

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2327

Introduced by

Senator W. Stenehjem

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

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

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

9 If the court specifically provides in a case in which a guardian is appointed and if
10 payment of the compensation does not unreasonably jeopardize the ward's
11 well-being, a visitor, lawyer, physician, guardian, or temporary guardian appointed
12 in a guardianship proceeding may receive reasonable compensation from the
13 ward's estate.

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

- 16 2. At a hearing held under this chapter, the court shall:
- 17 a. Hear evidence that the proposed ward is an incapacitated person. Age,
18 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a
19 finding of incapacity;
- 20 b. Hear evidence and determine whether there are any existing general durable
21 powers of attorney and durable powers of attorney for health care. If there
22 are validly executed durable powers of attorney, the court shall consider the
23 appointed attorneys in fact and agents appointed thereunder when assessing
24 alternative resource plans and the need for a guardian; and

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

12 **SECTION 3.** Two new subsections to section 30.1-28-04 of the North Dakota Century
13 Code are created and enacted as follows:

14 A durable power of attorney for health care executed pursuant to chapter 23-06.5
15 takes precedence over any authority to make medical decisions granted to a
16 guardian pursuant to chapter 30.1-28 unless a court of competent jurisdiction
17 determines, based upon clear and convincing evidence, that the attorney in fact or
18 agent:

- 19 a. Refuses to observe the laws that govern the exercise of that authority; or
20 b. Takes actions that are contrary to the wishes expressed by the principal when
21 competent.

22 The authority of a validly appointed attorney in fact or agent may not be disturbed
23 unless the court finds by clear and convincing evidence that the attorney in fact or
24 agent:

- 25 a. Refuses to observe the laws that govern the exercise of that authority; or
26 b. Takes actions that are contrary to the wishes expressed by the principal when
27 competent.