2017 HOUSE HUMAN SERVICES

HB 1365

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1365
1/31/2017
27648

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Judy Tepple

Explanation or reason for introduction of bill/resolution:

Relating to powers and duties of a guardian regarding medical decisions.

Minutes: 1, 2, 3, 4, 5

Chairman Weisz: called the committee to order.

Opened the hearing on HB 1365

Chairman Weisz: Is there any testimony in support of HB 1365?

Rep. Vigesaa introduced this bill.
Happy to introduce HB 1365 this morning. I urge the committee to give it a favorable recommendation. This is regarding the powers and duties of a guardian when it comes to administering medications. I am doing this on behalf of a family that lives in my district. They are here to testify and they will give a compelling reason why HB 1365 should move forward. I would be happy to answer any questions, but I am sure they will be answered by those that follow me.

Chairman Weisz: Are there any questions from the committee?

Chairman Weisz: Further testimony in support of HB 1365

Fred Lukens
(Attachment 1)
1:40

8:07
Chairman Weisz: Are there questions from the committee?
Chairman Weisz: Further testimony in support of HB 1365?

Representative Skroch
(Attachment 2) 8:18

20:55
Chairman Weisz: Are there questions from the committee?

Chairman Weisz: Is there further testimony in support of HB 1365?

Cheryl Rising, Family Nurse Practitioner
(Attachment 3)

Chairman Weisz: Are there any questions from the committee?

Representative Porter: You have people listed here that cannot write a prescription. I don't think that is appropriate if they are unable to do that. I don't know if that will fit in to what this bill does. I don't have a problem expanding it from physician to anyone who can legally write a prescription, but the words you used out of that bill include people that are not able to do that.

C. Rising: I do see that in that list a psychologist is not allowed to prescribe medication. I would appreciate it if you would add the advanced practice registered nurse to the bill that would be sufficient.

Chairman Weisz: Are there further questions from the committee? Seeing none.
Is there further testimony in support of HB 1365?

23:59
Representative McWilliams: I am giving the testimony for someone that could not be here today to give it. (Chelsea Luken)
(Attachment 4)

32:10
Chairman Weisz: Are there questions from the committee?

Chairman Weisz: Is there further testimony in support of HB 1365? Seeing none.

Chairman Weisz: Is there any opposition to HB 1365?

David Boeck, Dir. Of legal Services for Protection and Advocacy
(Attachment 5)
33:00

37:38
Chairman Weisz: Are there questions from the committee?
Where it says that if there is a need for involuntary medication became an emergency it allows for it. I guess my question is who determines if it is an emergency? What would be the process currently?

D. Boeck: The physician determines if it is an emergency.

Chairman Weisz: So the administration of the medication then does that have to go to court eventually?

D. Boeck: Yes, it would have to go to court and there would have to be a hearing to be able to have an ongoing course of involuntary treatment. Of course if the treatment is effective, it could remain involuntary forever, but it could be appealed after 90 days. They don't want to be insensitive to those needs. Court hearings can be held in a patient's room in the hospital. A judge can go up there, so the patient doesn't have to be taken to the courthouse. That sort of thing is done in certain cases. It doesn't have to be a horrible struggle to take someone to the courthouse. They can issue and immediate order to give forced medication but the patient would still have the opportunity for a day in court for due process to go on.

Chairman Weisz: Who determines immediate verses ongoing treatment? Is that the physician's judgement? Can they give them one shot or what? I am trying to get a handle here on just what that means and how much authority the physician has under the so called emergency and at what point then is the physician in trouble?

D. Boeck: A physician could certainly make a decision to save someone's life or prevent permanent injury.

Chairman Weisz: Further questions from the committee?
41:09
Representative Porter: In the testimony we received it seems like matters are different depending on what facility you would end up at whether or not they would honor the guardianship orders. In testimony earlier received they talked specifically about Altru Hospital honoring the ability of the guardian to assist the ward and then the clear message that I hear is that only the state hospital interprets it differently than other health care facilities.

D. Boeck: That is not the way the law is intended to be interpreted. The law is written that forced meds have to be approved by a court whether it is in any facility.

Representative Porter: You think those hospitals and physicians are acting outside of the current law and the state hospital is upholding the law correctly.

D. Boeck No, I think they are acting within the law and requiring hearings when there need to be a hearing

Representative Porter: Has the component of the authority of the guardian ever been in front of the supreme court or opinioned by the attorney general in regards to this issue?

D. Boeck: I cannot say that authoritatively. I don't know.

Representative Devlin: I can hear you explain that it is working, but the testimony we have heard tells us that it is not working and it is taking 15 days even though the medical provider for that patient at the state hospital says he must have it it takes 15 days to go through the court. It isn't that the judge is running up there to grant him the thing that day. Something in the system is broken or we wouldn't be here today. How do we fix it?

D. Boeck: That is why I am suggesting that the court system's work group study this and figure out what can be done. I do think that the court system is more flexible than what we have heard today. I think the court can offer remedies where it is essential.

Representative Devlin: that is not my understanding and I don't agree with your take on the judiciary, but you are essentially families that they need to wait another 2 years to deal with the life and death situation of your child if that is what it is while your group talks about it. That is the solution you are proposing.

D. Boeck: That is not what I mean. I think that each of the cases we heard about there can be a remedy under the current system. I mean there is a remedy. Judges have the authority to grant these orders when there is a compelling case presented for issuance of a temporary order and then allow a hearing at a later time where the individual has an opportunity to present his arguments as to why he shouldn't be forced to have medication. If you picture this now. If you have someone in the hospital that is kicking, screaming, and restrained and then someone gives them a shot. That is not a pleasant side either and I think that is where they need protection.

Representative Schneider: If this passes you can still study the issues and perhaps take some of this testimony to the work group and see if there are some changes that would need to be made both to protect individual rights, but also to allow for treatment in this, could you not?

D. Boeck: Yes, they could still study it either way. I think the complaint we are hearing today has less to do with the guardianship's authority than with the mental health system.

Representative McWilliams: Do we have any information on how many cases there are in the state such as the testimony that we have heard?

D. Boeck: no, I have no information about the cases that have been presented.

Representative McWilliams: Do you know how many instances the judge has left the court and gone to the hospital to hear the hearing in a hospital room? You mentioned that that might be a possibility. Do you know how many cases where that has been the case?

D. Boeck: that happens quite frequently. Typically, if someone is elderly or disoriented where they are in a long term care facility where it would be difficult to transport that person it could be done. That is not unusual. The chairman of the work group could probably give you information about how frequently she does it.

Representative Skroch: In your testimony you present the scenario where a patient is refusing meds, the doctor petitions the court, and if this is one of the cases where the patient does have appear in the courtroom, and only has to present themselves in calm demeanor for a few minutes to and during that time the judge then, who is not a psychiatrist, can determine that they are sound enough that they do not have to comply with the forced medication order, so the delay continues on. I guess I just want to know what your response to that would be when you have a judge who is not a psychiatrist determines that against the doctor's recommendation a patient refuses the meds.

D. Boeck: at the hearing you can have psychiatrists and family members testify and explain to the court that this is a relative calm, but the individual has periods of when he is out of control. I don't think that is the case though. I don't think it is that easy to fool a judge.

Representative Skroch:. That is not always the case and if that judge makes that rule then the patient refers back to a psych ward where they are allowed to deteriorate once again to the point where a doctor has to try another time to bring them to the court, produce evidence indicating that maybe now we can force meds. I can't agree with you. I don't think this system is working

Representative Seibel: Is it the courts that have already deemed appropriate for the patient to have a guardian? There is a reason that the individual has been given a guardian, right?

D. Boeck: Yes, there is a reason. The person has a guardian if the lack the capacity to make responsible decisions in specific areas of decision making.

Chairman Weisz: Further questions from the committee? Seeing none, thank you.

Chairman Weisz: Is there further testimony in opposition to HB 1365?

Dr. McClain, could you come up and clarify something for me?

Dr. McClain, Medical Director for the Dept. of Human Services and the chair of psychiatry for the medical school.
In 2008 I was the medical director at the state hospital when this opinion first came up. We went to the attorney general and asked for an opinion on whether or not it was required to go to court when a guardian and a doctor deemed it appropriate to treat with certain medications. The opinion of the attorney general was that, yes, it required a court order based on his review of the law of the land. Since that the state hospital has brought that question to the court. Often times the judge will determine that the patient has become stable enough and says that they will comply with oral medication or whatever then they don't enforce the long acting injectable. The acute rule is that the medical provider can treat someone who is significantly agitated at the point of dangerousness. In that they are treating the dangerousness and once that is over they are back to square one. The other thing that sometimes happens is that someone will ask for a second opinion and that will cause them to wait further and further. With significant human rights on one end and then there is the advocates that say you are allowing people to die with their rights and everything in between. So what we are looking at is that in SB 2042 there is actually language about looking at mental health professionals that can evaluate as an expert and that would include nurse practitioners, physicians, and psychiatrists who are physicians, so that is why we can say tier 1. Also PAs. We have also put in there under the provision for a last year psychiatric residents, because the problem is we can't find expert examiners to quickly evaluate. We have expanded our residency program by two including internal medicine to be able to meet those needs, but that's also part of those issues. I just received as I was coming in today a request to give a lecture on schizophrenia to medical students. They also need to hear what

the issues are in terms of what families are given, what the proper treatments is and what you need to do in terms of the evaluation etc. Looking at the century code as it stands right now, it provides for acute treatment depending on whether or not you agree with the interpretation or ask the question about bringing it to court. If there is an acute issue you can treat, but only for that acute issue and then it is back to the judge.

Representative McWilliams: Are there other mental illnesses outside of schizophrenia where this would apply where you need forced medications.

Dr. McClain: Yes, there are other things. Any psychotic state which can occur during a manic episode as well, a severe psychotic episode, a depression or someone not caring for themselves but they are delusional about that fact. Those are the more classic situations where we would go in and ask for forced treatment. In the century code as well there is what they call A, B, C, D criteria. A and B are straight forward. Someone is threatening to kill themselves or someone else. It is the C and D criteria where there is a pattern of behavior where someone is not caring for themselves and you can predict, based on history, this is going to happen again. This is the most frustrating thing with the family. They see this over and over and you have someone say this has happened 10 times and I can tell you it is going to happen again and it is under the C or D criteria. He is not suicidal or homicidal but you can bet your bottom dollar that this is going to happen. The flip side is in terms of advocates these medications are like chemotherapy in some cases. They have long term side effects. They are not benign like taking an aspirin. At the same time there is a balance between risk and benefit. You can tell from the testimony that the risk is actually quite high is some individuals. In our residency program we are also working on a clozapine clinic which is the best treatment for schizophrenia and it is an antipsychotic, but it is rarely prescribed because people are worried about how to use it. We are trying to increase evidence based practice as well.

Representative Porter: I am pleased that you have added more psychiatrists in the residency program. I hope one of them has to be located at your school about 4 blocks south of here.

Dr. McClain: Let me get on my soapbox then and tell you as we seek appropriations .We are increasing telemedicine for all of them to get training. We are also trying to get the residents to other parts of the state. Also all of the residents now have to go to the state hospital during their first year of rotation. They are there for 2 months. We are building and we have heard the call that we need to move people west. We know that residents usually practice within 100 miles of where they train, so if we can get them to other rural parts of the state and give them the opportunity for those clinics and hospitals to them, see them, and recruit them, that is a win win for everybody.

Representative Porter: inside of this bill there seems to be a gap and whether is it perceived or real in the eyes of the guardian and in the eyes of the family there is a gap. You know as well as I do that that perception is a reality in their minds when they see their loved one waiting. Is the delay in the court system? We hear 15 days and if I was laying in the hospital and needed a stint and you told me that I had to wait 15 days for someone to make that decision, life changing things happen to the myocardial tissue over that time just like life changing things happen to that brain tissue over time. How do we stop and get a handle

around the perception of that gap and reality of that gap in time from when the patient has the manic episode to the point of absolute treatment, not just sedation, but absolute treatment to stop what is going on?

Dr. McClain: There are two options there. One option would be to allow for continuation of treatment up until court. The second option would be to increase access more quickly which is the idea that we are adding more doctors and to allow for tele video presentation or whatever. That means allowing treatment up until court or getting more experts. You also brought up a point. When we are talking about schizophrenia or bipolar disorder it is not like diabetes where some people can manage it with diet and exercise and minimal treatment where others with diabetes can go into a coma. That is more like the cases the families have talked about. It is also important to listen to what is the severity of the illness; what is the most benefit. I think we can improve treatment and increase access by changing some of the definitions and allowing professionals.

Representative Porter: inside this bill it talks about just kind of a blanket authorization. Once you are the guardian you have this ability and authority, so what you are saying in the balancing act of this going back to the patient's rights and going back to the families rights and concerns that you brought up, you would think that there would be something in here that talked about including forced medications until a court appearance could be scheduled or some other treatment so that treatment isn't stopped, but there is still a safety net for the patient inside of that forced medication component that they still have the right to go back and go in front of a judge.

Dr. McClain: I think that is a good example of the option. Again the individual rights is a very difficult question because these drugs are not benign. Your suggestion is probably is a good Idea.

Representative Porter: The time of waiting for the family to get to court is going to get longer, not shorter because of the backlog inside of our court system.

Chairman Weisz: Further questions from the committee?

Closed the hearing on HB 1365.

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Human Services Committee
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1365
2/1/2017
27805

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Judy Kepple

Explanation or reason for introduction of bill/resolution:

Relating to powers and duties of a guardian regarding medical decisions.

Minutes:

Chairman Weisz: called the committee to order
Discussion on HB 1365

Chairman Weisz: There were a few suggestions, but whether this committee wants to adopt them or not, but one of the suggestions of Dr. McClain was to at least allow the forced medication "until" the court would determine competency. I am sure some could argue that if the court decides they are competent then it starts the cycle all over again. I want to talk about the bill. If we can't kick it out today that is fine, but we need to talk about some of the suggestions. Representative Skroch and Representative Devlin are on the bill. If they have suggestions or want to leave it the way it is?

Representative Damschen: Granting someone guardianship over an adult seems to me to be a fairly serious indication that the person needs help. I don't know what the point is if they can't authorize something with a physician's advice and approval. It just seems like that would be part of their normal duties as a guardian.

Representative P. Anderson: I talked to the legal advocate attorney outside in the hall and it seems to me that in the first guardianship you should be able to cover that so you don't have to go back to the court again. He agreed with that, but that is not how it works now. Somehow that should be studied like he said so that you only have to involve the court one time. Then under current statute that I don't think would change, a guardianship has to be reviewed again every 5 years. I think that guardianships that are done for a specific purpose like schizophrenia which is ongoing, medication just doesn't stop. How it is set up now it doesn't cover that.

Representative Skroch: Having been through this again and again and again. I prefer to have the language stay as it is without making that change. When guardianship is issued there is an extensive study. There are visitors that come and speak with the people that are going to be assigned guardianship. Through that study they determine what % of

guardianship you are allowed. It would be whatever the court allows you to have. It could be 50%over or 100% over. There are very sound reasons why you are given that authority. In those cases, where there are repeated, repeated, repeated need for forced medication I think the court process just slows things done. Therefore, I would rather the language stay as it is.

Representative Damschen: I think this bill does what we want it to do. I think it clarifies and I am in favor of the bill.

Representative Schneider: I would be comfortable with this if it had the language that I think we saw in both your guardianship documents and the Luken's where it specifically provided for this in the guardianship. Otherwise the guardianship would not normally address that., but I think in both of yours the court specifically heard medical testimony on that issue and provided for that authority in the guardian. Otherwise the guardianship could just be general without anything in it about forced medication.

Representative D. Anderson: I also think that if we pass this we should put the emergency clause on it.

Chairman Weisz: Yes, that would be a good idea. Representative Skroch, what language in your guardianship is Representative Schneider talking about?

Representative Skroch: In guardianship determinations I believe the law would only allow you authority to make this kind of decisions if it specifically says in your guardianship that you have authority over that.

Chairman Weisz: So you would have to have those directives in your guardianship?

Representative Skroch: We have power of attorney over medical decisions and we have 100% durable power. There might be some dispute that the power is very limited, but the state hospital would never recognize you having that authority. They would not recognize your authority to authorize forced meds unless you had that specified in your guardianship.

Representative McWilliams: I read a testimony yesterday that even if it was in there they wouldn't allow you to do forced medication unless it was an emergency and then it is too late. That's where we heard testimony yesterday about the relapse and then the cycle starts all over again, because of that gray area in the law. I think the doctors were kind of afraid to move in to. I think that is what this law does.

Chairman Weisz: the reason I asked Representative Skroch is would you be comfortable if we could add that kind of language like Representative Schneider was talking about? If it said that your guardianship included durable power of medical. So if you didn't have that then your guardianship doesn't give you that authority. Who that make it more acceptable on the advocate side? I don't know if it is warranted or not, but they have concerns that someone would allow their spouse or child to be drugged up against their will.

Representative Skroch: It says on line 4 that a guardian has general or limited authority as determined by the court. I think that nails it right there.

Representative Porter: There is a safety net because it has to be with the recommendation of the doctor or the nurse practitioner. They are the only ones that can administer the class 1 meds. The guardian should be able to do that until they can get back in to court to do it there. Then when they go back to court you will get the legal safety net. So they have the ability to instantly implement the care plan and instantly implement it based on the recommendation of the two individuals that can legally prescribe those medications and then you still have the courts that will review it as soon as possible based on an emergency.

Chairman Weisz: Not with the current language. So you think we should add that safety net?

Representative Porter: Absolutely. That gets both sides right to the center. In an emergency the physician or the APN can do the medication and then they have to petition the courts and go in front of the courts to reaffirm the fact that they are inside of the boundaries of that person's rights. You aren't delaying treatment and causing regression of the individual because of the non-ability to treat and you have the safety net there for the patient's rights.

Chairman Weisz: How do you address Representative Skroch's concern that this is going to become a round and round thing in the court. It is a safety net for the patient. The doctor and the Advanced Practice Nurse have to come in and support their decision.

Representative Porter: I think the safety net still relies back on the physician or APN being part of the court hearing. They won't be able to do it without having that expert testimony in the first place. To give it without that you are taking a little bit away from the patient's rights by just saying that you can do it whenever you want to. This way you have a safety net for the patient. When it comes before the court the doctor and the APN will be subpoenaed to come in and support their decision to give the meds on an emergency basis and that the patient was not capable of making that decision.

Representative Skroch: I am not familiar with other sections of the century code, so are there other sections that would already include that protection?

Representative Porter: We received an email that talks about 2503.1-24 which is the right to treat. Inside of there it doesn't prohibit a hospital from rendering emergency care. Now I think that the state hospital is kind of using smoke and mirrors, because if the state hospital are already saying they aren't doing it and won't do it because they are not authorized to do it, then they aren't considering the situation as an emergency. I do think that in order for us to have a system in place that one isn't it. F I think we have to do something here that gives a safety net but also gives the ability to treat in an emergency and medicate.

Chairman Weisz: At least Dr. McClain's explanation was the fact that they interpreted emergency to mean they could treat the symptom, but not the underlying condition.
They could give him something to calm him, but not to treat the condition. Maybe they're interpreting it a little too narrow, but If you used the language in the bill that says" until the court hearing" maybe that would help to satisfy some of it. It wouldn't be 100%. We have dealt with this for many sessions and to have a balance has always been a struggle between the patient's rights and the families watch their family member deteriorate and not be able to

do anything about it. We have always been trying to balance that, so maybe this is the halfway point.

Representative Skroch: My concern is that we will just end up in the same gray area and cycle through the courts again and again? If the person is incapacitated and this is a diagnosed situation why would you want to drive them to the courts again. If you are concerned with protection for the ward, there is adequate protection for them. Why is guardianship given? It has been determined by the court that the person is incapacitated it is for the good of the ward that that authority has been given to the guardian and my concern again goes back to the going to the courts and ending up there over and over again.

Representative Kiefert: Would it be possible to give them the right to appeal that could be put
in there instead of having an automatic court hearing? I can't imagine how that would play out if the doctor gives testimony and then you are going to listen to a schizophrenic say that the doctor is off the wall. If they could appeal they would still have the right, but it wouldn't mean an automatic court hearing.

Chairman Weisz: Of course the problem would be It would be the guardian who was doing the appealing because they are in charge. They are the guardian so they would appeal the decision, but on the other hand they are the ones that are saying to do it.

Representative McWilliams: There is a senate bill that addresses the same thing. It is SB 2291. It is written in almost the same exact language.

Chairman Weisz: Yes, I know. I don't know why we have so many duplicate bills this session.

Vice Chairman Rohr: Does that bill also include the APN along with the physician? We had a suggestion about adding the APN, because we find that often they are the ones treating.

Chairman Weisz: Megan is printing it out for us.

Representative P. Anderson: I think we should add PAs too.

Vice Chairman Rohr: They don't have prescription writing ability.

Representative P. Anderson: My daughter is a PA in Minneapolis and she has that ability.

Representative Skroch: I think they want someone with a higher level of skill to be able to assess a patient who can exhibit normalcy for a few minutes when they really aren't. I think you need a very qualified individual to make that decision and to decide it should be forced.

Chairman Weisz: Senate bill 2291 is identical to the part of the bill we are dealing with. The only thing they did was add some cleanup language in another part.

Representative Damschen: Doesn't the required recommendation of the doctor or advance

practice nurse offer some safety net to the patient?

Chairman Weisz: I think you want this to be as tight as possible if it comes out of here with a do pass. So that it isn't just anybody that can recommend that to the guardian. So committee there is certainly some division here. What are your wishes?

Representative Porter: Line 6 the language that is put in there may be the oversight and the ability of the court. By putting that language "as determined by the court" they could do all of
the things that we say here. They could do the guardianship order and have it as tight as they
want it to be based upon the initial hearing. Maybe it is already there.

Chairman Weisz: So if the court initially decided that in the beginning then you don't have to go back and do it again.

Representative Porter: The court could turn it around and not give you that authority too.

Representative Schneider: That was what I was suggesting. The Lukens had already had a mecidal professional testifying on that issue, so it was already before the court and the court made a specific determination that they could grant that. This bill doesn't have that specificity yet.A limited guardianship could be any kind of limited. It could be limited to financial management and never have heard a word about medication. I think that Representative Porter is on the right track. If the court has already made a specific determination on decision making for forced medication, then it would be ok. There are good reasons to come back too. A patient with schizophrenia has periods when they are on medication that they can very competently make their own decisions so the court is trying to protect those individual rights. It is not always a loving family making the determination either. Sometimes that guardian is not a great friend that they are making those decisions for. I think that is why the state hospital error on the side of protecting individual rights of the patient, but like we heard yesterday there has to be some middle ground here. It is disastrous to keep going back to court when you have already had a medical determination in the court that is focused on forced medication. We can't give the right generally or this will get thrown out and we will be starting over again.

Vice Chairman Rohr: I think the other thing that I heard yesterday besides the hardship to the family was regressive nature of the patient. Every time episode with a gap of treatment they regress and pretty soon they won't be able to make decisions whether they are on medication or not.

Representative Skroch: I want to draw your attention to those specific words in line 7 "to make medical decisions on behalf of the ward". That is included in that determination by the court. We would never be asked by the doctor to authorize forced medications if the patient is already compliant. If they are cooperating there is no need to seek authorization by the guardian.

Representative Schneider: Forced medication is in the same class as forced sterilization.

There are side effects of the medications and maybe that was not what is best for the patient.
Years ago there were abuses and we knew there were, but I think part of that was because of our lack of understanding of the illness and how it could be treated. I think that we have new generation treatments now. We have better medications, better understanding, and better therapies.

Representative McWilliams: Would it have any benefit to put a time line on it? So it has to be reviewed periodically. Representative Schneider: Having dealt with a number of guardianships, forced medication is in that category with the forced sterilization and everything in the eyes of the court, because of that nature of that medication. It can cause permanent injury to people, so it is balancing the benefits and the harms of and they are careful about how they do that. Making medical decisions probably isn't enough to be able to stand a challenge unless you put that specifically, in there that it includes forced medication. That would show that the court has
already heard the reasons why you have to force it and then not require that you have to go back to court again. I don't know if it will stand up.

Representative McWilliams: Would it help to put a time line on it that it has to be reviewed every so often? Would somebody that is in such a state to have to be in a long term where they would not have the where withal t challenge it in court? If they do, I think that would be a very good indicator of the fact that they really didn't need a guardianship.

Representative Skroch: A guardian has to give an annual report of what decisions they have made on behalf of the ward, ward bills they have paid on behalf of the ward, and those kinds of things. The decisions they have made, the bills they have paid, etc. The court will review that, but the ward can challenge this and then the guardian has to defend what they are saying and doing. There are times to increase or decrease the powers of the patient or the guardian. When following the language on line 8 that a guardian can make that decision When it is specifically provided in the guardianship.

Chairman Weisz: Representative Schneider I have a question for you. So if it comes back before the court does the court appoint a guardian ad litem?

Representative Schneider: An attorney rather than a guardian ad litem.

Representative P. Anderson: My PA prescribes medication.

Chairman Weisz: but they can't do schedule 1 meds.
Ok committee do you all understand this?

Representative Skroch: I move for a do pass.

Chairman Weisz: Ok we have a motion on the floor for a do pass on

Vice Chairman Rohr Don't we have an amendment to add APN?

Representative Skroch: I withdraw my motion.

Chairman Weisz: Let's take them separately. The first amendment is for the emergency Clause.

Representative Damschen: I so move

Representative Seibel: Seconded

Chairman Weisz: Is there any discussion on the emergency clause? Seeing none, we will take a voice vote on the amendment.

Voice vote carried on the amendment

Representative Skroch: I move that we add APR (advanced practice nurse)
Vice Chairman Rohr seconded

Chairman Weisz: a motion to add APN to line 8 to the physician. Is everyone comfortable with that?

Voice vote
Carried

Chairman Weisz: more amendments?

Representative Kiefert: didn't we talk about

Vice Chairman Rohr Make a motion for a do pass as amended

Representative Skroch: second

Discussion
Representative Schneider: I don't think it will stand up because there has never been a hearing on it and that is a pretty important right to take away from people. I think adding that language that the Lukens had in their guardianship indicates that the court has looked at that particular medical issue and given permission for it. You can leave it the way it is and maybe no one will ever challenge it, but for a few more words you can give it a lot more power.

Chairman Weisz: it depends if you put that language into it.to do forced medication.

Representative Schneider: I don't think a court would just say that you have the right to make the determination of forced medications unless there was a need at that time to make it. Their court case involved medical testimony about the illness and his incapacity to make the medical determination. That is why that was so strong and that is why his letter from his attorney was appropriate. I don't think a court would just generally say that you have the right to authorize forced medication if there isn't a critical need that has already been determined. It doesn't have to be an incident, but it has to be that the schizophrenia has

shown a pattern of behavior that shows he is not component.

Representative Porter: I think I kind of look at this like Representative Schneider: I think what is going to happen when we pass this is that the court is going to view this and just grant limited authority and never grant this because it still has to be determined by the court. They are going to say no unless you can show that it is needed, but if we do it in the other fashion where you make it kind of a standing order that has to come back to the court then it is there for emergency. Every time someone goes before the court the court has the ability to either give general or limited authority and it is all determined by them. There is nothing in here that says the court is mandated to give this authorization. I don't think we fixed this. It feels better, but it doesn't fix it.

Representative Skroch: There is a separation between the guardian having the authority given to him that includes forced medication.

Representative Porter: When you say "as determined by the court" you make it their option to do what they want. They have the ability to do a limited guardianship or a general guardianship.

Chairman Weisz: You could say that it must include forced medication if the guardians have the ability to make medical decisions.

Representative Damschen: Wouldn't the judge grant it if there was recommendation from the doctor or APN. The guardian can have all the authority, but if they can't exercise it without a doctor or APN to order the meds, they can't do anything.

Chairman Weisz: I think part of the problem here is when we get the guardianship. You probably weren't thinking about forced meds when you applied for guardianship.

Representative Skroch: Actually we were, because the doctors were so frustrated because they couldn't treat our son because he kept refusing medications. That was our situation and that is not uncommon. What we are trying to do is to avoid having to go before the courts every single time when clearly the court had given us that authority.

Chairman Weisz: Did giving forced medications come up in the discussion of you making the medical decisions did the guar

Representative Skroch: The court did not consider this lightly. The evidence was produced to show the court that it would require forced medication in order to stabilize our son. It was very specific and that is the reason they gave us 100% authority. That is spelled out in the guardianship.

Representative Schneider: That is what I am talking about. This language is too general.

Chairman Weisz: Ok, Representative Schneider, what is your language?

Representative Schneider: After recommendation I would put when specifically provided in

the guardianship or when specifically determined by the court.

Chairman Weisz: ok, first things first. We have a motion on the floor.

Vice Chairman Rohr I make a motion to withdraw my motion.

Representative Skroch: I withdraw my second

Chairman Weisz: We have a suggested amendment that would say after the physician's recommendation, "or when specifically provided for in the guardianship".

Representative Schneider: That doesn't make it as strong as Representative Porter's suggestion of sending them back to court, so you might see this again.

Representative Porter: This isn't the first time we have seen it.

Chairman Weisz: those of us that have been on here a long time we have seen this issue time and time again and we have struggled trying to balance. This is probably the best we have gotten yet.

Representative Schneider: When that work group meets I gave them the testimony that we got from families yesterday and he said he would take that to that work group and see if they can work on the issue of having to go back into court. The may be able to reconcile in a way that puts the two statutes together and still allows you to have language in there as a parent for consent of forced medication.

Chairman Weisz: I will entertain a motion.

Representative McWilliams: motion to pass amendment

Vice Chairman Rohr Second

Chairman Weisz: Is there any further discussion on the amendment? It adds the language on line 8 to "specifically provided for in the guardianship".

Voice vote carried to adopt the amendment.

Representative Seibel: I move for a do pass as amended

Representative Skroch: seconded

Chairman Weisz: Discussion on the motion? Seeing none the clerk will call the roll on a do pass as amended on HB 1365.

Roll Call vote taken on do pass as amended on HB 1365.
Motion carried Yes14 No 0
Do I have a volunteer to carry this one?

Representative Schneider: Will carry it.
Chairman Weisz: We didn't get a lot done here today, but we will stand adjourned until Monday morning at 9:00.

2/1/17 DP

17.0901.01001
Title.02000

Adopted by the Human Services Committee

February 1, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1365

Page 1, line 2, after "decisions" insert "; and to declare an emergency"

Page 1, line 8, after "physician's" insert "or advanced practice registered nurse's"

Page 1, line 8, after "recommendation" insert "when the power to provide forced medication is specifically included in the guardianship order"

Page 1, after line 10, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-1-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1365

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: to add EMERGENCY Clause
Page 1 line 2 Section 2

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. Damschen Seconded By Rep. Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. P. Anderson		
Vice Chairman Rohr			Rep. Schneider		
Rep. B. Anderson					
Rep. D. Anderson					
Rep. Damschen					
Rep. Devlin					
Rep. Kiefert					
Rep. McWilliams					
Rep. Porter					
Rep. Seibel					
Rep. Skroch					
Rep. Westlind					

Voice vote to adopt amendment carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-1-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1365

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: add Adv. Practice Reg Nurse Page 1 Line 8

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. Skroch Seconded By Vice Chr. Rohr.

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. P. Anderson		
Vice Chairman Rohr			Rep. Schneider		
Rep. B. Anderson					
Rep. D. Anderson					
Rep. Damschen					
Rep. Devlin					
Rep. Kiefert					
Rep. McWilliams					
Rep. Porter					
Rep. Seibel					
Rep. Skroch					
Rep. Westlind					

Voice vote carried to accept the amendment.

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-1-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1365

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: "or when specifically provided for in the guardianship"

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. McWilliams Seconded By Rep Rohr.

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. P. Anderson		
Vice Chairman Rohr			Rep. Schneider		
Rep. B. Anderson					
Rep. D. Anderson					
Rep. Damschen					
Rep. Devlin					
Rep. Kiefert					
Rep. McWilliams					
Rep. Porter					
Rep. Seibel					
Rep. Skroch					
Rep. Westlind					

Voice vote carried to adopt amendment

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date 2-1-17
Roll Call Vote #: 4

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1365

House Human Services 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. Seibel Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. P. Anderson	✓	
Vice Chairman Rohr	✓		Rep. Schneider	✓	
Rep. B. Anderson	✓				
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin	✓				
Rep. Kiefert	✓				
Rep. McWilliams	✓				
Rep. Porter	✓				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind	✓				

Total (Yes) 14 No 0

Absent _____

Floor Assignment Rep. Schneider

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

REPORT OF STANDING COMMITTEE

HB 1365: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1365 was placed on the Sixth order on the calendar.

Page 1, line 2, after "decisions" insert "; and to declare an emergency"

Page 1, line 8, after "physician's" insert "or advanced practice registered nurse's"

Page 1, line 8, after "recommendation" insert "when the power to provide forced medication is specifically included in the guardianship order"

Page 1, after line 10, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2017 SENATE HUMAN SERVICES

HB 1365

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1365
3/15/2017
Job Number 29221

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Marie Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to powers and duties of a guardian regarding medical decisions; and to declare an emergency.

Minutes: 4 Attachments

Chair J. Lee: Brought the hearing to order, all members were present.

Representative Don Vigesaa District 23 (0:55-2:15) introduced the bill. Constituents are the guardian of their son, this bill will allow them to have medication administered to their son, without having to go and get a separate court order. One thing that's missing is to have medication be administered without a court order.

Chair J. Lee: Are you aware of the bill that was on our side?

Rep. Vigesaa I was just made aware this morning; I have not looked at it.

Chair J. Lee: 2291, check it out. We did allow the guardian to make decisions about medication after they had been established as a guardian, we had the courts say they wanted it the same as naming a guardian. This is a situation where the guardian is already named. It would enable them to do whatever is the least restrictive. Take a look and see what you think.

Peter Welte (4:30-10:40) testified in favor, please see attachment #1.

Senator Piepkorn: When Joseph entered the state hospital it sounds like this is the first time it happened, which I find hard to believe, where they have to call in to the district judge and there's a delay. This had not happened before?

Mr. Welte: Are you asking in regard to Joseph Lukens?

Senator Piepkorn: No, to any. He's the first patient they had in this situation, where a guardian was needed?

Mr. Welte: I don't believe that this is the first situation. It's a policy that's been in place since 2007. Fred and Jane are remarkable parents, when they hired me, Joseph was in a semi catatonic state, they had been engaged with why this was happening. We worked with the attorney that was proceeding on behalf of the county. The county then proceeds with involuntary commitment proceeding, which is the focus of 2291, the attorney that was proceeding, worked with me, I tried to convince him it wasn't necessary, because we have a guardianship in place that addresses this. We need a separate judge's order, that provides cover for the state hospital with regards to administering the involuntary medications. Joseph is atypical, this is someone who is profoundly sick when not medicated, but functions famously when medicated. That's how we ended up here today.

Senator Kreun: How often does this reoccur? Once or again and again?

Mr. Welte: This has happened multiple times at the state hospital with Joseph.

Chair J. Lee: It's an ongoing issue with court order every time.

Mr. Welte: Correct. There are mental disorders and illnesses for which there is no cure. In this case, Joseph gets better, and decides he doesn't need medication, and the progression downward is remarkable.

Senator Heckaman: You referenced the other bill? Are you familiar with it?

Mr. Welte: I am not, I have been looking at it this morning, section 3 of that bill addresses a new sub section, which has some interplay with 1365. I do not believe it contradicts 1365.

Senator Heckaman: Which one is the best solution? But if you aren't familiar I don't want to put you on the spot.

Mr. Welte: I couldn't say.

Chair J. Lee: We just don't want them in conflict with one another.

Mr. Welte: Correct, I don't see them in conflict. Since we participated in the drafting of 1365 we felt like that was the one that was specifically better, in terms of providing freedom to the medical providers and protecting the ward.

Chair J. Lee: We did say the new section 1 in 2291, it talks about guardian consent to involuntary treatment with prescribed medication; patient has the right to be free of medication at the treatment hearing; the guardian may not consent solely for the convenience of the staff or for punishment. (read through proposed changes 17:25-17:45)

Courtney Kobele, NDMA, North Dakota Academy of Physician Assistants (18:10-19:20) testified in favor. Offered amendment: page 1, line 9, insert physician assistant's after physicians. We have been asking for all three of the primary care providers to be put into similar bills. I wanted to inform the committee 2291 did receive a Do Not Pass from the House.

Representative Kathy Skroch, District 26 (19:30-26:10) Testified in support. Please see attachment #2. Isn't sure if PA's should be amended in. In comparing the two bills,1365 is quite simple. There were things in 2291 the House felt went too far. An example was in section 1, line 21 "the guardian may not consent to involuntary treatment with prescribed medications solely for the convenience of the staff or for the purpose of punishment, that isn't acceptable, it doesn't need to be spelled out. Those things raised concern; also in section 3, lines 11-17 where it describes the criteria which must be met, a-d, if those criteria are not all met, then it would not be possible to force meds. We felt if went too far in restricting a guardian's authority in consultation with the doctors. In working with the staff in at least 8 committals, I do believe they are able to make that call in good judgement. I believe we are hopeful to combine the 2 bills in a sub-committee.

Senator Anderson: Is there something in 2291 you think we should save?

Rep. Skroch: I'm not an attorney; there are portions that I'd save, parts of section 3 with less restrictions, in order to meet the criteria for forced meds.

Chair J. Lee: The amendments we put in here were done with the help of the DHS, and are way less onerous than what the courts wanted; this was a compromise amendment. I don't think having a clinically appropriate med is onerous, or the provision that the ward was offered that treatment and refused it or doesn't have the capacity to make a decision. Prescribed medication as the least restrictive is very common. None of those seem threatening to me. I'm not asking you to defend them; but none of these seem onerous.

Rep. Skroch: I think in part that 1365 didn't have enough and 2291 had too much, in combining those two we will put the best bill forward.

Senator Heckaman: I really agree with you, if you killed 2291, we can only look at the difference between the House bill and the Senate bill on 1365. We can't add anything else in; you're better off keeping 2291, and killing this bill, because then we can talk about the differences. If you amend something in 2291, then we can come back and work on 2291 with you, but if it's gone, we can't take parts of that and put into this bill because all we can talk about are the differences between how this bill left your chamber and how we left it. It gets more complicated than combining two good bills, unless we amend things in now.

Chair J. Lee: If we amend things in from 2291, we might be able to accomplish what we hope to do.

Rep. Skroch: It was unanimous Do Not Pass, if there is a way you can take portions of 2291 and add them back in, I'm perfectly comfortable with that. We have to ensure the same types of things are not happening again, no grey areas.

Chair J. Lee: I obviously did a terrible job presenting the bill. I should have talked about that this was less onerous than what the courts wanted, it would permit the guardian to make decisions about medications without having to go back to the courts. We worked with the Department so all of that can be accomplished. We'll have a chat with the folks from committee. I'm concerned about the simplicity of the other bill.

Rep. Skroch: we could narrow the bill down to referring largely to psych meds. I don't believe you need any type of court action in cases of Tylenol and some of those meds that are used for those types of things. I can't speak as an attorney or psych. I do know the difficulties.

Chair J. Lee: I hesitate to limit the meds; I want it to be more flexible for you. Let's say it's someone taking psych meds and decides he doesn't want insulin.

Senator Piepkorn: Are you on the House Human Services Committee?

Rep. Skroch: I am.

Senator Piepkorn: You were in on all of the discussion. You objected to some language in SB about some behavior that is not acceptable, you said it was redundant; if it's not acceptable, it certainly doesn't do any harm if this language is in the bill.

Rep. Skroch: Anytime you include it in the law, it creates an assumption that it's happening and has to be addressed.

Cheryl Rising (38:00-38:45) testified in favor, please see attachment #3.

V-Chair Larsen: Would you give an ideal about APRN? It's not an advanced practice nurse that's in the OBGYN wing, these people are working in that field; they're in that area of expertise.

Ms. Rising: That's correct, we have many clinical nurse specialists that are prepared in the psychiatric area that are included under advanced practice registered nurses, we have family nurse practitioner's that have additional courses on psychiatric care, so it's people that have been trained and are working in this area according to their scope of practice, which is with the Board of Nursing.

David Boeck, Director of Legal Services P&A (40:20-46:42) testified in favor, please see attachment #4. I had planned on testifying in opposition, believing that 2291 had the answer. I believe we need to amend 1365 to include the standards and processes that will develop cooperation with DHS for 2291. 1365 as written will not accomplish its goal, which is to allow the state hospital to rely on guardian's consent; it doesn't address the state hospital order for involuntary treatment. The civil commitment chapter says that in order to administer forced meds for an individual that's under a commitment order you have to go through these processes, it doesn't say unless you have consent from a guardian. Those processes have to still be followed. It won't do at least one of the things that are among the ambitions. The court system's Guardianship Workgroup, that did propose amendments while this committee was considering 2291. Those amendments were much more demanding than what was adopted. There were requirements for court appointed counsel, a number of additional procedural protections. There had to be middle ground adopted. The question of forced medication most often arises among individuals who are involuntarily civilly committed to the state hospital, or to a private facility, usually for shorter periods of time than the state hospital. The issue is decided by the court, when the treating psychiatrist initiates a petition for court approval of involuntary medication. The court considers a number of factors to reach a decision for an individual already found by a court to be a danger due to inadequate treatment

of mental illness. Forced medication is an issue for some prisoners; DOCR recognizes a prisoner's right to be free of involuntarily administered medication, without some sort of due process. There is an administrative hearing within DOCR, to determine if the individual is going to have forced meds or not.

Senator Anderson: My perception is we're not trying to solve the prison system; they have the ability to prevent the prisoner from hurting themselves or others. What we've heard here is we need to short circuit that proceeding and allow this individual to get treatment in the interim, establish all these legal precedence, that's what we have now. The prison system has all the tools they need; I don't see how that relates to the issue here.

Mr. Boeck: There are due process protections that apply and those have to be followed at the state hospital, prison system, and when guardian is giving authority to make decisions. We want to articulate standards that would govern that administration and identify what sort of procedure you have to go through to get court permission. I believe it can be written in a way that accommodates Rep. Skroch's goal that a guardian could get authority for ongoing treatment, instead of just for a crisis. One of the most recognizable phrases from the constitution is that a person may not be deprived of life liberty or property without due process of law. Being able to proceed without forced medications is a very significant liberty interest, due process protections are there for more significant things.

Senator Kreun: In this particular case, it isn't that we aren't going to go through the due process to accommodate and give people their rights. But when they go through the one process and they're awarded the ability to take care of that individual. The main thing is each time that they get through that process and think they are cured, then they go through it again. We're trying to accomplish going to one hearing to say that individual needs that help not have to go back over and over again. Because it deteriorates that individual to a high degree. Can we do that, nobody questions whether we're circumventing their rights, once it's established that they are in need of that help, we shouldn't have to go back over and over. It deteriorates the individual and it costs a lot of money to go back through the court system. Can we eliminate that to go to one time to have authority to keep doing it without going back to court.

Mr. Boeck: I believe we can. 1365 doesn't do that, I would be happy to work with the Department and Mr. Alm to come up with some amendments that will create a statute that is constitutionally valid and will achieve the goals of providing adequate treatment for people who are at risk of deteriorating mental condition. I believe that can be done it will take some work.

Chair J. Lee: Asked all parties to work together.

Johnathon Alm, attorney, DHS 1365 doesn't accomplish what the bill sponsor wants it to, if I was to advise the state hospital whether or not they could prescribe medication based on the guardian's consent, if it doesn't fit the other statutory scheme in Chapter 25, I would say no they would not be able to. It needs to state in the civil commandment chapter that the hospital can force prescribe medication. 2291 how it was drafted accomplished that task, the other language really came from some of what Mr. Boeck testified to and drafted from language in chapter 23.1 dealing with being free from effects of medications at the hearings,

may not consent to involuntary treatment solely for convenience of staff. That's already in the statute. In 2008, the reason the state hospital is unable to do it, the AG office issued an opinion, you have to look at specific civil commitment law as to what your authority is to be able to do it, there's a gap where it's not necessary to prevent bodily harm or prevent imminent deterioration or physical or mental condition, so if it doesn't fit that get the court order.

Chair J. Lee: Closed public hearing. Explained the bill to the room

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1365
3/20/2017
Job Number 29420

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Marie Bohnsack

Explanation or reason for introduction of bill/resolution:

A bill relating to powers and duties of a guardian regarding medical decisions; and to declare an emergency.

Minutes: No Attachments

Chair J. Lee: We were going to amend in 2291?

Ian Arndt: You had asked me to contact Jonathan Alm; he was going to ask somebody else.

Chair J. Lee: If you could contact him again, we'll see where we're at.

V-Chair Larsen: There was one little thing we wanted to change.

Senator Anderson: The two lines you wanted to leave out that caused a little contention.

Chair J. Lee: They wanted us to add physician's assistant as well.

Senator Heckaman: This needs to be put in the civil commitment part of code, is this in the wrong chapter?

Chair J. Lee: Mr. Boeck said that 1265 does not address the state hospital on forced meds. Johnathon Alm says that 1365 doesn't address what sponsors want. It needs to say in the civil commitment chapter, the AG's office in 2008 ruled that civil commitment must determine court order.

Senator Anderson: Maybe the two lines were page 1, line 21-22, they were the two lines that Mr. Alm didn't have problem with deleting that. Apparently they created some contention over in the House.

Chair J. Lee: Somebody said it offended their eyes.

Senator Anderson: Leave those two out of the Hoghouse, but the intention is to put this language 2291 back into 1365.

Senator Anderson: I move that amendment.

Senator Heckaman: Second.

Chair J. Lee: amendment to adopt 2291 language except page1 lines 21-22.

Roll call vote taken.
Motion passes 7-0-0.

Chair J. Lee: Recapped the procedure.

Chair J. Lee: Closed the hearing.

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1365
3/20/2017
Job Number 29455

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Marie Dunn

Explanation or reason for introduction of bill/resolution:

A bill relating to powers and duties of a guardian regarding medical decisions; and to declare an emergency.

Minutes: 2 Attachments

Chair J. Lee: Brought the meeting to order. All members were present.

Johnathon Alm, attorney, DHS: Brought several amendments. Amendment A (**please see attachment #1**) reflects the P&A amendments to 2291 in the House. Exactly the same __ except for taking out 90-day discussion. The consent is good for 90 days; it's put down later in amendments. Removes section 3 of 2291, medicated for convenience of staff. It's the same standard that was in 2291. I have removed that from Amendment A. It is discussed later on. (4:00-5:20) walked through the amendment.

Senator Heckaman: Isn't that what we're trying to solve?

Chair J. Lee: I thought we were trying to do here was to make sure that someone could be required to have medication if they were already named the guardian.

Mr. Alm: You are correct. This amendment has part of 2291, if you are already a guardian, you can do forced medication; it's good for 90 days same, removes aspect of facilities can't do it based on convenience, also gives the ward the ability to disagree, allows the individual to challenge based on subsection b, parts 1, 2, and 3. That's where P&A thought that something additional needed to be added to the current proposals.

Chair J. Lee: Why didn't they bring this up earlier? We haven't had a hearing on that part?

Mr. Alm: He did testify on the original 2291, we did work through some amendments, which you passed.

Senator Piepkorn: To answer **Senator Heckaman's** question, what we were trying to avoid was the hospital having to call the court regarding a decision. What is new is what we are talking about a flip flop of that, it's adding a hitch, by allowing the ward who may or may not

be able to determine the best interest for himself to challenge in court. Its bugging up the works again.

Chair J. Lee: My concern is, in some of these cases, having that medication administered sooner rather than later was going to make a difference to the health of individual, it seems if we have this appeal process, then we've delayed it again; if they are not competent to make the decision to take the medication; they may not be competent to make the protest. I'm not expert, but it seems we went through that thoroughly, when we were trying to figure out how to get the medication to the individual as soon as feasible.

Senator Anderson: What is the timetable here of the challenge that starts on page 2, below d? Can he make that challenge before they start administering medication?

Mr. Alm: That's at any time, prior to, during, or afterwards. It would seem moot afterwards, but potentially they could.

Senator Anderson: By motion or informal letter to the court or judge. If the guardian had received permission in the hospital to administer the medication, then the person would have to put together either a motion or a letter to the judge.

Mr. Alm: That's correct.

Senator Anderson: That would mean the medication had already started.

Chair J. Lee: It also says any person who knowingly interferes with transmission of this request may be judged guilty of contempt of court. Which could include the guardian trying to discuss whether or not this should move forward so that they could be in a better state. That's a little heavy.

Senator Anderson: I think that would be in the case where a person wrote a letter, and the guardian blocked that attempt. That wouldn't be reasonable, to expect a guardian to block an attempt to contact the court.

Senator Heckaman: On the last part c, the guardian would have the burden of proof by clear and convincing evidence; is that the highest?

Mr. Alm: That would be the highest. I have other amendments. I think what Mr. Boeck was trying to do is recognize that there is some difficulty with having this authority to force the medication versus the ward's rights and how do you balance those.

Senator Kreun: Wasn't the goal because the ward was potentially injuring him or herself from not continuing medication, so we don't want them to hurt themselves by not taking the medication, so we have to have someone in there that can monitor them and be the caretakers even so, if they're able to do that, why 90 days? Why is that only good for 90 days?

Mr. Alm: The 90 days was originally decided, mostly the medication prescribed will be forced meds, it's going to be quick, short term, to get them out of psychosis, after a while they're

going to be getting the treatment at the state hospital, or other facility. When Dr. Etherington or Dr. McLean testified, they talked about the client then understands what the medication does, the benefit of the medication. That's why the 90 days was picked. A lot of times medication is prescribed for a short term basis; the steps they have to go through; the a-d was like anybody going to the doctor.

Senator Kreun: This repeats itself, if you do that, sure it's a short term medication, but it becomes a cycle. They feel they don't need the medication, if we put them back in charge, in some cases it's almost detrimental, if they don't get the medication in the proper time frame again. This whole thing is defeating what we are trying to accomplish. Am I reading that correctly?

Chair J. Lee: We heard that it could be permanently damaging, if they didn't get the medication in a timely fashion.

Senator Clemens: When we discussed the bill, the main concern was that the guardian wanted the state hospital to administer medication, if they felt necessary. The amendments do grant that; in section 1 they're getting what we were asking for, it's just getting detailed on the response of the ward.

Chair J. Lee: I think section 1 in all of them will allow that to happen. What's added in here, is additional. The ward can challenge; we've never had that before.

Senator Piepkorn: This is the patients advocate's to the extreme.

Chair J. Lee: That is their responsibility, but I'm troubled by them saying that they often punish people as an example. I have never heard of any evidence of that kind of thing. Let's let Mr. Alm proceed with amendment B.

Mr. Alm: (**Please see attachment #2**) Amendment B is everything in 2291 with the exception of the prescribe for convenience of staff. Section 3, it does say it's for the 90 days the easiest way the proposed prescribed medication is appropriate and necessary, the ward was offered that treatment and refused, least restrictive form, benefits outweigh the risks. That's already somewhat addressed in the civil commitment law, we needed it specifically for the guardian giving consent.

Chair J. Lee: We had some discussion about least restrictive, Dr. Etherington said that's a known phrase used in the statute and in treatment, so that means something.

Mr. Alm: You are correct, my understanding is a-d would be what any physician would do when prescribing the medication, it's not meant to impede.

(18:50-21:25) The committee discussed the 90-day limit. Decided that they had passed it out once, they'd do it again.

Senator Piepkorn: What is the source of controversy amendment A section 3d onwards? What's the source of amendment B?

Mr. Alm: Amendment B is the source of taking 2291 subtracting out forced medication for convenience.

Senator Piepkorn: Can't we disregard amendment A?

Chair J. Lee: If we are going to exactly what we passed out, we would be looking at amendment B. If we are going to do 2291 without the convenience language, that would be true until we get to page 2, the part about the ward challenging the involuntary treatment.

Mr. Alm: The paragraph after d, 'the guardian consent' all the way to the end.

Chair J. Lee: The part that starts with the ward has the right to challenge, so the challenge language is new.

Senator Anderson: Did you have some other choices?

Mr. Alm: Amendment C is 2291, as a whole, with the sentence in there. Amendment D is part of amendment A minus some sentences, the forced medication for convenience.

Senator Anderson: I move amendment B.
V-Chair Larsen: Second.

(26:25-27:20) The committee discussed the 90-day limit again, found that the guardian doesn't have to go back to court every 30 months, just visit the physician.

V-Chair Larsen: We want to help folks that have these conditions, but they do have the right to be crazy. I'm comfortable with it as well.

Chair J. Lee: it isn't just the ward and guardian, it's the treating physician involved with this discussion. Someone who is a professional health care provider, is going to be involved in the determination of whether this medication is really critical to this person's health. This isn't a frivolous deal. When someone is really unable to make the determination on their own. This enables the medication to be given in a way that will help them to the point where there will be an opportunity to have logical discussions, about the medications. I felt comfortable with this as it left us.

V-Chair Larsen: We're talking about psychotropic medications, we've all heard stories about cancer therapies where somebody under 18, and we force the medication on them, it's good and will extend their life; I can see the frustration for all parties here.

Senator Piepkorn: As we look at this bill, we aren't setting the treatment back with this, we are tilting more towards protecting that ward.

Chair J. Lee: The court involved with the guardianship establishment, which would give them this authority.

Senator Piepkorn: I feel pretty good about this.

A roll call vote was taken.
Motion passes 7-0-0.
(The committee re-adopted the amendments they adopted in the previous set of minutes.)

Senator Piepkorn: I move Do Pass as Amended.
V-Chair Larsen: Second.
A roll call vote was taken.
Motion passes 7-0-0.
Senator Anderson will carry.
Chair J. Lee closed the hearing.

CJ
3/20-2017
1 of 2

17.0901.02001
Title.03000

Adopted by the Senate Human Services Committee

March 20, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Guardian Consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.

2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

SECTION 2. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

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

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

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

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

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

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

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

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/20 2017

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1365

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: Hog house in 2291 except line 1, lines 21-22

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 Sen. Anderson Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/20 2017

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1365

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 17.0901.02001

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 Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/20 2017

Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1365

Senate Human Services 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 Sen. Piepkorn Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Andersson

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

REPORT OF STANDING COMMITTEE

HB 1365, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1365 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

SECTION 2. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

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

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

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

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

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

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1365

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1365
4/4/2017
29929

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature Judy Keppe

Explanation or reason for introduction of bill/resolution:

Relating to powers and duties of a guardian regarding medical decisions.

Minutes:

Chairman Rohr: Called the conference committee to order.
Attendance taken.

Chairman Rohr: Senator Lee can you explain your amendments for us.

Sen. J. Lee: This bill is very much like 2291. Right now HB 1365 has language that was in 2291. When Representative Skroch came and talked to us about 2291 about some of the needs here. We understood when we were discussing all of this that one of the bills did not have the state hospital and forced meds. The whole idea was based on the fact, as Representative Skroch shared with us, there are times when an individual who is seriously mentally ill and is of age but is not capable of making a decision about medication. We know there is a very fine line based on being of harm to self and others and being in a position where it could cause harm at least to themselves if they don't medicate. We worked with various parties including attorneys to determine what was the best thing to do here. What we went back to was that it talks about the fact that once the guardianship has been established and there is a need for medication and the healthcare provider and the guardian can come to a decision about the urgent need for medications, they can consult together and decide whether or not it is appropriate without having to go back for a court order which can take several days when the individual needs the meds now. That is really the background for this. We did not think that it was necessary to go back and go through the seven day process of having a court order, because sometimes those days can be really critical to the patient's mental and emotional wellbeing of the individual. We didn't think that they should have to go back to the court because of the delay in time, although we did have some folks that wanted to see this be in parallel with some of the other statutes that we have in place about commitment. In this case the guardianship is already in place and it is someone that cares about this individual who is assuming this responsibility. We did go back and forth about one thing about the fact that it couldn't be done for the convenience of the staff or facility. We thought that was a positive, but we were told that that was a problem in the

house, but then someone else said that it wasn't. I think a lot of our differences are a communications issue and I think we can reconsider it and come together.

Chairman Rohr: In all honestly can we call this a hog house?

Sen. J. Lee: Yes

Sen. H. Anderson: We just thought we have brought in the things that 2291 had in it as well as some of the things in 1365. It did not address the commitment issue that the state hospital had and we thought we needed to put that in. Our attorney said that he thought the best was to get good language to serve the patients that we were trying to serve here would be to hog house 1365 back into 2291 and then we would leave out those two lines that Senator Lee mentioned that were maybe causing a problem in the house that really didn't make any difference, because no practitioner that is any good would give people medication for the convenience of the staff or anything else. We just thought that this was a better approach. I know the P & A would like to have more in here, but what we heard in the testimony was that that was part of the problem. The patient was feeling well now and went back to court and said he didn't need the meds anymore so we start all over again. We didn't adopt all of the language that P & A wanted.

Chairman Rohr: Does anyone have any questions for the attorney?

Chairman Rohr: Are there any questions here from the house members?

Representative Skroch: I want to thank the Senate Human Services committee for the work that they did on this bill. I spent about an hour with Dr. Rosalee Ethrington, SHND Administrator. I presented the question to her about whether this bill would reduce the revolving door that the court system for the patients with full guardianship and asked her to go over it and let me know what she thought. When she responded to me she said, "Fully authorized guardian allowance is perfect and yes it will eliminate the revolving door. It will be important to educate courts and I'll ensure our psychologists know to identify this provision in guardian evaluations. Thank you for all of your work!" That was the purpose of this bill to begin with and I am totally comfortable with the final product.

Representative P. Anderson: I agree.

Chairman Rohr: Just for the committee and I talked with the sponsors of the bill and everyone is ok with what you have done to the bill. So with that I will ask for a motion for the House to accede to Senate Amendments.

Representative Skroch: I move that the House accedes to the Senate Amendments

Senator Kreun: I will second it.

Chairman Rohr: the clerk will call the roll for a do pass.
Roll call vote yes 6 No 0 Absent 0

Carriers will be Rep. Rohr for the House and Senator Lee for the Senate.

Date: 4/4/17
Roll Call Vote #: 1

2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. H.B. 1365 as (re) engrossed

House Human Services Committee

Action Taken

- ☑ **HOUSE accede to Senate Amendments**
- ☐ **HOUSE accede to Senate Amendments and further amend**
- ☐ **SENATE recede from Senate amendments**
- ☐ **SENATE recede from Senate amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Skroch Seconded by: Kreun

Representatives	4/4			Yes	No	Senators	4/4			Yes	No
Chr. Rohr	✓			✓		Sen. J. Lee	✓			✓	
Rep. Skroch	✓			✓		Sen. N. Anderson	✓			✓	
Rep. P. Anderson	✓			✓		Sen. Kreun	✓			✓	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Chr. Rohr Senate Carrier Sen. J. Lee

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1365, as engrossed: Your conference committee (Sens. J. Lee, Anderson, Kreun and Reps. Rohr, Skroch, P. Anderson) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1104-1105 and place HB 1365 on the Seventh order.

Engrossed HB 1365 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1365

January 31, 2017

Att. 1
HB1365
1-31-17

Distinguished members of the ND House of Representatives Human Service Committee.

I'm Fred Lukens, rural resident of Aneta, North Dakota. I, along with my wife Jane are here to testify in support of House Bill 1365.

We'd first like to thank Representative Vigesaa for his diligence in securing the introduction of HB 1365. Thank you Representative Vigessa.

Before I begin our experience and need for HB 1365. I'd like to give two important pieces of background information.

1. Our son Joseph, now 27 and a graduate of the University of North Dakota has been a resident of the ND State Hospital for nearly 16 months. His current stay began in December 2015.

At age 14, Joseph was diagnosed with "major depression with psychotic features". He started on medication at that time. As a boy, he followed the instructions of his doctors, reinforced by his parents. His response to medication was very good considering the severity of his diagnosis and he was able, with careful monitoring, to graduate from high school and college. Joseph was diagnosed with schizophrenia shortly after graduating from UND. Finding the correct

combination of medicines to treat his disease has been very difficult and his response to various medications has been inconsistent.

2. Jane and I have the highest regard for the Doctors and medical professionals that we've encountered in Joseph's nearly 16 months at the State Hospital. Look around the US. We are fortunate to have this facility and these medical professionals serving the mentally ill in North Dakota.

Back to HB 1365.

We approached Representative Vigessa with the need for this bill in December 2015. Our son Joseph had been admitted for a second time to the North Dakota State Hospital in Jamestown. On December 6, 2015, Joseph was transferred to the State Hospital from the Altru Hospital Psychiatric Unit in Grand Forks.

Let me digress. In July 2015, Jane and I finished the necessary court procedures to become Joseph's legal guardians. At that time, the court granted us the authority to make medical decisions for Joseph. During Joseph's six 2015 stays at Altru Hospital, Joseph's physician called us several times to ask our permission for changes or modifications in medications. These calls were necessitated by Joseph's unwillingness to approve the use of the prescribed medications. I should add that some of these medications are administered orally multiple times per day, while some are longer acting injections. Without Joseph's cooperation, oral medications

are impossible. In these situations injections are the only option. Without Joseph's cooperation, the Doctors sought our legal approval, the responsibility that we were granted by the ND Court.

To our dismay, this was not the case when Joseph entered the State Hospital in Jamestown. If Joseph refused medications at the State Hospital, the state of North Dakota required a court order from a local district judge to allow the medical professionals at the State Hospital to administer these required medications. To the chagrin of the medical professionals at the State Hospital, fifteen days passed before they had the necessary court order on file allowing them to administer medications. Despite our court approved legal guardianship with authority for medical decisions, we were told by the staff at the State Hospital that they were the only hospital in ND that did not consider our guardianship sufficient to approve prescribed forced medications. You can imagine our shock and disappointment.

In the meantime, Joseph who entered the State Hospital very sick, degenerated with no medication to a semi catatonic state. His fears consumed him. The Doctors at the State Hospital told us that when a mentally ill patient degenerates to this state, permanent brain damage can occur without proper medication. The description they gave us was, "in this state, connectors in the brain are often permanently damaged."

Let me repeat, "In this state, connectors in the brain are often permanently damaged."

Thus the need for HB 1365.

Becoming the guardian of your adult son is a complicated process that is not taken lightly by anyone involved. Joseph, Jane, and I have appeared before a North Dakota District Court judge with attorneys where oral and written testimony was taken from all three of us, as well as Joe's doctors regarding the need for guardianship. The court ruled it to be in Joseph's best interest to have Jane and I serve as his guardians. Why does the State of North Dakota then mandate the destructive delays while waiting for the duplicate and expensive additional court order? During Joseph's stay at the ND State Hospital, there have been at least four separate court orders to proceed with prescribed treatments. Two of the four resulted in unnecessary delays in treatment.

Unnecessary delays. Permanent brain damage. The need for HB bill 1365 is urgent.

Thank you for your consideration.

Jane and Fred Lukens

11940 17th St. NE

Aneta, ND 58212

4

Att. 2
HB 1365
1-31-17

TESTIMONY IN SUPPORT OF HB 1365 GUARDIANSHIP AUTHORITY

REPRESENTATIVE KATHY SKROCH

HUMAN SERVICES COMMITTEES

65TH LEGISLATIVE SESSION

Chairman Weisz and members of the Human Services Committee, thank you for permitting me to speak to you today. For the record, my name is Representative Kathy Skroch from District 26. I come before you to give testimony in support of HB 1365.

My husband and I have been guardians of our eldest son since 2003. He is our second child but our firstborn son and has five younger siblings. For the sake of his privacy, I will only refer to him as MCS in this testimony.

Anxious to make his mark in this world, MCS was born 10 days early. He was a very happy baby, a good baby and easy to care for. He was full of joy and eager to please his parents. At the age of 18 months he decided he did not like wet diapers anymore. He started using the toddler potty and never wet another diaper. He had a relatively normal childhood laced with adventure and mischief due to his high intelligence. He was bright from the beginning and claims to remember his birth. He grew into a handsome young man, strong and healthy from life on the family farm. He was a hard worker and at the age of 16 he took on a second job with our neighbor as a hired man in his free time. Our neighbor loved him and referred to him as his second son. He grew to be an easygoing, compassionate, empathetic, funny, self-sacrificing, patient and kind young man.

MCS first began to exhibit hints of his later diagnosis at the age of 18 which is the typical age for the onset of Schizophrenia. This disease is also more common in males. We did not realize at the time, but he was self-medicating in an attempt to resolve headaches and strange thoughts. He experienced his first full blown psychotic episode at the age of 19. The delusion he experienced occurred in real time and space, yet was a living nightmare so horrific that he found no other escape but killing himself. His attempt failed. We received the phone call at 1:30am in the morning from an emergency room doctor who had been franticly trying to locate a family member. He explained that a young man came in with 6" cuts down both wrists. He wondered if we were his parents.

Over the next several months and years, there were many visits to doctors who tried various medications to treat his symptoms. He would improve then stop taking the medications thinking he was "cured". Each time the medication was interrupted the disease would strike with vengeance, each time worse than the last. However, MCS insisted he did not have a disease and would refuse medications not realizing how much he was harming himself. Since he was an adult we had no choice but to watch in anguish as he continued on this downward spiral.

During one of the many hospitalizations we met Dr. Ravassia, one of his best Psychiatrists. In a private consultation he confirmed our worst fears. MCS, he strongly suspected, was suffering from schizophrenia. It was critical, the doctor explained, for MCS to stay on his medication to keep the disease in check. If not, the disease would ravage his mind, co-mingling delusional thoughts and experiences with his memory, eventually, corrupting and hard wiring his entire mind. Because our son was so intelligent, the doctor explained, he would try to outwit himself and his doctors. He would rationalize and try to think his way out of the delusions and hallucinations with a malfunctioning brain. The real danger, was that the day MCS realized this disease of his brain is incurable, that he would never be "normal" again even with medication, is the day he would again attempt suicide and may succeed.

Schizophrenia functions much like a Trojan Virus in a computer. If it is not stopped right away, the virus infiltrates corrupting file after file until the entire computer memory is corrupted. Schizophrenia may cause the corruption of all memories including data, even childhood memories, become laced with false realities and delusional thoughts. Highly intelligent victims, refuse to accept the reality of their disease and reject advice from their families and doctors. They are the most likely to commit suicide when they realize their "beautiful mind" can never be "normal" again. MCS was sure he could fix himself while he continued on a downward spiral. He could no longer hold down a job. He lost his health insurance, was out of money and owed nearly $50,000. in medical bills. We finally had no other choice but to petition the court and obtained legal guardianship over our 23-year-old son. With guardianship in place he also qualified for Social Security Disability Income which was used to pay down his medical bills.

We were assigned full guardianship authority over much of our son's decisions making. We especially needed this authority over all medical decisions with full durable power of attorney, particularly during his worst relapses. His doctors would seek our permission for force medications.

Off his medication MCS began to have horrifying delusions. He would see the walls of his house become as molten lava in a vision of hell, food would become worms slithering on his plate and a pork chop he just cut into pieces become a cut up baby before his eyes. He could feel snakes crawling over his body and other horrors. Water would taste like urine or have bugs in it. He could not eat or drink. He would not dare sleep for fear of horrific nightmares. We would make every effort to get help for him but were often told "We can't do anything unless he is doing harm to himself or others." In his delusional state he would resort to eating tree bark and leaves, weeds, grass or worse in his attempt to survive. His lips would split from dehydration, having gone without food and water for weeks, having lost 30 pounds we finally could get help to transport him to the hospital. In this critical state doctors could force medication with a guardian's permission. However, after a few days, the doctors would have to stop forced medications. This was because of North Dakota statuettes that provide for the mentally ill to refuse their medication against doctor's advice and guardianship authorization

to treat. Knowing the delay of treatment advances the progression of the disease, we were still denied our guardianship authority to approve forced medication needed until he fully recovered. So even under the watch of the ND State Hospital, MCS would again deteriorate over the course of weeks.

We were told, "We can't force medications unless a judge declares him mentally incompetent." The delays to treat continued. During one of these hearings, MCS was in a horrible physical and mental condition. He was made to wear shackles and handcuffs to a hearing. He was so shamed by being made to hop through the front entrance of the court house under armed guards, through a crowded foyer to enter the courtroom. Then, he was made to repeat that experience to return to the psych ward. Please don't get me wrong. I am not blaming law enforcement providers. They don't have a choice when left to pick up the pieces as the system fails. Again, I blame the law, not the people. However, our son has been tazzed over 8 times including one transport in which he was tazzed 3 times. That particular time, MCS said his heart stopped and he died but Jesus brought him back. This is protocol, law officers have no choice. When the patient goes untreated for long periods they can become unpredictable.

Now after years of delayed intervention, we see the devastating results. Each relapse for MCS has permitted the disease to advance. At first it was Schizophrenia, then Paranoid Schizophrenia, then Paranoid Schizophrenia with Bi-Polar Effect and more. Each delay has resulted in the need to increase medication, from 60 milligrams to 80mg, 100mg, 120mg, 160mg, 180mg, 200mg with less and less recovery of his original personality and functionality in society. The high dosages have resulted in the need of other drugs to ease side effects.

Yes, I believe it could have been much different. There are states who permit guardian authorized forced medication until a patient has recovered enough to have the incite necessary to willingly stay on medication. It was in another state, with those laws, were our son had the most successful, most amazing recovery while with the shortest hospitalization. So made whole was he, that he was able to enroll in college, was recognized as an honor student, and earned a certification in welding. He held gainful employment for a year. Then as often happens, he relapsed, this time in North Dakota. Treatment was delayed, he was left to sit in a jail for 6 weeks waiting for a hearing. He was transported to an acute care mental hospital when officers could not bear watching him suffer any longer.

So much damage has occurred to our son because of delays in treatment. I can't help wonder what might have been. Still there is hope. People with this illness, can live normal lives, have jobs raise families if they stay on their medication. That is the greatest challenge. Current ND laws are well intentioned but in these cases they cause harm. Guardians and North Dakota Mental Health professionals need the right to force medication when in their informed judgment, it is in the best interest of the patient. They need their hands unshackled from the laws of this state through this bill.

I was encouraged again and again, that if I ever got elected, I should work on fixing how mentally ill people are treated in North Dakota. Prompted by the many professionals who have tried so hard to help our son, his doctors, human service agents, lawyers, law officers, states attorneys, I ask you today vote Do Pass on House Bill 1365.

Thank you for giving me the opportunity to speak today. I would be happy to answer any questions.

Kathy Skroch

Att. 3
HB 1365
1-31-17

NDNPA
NORTH DAKOTA
Nurse Practitioner Association

HOUSE HUMAN SERVICES COMMITTEE

65TH NORTH DAKOTA LEGISLATIVE ASSEMBLY

House Bill 1365 Testimony 1/31/2017

Chairman Weisz 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 1365, A BILL for an Act to amend and reenact subsection 4 of section 30.1-28-12 of the North Dakota Century Code, relating to powers and duties of a guardian regarding medical decisions.

We do ask that page 1, line 8, physician, be changed to expert examiner. NDNPA is making this request due to House Bill 1095 having this language included, expert examiner. This would include an Advanced Practice Registered Nurse.

That concludes my testimony

Cheryl Rising, FNP 701-527-2583 crisingnp@gmail.com

Att. 4
HB 1365
1-31-17

When I was little, my Mom would always ask me what I thought about this or that. I would tell her what I thought and not think anything of her asking me for my opinion. As I got older, instead of just answering her like I always had, I asked her, "Why?"

'Why would an adult (my Mother or not) care what the opinion of a clueless teenager was?' Was my thought process. I did not realize the conversation we were about to have would forever follow me through my adult life. My Mom and I talked about several things that day, but in that moment, she told me this:

"Your opinion and what you believe in matters. It has always mattered and it will always matter. You have a voice and it's your duty to use it to fight for what's right, whether you're the only one who believes in it or are the only one strong enough to stand up and lead with your voice." The way she said this to me was in such a passionate, powerful way that it obviously stuck with me all of these years.

Over the course of the last several months, I have battled extreme difficulty in being able to help my Mom while she is ill. I reached the point where I had literally done everything I could, physically and legally, to help her and it wasn't enough. I remember asking one of the nurses why I couldn't do anything more for her and she told me, "it's just the way the laws are in North Dakota." That response fueled a fire much bigger than I think I even realized at the time because I was less than satisfied with that answer.

So many things went through my mind after that, much to the effect of, "No. This is not just how it's going to be. This is MY Mom. She deserves more and she needs more. She needs me to fight for her because she's sick and she cannot fight for herself right now."

On November 16, 2016, my Mom was taken to the ER at Altru in Grand Forks for what would be her 6th and last psychiatric admission there at that hospital for 2016. I sat in the ER with her as her mental health was rapidly deteriorating and I looked at her with tears in my eyes and made her a promise. I promised that I would fight for not only her, but everyone else suffering too. The next day, November 17, 2016, my Mom was admitted to the North Dakota State Hospital, where she has remained since.

Since last September, my Mom has suffered from crippling delusions, hallucinations and paranoia. She has cried and screamed in fear that what she's hearing is actually happening. This escalated to the point where it was no longer episodes of psychosis, it was her constant state of mind. She was living in constant fear that these horrid circumstances were actually real life. Well, to her, they were real life. This was her very real, incredibly terrifying reality.

My Mom became non-compliant with her psychiatric medication shortly after her admission to the state hospital. Because the NDCC does not allow a guardian to authorize the use of forced, necessary medication, my Mom sat there for over a month with no medication in her system. She was hysterical. She was terrified. She was manic. She was delusional. In the words of her physician, "She's miserable." My sweet, funny, loving Mom is miserably ill and there's nothing I can do to help her because of the language of the law.

I cannot even begin to tell you how many tears have been shed and how many prayers have been said. I have often times wondered how other people manage to get through this. I wonder what happens to the families who don't have the resources and the support that I've been so incredibly fortunate to be able to offer my Mom? These thoughts and the story I opened with are what have lead me here today.

I'm well aware that the changes I'm supporting will likely not happen soon enough to directly benefit my Mom and our situation. I'm okay with that. This is about so much more than just us, it's about offering hope, clarity, support and invaluable resources to those who desperately need it most but are too sick to access these things on their own. It's about making sure the people suffering can get the treatment they need and deserve in a timely manner, instead of going several weeks untreated and in complete misery.

Guardianship is granted because the court has been presented with sufficient evidence and testimony that the Ward is not capable of making decisions for themselves within their best interest. This is not an easy process to go through, nor should it be. Allowing patients to decide whether or not they take any or all of their prescribed medication simply undermines the expert physicians who initially supported the guardianship, because the physicians know the Ward cannot be their own decision maker.

If clarifying the language of the law helps other families and guardians who are likely unbeknownst to them, heading down this very difficult road I've been on, it is absolutely worth every tear shed and plea I've made to district representatives and senate members.

I have spent the last 5+ months fighting to take care of my Mother, Sherry, while her mental health condition has caused her to rapidly deteriorate. From September 1, 2016-November 17, 2016, she has had 7 admissions to a psychiatric hospital unit. My mother has been inpatient at the North Dakota State Hospital Since November 17, 2016. I have been appointed her temporary guardian, in an effort to redirect her medical care and treatment so that she can become stable and hopefully live independently again.

In November, I reached the point where I had done everything I could, physically and legally, to take care of my ill and unstable Mom, and it wasn't enough. Imagine the heartbreak, knowing that you've done absolutely everything possible for the woman who's given you life and raised you, and yet...it's not enough.

Att. 5
HB 1365
1-31-17

House Human Services Committee
Sixty-Fifth Legislative Assembly of North Dakota
House Bill No. 1365
January 31, 2017

Good morning, Chairman Weisz and Members of the House Human Services Committee. I am David Boeck, a State employee and Director of Legal Services 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 state court system's Guardianship Workgroup that is engaged in a complete review of the guardianship and conservatorship statutes. The workgroup has been effective at developing appropriate amendments to North Dakota guardianship and conservatorship laws, notably HB 1095, introduced by the Judiciary Committee at the request of the Supreme Court, and which the House passed 90-0 last week.

The Workgroup includes individuals with diverse backgrounds and experience in guardianships, e.g., corporate guardians, social workers who serve as visitors, court administrators, a representative of Vulnerable Adult Protective Services, a representative of the Protection & Advocacy Project, a district court judge, lawyers who petition for guardianships, lawyers who defend individuals in

guardianship proceedings, and guardians ad litem who advise courts on the best interests of proposed wards, among others.

At present, a question of "forced medication" arises most often among individuals who are involuntarily committed to the State Hospital. In those instances, the issue is decided by a court when the treating psychiatrist initiates a petition for court approval of involuntary medication. The court considers multiple factors to reach a decision for an individual already found by a court to be a danger due to inadequate treatment of mental illness.

"Forced medication" is also an issue for some prisoners. The Department of Corrections and Rehabilitation recognizes a prisoner's right to be free of involuntarily-administered medication. The prison must prevail at an administrative hearing before administering a medication to an objecting prisoner.

If HB 1365 were to become law and if it were to survive a court challenge, a ward would have fewer rights to refuse medication than an individual committed to the State Hospital for involuntary treatment and fewer than a convicted felon in the prison system. This would be inequitable.

If the need for an involuntary medication became an emergency, current North Dakota law would allow administration of the medication to a ward, an involuntary patient at the State Hospital, or a prisoner.

The state court system's Guardianship Workgroup will study this issue in the interim.

Please let me know whether you have any questions. Thank you.

Peter D. Welte

pwelte@vogellaw.com

January 30, 2017

Honorable Members of the House Human
Services Committee
Chair Representative Robin Weisz
Vice Chair Representative Karen Rohr
Representative Bert Anderson
Representative Dick Anderson
Representative Pamela Anderson
Representative Chuck Damschen
Representative Bill Devlin
Representative Dwight Kiefert
Representative Aaron McWilliams
Representative Todd Porter
Representative Mary Schneider
Representative Jay Seibel
Representative Kathy Skroch
Representative Greg Westlind

Re: HB 1365

Dear House Human Services Committee Members:

I write you to request your considered judgment and support of HB 1365. I regret my inability to be present at your public hearing on January 31, 2017. This is a bill that deserves a do pass recommendation.

My experience with guardianships is extensive. As a member of the State Bar Association of North Dakota for 20 years, I have practiced law in many capacities: private practice, Steele County State's Attorney (where I proudly worked for Representative Devlin), Assistant Grand Forks County State's Attorney, Grand Forks County State's Attorney, and now again in private practice. During that time I have been involved in countless guardianship cases, in many different roles.

The most tragic of guardianships is where a ward is so profoundly and chronically sick that their best interests require vigilant, consistent medical treatment—including medication—where even a brief gap in treatment can result in permanent physical, psychological, and organic damage. That is the situation that is remedied by HB 1365. You will hear testimony from Fred and Jane Lukens

at your hearing. Fred and Jane Lukens are parents who have experienced this situation firsthand. As they will share with you, the gap in treatment to a patient who needs consistent medical treatment can have devastating results. Remarkably, in the private sector, medical facilities often will honor the wishes of the guardian to have involuntary medications administered at the request of a guardian. Unfortunately—and equally remarkably—the North Dakota State Hospital will not follow that protocol, partly because they don't believe the North Dakota Century Code permits them to do so. HB 1365 should remedy that belief.

Please bear in mind that HB 1365 retains the current safety valve language contained in NDCC 30.1-28-12(4). All HB 1365 does is add clarity to one judicial order (a guardianship), which in turn obviates the need for an entirely different—and redundant—judicial order from a different hearing. This will save counties tens of thousands of dollars per biennium. And given the state of the judiciary, and the scarcity of judicial resources, HB 1365 appears to be good common sense and good public policy, as well.

Thank you for your time and your consideration. Please contact me at your convenience with comments or questions.

Very Truly Yours,

Peter D. Welte

Copy: Fred and Jane Lukens

HB 1365
#1
3/15
pg 1

Peter D. Welte

pwelte@vogellaw.com

March 14, 2017

Honorable Members of the Senate Human
Services Committee
Chair Senator Judy Lee
Vice Chair Senator Oley Larsen
Senator Howard C. Anderson
Senator David A. Clemens
Senator Joan Heckaman
Senator Curt Kreun
Senator Merrill Piepkorn

Re: HB 1365

Dear Senate Human Services Committee Members:

My name is Peter D. Welte. I am a farmer and an attorney in Grand Forks County. This morning I testify for myself. My testimony is based upon and influenced by my personal experience with my clients and friends Fred and Jane Lukens. I respectfully request your considered judgment and support of HB 1365. This is a bill that deserves a do pass recommendation.

My experience with guardianships is extensive. As a member of the State Bar Association of North Dakota for 20 years, I have practiced law in many capacities: private practice, Steele County State's Attorney, Assistant Grand Forks County State's Attorney, Grand Forks County State's Attorney, and now again in private practice. During that time I have been involved in countless guardianship cases, in many different roles.

The most tragic of guardianships is where a ward is so profoundly and chronically sick that their best interests require vigilant, consistent medical treatment—including medication—where even a brief gap in treatment can result in permanent physical, psychological, and organic damage. That is the situation that is remedied by HB 1365.

Fred and Jane Lukens are parents who have experienced this situation firsthand. As they testified before the House Human Services Committee, their son Joseph, who is 27 years old and a graduate of the University of North Dakota, has been a resident of the North Dakota State Hospital for roughly 17 months. His current stay began in December 2015.

At age 14, Joseph was diagnosed with major depression with psychotic features. He began medication at that time. As a boy, he followed the instructions of his doctors, reinforced by his parents. With careful but vigilant monitoring, he graduated from high school and college.

Fred and Jane are Joseph's legal guardians. Their authority, granted after due consideration by a North Dakota District Judge, includes court-ordered authority regarding medical decisions. Joseph has been treated at private hospitals and at the North Dakota State Hospital. Because of his illness, there are times when Joseph refuses to take the medications necessary to treat him. In a private hospital, Doctors simply seek approval from Fred and Jane to administer medications to Joseph. But at the State Hospital, the state of North Dakota requires a separate court order from a local district judge to permit the medical professionals to administer medications to Joseph. This can result in a gap of administering medications, and thus a gap in treatment.

As one example, in July 2015 Jane and Fred finished the necessary court procedures to become Joseph's legal guardians. The Court granted them the authority to make medical decisions for Joseph. During Joseph's six 2015 stays at Altru Hospital, his physician called them several times to seek permission for changes or modifications in medication for Joseph. This permission was granted, and the physician proceeded with treatment accordingly.

To Jane and Fred's dismay, this was not the case when Joseph entered the NDSH. If Joseph refused medications at the NDSH, the State of North Dakota required a separate court order from a local district judge to permit the NDSH medical professionals to administer required medications. To the chagrin of the medical professionals at the NDSH, fifteen days passed before they had the necessary court order on file, permitting them to administer medications. The Lukens' were advised by NDSH staff that the NDSH is the only facility in the state that did not consider the court-ordered guardianship sufficient to approve administering the medications Joseph needed.

In the meantime Joseph, who entered the State Hospital very sick, degenerated with no medication to a semi catatonic state. His fears consumed him. The doctors at the NDSH told them that when a mentally ill patient degenerates to this state, permanent brain damage can occur without proper medication.

With mental illness, any gap in treatment to a patient who needs consistent medical treatment can have devastating results, including permanent organic brain damage. Remarkably, in the private sector, medical facilities typically will honor the wishes of the guardian to have involuntary medications administered at the request of a guardian. Unfortunately the North Dakota State Hospital will not follow that protocol, partly because they don't believe the North Dakota Century Code permits them to do so. I believe this is a policy that goes back to 2007, which means it has affected countless patients over the years. This administrative interpretation runs counter to the treatment mission of the NDSH, and it is remedied by HB 1365.

Fred and Jane, and I, want to emphasize to this committee that we have the highest respect for the staff and administration at the North Dakota State Hospital. This testimony is not meant to impugn anyone affiliated with that institution. This testimony is merely meant to further a bill that remedies an unfortunate interpretation of law; an interpretation that results in harm to patients at that institution, and probably at other institutions as well.

Please bear in mind that HB 1365 retains the current safety valve language contained in NDCC 30.1-28-12(4). All HB 1365 does is add clarity to one judicial order (a guardianship), which in turn obviates the need for an entirely different—and redundant—judicial order from a different hearing. This will save counties tens of thousands of dollars per biennium. And given the state of the judiciary, and the scarcity of judicial resources, HB 1365 appears to be good common sense and good public policy, as well.

Thank you for your time and your consideration. Please contact me at your convenience with comments or questions.

Very Truly Yours,

Peter D. Welte

Copy: Fred and Jane Lukens

HB1365

TESTIMONY IN SUPPORT OF SB 2291

GUARDIANSHIP

REPRESENTATIVE KATHY SKROCH

SENATE HUMAN SERVICES COMMITTEES

65TH LEGISLATIVE SESSION

Chairman Lee and members of the Human Services Committee, thank you for permitting me to speak to you today. For the record, my name is Representative Kathy Skroch. I represent District 26. I come before you to give testimony in support of SB 2291.

My husband and I have been guardians of our eldest son since 2003. For the sake of this testimony I will refer to him as MCS. When he was born he was an easy baby to care for full of joy and eager to please. At the age of 18 months he decided he did not like diapers anymore. He started using the toddler potty and never wet his pants again. He was bright from the beginning. He claims to remembers his birth. He grew to be an easygoing, compassionate, empathetic, gentle, humorous, self-sacrificing, patient and kind young man.

He had a relatively normal childhood laced with adventure and mischief due to his high intelligence. MCS first began to exhibit hints of his later diagnosis at the age of 18 which a typical age for the onset of Schizophrenia which is also more common in males. We did not realize at the time, but he was self-medicating in an attempt to resolve headaches and strange thoughts. He had his first full blown psychotic episode at the age of 19. The delusion he experienced occurred in real time and space, yet a living nightmare so horrific that he found no other escape but killing himself. His attempt failed. Over the next several years, doctors tried various medications to treat his symptoms. He would have relief and stop taking the medications thinking he was "cured". Each time the disease would strike with vengeance, each time worse than the last. He insisted he did not have a disease and would refuse medications not realizing how much he was harming himself. He continued on this downward spiral.

During one of the many hospitalizations we met psychiatrist Dr. Ravasia, one of his best Psychiatrists. In a private consultation he confirmed our worst fears. MCS, he strongly suspected, was suffering from schizophrenia. It was critical, the doctor explained, for MCS to stay on his medication to keep the disease in check. If not, the disease would ravage his mind, co-mingling delusional thoughts and experiences with his memory, eventually, corrupting and hard wiring his entire mind. Because our son was so intelligent, the doctor explained, he would try to outwit his own doctors. He would try to think his way out of the delusions and hallucinations with a malfunctioning brain. The disease functions much like a Trojan Virus in a computer. If you do not catch it right away, the corruption infiltrates file after file until the

entire memory is corrupted. Childhood memories as well as short term memories become laced with false memories and delusional thoughts.

The most intelligent victims, reject the reality of their disease, reject advice from family and doctors and are the most likely to commit suicide when they realize their "beautiful mind" can never be normal again. He continued on this downward spiral. We finally had no other choice but to petition the court and obtained legal guardianship over our 23 year old son.

We were assigned full guardianship over much of our son's decisions, especially over all medical decisions, particularly during his worst relapses. At his worst, he would see his walls melt on fire, food turn to worms on his plate, feel snakes crawling over his body and other horrors. Water would taste like urine, have bugs in it, or taste like poison to him. He could not eat or drink. He would not dare sleep for fear of the horrific nightmares. I could tell you so many stories of his suffering. We would make every effort to get help for him but were often told "We can't do anything unless he is doing harm to himself or others." In his delusional state he would resort to eating tree bark and leaves, weeds, grass or worse in his attempt to survive. Dehydrated to the point of sunken eyes and cracked lips, having gone without food and water for weeks, having lost 30 pounds, all resources would recognize how deteriorated he had become he would be transport to a hospital. Often in the transport, he would be tazzed 2 to3 times because his condition mimicked someone high on meth. His condition would be critical when he arrived to the emergency room. He would be placed in intensive care where doctors could force medication with a guardian's permission. However, after a few days, the doctors would have to stop forced medications. This we were told by doctors was because of the North Dakota statutes on treatment of the mentally ill. Knowing the delay of treatment advances the progression of the disease, very ill patients have the right to refuse, against doctors advise and guardianship authorization. So even under the watch of the ND State Hospital, MCS would again deteriorate over the course of weeks. We were told "We can't force medications unless a judge declares him mentally incompetent." On one occasion, in horrible physical and mental condition, he was made to wear shackles and handcuffs to a hearing. He was so shamed by being made to hop through the front entrance through a crowded foyer and down halls to the courtroom. Then, he was made to repeat that experience to be returned to the psych ward. This is protocol, law officers have no choice.

After years of delayed intervention, we have watched the devastating results. Each delay has caused progression from Schizophrenia, to Paranoid Schizophrenia, to Paranoid Schizophrenia with Bi-Polar Effect and more. Each delay has resulted in increased medication, from 60 milligrams to 80, 100, 120, 150, 180, 200 with less and less recovery of the original personality.

Yes, it could have been much different. There are states who permit forced medication until a patient has recovered enough to have the incite necessary to willingly stay on medication. It was in another state, with those laws, were our son had the most successful, most amazing

recovery while the shortest hospitalization. So made whole was he, that he was able to enroll in college, was recognized as an honor student, and earned a certification in welding. He held gainful employment for a year. Then as often happens, he relapsed, this time in North Dakota. Treatment was delayed, he was left to sit in a jail for 6 weeks waiting for a hearing. He was transported to an acute care mental hospital when officers could not bear watching him suffer any longer.

So much damage has occurred to our son because of delays in treatment. I can't help wonder what might have been.

Still there is hope. People with this illness, can live normal lives, have jobs raise families if they stay on their medication. That is the greatest challenge. Guardians and North Dakota Mental Health professionals need the right to force medication when in their informed judgment, it is in the best interest of the patient. They need their hands unshackled by the laws of this state. On behalf of the many professionals who have tried so hard to help our son, his doctors, human service agents, lawyers, law officers, states attorneys I ask you today vote Do Pass on this bill.

Thank you for giving me the opportunity to speak today. I would be happy to answer any questions.

Kathy Skroch

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NDNPA
NORTH DAKOTA
Nurse Practitioner Association

SENATE HUMAN SERVICES COMMITTEE

65TH NORTH DAKOTA LEGISLATIVE ASSEMBLY

House Bill 1365 Testimony 3/15/2017

Madam Chairman Lee 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 1365, A BILL for an Act to amend and reenact subsection 4 of section 30.1-28-12 of the North Dakota Century Code, relating to powers and duties of a guardian regarding medical decisions.

We support the addition of Advance Practice Registered Nurse (APRN) on line 9 page one. APRN's work in a variety of settings including the area of mental illness. The addition of APRN would eliminate any barriers to our scope of practice and care for our patients.

That concludes my testimony

Cheryl Rising, FNP 701-527-2583 crisingnp@gmail.com

HB 1365
#4
3/15

Senate Human Services Committee
Sixty-Fifth Legislative Assembly of North Dakota
House Bill No. 1365
March 15, 2017

Good morning, Chairman Lee and Members of the Senate Human Services Committee. I am David Boeck, a State employee and Director of Legal Services 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 state court system's Guardianship Workgroup that is engaged in a complete review of the guardianship and conservatorship statutes. The workgroup has been effective at developing appropriate amendments to North Dakota guardianship and conservatorship laws, notably HB 1095, already passed by both houses of the Legislature, and signed by the Governor.

The Workgroup includes individuals with diverse backgrounds and wide-ranging experience in guardianships.

The question of "forced medication" arises most often among individuals who are involuntarily committed to the State Hospital. In those instances, the issue is decided by a court when the treating psychiatrist initiates a petition for court approval of involuntary medication. The court considers multiple factors to reach a decision

for an individual already found by a court to be a danger due to inadequate treatment of mental illness.

"Forced medication" is also an issue for some prisoners. The Department of Corrections and Rehabilitation recognizes a prisoner's right to be free of involuntarily-administered medication. The prison must prevail at an administrative hearing before administering a medication to an objecting prisoner.

This bill and SB 2291 address another problem, a guardian's authority to provide informed consent for prescribed medications administered to a ward who resists or objects. A guardianship court can entrust a guardian with full authority to make medical decisions for a ward only if the ward is found by clear and convincing evidence to be unable to make or communicate responsible decisions for the ward's own medical care.

Both the federal and state constitutions protect everyone from loss of liberty without the due process of law. Even individuals with mental illness are protected from the loss of liberty without the due process of law. Being forcibly medicated is a loss of liberty.

Of course, some individuals lose liberty by imprisonment, involuntary civil commitment, or guardianship. All are first protected by the due process of law and have access to the courts to challenge the basis for those losses of liberty.

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In all these instances, individuals have the right to know the standards by which they will be judged, the right to confront and cross-examine witnesses, and the right to a neutral decision maker. Due process guarantees vary depending on the issues at stake.

When psychotropic medications are being administered to a resisting or unwilling patient, the stakes are high. As written, HB 1365 does not identify sufficient ways in which the ward would be protected.

- Notice in a guardianship proceeding does not alert a proposed ward that a prospective guardian might be given authority to authorize psychotropic medications over the ward's resistance or objection
- HB 1365 does not identify a specific standard that will govern a guardian's decision to authorize administration of unwanted psychotropic medications
- The bill does not identify a means of judicial protection from an erroneous decision by a guardian who authorizes the administration of objectionable psychotropic medications
- The bill does not guarantee that a ward may be represented by an attorney in challenging a specific psychotropic medication, that a ward may call witnesses, that a ward may cross-examine opposing witnesses, that a

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judicial decision will be made after a hearing rather than solely a document review

- The ward is not provided a right to an expert examiner for an independent professional opinion on the administration of forced psychotropic medications

SB 2291, previously amended by this Committee, is better designed to fill these gaps and the House may provide further refinements. HB 1365 should be held by the Committee until final action by the House on SB 2291.

In the alternative, a group of interested individuals should propose substantial amendments to HB 1365, so it could pass judicial review.

Please let me know whether you have any questions. Thank you.

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Amendment A

Proposed Amendments to Engrossed House Bill No. 1365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and three new subsections to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, authority of a guardian regarding medical decisions, and rights of the ward; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Guardian consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act. The patient has the right to be free of the effects of medication at any hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

SECTION 2. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 3. Three new subsections to section 30.1-28-12 of the North Dakota Century Code are created and enacted as follows:

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

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

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

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

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

The guardian's consent to involuntary treatment with prescribed medications remains effective for up to ninety days but no longer than the recommendation and determination of the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse continues.

The ward has a right to challenge involuntary treatment with prescribed medications in the guardianship proceedings.

a. The ward may initiate a challenge under this subsection by motion or by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

b. The scope of a ward's challenge may include:

(1) Whether the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse has made the required recommendation and determination;

(2) Whether the involuntary treatment with prescribed medications is solely for the convenience of facility staff or for the purpose of punishment; and

(3) Whether the required recommendation and determination by the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse is medically reasonable.

c. The guardian would have the burden of proof by clear and convincing evidence.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Amendment prepared by the Department at the request of Senator Lee.

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Amendment B

Proposed Amendments to Engrossed House Bill No. 1365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Guardian consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

a. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.

b. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

SECTION 2. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

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

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

A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving

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a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

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

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

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

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

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Amendment prepared by the Department at the request of Senator Lee.