

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2327

Introduced by

Senator W. Stenehjem

A BILL for an Act to create and enact a new subsection to section 30.1-28-03 and a new subsection to section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions and compensation for services in guardianship proceedings; and to amend and reenact subsection 2 of section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 30.1-28-03 of the North Dakota Century Code is created and enacted as follows:

If not otherwise compensated for services rendered, any visitor, lawyer, physician, guardian, or temporary guardian appointed in a guardianship proceeding is entitled to receive reasonable compensation from the estate.

SECTION 2. AMENDMENT. Subsection 2 of section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

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 determine whether the agent or attorneys in fact appointed thereunder may exercise any authority if a general or limited guardian is appointed.
- c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:

- 1 (1) The proposed ward is an incapacitated person;
- 2 (2) There is no available alternative resource plan that is suitable to
- 3 safeguard the proposed ward's health, safety, or habilitation which
- 4 could be used instead of a guardianship;
- 5 (3) The guardianship is necessary as the best means of providing care,
- 6 supervision, or habilitation of the ward; and
- 7 (4) The powers and duties conferred upon the guardian are appropriate as
- 8 the least restrictive form of intervention consistent with the ability of the
- 9 ward for self-care.

10 **SECTION 3.** A new subsection to section 30.1-28-04 of the North Dakota Century Code
11 is created and enacted as follows:

12 Unless a court of competent jurisdiction determines otherwise, a durable power of
13 attorney for health care executed pursuant to chapter 23-06.5 takes precedence
14 over any authority to make medical decisions granted to a guardian pursuant to
15 chapter 30.1-28.