motion passed now we have the amended bill before us and I think we should have done was reconsidered our action by which we passed HB 1095 ado pass recommendation as amended. We have the amended bill before us.

Rep. Roers Jones: I make a motion for a do pass recommendation.

Chairman Koppelman: A do pass recommendation as amended 4 times on HB 1095.

Rep. Hanson: Second.

Chairman Koppelman: Clerk will roll call **Yes 15 No 0 ABSENT 0**

BILL CARRIER REP. HANSON

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, replace the first "section" with "sections"

Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"

Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"

Page 1, line 2, after the third comma insert "subsection 2 of section"

Page 1, line 2, after the fourth comma insert "subsection 1 of section"

Page 1, line 3, after the first comma insert "sections"

Page 1, line 3, replace the second comma with "and"

Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"

Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

Page 3, line 17, overstrike "20." and insert immediately thereafter "21."

Page 3, line 22, overstrike "21." and insert immediately thereafter "22."

Page 3, line 26, overstrike "22." and insert immediately thereafter "23."

Page 3, line 29, overstrike "23." and insert immediately thereafter "24."

Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

Page 4, line 1, overstrike "25." and insert immediately thereafter "26."
Page 4, line 8, overstrike "26." and insert immediately thereafter "27."
Page 4, line 9, overstrike "27." and insert immediately thereafter "28."
Page 4, line 14, overstrike "28." and insert immediately thereafter "29."
Page 4, line 15, overstrike "29." and insert immediately thereafter "30."
Page 4, line 17, overstrike "30." and insert immediately thereafter "31."
Page 4, line 21, overstrike "31." and insert immediately thereafter "32."
Page 4, line 24, overstrike "32." and insert immediately thereafter "33."
Page 4, line 25, overstrike "33." and insert immediately thereafter "34."
Page 4, line 27, overstrike "34." and insert immediately thereafter "35."
Page 4, line 29, overstrike "35." and insert immediately thereafter "36."
Page 5, line 1, overstrike "36." and insert immediately thereafter "37."
Page 5, line 5, overstrike "37." and insert immediately thereafter "38."
Page 5, line 8, overstrike "38." and insert immediately thereafter "39."
Page 5, line 10, overstrike "39." and insert immediately thereafter "40."
Page 5, line 11, overstrike "40." and insert immediately thereafter "41."
Page 5, line 15, overstrike "41." and insert immediately thereafter "42."
Page 5, remove lines 16 through 25
Page 7, remove lines 20 through 30
Page 8, remove lines 1 through 30
Page 9, remove lines 1 through 29
Page 10, replace lines 1 through 9 with:

"SECTION 2. 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;
 - 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; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; from a physician, mental health services provider, or other health care provider, 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 a ~~physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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.
 - e-f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f-g. To obtain other relevant information as directed by the court.
 - g-h. To submit a written report to the court.
 - h-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 be appointed, a recommendation regarding an alternative person or entity who 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
 - (4)(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
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 either ~~a physician or a clinical psychologist~~ 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, 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 ~~physician~~ 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. 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.
 10. If the court approves a visitor, lawyer, ~~physician~~ 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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor, lawyer, physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, replace the first "section" with "sections"

Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"

Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"

Page 1, line 2, after the third comma insert "subsection 2 of section"

Page 1, line 2, after the fourth comma insert "subsection 1 of section"

Page 1, line 3, after the first comma insert "sections"

Page 1, line 3, replace the second comma with "and"

Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"

Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

Page 3, line 17, overstrike "20." and insert immediately thereafter "21."

Page 3, line 22, overstrike "21." and insert immediately thereafter "22."

Page 3, line 26, overstrike "22." and insert immediately thereafter "23."

Page 3, line 29, overstrike "23." and insert immediately thereafter "24."

Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

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Page 4, line 1, overstrike "25." and insert immediately thereafter "26."

Page 4, line 8, overstrike "26." and insert immediately thereafter "27."

Page 4, line 9, overstrike "27." and insert immediately thereafter "28."

Page 4, line 14, overstrike "28." and insert immediately thereafter "29."

Page 4, line 15, overstrike "29." and insert immediately thereafter "30."

Page 4, line 17, overstrike "30." and insert immediately thereafter "31."

Page 4, line 21, overstrike "31." and insert immediately thereafter "32."

Page 4, line 24, overstrike "32." and insert immediately thereafter "33."

Page 4, line 25, overstrike "33." and insert immediately thereafter "34."

Page 4, line 27, overstrike "34." and insert immediately thereafter "35."

Page 4, line 29, overstrike "35." and insert immediately thereafter "36."

Page 5, line 1, overstrike "36." and insert immediately thereafter "37."

Page 5, line 5, overstrike "37." and insert immediately thereafter "38."

Page 5, line 8, overstrike "38." and insert immediately thereafter "39."

Page 5, line 10, overstrike "39." and insert immediately thereafter "40."

Page 5, line 11, overstrike "40." and insert immediately thereafter "41."

Page 5, line 15, overstrike "41." and insert immediately thereafter "42."

Page 5, remove lines 16 through 25

Page 7, line 15, after "60." insert "Visitor" means means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

61."

Page 7, line 16, replace "61." with "62."

Page 7, remove lines 20 through 30

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 29

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"SECTION 2. 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

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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;
 - 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; ~~and~~
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; ~~from a physician, mental health services provider, or other health care provider~~ 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 ~~a physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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
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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.
 - e-f. To discuss an alternative resource plan with the proposed ward, if appropriate.
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 - g-h. To submit a written report to the court.
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8. The proposed ward must be present at the hearing in person, 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 ~~physician~~ 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. 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.
- 10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

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Renumber accordingly

1/17/17 DA

January 17, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

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- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
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 - 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;
 - 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; ~~and~~
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; ~~from a physician, mental health services provider, or other health care provider~~ 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 a physician or clinical psychologist~~ 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:
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 - 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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.
 - e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f.g. To obtain other relevant information as directed by the court.
 - g.h. To submit a written report to the court.
 - h.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;
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 - (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
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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 ~~either a physician or a clinical psychologist~~ 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, 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 ~~physician~~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. 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.
10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor, lawyer, physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1095

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8022.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Representative Hanson Seconded By Rep. Roers Jones

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE CARRIED

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1095

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8022.01002.02000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Representative Maragos Seconded By Rep. Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | X | | Rep. Hanson | X | |
| Vice Chairman Karls | X | | Rep. Nelson | X | |
| Rep. Blum | -- | | | | |
| Rep. Johnston | X | | | | |
| Rep. Jones | X | | | | |
| Rep. Klemin | X | | | | |
| Rep. Magrum | X | | | | |
| Rep. Maragos | X | | | | |
| Rep. Paur | X | | | | |
| Rep. Roers-Jones | X | | | | |
| Rep. Satrom | X | | | | |
| Rep. Simons | X | | | | |
| Rep. Vetter | X | | | | |

Total (Yes) 14 No 0

Absent 1

Floor Assignment : Rep. Hanson

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1095**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Hanson Seconded By Rep. Jones

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Total (Yes) voice vote No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

Motion carried

Date: 1-17-17
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1095

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider *undo* *undo the 1st Consideration*

Motion Made By Rep Nelson Seconded By Rep. Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Total (Yes) voice notes No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

Motion passed

Date: 1-17-17
Roll Call Vote 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1095

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Hanson Seconded By Rep. Simons

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Total (Yes) _____ *Voice note* No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion passed
Section 30.1-28-03 of the N.D. Century Code under
subsection 4 letter I sub 3 so that not to be inserted
after the word should and before the word be and is found
in the amended bill on page 10 line 29

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1095**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Hanson

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | X | | Rep. Hanson | X | |
| Vice Chairman Karls | X | | Rep. Nelson | X | |
| Rep. Blum | x | | | | |
| Rep. Johnston | x | | | | |
| Rep. Jones | x | | | | |
| Rep. Klemin | x | | | | |
| Rep. Magrum | x | - | | | |
| Rep. Maragos | x | | | | |
| Rep. Paur | x | | | | |
| Rep. Roers-Jones | x | | | | |
| Rep. Satrom | x | | | | |
| Rep. Simons | x | | | | |
| Rep. Vetter | X | | | | |

Total (Yes) 15 No 0

Absent 0

Floor Assignment : Rep. Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1095: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1095 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections"

Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"

Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"

Page 1, line 2, after the third comma insert "subsection 2 of section"

Page 1, line 2, after the fourth comma insert "subsection 1 of section"

Page 1, line 3, after the first comma insert "sections"

Page 1, line 3, replace the second comma with "and"

Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"

Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner" means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

Page 3, line 17, overstrike "20." and insert immediately thereafter "21."

Page 3, line 22, overstrike "21." and insert immediately thereafter "22."

Page 3, line 26, overstrike "22." and insert immediately thereafter "23."

Page 3, line 29, overstrike "23." and insert immediately thereafter "24."

Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

Page 4, line 1, overstrike "25." and insert immediately thereafter "26."

Page 4, line 8, overstrike "26." and insert immediately thereafter "27."

Page 4, line 9, overstrike "27." and insert immediately thereafter "28."

Page 4, line 14, overstrike "28." and insert immediately thereafter "29."

Page 4, line 15, overstrike "29." and insert immediately thereafter "30."

Page 4, line 17, overstrike "30." and insert immediately thereafter "31."

Page 4, line 21, overstrike "31." and insert immediately thereafter "32."

Page 4, line 24, overstrike "32." and insert immediately thereafter "33."

Page 4, line 25, overstrike "33." and insert immediately thereafter "34."

Page 4, line 27, overstrike "34." and insert immediately thereafter "35."

Page 4, line 29, overstrike "35." and insert immediately thereafter "36."

Page 5, line 1, overstrike "36." and insert immediately thereafter "37."

Page 5, line 5, overstrike "37." and insert immediately thereafter "38."

Page 5, line 8, overstrike "38." and insert immediately thereafter "39."

Page 5, line 10, overstrike "39." and insert immediately thereafter "40."

Page 5, line 11, overstrike "40." and insert immediately thereafter "41."

Page 5, line 15, overstrike "41." and insert immediately thereafter "42."

Page 5, remove lines 16 through 25

Page 7, line 15, after "60." insert ""Visitor" means means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

61."

Page 7, line 16, replace "61." with "62."

Page 7, remove lines 20 through 30

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 29

Page 10, replace lines 1 through 9 with:

"SECTION 2. 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;
 - 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; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; ~~from a physician, mental health services provider, or other health care provider~~ 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 ~~a physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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.
- e-f. To discuss an alternative resource plan with the proposed ward, if appropriate.
- f-g. To obtain other relevant information as directed by the court.
- g-h. To submit a written report to the court.
- h-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 be appointed, a recommendation regarding an alternative person or entity who 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
 - (4)(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
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 ~~either a physician or a clinical psychologist~~ 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, 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 ~~physician~~ 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. 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.
10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor,~~ lawyer, ~~physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1095: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the Sixth order on the calendar.

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Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner" means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

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Page 5, remove lines 16 through 25

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Page 7, line 16, replace "61." with "62."

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"SECTION 2. AMENDMENT. Section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

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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;
 - 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; ~~and~~
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; ~~from a physician, mental health services provider, or other health care provider~~ 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 ~~a physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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.
 - e-f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f-g. To obtain other relevant information as directed by the court.
 - g-h. To submit a written report to the court.
 - h-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 person or entity who 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
 - (4)(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
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 ~~either a physician or a clinical psychologist~~ 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, 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 ~~physician~~ 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. 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.
10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor~~, lawyer, ~~physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

2015 SENATE JUDICIARY

HB 1095

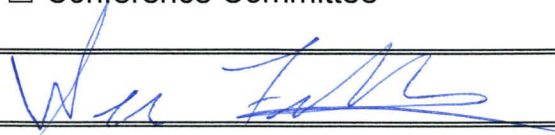
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1095
2/14/2017
28336

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes: **Testimony attached #**

1,2

Chairman Armstrong called the committee to order on HB 1095. All committee members were present.

Cynthia M. Feland, South Central Judicial District Court Judge, testified in support of the bill. (see attachment 1)

Chairman Armstrong: "Is it safe to say these amendments deal with that definition of expert examiner? I mean you do know it will be in their twice?"

Judge Feland: "Yes. A lot of times it makes it easier if you have a definition section that defines things."

Chairman Armstrong: "A lot of these set up for dementia situations, appointed a guardian than a ward can ask for an additional attorney. My question is, how do you address if the ward is competent enough to make their own decisions for their own lawyer?"

Judge Feland: "They still have the right to hire their own lawyer, but other family members can get involved by using different lawyers. As an example, a wife is in a hospital and the staff wants Mom to go to the hospital and Dad doesn't want to, and it has to do with money issues as opposed to whether it's in the wife's best interest. Then the two kids get involved and then all of a sudden they file a guardianship against not only Mom but Dad. Then there are a lot of issues that come into play in that particular instance, because Dad doesn't need a guardian, but Mom really does."

Chairman Armstrong: "How does that compare to now? I mean if you say it's not in the code now, you're still holding hearings and you're still determining the burden of proof."

Chairman Armstrong was referring Judge Feland's comment that a minor does not have the legal capacity to manage an estate. For conservatorships based on other reasons other than minority status, section 2 conservatorships, the workgroup concluded that the higher,

clear and convincing standard was warranted given that adults typically have more rights than minors which would be restricted through a conservatorship and a situation leading up to the conservatorship tends to be more complex than those based on minority status.”

Judge Feland: “At this point there isn’t one listed and there isn’t a Supreme Court case that addresses it because nobody has appealed the issue. So there is no unanimous consensus as to how it’s currently being done.”

Chairman Armstrong: “So judges could be doing it differently?”

Judge Feland: “Could be. Most issues that come before the court can usually be figured out what the burden of proof.”

Chairman Armstrong: “Is the guardian ad litem always an attorney in this situation?”

Chairman Armstrong was referring to Judge Feland’s comment that the ad litem is a guardian who is to act in the best interest of the person sought to be protected.

Judge Feland: “Yes.”

Senator Luick: “Does the expiration date of the ad litem reset itself if someone is changed?”

Judge Feland: “It could. It could be less but it could be up to 5 years. It’s meant to be flexible.”

Senator Nelson: “Can we go back to the definitions for a minute? There’s three people involved here and I want to know where they all fit on the totem pole. You got the Guardian ad litem who is for interests of the person.”

Judge Feland: “Yes.”

Senator Nelson: “Then you have the conservator who looks at the best interest of estate.”

Judge Feland: “Yes.”

Senator Nelson: “Where does the guardian fit?”

Judge Feland: “The judge will get three reports from the 3 types of people, then he’ll listen to the reports and decide who the guardian is.”

Senator Nelson: “So if I have a trust and it specifies who gets what, can you overrule those?”

Judge Feland: “No. The trustee controls those.”

Senator Osland: “Just as a practical matter, if I’m a business man and I’m dealing with a single individual or person, what is my first step to get them help?”

Judge Feland: “So, you basically go out and decide you will become that person’s guardian or you find someone who is or you contact a public administrator to see if they are going to do this, or you could find a family member to do this as well.”

Senator Nelson: “At the very end of your presentation you list the workgroup. Are they all attorneys who look at it? Or is somebody maybe a conservator or somebody else who can look at that?”

Judge Feland went over the different members of the workgroup and their respective titles. (See audio: 46:10 – 49:25)

Senator Nelson: “Is this like the Supreme Court where you are on this committee until you die?”

Judge Feland: “It’s not a committee it’s a workgroup, we are basically taking away somebody’s rights to make any decision and hand that over to someone else. So the authority we are giving someone is a strong authority and me personally I want to see these things through.”

Cheryl Rising, Family Nurse Practitioner, for the North Dakota Nurse Practitioner Association, testified in support of the bill. (See attachment 2)

Courtney Koebele, Executive Director of the North Dakota Medical Association, briefly testified in support of the bill.

“I just want to say we also support this bill as Amended.”

John V. Emter, North Dakota citizen, testified in opposition.

Chairman Armstrong dismissed John Emter after concluding his testimony was not relevant to the bill at hand.

Chairman Armstrong closed the hearing on SB 1095.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1095 Committee Work
2/14/2017
28339

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to guardianship and conservatorship proceedings.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on HB 1095. All committee members were present.

No discussion followed; a motion was made instantly.

Senator Luick motioned Do Pass. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson carried the bill.

Chairman Armstrong ended the discussion on HB 1095.

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1095

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator ^{Luick} ~~Larson~~ Seconded By Senator Myrdal

| Senators | Yes | No | Senators | Yes | No |
|--------------------|-----|----|----------------|-----|----|
| Chairman Armstrong | X | | Senator Nelson | X | |
| Vice-Chair Larson | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1095: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the
Fourteenth order on the calendar.

2017 TESTIMONY

HB 1095

#1
1-4-17
AM

**House Bill 1095
Judiciary Committee**

**Testimony Presented by Cynthia M. Feland
District Court Judge
January 4, 2017**

Chairman Koppelman, members of the House Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District. In the fall of 2013, the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. In reviewing our current statutes governing the guardianship and conservatorship processes, the Guardianship Workgroup identified and recommended a number of statutory amendments to improve and strengthen procedures in guardianship and conservatorship cases. These statutory amendments were reviewed by the Judicial Conference in November. All of the proposed amendments are contained in House Bill 1095.

Section 1 – General Definitions

Page 5, lines 16-25, amends N.D.C.C. § 30.1-01-06 to add a new subsection defining “physician” or “clinical psychologist”.

“Physician” or “clinical psychologist” are currently undefined in the chapter and presumably would only include a medical doctor and clinical psychologist. Health professionals such as certified nurse practitioners and certified clinical nurse specialists who have authority to diagnose and prescribe often serve as the only accessible health care in rural areas. The Workgroup discussed at length not only the difficulty in locating a medical doctor or psychologist in rural areas to complete the necessary report under N.D.C.C. §§ 30.1-28-03(5)

and 30.1-29-07(3), but the fact that the medical professional who has the most contact with and knowledge concerning the medical condition of a proposed ward is not a medical doctor. In reviewing other similar statutes, such as civil commitments, the Workgroup noted that the definition of health professionals has been expanded beyond medical doctors. Expanding the definition of “physician” or “clinical psychologist” in guardianship proceedings would remove obstacles in locating health professionals to provide the required report to the court on the proposed ward’s incapacity or disability, prognosis, and ability to provide for personal needs.

Section 2 – Petition, duties of guardian ad litem, and duties of visitor

- Page 8, lines 22-25, amends N.D.C.C. § 30.1-28-03(2) to add subdivision (o) requiring a statement by the petitioner within the guardianship petition for any proposed restrictions on the proposed ward’s rights and to remove the right to testify at judicial or administrative proceedings from the list of possible restrictions on the proposed ward’s rights.

The current statutory provisions do not require a petition to indicate whether any of the proposed ward’s rights are sought to be restricted. The court appointed visitor is required to offer an assessment to the court in the visitor report as to any restrictions recommended on the proposed ward’s rights, and if a guardianship is ordered, the court addresses the retention of the ward’s rights in its findings of fact and appointment. The Workgroup concluded that because a ward’s rights are addressed during the hearing on the guardianship petition, a restriction sought by the petitioner should be included in the original petition to the court as the restrictions may have bearing on whether the proposed ward seeks legal counsel.

The proposed amendment also includes a listing of the rights of the proposed ward that may be restricted. The proposed ward's right to testify in a judicial or administrative proceeding (which is currently included in the statute elsewhere) is not included in the proposed listing of rights, as the Workgroup did not find such a restriction to be an appropriate limitation.

Issues pertaining to competence are best addressed by courts at the time of an administrative or judicial proceeding. A premature restriction of an individual's right to testify in an administrative or judicial proceeding presupposes competency to testify.

Later references within the statute related to deprivation of the right to testify at judicial or administrative proceedings are also recommended for removal.

- Page 9, lines 8-9, amends N.D.C.C. §30.1-28-03(4) to add subdivision (e) which expands the duties of the guardian ad litem to include reviewing the visitor's report with the proposed ward.

The Workgroup concluded that it is important for guardian ad litem to explain the recommendations of the visitor to the proposed ward prior to the guardianship hearing in terms consistent with proposed ward's level of understanding and to insure that any concerns of the proposed ward are brought to the Court's attention at the hearing.

- Page 9, lines 18, 28-29 and Page 10, lines 1-3, amends N.D.C.C. § 30.1-28-03(6) by adding new subdivision (d) to expand the duties of the visitor to include interviewing other interested persons, renumbering, and adding provisions under renumbered subdivision (i) to require that the visitor provide a recommendation as to the appropriate person(s) to be appointed guardian.

Currently there is no requirement for a visitor to interview other interested persons, although such interviews are a common practice. The requirement to conduct interviews would not only conform to current practice but provide information about the suitability of the proposed guardian from the interested person's perspectives and elicit other relevant information about the proposed guardianship. The visitor is in the best position to gather information about the proposed guardian's suitability and, in instances where the proposed guardian is not suitable or qualified, to discover and recommend alternative potential guardians.

Section 3 – Ward's rights

Page 10, lines 12-15, amends N.D.C.C. § 30.1-28-04(3) to remove the reference to deprivation of the ward's right to testify in a judicial or administrative proceeding as a right that may be deprived upon specific findings by the court.

As mentioned previously, the Workgroup deemed the deprivation of the ward's right to testify to be inappropriate because a judicial officer not only has the authority, but is in the best position to determine a witness's competency to testify at the time of the proceeding in which the ward is called to testify.

Sections 4 – Burden of Proof in Conservatorship cases

Page 10, lines 18, 22-23, 29-30, and Page 11, lines 3-7, amends the caption to N.D.C.C. § 30.1-29-01 and Sections (1) and (2) with stylistic changes in addition to establishing the burdens of proof required for different types of conservatorships or other protective proceedings.

The burden of proof in conservatorship proceedings is currently not addressed by statute.

Following lengthy discussions, the Workgroup recommends that for a conservatorship based on

minority status (Section 1), preponderance of the evidence standard would be appropriate as a minor does not have the legal capacity to manage an estate. For a conservatorship based on reasons other than minority status (Section 2), the Workgroup concluded that the higher clear and convincing standard was warranted given that adults typically have more rights than minors, which would be restricted through the conservatorship, and the situation leading up to the conservatorship tends to be more complex than those based on minority status.

Sections 5 – Conservatorship Petition

Page 11, lines 13-30 and Page 12, lines 1-5, amends N.D.C.C. § 30.1-29-04(2) with stylistic changes and adds subdivisions to expand the information required within the petition for a conservatorship.

To maintain consistency in information provided to the Court in any protective proceedings, the Workgroup recommends that the requirements for the conservatorship petition parallel those in a guardianship.

Section 6 - Service

Page 12, line 12, amends N.D.C.C. § 30.1-29-05(1) to clarify that the petitioning party is responsible for service.

Section 7 – Conservatorships

- Page 12, line 27 to Page 14, line 13, amends N.D.C.C. § 30.1-29-07(1) and (2) to expressly require the proposed conservator to attend the hearing unless good cause is shown, to address issues related to an attorney appointed to represent the person sought to be protected under

the guardianship, and to add subdivisions (a) through (g) which expand the duties of the guardian ad litem in a conservatorship.

While the conservator is generally in attendance at the hearing on the petition, the Workgroup concluded that the attendance should be mandated by statute absent good cause.

The current statute requires that the court appoint an attorney to represent the person sought to be protected if the court determines that the interests of the person sought to be protected are being inadequately represented. Given that the traditional role of a guardian ad litem is to advocate for the best interests of the person sought to be protected and to maintain consistence with guardianship proceedings, the Workgroup recommends that the language of the statute be modified to provide for the appointment of an attorney to serve as a guardian ad litem.

With respect to the expanded duties of the guardian ad litem, the Workgroup added these provisions to maintain consistency and to ensure the court is provided with adequate information in all conservatorship cases. The proposed additions parallel the duties of a guardian ad litem within guardianship cases.

- Page 14, line 14 to Page 15, line 13, amends N.D.C.C. § 30.1-29-07(3) with stylistic changes and adds subdivision (a) and (b) to specify the contents of the report submitted by a physician or clinical psychologist and that the physician's report will be considered by the court and that the court or any of the parties may issue subpoena(s) if cross-examination of either report is sought.

The addition of these provisions is recommended by the Workgroup to maintain and clarify the required contents of the report, and to maintain consistency and parallel the requirements of the guardianship provisions. As a matter of current practice, the physician rarely attends, and attendance by the visitor is sporadic, which can result in hearings being continued due to confusion over which party bears subpoenaing responsibilities. Proposed subdivision (d) would assist in ensuring that subpoenas are timely issued where cross-examination of the physician at a hearing is desired.

- Page 15, lines 14-19, amends N.D.C.C. § 30.1-29-07 by adding subsection (4), which includes a requirement that the person to be protected and guardian ad litem must be present at the conservatorship hearing unless good cause is shown and specifying that good cause does not include the physical difficulty of the person to be protected.

Here again, while the conservator is generally in attendance at the hearing on the petition, the Workgroup concluded that the attendance should be mandated by statute absent good.

- Page 15, lines 24-27, amends N.D.C.C. § 30.1-29-07(5) and (6) with stylistic changes

Section 8 – Term of Appointment in Conservatorships

Page 16, lines 18-19 and Page 17, lines 14-26, amends N.D.C.C. § 30.1-29-08 with stylistic changes and creates a new subsection (3) that would establish a five-year expiration for orders appointing or reappointing a conservator and providing a procedure for the reappointment of a conservator.

The Workgroup included this change to incorporate a regular review process for conservatorships similar to that provided for guardianships.

Section 9 – Term of Appointment in Conservatorships

- Page 17, line 30 to Page 18, lines 1-4, amends N.D.C.C. § 30.1-29-19 (1) to clarify and expand the requirements for the conservator's annual report.

The Workgroup recommends the amendment to ensure detailed information concerning the exercise of authority by the conservator similar to those required for exercises of financial authority under a guardianship where financial authority has been ordered.

- Page 18, lines 7-9, amends N.D.C.C. § 30.1-29-19 (2) to clarify that the annual report must be filed with the clerk of court.

The proposed amendments clarify the status of the filing of the annual report as being a clerical function and not an adjudication or determination of the merits of the report.

- Page 18, lines 25-30, amends N.D.C.C. § 30.1-29-19 to add subsection (3) to require the conservator to provide copies of the annual report to the protected person and other interested persons.

Unlike guardianship proceedings, currently there is only a requirement for the filing of the annual report. Although the protected person may not have any capacity to comprehend the appropriateness of the conservator's exercise of duties and powers, the Workgroup determined that the protected person should nevertheless be provided with a copy of the annual report. In addition, the amendment would allow interested parties to request copies of the annual report at

the time of the original appointment, enhancing the detection of any malfeasance by the conservator. The proposed amendments are also consistent with reporting requirements in guardianship cases.

Respectfully Submitted:

Cynthia M. Feland
District Judge

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; **Mel Webster**, Bismarck; **Roger Wetzel**, Bismarck; **Leo Ryan**, Jamestown; **Rich LeMay**, North Dakota Legal Services; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Human Services; **David Boeck**, Protection and Advocacy; **Christopher Carlson**, Bismarck; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**, Trial Court Administrator, Unit 3; **Catherine Palsgraff**, Bismarck; **Rachel Thomason**, Bismarck.



1095

#1
1-4-17
PM

**House Judiciary Committee
HB 1095
January 4, 2017**

Chairman Koppelman and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA is very supportive of the concepts and the work put into the changes on this bill. However, NDMA objects to the term physician being broadened to include health professionals that are not physicians. The proposed change in definition applies to the entire probate code. People are confused about the education and training of health care providers, and the use of the title physician to apply to providers other than physicians only serves to confuse and mislead the public.

Therefore, we offer a "friendly" amendment, allowing those professionals to conduct exams and submit reports, but not confuse the definition by calling them physicians. The amendment also adds in physician assistants into the code, as they are also authorized to diagnose and prescribe. If the law is going to extend to advanced practice registered nurses there doesn't appear any reason within the Board of Medicine's licensing and certification that it isn't done with parity with advanced practice registered nurses. There is a national certification for physician assistants that requires among testing and education including 2000 hours practice in the field. They must practice within the scope of the supervising physician.

Proposed Amendments – House Bill 1095

Page 5, Line 16 after “Physician” insert “s report” means a written report submitted to the court by the following health care professionals:”

Page 5, Line 16, remove “” or clinical psychologist means”

Page 5, line 21, delete “or”

Page 5, line 25, after “nursing” remove the period and insert “; or”

Page 5, line 25 insert “d. A physician assistant licensed to practice as a physician assistant under chapter 43-17, who is authorized by the state board of medical examiners to practice in this state. This chapter does not expand the scope of practice of a physician assistant beyond the scope of practice authorized by the state board of medical examiners.”

Page 14, line 17 after “physician” remove “or” and insert a comma

Page 14, line 18 after “psychologist” insert “, advanced practice registered nurse or physician’s assistant”

Page 14, line 18, after “physician” remove “or psychologist”

Page 14, line 18, after “physician” insert “clinical psychologist, advanced practice registered nurse or physician’s assistant.”

Page 14, line 23 after “physician” remove “or” and insert comma

Page 14, line 23 after “clinical psychologist” insert “advanced practice registered nurse or physician’s assistant.”

Page 15, line 10 after “physician” remove “or” and insert comma

Page 15, line 10 after “clinical psychologist” insert “advanced practice registered nurse or physician’s assistant.”

1095 #2
1-4-17
PM

House Judiciary Committee
Sixty-Fifth Legislative Assembly of North Dakota
House Bill No. 1095
January 4, 2017

Good morning, Chairman Koppelman and Members of the House Judiciary Committee. I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

I serve on the Guardianship Workgroup that proposed the substance of HB 1095. The workgroup has been effective at developing appropriate amendments to current North Dakota guardianship and conservatorship laws.

Nonetheless, I could not agree with every proposal. I want to bring your attention one non-substantive concern with HB 1095: the proposed definition of "physician" and "clinical psychologist" on page 5, lines 16 to 25. The proposed definition includes "advanced practice registered nurse ..." on lines 22 to 25.

The guardianship and conservatorship laws should be readily understood by people who are not lawyers or legislators. Family members frequently petition for guardianship and serve as guardians. Both "physician" and "clinical psychologist" are terms with widely

1095
#2
1-4-17
PM

recognized meanings among North Dakotans. The law should not assign different meanings to common terms.

“Physician” already is defined at least nine times in North Dakota statutes. The present statutory definitions are consistent with one another. They are in sections 11-19.1-01, 12.1-31-12, 14-02.1-02, 19-24-02, 23-02.1-01, 23-06.6-01, 43-17-01, 43-17.1-01, and 43-39-01. The definition proposed in HB 1095 would conflict with each of the present statutory definitions.

In the Century Code provisions on involuntary civil commitment, the Legislature chose the term “expert examiner” to address a similar issue. Here, “capacity examiner” or a similar term could serve the purpose.

Please let me know if you have any questions.

Proposed Amendments to House Bill 1095

1095 #3
1-4-17
PM,

Page 5, line 16, replace "Physician" or "clinical psychologist," with "Capacity examiner"

Page 7, line 20, insert "3," before "4"

Page 7, line 20, insert "5," before "and"

Page 7, line 20, overstrike "and" and insert ", and 10" immediately after "6"

Page 8, line 22, replace "retains" with "should lose"

Page 8, after line 25 insert,

- "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 a ~~physician or clinical psychologist~~ capacity 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."

Page 9, after line 9, insert,

- "5. The ~~physician or clinical psychologist~~ "capacity 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 affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule."

Page 10, after line 9, insert,

1095 #3
1-4-17
PM

- "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 either a ~~physician or a clinical psychologist~~capacity 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, 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 ~~physician~~capacity 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."

Page 10, after line 9, next insert,

"10. If the court approves a visitor, lawyer, ~~physician~~capacity 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."

Page 10, after line 9, next insert a new section,

"Amendment. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

"d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~capacity examiner, together with a copy of the respective order of appointment for each."

Page 14, line 17, overstrike "physician"

Page 14, line 17, replace "or clinical" with "capacity examiner"

Page 14, line 18, delete the first "psychologist"

Page 14, line 18, replace "physician or psychologist" with "capacity examiner"

Page 14, line 23, remove "either"

Page 14, line 23, replace "physician or clinical psychologist" with "capacity examiner"

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Page 15, line 10, replace "either a physician or clinical psychologist" with "capacity examiner"

Page 17, after line 26, add a new section:

"Amendment. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

"2. If not otherwise compensated for services rendered, any visitor, lawyer, ~~physician~~capacity examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

NDLA, H JUD - Shimek, Delores

1095
#1
1-10-17

From: NDLA, Intern 10 - Johnson, Kelly
Sent: Thursday, January 05, 2017 3:09 PM
To: NDLA, H JUD - Shimek, Delores
Subject: FW: HB1095 -- Proposed Amendments Follow Up
Attachments: Proposed Amends to HB 1095 - 01-04-2017.doc

Hello Delores,

I received the email below with the attached Word Document in response to yesterday's House Judiciary Committee Meeting on HB 1095 from Mr. David Boeck with the Protection & Advocacy Project (with Judge Cynthia Feland cc'd on the email). I am forwarding this to you for your review and so that you can make copies for the members of the Judiciary Committee.

Please let me know if you have any questions or if I can be of any assistance.

Thank you,

Kelly Johnson

From: Boeck, David
Sent: Wednesday, January 04, 2017 4:45 PM
To: NDLA, Intern 10 - Johnson, Kelly <intern10@nd.gov>
Cc: Feland, Cynthia M. <cfeland@ndcourts.gov>; ckoebele@ndmed.com
Subject: HB1095

Attached is a Word version of the amendments I submitted today for HB1095.

I believe the current idea is to use the term "expert examiner" in place of physician, psychologist, advanced practice registered nurse, and physician's assistant. You would need to amend section 1 of the bill to include a definition of "expert examiner." This definition would be very similar to the definition of "expert examiner" in N.D.C.C. § 25-03.1-02 (8). Judge Feland or Courtney Koebele could provide the current list of professionals to include in the definition.

Page 5, lines 16-25 would be removed from HB1095.

I wrote proposed amendments using the term, "capacity examiner" but you could readily use much of those amendments by replacing "capacity" with "expert."

I intended that the amendments would apply to Article V of the probate code (chapters 30.1-26 through 30.1-30), rather than the entire probate code. [I believe the amendments would not change anything in chapter 30.1-30.] Chapters 30.1-26 through 30.1-29 would need changes to be compatible with an amended HB1095. I tried to include those changes in my proposed amendments.]

I believe Chairman Koppelman suggest language to replace the terms on page 8, line 22. I believe new verb should be "deprive," so it conveys the idea that any restriction/limitation of these rights is disfavored.

Contact me if you have questions.

David Boeck
Protection & Advocacy Project
Suite 409
400 East Broadway Avenue
Bismarck, ND 58501-4071

Ph. 701-328-2950
Fax 701-328-3934

Proposed Amendments to House Bill 1095

#1
1-10-19
1095

Page 5, line 16, replace "Physician" or "clinical psychologist," with "Capacity examiner"

Page 7, line 20, insert "3," before "4"

Page 7, line 20, insert "5," before "and"

Page 7, line 20, overstrike "and" and insert ", and 10" immediately after "6"

Page 8, line 22, replace "retains" with "should lose"

Page 8, after line 25 insert,

"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 a ~~physician or clinical psychologist~~ capacity 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."

Page 9, after line 9, insert,

"5. The ~~physician or clinical psychologist~~ "capacity 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 affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule."

Page 10, after line 9, insert,

- "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 either a ~~physician or a clinical psychologist~~capacity 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, 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 ~~physician~~capacity 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."

Page 10, after line 9, next insert,

- "10. If the court approves a visitor, lawyer, ~~physician~~capacity 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."

Page 10, after line 9, next insert a new section,

"Amendment. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- "d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~capacity examiner, together with a copy of the respective order of appointment for each."

Page 14, line 17, overstrike "physician"

Page 14, line 17, replace "~~or clinical~~" with "capacity examiner"

Page 14, line 18, delete the first "~~psychologist~~"

Page 14, line 18, replace "~~physician or psychologist~~" with "capacity examiner"

Page 14, line 23, remove "~~either~~"

Page 14, line 23, replace "~~physician or clinical psychologist~~" with "capacity examiner"

Page 15, line 10, replace "either a physician or clinical psychologist" with "capacity examiner"

Page 17, after line 26, add a new section:

"Amendment. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

"2. If not otherwise compensated for services rendered, any visitor, lawyer, ~~physician~~capacity examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

#1
1095
1-11-17

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact ~~sections~~ sections 30.1-01-06, ~~subsections 2, 4, and 6 of~~
2 ~~section and~~ 30.1-28-03, subsection 3 of section 30.1-28-04, ~~and sections~~ subdivision d of
3 ~~subsection 1 of section~~ 30.1-28-09, section 30.1-29-01, subsection 2 of section 30.1-29-04,
4 ~~subsection 1 of section~~ 30.1-29-05, ~~sections~~ 30.1-29-07, ~~and~~ 30.1-29-08, ~~subsection 2 of section~~
5 ~~30.1-29-14,~~ and ~~section~~ 30.1-29-19 of the North Dakota Century Code, relating to guardianship
6 and conservatorship proceedings.

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

8 **SECTION 1. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-01-06. (1-201) General definitions.**

11 Subject to additional definitions contained in the subsequent chapters which are applicable
12 to specific chapters, and unless the context otherwise requires, in this title:

- 13 1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,
14 an individual authorized to make decisions concerning another's health care, and an
15 individual authorized to make decisions for another under a natural death act.
- 16 2. "Application" means a written request to the court for an order of informal probate or
17 appointment under chapter 30.1-14.
- 18 3. "Augmented estate" means the estate described in section 30.1-05-02.
- 19 4. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any
20 present or future interest, vested or contingent, and also includes the owner of an
21 interest by assignment or other transfer; as it relates to a charitable trust, includes any
22 person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary
23 designation, refers to a beneficiary of an account with a payable on death designation,
24 of a security registered in beneficiary form transferable on death, or other nonprobate

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1-11-17

- 1 transfer at death; and, as it relates to a "beneficiary designated in a governing
2 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary
3 of a beneficiary designation, a donee, or a person in whose favor a power of attorney
4 or a power held in any individual, fiduciary, or representative capacity is exercised.
- 5 5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an
6 account with payable on death designation, of a security registered in beneficiary form
7 transferable on death, or other nonprobate transfer at death.
- 8 6. "Child" includes an individual entitled to take as a child under this title by intestate
9 succession from the parent whose relationship is involved and excludes a person who
10 is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 11 7. "Claims", in respect to estates of decedents and protected persons, includes liabilities
12 of the decedent or protected person whether arising in contract, in tort, or otherwise,
13 and liabilities of the estate which arise at or after the death of the decedent or after the
14 appointment of a conservator, including funeral expenses and expenses of
15 administration. The term does not include estate or inheritance taxes or demands or
16 disputes regarding title of a decedent or protected person to specific assets alleged to
17 be included in the estate.
- 18 8. "Conservator" means a person who is appointed by a court to manage the estate of a
19 protected person, and includes limited conservators as defined in this section.
- 20 9. "Court" means the court having jurisdiction in matters relating to the affairs of
21 decedents.
- 22 10. "Descendant" of an individual means all descendants of all generations, with the
23 relationship of parent and child at each generation being determined by the definition
24 of child and parent contained in this title.
- 25 11. "Devise", when used as a noun, means a testamentary disposition of real or personal
26 property, and when used as a verb, means to dispose of real or personal property by
27 will.
- 28 12. "Devisee" means a person designated in a will to receive a devise. In the case of a
29 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust
30 or trustee is the devisee and the beneficiaries are not devisees.
- 31 13. "Disability" means cause for a protective order as described in section 30.1-29-01.

- 1 14. "Distributee" means any person who has received property of a decedent from the
2 decedent's personal representative other than as a creditor or purchaser. A
3 testamentary trustee is a distributee only to the extent of distributed assets or
4 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary
5 trust to whom the trustee has distributed property received from a personal
6 representative is a distributee of the personal representative. For the purposes of this
7 provision, "testamentary trustee" includes a trustee to whom assets are transferred by
8 will to the extent of the devised assets.
- 9 15. "Estate" includes the property of the decedent, trust, or other person whose affairs are
10 subject to this title as originally constituted and as it exists from time to time during
11 administration.
- 12 16. "Exempt property" means that property of a decedent's estate which is described in
13 section 30.1-07-01.
- 14 17. "Expert examiner" means:
15 a. A licensed physician;
16 b. A psychiatrist;
17 c. A psychologist trained in a clinical program;
18 d. An advanced practice registered nurse who is licensed under chapter 43-12.1
19 within the role of a certified nurse practitioner or certified clinical nurse specialist,
20 who has completed the requirements for a minimum of a master's degree from an
21 accredited program, and who is functioning within the scope of practice in one of
22 the population foci as approved by the state board of nursing; or
23 e. A physician assistant who is licensed under chapter 43-17 and authorized by the
24 state board of medical examiners to practice in this state.
- 25 18. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 26 ~~18-19.~~ "Foreign personal representative" means a personal representative appointed by
27 another jurisdiction.
- 28 ~~19-20.~~ "Formal proceedings" means proceedings conducted before a judge with notice to
29 interested persons.
- 30 ~~20-21.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account
31 with payable on death designation, security registered in beneficiary form transferable

1 on death, pension, profit-sharing, retirement, or similar benefit plan, instrument
2 creating or exercising a power of appointment or a power of attorney, or a dispositive,
3 appointive, or nominative instrument of any similar type.

4 ~~21-22.~~ "Guardian" means a person who or nonprofit corporation that has qualified as a
5 guardian of a minor or incapacitated person pursuant to testamentary or court
6 appointment, and includes limited guardians as defined in this section, but excludes
7 one who is merely a guardian ad litem.

8 ~~22-23.~~ "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the
9 surviving spouse and the state, who are entitled under the statutes of intestate
10 succession to the property of a decedent.

11 ~~23-24.~~ "Incapacitated person" means an individual described in section 30.1-26-01.

12 ~~24-25.~~ "Informal proceedings" means those conducted by the court for probate of a will or
13 appointment of a personal representative without notice to interested persons.

14 ~~25-26.~~ "Interested person" includes heirs, devisees, children, spouses, creditors,
15 beneficiaries, and any others having a property right in or claim against a trust estate
16 or the estate of a decedent, ward, or protected person. The term also includes persons
17 having priority for appointment as personal representative and other fiduciaries
18 representing interested persons. The meaning as it relates to particular persons may
19 vary from time to time and must be determined according to the particular purposes of,
20 and matter involved in, any proceeding.

21 ~~26-27.~~ "Issue" of a person means descendant as defined in subsection 10.

22 ~~27-28.~~ "Joint tenants with the right of survivorship" and "community property with the right of
23 survivorship" includes co-owners of property held under circumstances that entitle one
24 or more to the whole of the property on the death of the other or others, but excludes
25 forms of co-ownership registration in which the underlying ownership of each party is
26 in proportion to that party's contribution.

27 ~~28-29.~~ "Lease" includes an oil, gas, or other mineral lease.

28 ~~29-30.~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration,
29 and letters of conservatorship.

30 ~~30-31.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court,
31 to manage only those financial resources specifically enumerated by the court for the

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- 1 person with limited capacity and includes limited conservators as described by section
2 30.1-29-20.
- 3 ~~31-32.~~ "Limited guardian" means a person or nonprofit corporation, appointed by the court, to
4 supervise certain specified aspects of the care of a person with limited capacity and
5 includes limited guardians as described by section 30.1-28-04.
- 6 ~~32-33.~~ "Minor" means a person who is under eighteen years of age.
- 7 ~~33-34.~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is
8 encumbered or used as security.
- 9 ~~34-35.~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction
10 at the time of death.
- 11 ~~35-36.~~ "Organization" means a corporation, limited liability company, government or
12 governmental subdivision or agency, business trust, estate, trust, partnership, joint
13 venture, association, or any other legal or commercial entity.
- 14 ~~36-37.~~ "Parent" includes any person entitled to take, or who would be entitled to take if the
15 child died without a will, as a parent under this title, by intestate succession from the
16 child whose relationship is in question and excludes any person who is only a
17 stepparent, foster parent, or grandparent.
- 18 ~~37-38.~~ "Payer" means a trustee, insurer, business entity, employer, government,
19 governmental agency or subdivision, or any other person authorized or obligated by
20 law or a governing instrument to make payments.
- 21 ~~38-39.~~ "Person" means an individual, a corporation, a limited liability company, an
22 organization, or other legal entity.
- 23 ~~39-40.~~ "Person with limited capacity" is as defined in section 30.1-26-01.
- 24 ~~40-41.~~ "Personal representative" includes executor, administrator, successor personal
25 representative, special administrator, and persons who perform substantially the same
26 function under the law governing their status. "General personal representative"
27 excludes special administrator.
- 28 ~~41-42.~~ "Petition" means a written request to the court for an order after notice.
- 29 ~~42.~~ "Physician" or "clinical psychologist," means:
- 30 ~~a. A licensed physician;~~
- 31 ~~b. A psychiatrist;~~

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Legislative Assembly

- 1 ~~c. A psychologist trained in a clinical program;~~
2 ~~d. A psychologist with at least a master's degree who has been either licensed or~~
3 ~~approved for exemption by the state board of psychology examiners; or~~
4 ~~e. An advanced practice registered nurse who is licensed under chapter 43-12.1~~
5 ~~within the role of certified nurse practitioner or certified clinical nurse specialist,~~
6 ~~and who is functioning within the scope of practice in one of the population foci~~
7 ~~as approved by the state board of nursing.~~
- 8 43. "Proceeding" includes action at law and suit in equity.
- 9 ~~43-44.~~ "Property" includes both real and personal property or any interest therein and means
10 anything that may be the subject of ownership.
- 11 ~~44-45.~~ "Protected person" is as defined in section 30.1-26-01.
- 12 ~~45-46.~~ "Protective proceeding" means a proceeding described in section 30.1-26-01.
- 13 ~~46-47.~~ "Record" means information that is inscribed on a tangible medium or that is stored in
14 an electronic or other medium and is retrievable in perceivable form.
- 15 ~~47-48.~~ "Security" includes any note, stock, treasury stock, bond, debenture, membership
16 interest in a limited liability company, evidence of indebtedness, certificate of interest
17 or participation in an oil, gas, or mining title or lease or in payments out of production
18 under such a title or lease, collateral trust certificate, transferable share, voting trust
19 certificate or, in general, any interest or instrument commonly known as a security, or
20 any certificate of interest or participation, any temporary or interim certificate, receipt,
21 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
22 the foregoing.
- 23 ~~48-49.~~ "Settlement", in reference to a decedent's estate, includes the full process of
24 administration, distribution, and closing.
- 25 ~~49-50.~~ "Sign" means, with present intent to authenticate or adopt a record other than a will, to
26 execute or adopt a tangible symbol or to attach to or logically associate with the record
27 an electronic symbol, sound, or process.
- 28 ~~50-51.~~ "Special administrator" means a personal representative as described by sections
29 30.1-17-14 through 30.1-17-18.

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- 1 51-52. "State" means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
3 jurisdiction of the United States.
- 4 52-53. "Successor personal representative" means a personal representative, other than a
5 special administrator, who is appointed to succeed a previously appointed personal
6 representative.
- 7 53-54. "Successors" means persons, other than creditors, who are entitled to property of a
8 decedent under the decedent's will or this title.
- 9 54-55. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 10 55-56. "Survive" means that an individual has neither predeceased an event, including the
11 death of another individual, nor predeceased an event under sections 30.1-04-04 and
12 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",
13 "survivor", and "surviving".
- 14 56-57. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 15 57-58. "Trust" includes an express trust, private or charitable, with additions thereto,
16 wherever and however created. The term also includes a trust created or determined
17 by judgment or decree under which the trust is to be administered in the manner of an
18 express trust. The term excludes other constructive trusts and excludes resulting
19 trusts, conservatorships, personal representatives, trust accounts as defined in
20 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19
21 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,
22 chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,
23 common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts
24 for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,
25 pensions, or employee benefits of any kind, and any arrangement under which a
26 person is nominee or escrowee for another.
- 27 58-59. "Trustee" includes an original, additional, or successor trustee, whether or not
28 appointed or confirmed by court.
- 29 59-60. "Ward" means an individual described in section 30.1-26-01.
- 30 60-61. "Will" includes codicil and any testamentary instrument that merely appoints an
31 executor, revokes or revises another will, nominates a guardian, or expressly excludes

1 or limits the right of an individual or class to succeed to property of the decedent
2 passing by intestate succession.

3 ~~SECTION 2. AMENDMENT.~~ Subsections 2, 4, and 6 of section 30.1-28-03 of the North
4 Dakota Century Code are amended and reenacted as follows:

5 ~~2.~~ The petition for appointment of a guardian must state:

6 ~~a.~~ The name, address, and corporate or agency status of the petitioner, and its
7 connection with or relationship to the proposed ward;

8 ~~b.~~ The name, age, and address of the proposed ward;

9 ~~c.~~ The name and address of any person or institution having care or custody over
10 the proposed ward;

11 ~~d.~~ The names and addresses of the spouse, parents, and adult children or, if none,
12 any adult siblings and any adult with whom the proposed ward resides in a
13 private residence, or, if none, the nearest adult relative;

14 ~~e.~~ A brief description of and the approximate value of the real and personal property
15 and income of the proposed ward, so far as they are known to the petitioner;

16 ~~f.~~ The extent of guardianship authority sought, including full authority, limited
17 authority, or no authority in each area of residential, educational, medical, legal,
18 vocational, and financial decisionmaking unless the petitioner is undecided on the
19 extent of authority in any area, in which case the petition must state the specific
20 areas in which the authority is sought;

21 ~~g.~~ The occupation and qualifications of the proposed guardian;

22 ~~h.~~ The name and address of the attorney, if known, who most recently represented
23 the proposed ward;

24 ~~i.~~ A statement alleging specific facts establishing the necessity for the appointment
25 of a guardian;

26 ~~j.~~ The name and address of any current conservator appointed for the proposed
27 ward;

28 ~~k.~~ The name and address of any person designated as an attorney in fact or agent
29 in a power of attorney or as an agent in a health care directive;

30 ~~l.~~ The name and address of any representative payee for the proposed ward;

31 ~~m.~~ That less intrusive alternatives to guardianship have been considered; and

- 1 ~~_____ n. In the form of an attached recent statement, the physical, mental, and emotional~~
2 ~~_____ limitations of the proposed ward, from a physician, mental health services~~
3 ~~_____ provider, or other health care provider, if available; and~~
4 ~~_____ e. Whether the proposed ward retains any of the following rights:~~
5 ~~_____ (1) To vote;~~
6 ~~_____ (2) To seek to change marital status; or~~
7 ~~_____ (3) To obtain or retain a motor vehicle operator's license.~~
8 ~~_____ 4. The duties of the guardian ad litem include:~~
9 ~~_____ a. Personally interviewing the proposed ward;~~
10 ~~_____ b. Explaining the guardianship proceeding to the proposed ward in the language,~~
11 ~~_____ mode of communication, and terms that the proposed ward is most likely to~~
12 ~~_____ understand, including the nature and possible consequences of the proceeding,~~
13 ~~_____ the right to which the proposed ward is entitled, and the legal options that are~~
14 ~~_____ available, including the right to retain an attorney to represent the proposed ward;~~
15 ~~_____ c. Advocating for the best interests of the proposed ward. The appointed attorney~~
16 ~~_____ serving as legal guardian ad litem may not represent the proposed ward or ward~~
17 ~~_____ in a legal capacity; and~~
18 ~~_____ d. Submitting a written report to the court containing the guardian ad litem's~~
19 ~~_____ response to the petition; and~~
20 ~~_____ e. Reviewing the visitor's written report submitted in accordance with subdivision h~~
21 ~~_____ and i of subsection 6 and discussing the report with the proposed ward.~~
22 ~~_____ 6. The visitor shall have the following duties:~~
23 ~~_____ a. To meet, interview, and consult with the proposed ward regarding the~~
24 ~~_____ guardianship proceeding, including explaining the purpose for the interview in a~~
25 ~~_____ manner the proposed ward can reasonably be expected to understand.~~
26 ~~_____ b. To ascertain the proposed ward's views concerning the proposed guardian, the~~
27 ~~_____ powers and duties of the proposed guardian, the proposed guardianship, and the~~
28 ~~_____ scope and duration thereof.~~
29 ~~_____ c. To interview the person seeking appointment as guardian.~~
30 ~~_____ d. To interview other persons interested in the welfare of the proposed ward.~~
31 ~~_____ e. To visit the proposed ward's present place of residence.~~

1 ~~e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.~~

2 ~~f.g. To obtain other relevant information as directed by the court.~~

3 ~~g.h. To submit a written report to the court.~~

4 ~~h.i. The visitor's written report must contain:~~

5 ~~(1) A description of the nature and degree of any current impairment of the~~
6 ~~proposed ward's understanding or capacity to make or communicate~~
7 ~~decisions;~~

8 ~~(2) A statement of the qualifications and appropriateness of the proposed~~
9 ~~guardian and a recommendation regarding whether the proposed guardian~~
10 ~~should be appointed;~~

11 ~~(3) If the visitor recommends the proposed guardian should not be appointed, a~~
12 ~~recommendation regarding an alternative person or entity who should be~~
13 ~~appointed as guardian;~~

14 ~~(4) Recommendations, if any, on the powers to be granted to the proposed~~
15 ~~guardian, including an evaluation of the proposed ward's capacity to~~
16 ~~perform the functions enumerated under subsections 3 and 4 of section~~
17 ~~30.1-28-04; and~~

18 ~~(4)(5) An assessment of the capacity of the proposed ward to~~
19 ~~perform the activities of daily living.~~

20 **SECTION 2. AMENDMENT.** Section 30.1-28-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated**
23 **person.**

24 1. Any person interested in the welfare of an allegedly incapacitated person may petition
25 for the appointment of a guardian. No filing fee under this or any other section may be
26 required when a petition for guardianship of an incapacitated person is filed by a
27 member of the individual treatment plan team for the alleged incapacitated person or
28 by any state employee in the performance of official duties.

29 2. The petition for appointment of a guardian must state:

30 a. The name, address, and corporate or agency status of the petitioner, and its
31 connection with or relationship to the proposed ward;

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- 1 b. The name, age, and address of the proposed ward;
- 2 c. The name and address of any person or institution having care or custody over
- 3 the proposed ward;
- 4 d. The names and addresses of the spouse, parents, and adult children or, if none,
- 5 any adult siblings and any adult with whom the proposed ward resides in a
- 6 private residence, or, if none, the nearest adult relative;
- 7 e. A brief description of and the approximate value of the real and personal property
- 8 and income of the proposed ward, so far as they are known to the petitioner;
- 9 f. The extent of guardianship authority sought, including full authority, limited
- 10 authority, or no authority in each area of residential, educational, medical, legal,
- 11 vocational, and financial decisionmaking unless the petitioner is undecided on the
- 12 extent of authority in any area, in which case the petition must state the specific
- 13 areas in which the authority is sought;
- 14 g. The occupation and qualifications of the proposed guardian;
- 15 h. The name and address of the attorney, if known, who most recently represented
- 16 the proposed ward;
- 17 i. A statement alleging specific facts establishing the necessity for the appointment
- 18 of a guardian;
- 19 j. The name and address of any current conservator appointed for the proposed
- 20 ward;
- 21 k. The name and address of any person designated as an attorney in fact or agent
- 22 in a power of attorney or as an agent in a health care directive;
- 23 l. The name and address of any representative payee for the proposed ward;
- 24 m. That less intrusive alternatives to guardianship have been considered; ~~and~~
- 25 n. In the form of an attached recent statement, the physical, mental, and emotional
- 26 limitations of the proposed ward, ~~from a physician, mental health services~~
- 27 ~~provider, or other health care provider, if available; and~~
- 28 o. Whether the petition seeks to restrict any of the following rights:
- 29 (1) To vote;
- 30 (2) To seek to change marital status; or
- 31 (3) To obtain or retain a motor vehicle operator's license.

- 1 3. Upon the filing of a petition, the court promptly shall set a date for hearing on the
2 issues of incapacity, appoint an attorney to act as guardian ad litem, appoint a
3 ~~physician or clinical psychologist~~ an expert examiner to examine the proposed ward,
4 and appoint a visitor to interview the proposed guardian and the proposed ward. The
5 proposed guardian shall attend the hearing on the petition unless excused by the court
6 for good cause.
- 7 4. The duties of the guardian ad litem include:
- 8 a. Personally interviewing the proposed ward;
- 9 b. Explaining the guardianship proceeding to the proposed ward in the language,
10 mode of communication, and terms that the proposed ward is most likely to
11 understand, including the nature and possible consequences of the proceeding,
12 the right to which the proposed ward is entitled, and the legal options that are
13 available, including the right to retain an attorney to represent the proposed ward;
- 14 c. Advocating for the best interests of the proposed ward. The appointed attorney
15 serving as legal guardian ad litem may not represent the proposed ward or ward
16 in a legal capacity; ~~and~~
- 17 d. Submitting a written report to the court containing the guardian ad litem's
18 response to the petition; ~~and~~
- 19 e. Reviewing the visitor's written report submitted in accordance with subdivision h
20 and i of subsection 6 and discussing the report with the proposed ward.
- 21 5. The ~~physician or clinical psychologist~~ expert examiner shall examine the proposed
22 ward and submit a written report to the court. The written report must contain:
- 23 a. A description of the nature and degree of any current incapacity or disability,
24 including the medical or psychological history, if reasonably available;
- 25 b. A medical prognosis or psychological evaluation specifying the estimated severity
26 and duration of any current incapacity or disability;
- 27 c. A statement as to how or in what manner any underlying condition of physical or
28 mental health affects the proposed ward's ability to provide for personal needs;
29 and

- 1 d. A statement as to whether any current medication affects the demeanor of the
2 proposed ward or the ability of the proposed ward to participate fully in any court
3 proceeding or in any other procedure required by the court or by court rule.
- 4 6. The visitor shall have the following duties:
- 5 a. To meet, interview, and consult with the proposed ward regarding the
6 guardianship proceeding, including explaining the purpose for the interview in a
7 manner the proposed ward can reasonably be expected to understand.
- 8 b. To ascertain the proposed ward's views concerning the proposed guardian, the
9 powers and duties of the proposed guardian, the proposed guardianship, and the
10 scope and duration thereof.
- 11 c. To interview the person seeking appointment as guardian.
- 12 d. To interview other persons interested in the welfare of the proposed ward.
- 13 e. To visit the proposed ward's present place of residence.
- 14 e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.
- 15 f.g. To obtain other relevant information as directed by the court.
- 16 g.h. To submit a written report to the court.
- 17 h.i. The visitor's written report must contain:
- 18 (1) A description of the nature and degree of any current impairment of the
19 proposed ward's understanding or capacity to make or communicate
20 decisions;
- 21 (2) A statement of the qualifications and appropriateness of the proposed
22 guardian and a recommendation regarding whether the proposed guardian
23 should be appointed;
- 24 (3) If the visitor recommends the proposed guardian should be appointed, a
25 recommendation regarding an alternative person or entity who should be
26 appointed as guardian;
- 27 (4) Recommendations, if any, on the powers to be granted to the proposed
28 guardian, including an evaluation of the proposed ward's capacity to
29 perform the functions enumerated under subsections 3 and 4 of section
30 30.1-28-04; and

- 1 d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical~~
2 ~~psychologist~~ expert examiner, together with a copy of the respective order of
3 appointment for each.

4 **SECTION 5. AMENDMENT.** Section 30.1-29-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **30.1-29-01. (5-401) Protective proceedings - Burden of proof.**

7 Upon petition and after notice and hearing in accordance with the provisions of this chapter,
8 the court may appoint a conservator or make other protective order for cause as follows:

- 9 1. Appointment of a conservator or other protective order may be made in relation to the
10 estate and affairs of a minor if the court determines by a preponderance of the
11 evidence that a minor owns money or property that requires management or
12 protection which cannot otherwise be provided, has or may have business affairs
13 which may be jeopardized or prevented by the minor's minority, or that funds are
14 needed for the minor's support and education and that protection is necessary or
15 desirable to obtain or provide funds.
- 16 2. Appointment of a conservator or other protective order may be made in relation to the
17 estate and affairs of a person, including a minor, if the court determines ~~that~~ by clear
18 and convincing evidence:
- 19 a. The person is unable to manage the person's property and affairs effectively for
20 reasons such as mental illness, mental deficiency, physical illness or disability,
21 chronic use of drugs, or chronic intoxication, ~~confinement, detention by a foreign~~
22 ~~power, or disappearance.~~
- 23 b. The person is unable to manage the person's property and affairs effectively for
24 reasons of confinement, detention by a foreign power, or disappearance; or
- 25 c. The person has property ~~which~~ that will be wasted or dissipated unless proper
26 management is provided, or that funds are needed for the support, care, and
27 welfare of the person or those entitled to be supported by the person and that
28 protection is necessary or desirable to obtain or provide funds.

29 **SECTION 6. AMENDMENT.** Subsection 2 of section 30.1-29-04 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 31 2. The petition ~~shall set forth~~ must state or include, to the extent known, ~~the~~

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- 1 a. The interest of the petitioner; the
- 2 b. The name, age, residence, and address of the person to be protected; the
- 3 c. The name and address of the guardian of the person to be protected, if any; the
- 4 d. The name and address of the nearest relative of the person to be protected
- 5 known to the petitioner; a
- 6 e. A general statement of property of the person to be protected with an estimate of
- 7 the value thereof, including any compensation, insurance, pension, or allowance
- 8 to which the person to be protected is entitled; ~~and the~~
- 9 f. The extent of conservatorship authority sought;
- 10 g. The name and address of any person designated as an attorney in fact or agent
- 11 in a power of attorney;
- 12 h. The name and address of any representative payee for the person to be
- 13 protected;
- 14 i. That less intrusive alternatives to conservatorship have been considered;
- 15 j. If the appointment of a conservator is requested under subdivision a of
- 16 subsection 2 of section 30.1-29-01, an attached recent statement, if any, from a
- 17 physician, mental health services provider, or other health care provider an expert
- 18 examiner which describes the physical, mental, and emotional limitations of the
- 19 person to be protected;
- 20 k. The reason why appointment of a conservator or other protective order is
- 21 necessary; and
- 22 l. If the appointment of a conservator is requested, ~~the petition also shall set forth~~
- 23 the name and address of the person whose appointment is sought and the basis
- 24 of the person's priority for appointment.

25 **SECTION 7. AMENDMENT.** Subsection 1 of section 30.1-29-05 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 1. On a petition for appointment of a conservator or other protective order, the person to
- 28 be protected and the spouse of the person to be protected or, if none, the parents of
- 29 the person to be protected, must be served personally by the petitioning party with
- 30 notice of the proceeding at least fourteen days before the date of hearing if they can
- 31 be found within the state, or, if they cannot be found within the state, they, any other

1 guardian or conservator, and any government agency paying benefits to the person
2 sought to be protected, if the person seeking the appointment has knowledge of the
3 existence of these benefits, must be given notice in accordance with section
4 30.1-03-01. Waiver by the person to be protected is not effective unless the
5 proceedings are limited to payment of veterans' administration benefits, the person to
6 be protected attends the hearing, or, unless minority is the reason for the proceeding,
7 waiver is confirmed in an interview with the visitor.

8 **SECTION 8. AMENDMENT.** Section 30.1-29-07 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.**

- 11 1. Upon receipt of a petition for appointment of a conservator or other protective order
12 because of minority, the court shall set a date for hearing on the matters alleged in the
13 petition. The proposed conservator, if any, shall attend the hearing unless excused by
14 the court for good cause. If, at any time in the proceeding, the court determines that
15 the interests of the minor are or may be inadequately represented, it may appoint an
16 attorney to ~~represent~~serve as guardian ad litem for the minor, giving consideration to
17 the choice of the minor if fourteen years of age or older. ~~A lawyer appointed by the~~
18 ~~court to represent a minor has the powers and~~The duties of a guardian ad litem
19 include:
- 20 a. Meeting, interviewing, and consulting with the person to be protected regarding
21 the conservatorship proceeding, including explaining the purpose for the
22 interview in the language, mode of communication, and terms the person is most
23 likely to understand, the nature and possible consequences of the proceeding,
24 the rights to which the person is entitled, and the legal options available,
25 including the right to retain an attorney to represent the person;
- 26 b. Advocating for the best interests of the person to be protected. The appointed
27 attorney serving as guardian ad litem may not represent the person in a legal
28 capacity;
- 29 c. Ascertaining the views of the person to be protected concerning the proposed
30 conservator, the powers and duties of the proposed conservator, the proposed
31 conservatorship, and the scope and duration of the conservatorship;

- 1 d. Interviewing the person seeking appointment as conservator;
- 2 e. Obtaining any other relevant information;
- 3 f. Submitting a written report to the court containing the guardian ad litem's
- 4 response to the petition; and
- 5 g. Attending the hearing unless excused by the court for good cause.
- 6 2. Upon receipt of a petition for appointment of a conservator or other protective order for
- 7 reasons other than minority, the court shall set a date for hearing. The proposed
- 8 conservator, if any, shall attend the hearing unless excused by the court for good
- 9 cause. If, at any time in the proceeding, the court determines that the interests of the
- 10 person to be protected are or may be inadequately represented, ~~it may~~ the court shall
- 11 appoint an attorney to ~~represent~~ serve as guardian ad litem for the person to be
- 12 protected. ~~An attorney appointed by the court to represent a protected person has the~~
- 13 ~~powers and~~ The duties of a guardian ad litem include:
- 14 a. Meeting, interviewing, and consulting with the person to be protected regarding
- 15 the conservatorship proceeding, including explaining the purpose for the
- 16 interview in the language, mode of communication, and terms the person is most
- 17 likely to understand, the nature and possible consequences of the proceeding,
- 18 the rights to which the person is entitled, and the legal options available,
- 19 including the right to retain an attorney to represent the person;
- 20 b. Advocating for the best interests of the person to be protected. The appointed
- 21 attorney serving as guardian ad litem may not represent the person in a legal
- 22 capacity;
- 23 c. Ascertaining the views of the person to be protected concerning the proposed
- 24 conservator, the powers and duties of the proposed conservator, the proposed
- 25 conservatorship, and the scope and duration of the conservatorship;
- 26 d. Interviewing the person seeking appointment as conservator;
- 27 e. Obtaining any other relevant information;
- 28 f. Submitting a written report to the court containing the guardian ad litem's
- 29 response to the petition; and
- 30 g. Attending the hearing unless excused by the court for good cause.

- 1 3. If the petition seeks appointment of a conservator or other protective order for reasons
2 other than minority and the alleged disability is mental illness, mental deficiency,
3 physical illness or disability, chronic use of drugs, or chronic intoxication, the court
4 mayshall direct that the person to be protected be examined by a physician or clinical
5 psychologistan expert examiner designated by the court, The physician or
6 psychologistexpert examiner preferably a physicianshould be someone who is not
7 connected with any institution in which the person is a patient or is detained. The court
8 may send a visitor to interview the person to be protected. The visitor may be a
9 guardian ad litem or an officer, employee, or special appointee of the court.
- 10 a. A physician or clinical psychologistAn expert examiner appointed under this
11 subsection shall examine the person to be protected and submit a written report
12 to the court. The report must contain:
- 13 (1) A description of the nature and degree of any current disability, including the
14 medical or psychological history, if reasonably available;
- 15 (2) A medical prognosis or psychological evaluation specifying the estimated
16 severity and duration of any current disability;
- 17 (3) A statement about how or in what manner any underlying condition of
18 physical or mental health affects the ability of the person to be protected to
19 provide for personal needs; and
- 20 (4) A statement about whether any current medication affects the demeanor of
21 the person to be protected or the ability of the person to participate fully in
22 any court proceeding or in any other procedure required by the court or by
23 court rule.
- 24 b. In determining whether appointment of a conservator is appropriate, the court
25 shall consider the reports ordered by the court under this subsection from a
26 guardian ad litem; and either a physician or clinical psychologistan expert
27 examiner. The court, guardian ad litem, petitioner, or person to be protected may
28 subpoena the individualexpert examiner who prepared and submitted the report
29 to appear, testify, and be cross-examined.
- 30 4. The person to be protected must be present at the hearing in person, unless good
31 cause is shown for the absence. Good cause does not consist of the physical difficulty

1 of the person to be protected to attend the hearing. The court shall take all necessary
2 steps to make the courts and court proceedings accessible and understandable to
3 impaired persons. The court may convene temporarily, or for the entire proceeding, at
4 any other location if it is in the best interest of the person to be protected.

5 5. In any case in which the veterans' administration is or may be an interested party, a
6 certificate of an authorized official of the veterans' administration that the person to be
7 protected has been found incapable of handling the benefits payable on examination
8 in accordance with the laws and regulations governing the veterans' administration
9 ~~shall be~~ prima facie evidence of the necessity for ~~such appointment~~ a conservator or
10 other protective order.

11 ~~3.6.~~ After hearing, upon finding that ~~a basis for~~ the appointment of a conservator or other
12 protective order ~~has been established~~ is appropriate, the court shall make an
13 appointment or other appropriate protective order.

14 **SECTION 9. AMENDMENT.** Section 30.1-29-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **30.1-29-08. (5-408) Permissible court orders.**

- 17 1. The court shall exercise the authority conferred in this chapter consistent with the
18 maximum self-reliance and independence of the protected person and make
19 protective orders only to the extent necessitated by the protected person's actual
20 mental and adaptive limitations and other conditions warranting the procedure.
- 21 2. The court has the following powers which may be exercised directly or through a
22 conservator in respect to the estate and affairs of protected persons:
- 23 a. While a petition for appointment of a conservator or other protective order is
24 pending and after preliminary hearing and without notice to others, the court has
25 power to preserve and apply the property of the person to be protected as may
26 be required for the benefit of the person to be protected or the benefit of the
27 dependents of the person to be protected.
- 28 b. After hearing and upon determining that a basis for an appointment or other
29 protective order exists with respect to a minor without other disability, the court
30 has all those powers over the estate and affairs of the minor which are or might

- 1 be necessary for the best interests of the minor, the minor's family, and members
2 of the minor's household.
- 3 c. After hearing and upon determining that ~~a basis for an~~ appointment of a
4 conservator or other protective order ~~exists~~ is appropriate with respect to a person
5 for reasons other than minority, the court has, for the benefit of the person and
6 members of the person's household, all the powers over the person's estate and
7 affairs which the person could exercise if present and not under disability, except
8 the power to make a will. These powers include power to make gifts, to convey or
9 release the person's contingent and expectant interests in property, including
10 marital property rights and any right of survivorship incident to joint tenancy, to
11 exercise or release the person's powers as trustee, personal representative,
12 custodian for minors, conservator, or donee of a power of appointment, to enter
13 into contracts, to create revocable or irrevocable trusts of property of the estate
14 which may extend beyond the person's disability or life, to exercise options of the
15 disabled person to purchase securities or other property, to exercise the person's
16 rights to elect options and change beneficiaries under insurance and annuity
17 policies and to surrender the policies for their cash value, to exercise the person's
18 right to an elective share in the estate of the person's deceased spouse, and to
19 renounce any interest by testate or intestate succession or by inter vivos transfer.
- 20 d. The court may exercise or direct the exercise of its authority to exercise or
21 release powers of appointment of which the protected person is donee, to
22 renounce interests, to make gifts in trust or otherwise exceeding twenty percent
23 of any year's income of the estate, or to change beneficiaries under insurance
24 and annuity policies, only if satisfied, after notice and hearing, that it is in the best
25 interests of the protected person, and that the protected person either is
26 incapable of consenting or has consented to the proposed exercise of power.
- 27 e. An order made pursuant to this section determining that ~~a basis for~~ appointment
28 of a conservator or other protective order ~~exists~~ is appropriate has no effect on the
29 capacity of the protected person.
- 30 3. Unless terminated earlier by the court, an order appointing or reappointing a
31 conservator under this section is effective for up to five years. At least ninety days

1 before the expiration of the initial order of appointment or any following order of
2 reappointment, the court shall request and consider information submitted by the
3 conservator, the protected person, the protected person's attorney, if any, and any
4 interested persons regarding whether the need for a conservator continues to exist. If
5 it is recommended the conservatorship continue, the court may appoint a guardian ad
6 litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether
7 the conservatorship should continue. Following the hearing and consideration of
8 submitted information, the court may reappoint the conservator for up to another five
9 years, allow the existing order to expire, or appoint a new conservator in accordance
10 with this section. The supreme court, by rule or order, shall provide for regular review
11 of conservatorships in existence on the effective date of this Act.

12 **SECTION 10. AMENDMENT.** Subsection 2 of section 30.1-29-14 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 2. If not otherwise compensated for services rendered, any ~~visitor,~~ lawyer,
15 ~~physician~~ expert examiner, conservator, or special conservator appointed in a
16 protective proceeding is entitled to reasonable compensation from the estate.

17 **SECTION 11. AMENDMENT.** Section 30.1-29-19 of the North Dakota Century Code is
18 amended and reenacted as follows:

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

20 1. At least once annually and at other times as the court may direct, a conservator
21 ~~must~~ shall file a report and account with the court regarding the exercise of powers and
22 duties specified in the court's order of appointment. The report must describe any
23 expenditure and income affecting the protected person, any sale or transfer of
24 property affecting the protected person, and any exercise of authority by the
25 conservator affecting the protected person.

26 2. On termination of the protected person's minority or disability, a conservator shall file a
27 final report and accounting and provide a copy of the report or accounting to the
28 protected person. The report or accounting must be filed with the clerk of district court.
29 ~~The filing of the report or accounting and the acceptance by the court or clerk of~~
30 ~~district court of the report or accounting~~ does not constitute the court's approval of the
31 report or accounting. The court may approve a report and settle and allow an

1 accounting only upon notice to the protected person and other interested persons who
2 have made an appearance or requested notice of proceedings. Subject to appeal or
3 vacation within the time permitted, an order, made upon notice and hearing, allowing
4 an intermediate account of a conservator, adjudicates as to liabilities concerning the
5 matters considered in connection therewith. An order, made upon notice and hearing,
6 allowing a final account adjudicates as to all previously unsettled liabilities of the
7 conservator to the protected person or the protected person's successors relating to
8 the conservatorship. In connection with any account, the court may require a
9 conservator to submit to a physical check of the estate in the conservator's control, to
10 be made in any manner the court may specify. The office of the state court
11 administrator shall provide printed forms that may be used to fulfill reporting
12 requirements. Any report must be similar in substance to the state court
13 administrator's form. The forms must be available in the office of clerk of district court
14 or obtainable through the supreme court's internet website.

15 3. Copies of the conservator's annual report to the court and of any other reports
16 required by the court must be mailed by the conservator to the protected person and
17 any interested persons designated by the court in its order. The protected person's
18 copy must be accompanied by a statement, printed with not less than double-spaced
19 twelve-point type, of the protected person's right to seek alteration, limitation, or
20 termination of the conservatorship at any time.

42
1095
1-11-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

- Page 1, line 1, replace the first "section" with "sections"
- Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"
- Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"
- Page 1, line 2, after the third comma insert "subsection 2 of section"
- Page 1, line 2, after the fourth comma insert "subsection 1 of section"
- Page 1, line 3, after the first comma insert "sections"
- Page 1, line 3, replace the second comma with "and"
- Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"
- Page 1, line 3, after "and" insert "section"
- Page 3, line 12, after "17." insert "Expert examiner" means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

- Page 3, line 13, overstrike "18." and insert immediately thereafter "19."
- Page 3, line 15, overstrike "19." and insert immediately thereafter "20."
- Page 3, line 17, overstrike "20." and insert immediately thereafter "21."
- Page 3, line 22, overstrike "21." and insert immediately thereafter "22."
- Page 3, line 26, overstrike "22." and insert immediately thereafter "23."
- Page 3, line 29, overstrike "23." and insert immediately thereafter "24."
- Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

Page 4, line 1, overstrike "25." and insert immediately thereafter "26."

Page 4, line 8, overstrike "26." and insert immediately thereafter "27."

Page 4, line 9, overstrike "27." and insert immediately thereafter "28."

Page 4, line 14, overstrike "28." and insert immediately thereafter "29."

Page 4, line 15, overstrike "29." and insert immediately thereafter "30."

Page 4, line 17, overstrike "30." and insert immediately thereafter "31."

Page 4, line 21, overstrike "31." and insert immediately thereafter "32."

Page 4, line 24, overstrike "32." and insert immediately thereafter "33."

Page 4, line 25, overstrike "33." and insert immediately thereafter "34."

Page 4, line 27, overstrike "34." and insert immediately thereafter "35."

Page 4, line 29, overstrike "35." and insert immediately thereafter "36."

Page 5, line 1, overstrike "36." and insert immediately thereafter "37."

Page 5, line 5, overstrike "37." and insert immediately thereafter "38."

Page 5, line 8, overstrike "38." and insert immediately thereafter "39."

Page 5, line 10, overstrike "39." and insert immediately thereafter "40."

Page 5, line 11, overstrike "40." and insert immediately thereafter "41."

Page 5, line 15, overstrike "41." and insert immediately thereafter "42."

Page 5, remove lines 16 through 25

Page 7, remove lines 20 through 30

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 29

Page 10, replace lines 1 through 9 with:

"SECTION 2. 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;
 - 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; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; from a ~~physician, mental health services provider, or other health care provider~~, 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 a ~~physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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.
 - e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f.g. To obtain other relevant information as directed by the court.
 - g-h. To submit a written report to the court.
 - h.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 be appointed, a recommendation regarding an alternative person or entity who 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
 - ~~(4)~~(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
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 ~~either a physician or a clinical psychologist~~ 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, 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 ~~physician~~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. 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.
 10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor, lawyer, physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

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Additional amendments to HB 1095

Page 3, line 16: Delete "b. A psychiatrist" (duplicative because a psychiatrist is a licensed physician)

Page 3, line 17: Insert "licensed" so the line reads: "c. A licensed psychologist trained in a clinical program.

Page 7, between lines 28 and 29: insert an additional definition as follows and renumber accordingly.

"**Visitor**" in guardianship proceedings is a person who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

It is recommended by the NDMA, as well as Lindsey Nieuwsma and Judge Cynthia Feland, that we use "**expert examiner**" as written in the amended bill before you. This term is used in the civil commitment code and would be consistent with that.

Other terms were considered. We need to give a name to the role - we can't just say the report can be completed by the following professionals. Capacity examiner and mental health professional are too focused on mental capacity vs physical capacity. Health care report and health care examiner are too broad. Medical examiner is a specific role (autopsy).

Court-appointed examiner was also considered and would be ok with Lindsey and the NDMA but it is not their preference because someone could present information to the court before being appointed. Judge Feland has not weighed in on court-appointed examiner at the time of this writing.

Another change to note:

Page 11, line 28: instead of using the term 'deprive' - it is recommended by Lindsey to use '**restrict**'

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, replace the first "section" with "sections"

Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"

Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"

Page 1, line 2, after the third comma insert "subsection 2 of section"

Page 1, line 2, after the fourth comma insert "subsection 1 of section"

Page 1, line 3, after the first comma insert "sections"

Page 1, line 3, replace the second comma with "and"

Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"

Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner" means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

Page 3, line 17, overstrike "20." and insert immediately thereafter "21."

Page 3, line 22, overstrike "21." and insert immediately thereafter "22."

Page 3, line 26, overstrike "22." and insert immediately thereafter "23."

Page 3, line 29, overstrike "23." and insert immediately thereafter "24."

Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

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Page 4, line 1, overstrike "25." and insert immediately thereafter "26."

Page 4, line 8, overstrike "26." and insert immediately thereafter "27."

Page 4, line 9, overstrike "27." and insert immediately thereafter "28."

Page 4, line 14, overstrike "28." and insert immediately thereafter "29."

Page 4, line 15, overstrike "29." and insert immediately thereafter "30."

Page 4, line 17, overstrike "30." and insert immediately thereafter "31."

Page 4, line 21, overstrike "31." and insert immediately thereafter "32."

Page 4, line 24, overstrike "32." and insert immediately thereafter "33."

Page 4, line 25, overstrike "33." and insert immediately thereafter "34."

Page 4, line 27, overstrike "34." and insert immediately thereafter "35."

Page 4, line 29, overstrike "35." and insert immediately thereafter "36."

Page 5, line 1, overstrike "36." and insert immediately thereafter "37."

Page 5, line 5, overstrike "37." and insert immediately thereafter "38."

Page 5, line 8, overstrike "38." and insert immediately thereafter "39."

Page 5, line 10, overstrike "39." and insert immediately thereafter "40."

Page 5, line 11, overstrike "40." and insert immediately thereafter "41."

Page 5, line 15, overstrike "41." and insert immediately thereafter "42."

Page 5, remove lines 16 through 25

Page 7, line 15, after "60." insert "Visitor means means a person, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings."

61."

Page 7, line 16, overstrike "60." and insert immediately thereafter "62."

Page 7, remove lines 20 through 30

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 29

Page 10, replace lines 1 through 9 with:

"SECTION 2. 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

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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;
 - 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; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward, from a physician, mental health services provider, or other health care provider an expert examiner, if available; and
 - o. Whether the petition seeks to restrict any of the following rights:
 - (1) To vote;

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(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 a ~~physician or clinical psychologist~~ 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; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; 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 ~~physician or clinical psychologist~~ 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 affects the demeanor of the proposed ward or the ability of the proposed ward to 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

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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.
 - e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f.g. To obtain other relevant information as directed by the court.
 - g.h. To submit a written report to the court.
 - h.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 be appointed, a recommendation regarding an alternative person or entity who 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
 - (4)(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
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 ~~either a physician or a clinical psychologist~~ 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, 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 ~~physician~~ 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.

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9. 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.
10. If the court approves a visitor, lawyer, ~~physician~~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."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor, lawyer, physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly

House Bill 1095
Senate Judiciary Committee

Testimony Presented by Cynthia M. Feland
District Court Judge
February 14, 2017

Chairman Armstrong, members of the Senate Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District. In the fall of 2013, the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. In reviewing our current statutes governing the guardianship and conservatorship processes, the Guardianship Workgroup identified and recommended a number of statutory amendments to improve and strengthen procedures in guardianship and conservatorship cases. These statutory amendments were reviewed by the Judicial Conference in November. All of the proposed amendments are contained in House Bill 1095.

Section 1 – General Definitions

Page 3, lines 14-24, amends N.D.C.C. § 30.1-01-06 to add a new subsections defining “Expert examiner” and “visitor”. The term “Expert examiner” would replace the phrase “either a physician or clinical psychologist” throughout the chapter.

Under the current law, only a licensed physician was able to conduct examinations for consideration by the court during guardianship proceedings. Health professionals such as certified nurse practitioners and certified clinical nurse specialists who have authority to diagnose and prescribe often serve as the only accessible health care in rural areas. The Workgroup discussed at length not only the difficulty in locating a medical doctor or

psychologist in rural areas to complete the necessary report under N.D.C.C. §§ 30.1-28-03(5) and 30.1-29-07(3), but the fact that the medical professional who has the most contact with and knowledge concerning the medical condition of a proposed ward is not a medical doctor. In reviewing other similar statutes, such as civil commitments, the Workgroup noted that the definition of health professionals has been expanded beyond medical doctors. After working with the North Dakota Medical Association, the term “Expert examiner” was added to broaden the list of professionals, thereby removing obstacles in locating health professionals to provide the required report to the court on the proposed ward’s incapacity or disability, prognosis, and ability to provide for personal needs.

Page 7, lines 20-22, amends N.D.C.C. § 30.1-01-06 to add a new subsection defining “Visitor”.

Although visitor is defined later in the chapter, the addition of the term to definition section was added by the House Judiciary Committee for ease of reference.

Section 2 – Petition, duties of guardian ad litem, and duties of visitor

- Page 9, lines 8-11, amends N.D.C.C. § 30.1-28-03(2) to add subdivision (o) requiring a statement by the petitioner within the guardianship petition for any proposed restrictions on the proposed ward’s rights and to remove the right to testify at judicial or administrative proceedings from the list of possible restrictions on the proposed ward’s rights.

The current statutory provisions do not require a petition to indicate whether any of the proposed ward’s rights are sought to be restricted. The court appointed visitor is required to offer an assessment to the court in the visitor report as to any restrictions recommended on the proposed ward’s rights, and if a guardianship is ordered, the court addresses the retention

of the ward's rights in its findings of fact and appointment. The Workgroup concluded that because a ward's rights are addressed during the hearing on the guardianship petition, a restriction sought by the petitioner should be included in the original petition to the court as the restrictions may have bearing on whether the proposed ward seeks legal counsel.

The proposed amendment also includes a listing of the rights of the proposed ward that may be restricted. The proposed ward's right to testify in a judicial or administrative proceeding (which is currently included in the statute elsewhere) is not included in the proposed listing of rights, as the Workgroup did not find such a restriction to be an appropriate limitation.

Issues pertaining to competence are best addressed by courts at the time of an administrative or judicial proceeding. A premature restriction of an individual's right to testify in an administrative or judicial proceeding presupposes competency to testify.

Later references within the statute related to deprivation of the right to testify at judicial or administrative proceedings are also recommended for removal.

- Page 9, lines 30-31, amends N.D.C.C. §30.1-28-03(4) to add subdivision (e) which expands the duties of the guardian ad litem to include reviewing the visitor's report with the proposed ward.

The Workgroup concluded that it is important for guardian ad litem to explain the recommendations of the visitor to the proposed ward prior to the guardianship hearing in terms consistent with proposed ward's level of understanding and to insure that any concerns of the proposed ward are brought to the Court's attention at the hearing.

- Page 10, lines 21-26 and Page 11, lines 2-6, amends N.D.C.C. § 30.1-28-03(6) by adding new subdivision (d) to expand the duties of the visitor to include interviewing other interested persons, renumbering, and adding provisions under renumbered subdivision (i) to require that the visitor provide a recommendation as to the appropriate person(s) to be appointed guardian.

Currently there is no requirement for a visitor to interview other interested persons, although such interviews are a common practice. The requirement to conduct interviews would not only conform to current practice but provide information about the suitability of the proposed guardian from the interested person's perspectives and elicit other relevant information about the proposed guardianship. The visitor is in the best position to gather information about the proposed guardian's suitability and, in instances where the proposed guardian is not suitable or qualified, to discover and recommend alternative potential guardians.

Section 3 – Ward's rights

Page 12, lines 3-6, amends N.D.C.C. § 30.1-28-04(3) to remove the reference to deprivation of the ward's right to testify in a judicial or administrative proceeding as a right that may be deprived upon specific findings by the court.

As mentioned previously, the Workgroup deemed the deprivation of the ward's right to testify to be inappropriate because a judicial officer not only has the authority, but is in the best position to determine a witness's competency to testify at the time of the proceeding in which the ward is called to testify.

Sections 5 – Burden of Proof in Conservatorship cases

Page 12, lines 14, 25-26, and Page 13, lines 1-3, amends the caption to N.D.C.C. § 30.1-29-01 and Sections (1) and (2) with stylistic changes in addition to establishing the burdens of proof required for different types of conservatorships or other protective proceedings.

The burden of proof in conservatorship proceedings is currently not addressed by statute.

Following lengthy discussions, the Workgroup recommends that for a conservatorship based on minority status (Section 1), preponderance of the evidence standard would be appropriate as a minor does not have the legal capacity to manage an estate. For a conservatorship based on reasons other than minority status (Section 2), the Workgroup concluded that the higher clear and convincing standard was warranted given that adults typically have more rights than minors, which would be restricted through the conservatorship, and the situation leading up to the conservatorship tends to be more complex than those based on minority status.

Sections 6 – Conservatorship Petition

Page 13, lines 9-29 and Page 14, line 1, amends N.D.C.C. § 30.1-29-04(2) with stylistic changes and adds subdivisions to expand the information required within the petition for a conservatorship.

To maintain consistency in information provided to the Court in any protective proceedings, the Workgroup recommends that the requirements for the conservatorship petition parallel those in a guardianship.

Section 7 - Service

Page 14, line 8, amends N.D.C.C. § 30.1-29-05(1) to clarify that the petitioning party is responsible for service.

Section 8 – Conservatorships

- Page 14, line 23-31 to Page 16, line 11, amends N.D.C.C. § 30.1-29-07(1) and (2) to expressly require the proposed conservator to attend the hearing unless good cause is shown, to address issues related to an attorney appointed to represent the person sought to be protected under the guardianship, and to add subdivisions (a) through (g) which expand the duties of the guardian ad litem in a conservatorship.

While the conservator is generally in attendance at the hearing on the petition, the Workgroup concluded that the attendance should be mandated by statute absent good cause.

The current statute requires that the court appoint an attorney to represent the person sought to be protected if the court determines that the interests of the person sought to be protected are being inadequately represented. Given that the traditional role of a guardian ad litem is to advocate for the best interests of the person sought to be protected and to maintain consistence with guardianship proceedings, the Workgroup recommends that the language of the statute be modified to provide for the appointment of an attorney to serve as a guardian ad litem.

With respect to the expanded duties of the guardian ad litem, the Workgroup added these provisions to maintain consistency and to ensure the court is provided with adequate

information in all conservatorship cases. The proposed additions parallel the duties of a guardian ad litem within guardianship cases.

- Page 16, line 12-31 to Page 17, line 7, amends N.D.C.C. § 30.1-29-07(3) with stylistic changes and adds subdivision (a) and (b) to specify the contents of the report submitted by a physician or clinical psychologist and that the physician's report will be considered by the court and that the court or any of the parties may issue subpoena(s) if cross-examination of either report is sought.

The addition of these provisions is recommended by the Workgroup to maintain and clarify the required contents of the report, and to maintain consistency and parallel the requirements of the guardianship provisions. As a matter of current practice, the physician rarely attends, and attendance by the visitor is sporadic, which can result in hearings being continued due to confusion over which party bears subpoenaing responsibilities. Proposed subdivision (d) would assist in ensuring that subpoenas are timely issued where cross-examination of the physician at a hearing is desired.

- Page 17, lines 8-13, amends N.D.C.C. § 30.1-29-07 by adding subsection (4), which includes a requirement that the person to be protected and guardian ad litem must be present at the conservatorship hearing unless good cause is shown and specifying that good cause does not include the physical difficulty of the person to be protected.

Here again, while the conservator is generally in attendance at the hearing on the petition, the Workgroup concluded that the attendance should be mandated by statute absent good.

- Page 17, lines 14-19, amends N.D.C.C. § 30.1-29-07(5) and (6) with stylistic changes

Section 9 – Term of Appointment in Conservatorships

Page 18, lines 11-12 and Page 19, lines 7-19, amends N.D.C.C. § 30.1-29-08 with stylistic changes and creates a new subsection (3) that would establish a five-year expiration for orders appointing or reappointing a conservator and providing a procedure for the reappointment of a conservator.

The Workgroup included this change to incorporate a regular review process for conservatorships similar to that provided for guardianships.

Section 11 – Term of Appointment in Conservatorships

- Page 19, line 28-31 to Page 20, line 2, amends N.D.C.C. § 30.1-29-19 (1) to clarify and expand the requirements for the conservator's annual report.

The Workgroup recommends the amendment to ensure detailed information concerning the exercise of authority by the conservator similar to those required for exercises of financial authority under a guardianship where financial authority has been ordered.

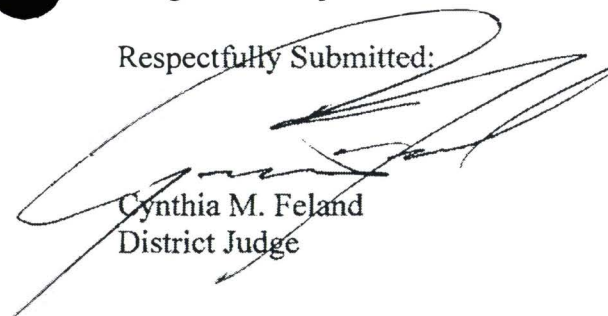
- Page 20, lines 5-7, amends N.D.C.C. § 30.1-29-19 (2) to clarify that the annual report must be filed with the clerk of court.

The proposed amendments clarify the status of the filing of the annual report as being a clerical function and not an adjudication or determination of the merits of the report.

- Page 20, lines 23-28, amends N.D.C.C. § 30.1-29-19 to add subsection (3) to require the conservator to provide copies of the annual report to the protected person and other interested persons.

Unlike guardianship proceedings, currently there is only a requirement for the filing of the annual report. Although the protected person may not have any capacity to comprehend the appropriateness of the conservator's exercise of duties and powers, the Workgroup determined that the protected person should nevertheless be provided with a copy of the annual report. In addition, the amendment would allow interested parties to request copies of the annual report at the time of the original appointment, enhancing the detection of any malfeasance by the conservator. The proposed amendments are also consistent with reporting requirements in guardianship cases.

Respectfully Submitted:



Cynthia M. Feland
District Judge

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; **Mel Webster**, Bismarck; **Roger Wetzel**, Bismarck; **Leo Ryan**, Jamestown; **Rich LeMay**, North Dakota Legal Services; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Human Services; **David Boeck**, Protection and Advocacy; **Christopher Carlson**, Bismarck; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**, Trial Court Administrator, Unit 3; **Catherine Palsgraff**, Bismarck; **Rachel Thomason**, Bismarck.



SENATE JUDICIARY COMMITTEE

65TH NORTH DAKOTA LEGISLATIVE ASSEMBLY

House Bill 1095 2/14/2017

Chairman Armstrong and Committee Members:

I am Cheryl Rising, Family Nurse Practitioner (FNP) and Legislative Liaison for the North Dakota Nurse Practitioner Association (NDNPA). I am here to testify in support of House Bill 1095 relating to guardianship and conservatorship proceedings.

NDNPA supports the changes on page 3, lines 14 through 24. Expert examiner includes Advance Practice Registered Nurse (APRN). This definition will allow us to perform at our full scope of practice.

APRN's see residents in Alzheimer's memory care units. I will share one of several examples related to this bill. One of my patients with end stage dementia had a daughter that chose not to be the guardian any longer. The patient did have a sister that agreed to be the guardian. I was asked to complete a history and physical on this client and submit to a lawyer in town. I completed and submitted the exam documentation. I was notified they would not accept my exam, they needed a physician. The question was asked; who is the primary provider on this patient? I stated I was. They stated they needed a physician signature. This patient had severe dementia and was very difficult to take out of the facility and no other providers came to this facility to do exams. They then asked if I would contact a physician to co-sign the document. I did contact a physician that agreed

to sign after the situation was explained. I then submitted the history and physical with the addition of the physician's signature. I was then called and told that the physician needed to sign in the area that stated the physician did the exam. I explained, I did the exam, the physician co signed the document and he will not sign in the area of the examiner because he did not do the exam.

APRN's are primary providers of clients in this state. APRN's have barriers to practice when faced with these situations and loss of productivity and time. With addition of APRN's to this bill we will eliminate barriers to practice.

Cheryl Rising, RN, MS, FNP-BC

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