

Introduced by

Senators J. Lee, Bowman, Nelson

Representatives Heinert, Rohr, Delmore

1 A BILL for an Act to amend and reenact section 30.1-28-03, subsection 1 of section 30.1-28-09,
2 subsection 2 of section 30.1-29-07, and subsection 2 of section 30.1-29-14 of the North Dakota
3 Century Code, relating to the participation of advanced practice registered nurses in guardian
4 and conservator proceedings.

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

6 **SECTION 1. AMENDMENT.** Section 30.1-28-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated**
9 **person.**

- 10 1. Any person interested in the welfare of an allegedly incapacitated person may petition
11 for the appointment of a guardian. ~~No~~A filing fee under this or any other section may
12 not be required ~~when~~if a petition for guardianship of an incapacitated person is filed by
13 a member of the individual treatment plan team for the alleged incapacitated person or
14 by any state employee in the performance of official duties.
- 15 2. The petition for appointment of a guardian must state:
- 16 a. The name, address, and corporate or agency status of the petitioner, and its
17 connection with or relationship to the proposed ward;
- 18 b. The name, age, and address of the proposed ward;
- 19 c. The name and address of any person or institution having care or custody over
20 the proposed ward;
- 21 d. The names and addresses of the spouse, parents, and adult children or, if none,
22 any adult siblings and any adult with whom the proposed ward resides in a
23 private residence, or, if none, the nearest adult relative;

- 1 e. A brief description of and the approximate value of the real and personal property
- 2 and income of the proposed ward, so far as they are known to the petitioner;
- 3 f. The extent of guardianship authority sought, including full authority, limited
- 4 authority, or no authority in each area of residential, educational, medical, legal,
- 5 vocational, and financial decisionmaking unless the petitioner is undecided on the
- 6 extent of authority in any area, in which case the petition must state the specific
- 7 areas in which the authority is sought;
- 8 g. The occupation and qualifications of the proposed guardian;
- 9 h. The name and address of the attorney, if known, who most recently represented
- 10 the proposed ward;
- 11 i. A statement alleging specific facts establishing the necessity for the appointment
- 12 of a guardian;
- 13 j. The name and address of any current conservator appointed for the proposed
- 14 ward;
- 15 k. The name and address of any person designated as an attorney in fact or agent
- 16 in a power of attorney or as an agent in a health care directive;
- 17 l. The name and address of any representative payee for the proposed ward;
- 18 m. That less intrusive alternatives to guardianship have been considered; and
- 19 n. In the form of an attached recent statement, the physical, mental, and emotional
- 20 limitations of the proposed ward, from a physician, mental health services
- 21 provider, or other healthcare provider, if available.
- 22 3. Upon the filing of a petition, the court promptly shall set a date for hearing on the
- 23 issues of incapacity; appoint an attorney to act as guardian ad litem; appoint a
- 24 physician or clinical psychologist, or an advanced practice registered nurse to
- 25 examine the proposed ward; and appoint a visitor to interview the proposed guardian
- 26 and the proposed ward. The proposed guardian shall attend the hearing on the
- 27 petition unless excused by the court for good cause.
- 28 4. The duties of the guardian ad litem include:
- 29 a. Personally interviewing the proposed ward;
- 30 b. Explaining the guardianship proceeding to the proposed ward in the language,
- 31 mode of communication, and terms that the proposed ward is most likely to

- 1 understand, including the nature and possible consequences of the proceeding,
2 the right to which the proposed ward is entitled, and the legal options that are
3 available, including the right to retain an attorney to represent the proposed ward;
- 4 c. Advocating for the best interests of the proposed ward. The appointed attorney
5 serving as legal guardian ad litem may not represent the proposed ward or ward
6 in a legal capacity; and
- 7 d. Submitting a written report to the court containing the guardian ad litem's
8 response to the petition.
- 9 5. The physician or, clinical psychologist, or advanced practice registered nurse shall
10 examine the proposed ward and submit a written report to the court. The written report
11 must contain:
- 12 a. A description of the nature and degree of any current incapacity or disability,
13 including the medical or psychological history, if reasonably available;
- 14 b. A medical prognosis or psychological evaluation specifying the estimated severity
15 and duration of any current incapacity or disability;
- 16 c. A statement as to how or in what manner any underlying condition of physical or
17 mental health affects the proposed ward's ability to provide for personal needs;
18 and
- 19 d. A statement as to whether any current medication affects the demeanor of the
20 proposed ward or the ability of the proposed ward to participate fully in any court
21 proceeding or in any other procedure required by the court or by court rule.
- 22 6. The visitor shall have the following duties:
- 23 a. To meet, interview, and consult with the proposed ward regarding the
24 guardianship proceeding, including explaining the purpose for the interview in a
25 manner the proposed ward can reasonably be expected to understand.
- 26 b. To ascertain the proposed ward's views concerning the proposed guardian, the
27 powers and duties of the proposed guardian, the proposed guardianship, and the
28 scope and duration thereof.
- 29 c. To interview the person seeking appointment as guardian.
- 30 d. To visit the proposed ward's present place of residence.
- 31 e. To discuss an alternative resource plan with the proposed ward, if appropriate.

- 1 f. To obtain other relevant information as directed by the court.
- 2 g. To submit a written report to the court.
- 3 h. The visitor's written report must contain:
- 4 (1) A description of the nature and degree of any current impairment of the
- 5 proposed ward's understanding or capacity to make or communicate
- 6 decisions;
- 7 (2) A statement of the qualifications and appropriateness of the proposed
- 8 guardian;
- 9 (3) Recommendations, if any, on the powers to be granted to the proposed
- 10 guardian, including an evaluation of the proposed ward's capacity to
- 11 perform the functions enumerated under subsections 3 and 4 of section
- 12 30.1-28-04; and
- 13 (4) An assessment of the capacity of the proposed ward to perform the
- 14 activities of daily living.
- 15 7. In determining whether appointment of a guardian is appropriate, the court shall
- 16 consider the reports ordered by the court under this section from a guardian ad litem,
- 17 visitor, and ~~either a physician or a clinical psychologist, or an advanced practice~~
- 18 registered nurse. The court, guardian ad litem, petitioner, or proposed ward may
- 19 subpoena the individual who prepared and submitted the report to appear, testify, and
- 20 be cross-examined.
- 21 8. The proposed ward must be present at the hearing in person, unless good cause is
- 22 shown for the absence. Good cause does not consist only of the physical difficulty of
- 23 the proposed ward to attend the hearing. The proposed ward has the right to present
- 24 evidence, and to cross-examine witnesses, including the court-appointed physician,
- 25 clinical psychologist, or advanced practice registered nurse and the visitor. The issue
- 26 may be determined at a closed hearing if the proposed ward or the proposed ward's
- 27 counsel so requests.
- 28 9. The court shall take all necessary steps to make the courts and court proceedings
- 29 accessible and understandable to impaired persons. Accordingly, the court may
- 30 convene temporarily, or for the entire proceeding, at any other location if it is in the
- 31 best interest of the proposed ward.

1 10. If the court approves a visitor, lawyer, physician, clinical psychologist, advanced
2 practice registered nurse, guardian, or emergency guardian appointed in a
3 guardianship proceeding, that person may receive reasonable compensation from the
4 ward's estate if the compensation will not unreasonably jeopardize the ward's
5 well-being.

6 **SECTION 2. AMENDMENT.** Subsection 1 of section 30.1-28-09 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. In a proceeding for the appointment or removal of a guardian or for an alteration or
9 termination of a guardianship other than for the appointment of an emergency
10 guardian or for the temporary suspension of a guardian, notice of hearing ~~shall~~must be
11 given by the petitioning party, unless otherwise directed by the court, to each of the
12 following:
- 13 a. The ward or the proposed ward and the ward's or proposed ward's spouse,
14 parents, and adult children;
 - 15 b. Any person, corporation, or institution who is serving as the ward's guardian,
16 attorney in fact, representative payee for public benefits, or conservator, or who
17 has the ward's care and custody;
 - 18 c. If no other person is notified under subdivision a, then the adult siblings and any
19 adult with whom the proposed ward resides in a private residence, or if none can
20 be found, any known adult relative; and
 - 21 d. The attorney for the proposed ward, the visitor, and the physician or clinical
22 psychologist, or advanced practice registered nurse, together with a copy of the
23 respective order of appointment for each.

24 **SECTION 3. AMENDMENT.** Subsection 2 of section 30.1-29-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 2. Upon receipt of a petition for appointment of a conservator or other protective order for
27 reasons other than minority, the court shall set a date for hearing. If, at any time in the
28 proceeding, the court determines that the interests of the person to be protected are or
29 may be inadequately represented, it may appoint an attorney to represent the person
30 to be protected. An attorney appointed by the court to represent a protected person
31 has the powers and duties of a guardian ad litem. If the alleged disability is mental

1 illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic
2 intoxication, the court may direct that the person to be protected be examined by a
3 physician or advanced practice registered nurse designated by the court, preferably a
4 physician or advanced practice registered nurse who is not connected with any
5 institution in which the person is a patient or is detained. The court may send a visitor
6 to interview the person to be protected. The visitor may be a guardian ad litem or an
7 officer, employee, or special appointee of the court. In any case in which the veterans'
8 administration is or may be an interested party, a certificate of an authorized official of
9 the veterans' administration that the person to be protected has been found incapable
10 of handling the benefits payable on examination in accordance with the laws and
11 regulations governing the veterans' administration shall be prima facie evidence of the
12 necessity for ~~such~~the appointment.

13 **SECTION 4. AMENDMENT.** Subsection 2 of section 30.1-29-14 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 2. If not otherwise compensated for services rendered, any visitor, lawyer, physician,
16 advanced practice registered nurse, conservator, or special conservator appointed in a
17 protective proceeding is entitled to reasonable compensation from the estate.