

March 22, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1117

Page 1, line 1, after "to" insert "create and enact sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and 30.1-28-19 of the North Dakota Century Code, relating to involuntary treatment of a ward with prescribed medication; and to"

Page 1, line 2, after the first comma insert "25-03.1-18.2,"

Page 1, line 2, remove the second "and"

Page 1, line 3, after "25-03.1-29" insert ", subsection 2 of section 30.1-28-03, and sections 30.1-28-04, 30.1-28-12, and 30.1-28-14"

Page 1, line 4, after "procedures" insert "and involuntary treatment of a ward with prescribed medication"

Page 3, after line 17, insert:

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

**25-03.1-18.2. 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 ~~subsection 6 of section 30.1-28-12~~ sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and 30.1-28-19.

- ~~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 subsection 6 of section 30.1-28-12.~~
- ~~2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings."~~

Page 6, after line 29, insert:

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

2. The petition for appointment of a guardian must state:
  - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
  - b. The name, age, and address of the proposed ward;

- c. The name and address of any person or institution having care or custody over the proposed ward;
- d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;
- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
- f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
- g. The occupation and qualifications of the proposed guardian;
- h. The name and address of the attorney, if known, who most recently represented the proposed ward;
- i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
- j. The name and address of any current conservator appointed for the proposed ward;
- k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
- l. The name and address of any representative payee for the proposed ward;
- m. That less intrusive alternatives to guardianship have been considered;
- n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward from an expert examiner, if available; ~~and~~
- o. Whether the petition seeks to restrict any of the following rights:
  - (1) To vote;
  - (2) To seek to change marital status; or
  - (3) To obtain or retain a motor vehicle operator's license; and
- p. If the proposed guardian seeks authority to involuntary treatment with prescribed psychiatric medication under section 30.1-28-16, a statement alleging specific facts under subsection 3 of section 30.1-28-16 and an attached recent report under subsection 2 of section 30.1-28-16.

**SECTION 12. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

### **30.1-28-04. (5-304) Findings - Order of appointment.**

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:
  - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
  - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
  - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
    - (1) The proposed ward is an incapacitated person;
    - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
    - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
    - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, a ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license.
4. The court may find that the ward retains other specific rights.
5. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority retained by the ward. The court's order must require the guardian to provide within ninety days from the date of the order a beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to the ward and any interested persons designated by the court

in its order. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. ~~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 13. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A guardian of an incapacitated person has only the powers and duties specified by the court.
2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility or state institution for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subsection, the guardian may readmit a ward to a mental health facility or a state institution within sixty days of discharge from that institution, if the original admission to the facility or institution had been authorized by the court.
3. If entitled to custody of the ward, the guardian should make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training, education, or habilitative services. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and personal effects.
4. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psychosurgery, abortion,

sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.

5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:
  - a. Meeting with the ward following the hearing, unless the ward is represented by an attorney, and explaining to the fullest extent possible the contents of the court's order and the extent of the guardian's authority;
  - b. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
  - c. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.
6. ~~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 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.~~
7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian may:
  - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
  - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

- 8-7. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.
- 9-8. A guardian shall file an annual report with the court regarding the exercise of powers and duties in areas of authority specified in the court's order of appointment. The report must describe the status or condition of the ward, including any change of residence and reasons for the change, any medical treatment received by or withheld from the ward, any expenditure and income affecting the ward, any sale or transfer of property affecting the ward, and any exercise of legal authority by the guardian affecting the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian also shall report whether the ward continues to require guardianship and whether any powers of the guardian should be increased or limited. The report must be filed with the clerk of district court. The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
- 10-9. Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to the ward and any interested persons designated by the court in its order. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.
- 11-10. The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

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

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

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

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

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

1. Upon notice and a hearing, a guardian may request authorization from the court for a ward to be treated with prescribed medication. The court may consider the petition in the initial procedure for court appointment of a guardian or at a separate involuntary treatment hearing.
  2. As a part of a petition, the guardian shall provide a report from the treating expert examiner which must certify:
    - a. The proposed prescribed medication is clinically appropriate and necessary to treat the ward effectively and that the ward is a person requiring treatment;
    - b. The ward was offered that treatment and refused the treatment 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.
  3. a. Evidence of the factors certified under subsection 1 may be presented to the court within the petition and during the initial hearing for court appointment of a guardian under section 30.1-28-03 or at a separate involuntary treatment hearing under this section. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
    - (1) The danger the ward presents to self or others;
    - (2) The ward's current condition;
    - (3) The ward's treatment history;
    - (4) The results of previous medication trials;
    - (5) The efficacy of current or past treatment modalities concerning the ward;
    - (6) The ward's prognosis; and
    - (7) The effect of the ward's mental condition on the ward's capacity to consent.
  - b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.
4. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in the court's findings on the petition, or the court may issue a separate order after notice and

hearing, authoring the treating medical professional to involuntarily treat the ward with prescribed medication on such terms and conditions as are appropriate. However, unless specifically authorized by the court, the order for involuntary treatment with prescribed medication may not be in effect for more than ninety days.

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

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

1. The involuntary treatment with prescribed medication hearing, unless waived by the ward or the ward has been released as a person not requiring treatment, must be held within three days, exclusive of weekends and holidays, of the date of the filing of the petition. The court may extend the time for hearing for good cause.
2. The ward has the right to an examination by an independent expert examiner if so requested. If the ward is indigent, the county of residence of the ward shall pay for the cost of the examination and the ward may choose an independent expert examiner.
3. The hearing must be held in the county of the ward's residence or location or the county in which the state hospital or treatment facility treating the ward is located. At the hearing, evidence in support of the request must be presented by the guardian or guardian's private counsel. During the hearing, the guardian and the ward must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All individuals not necessary for the conduct of the proceeding must be excluded except that the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the ward. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the ward, and the burden of proof in support of the petition is upon the petitioner. If, upon completion of the hearing, the court finds the petition has not been sustained by clear and convincing evidence, the court shall deny the petition.

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

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

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



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

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

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

Renumber accordingly