

January 17, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, replace the first "section" with "sections"

Page 1, line 1, replace ", subsections 2, 4, and 6 of section" with "and"

Page 1, line 2, replace "and sections" with "subdivision d of subsection 1 of section 30.1-28-09, section"

Page 1, line 2, after the third comma insert "subsection 2 of section"

Page 1, line 2, after the fourth comma insert "subsection 1 of section"

Page 1, line 3, after the first comma insert "sections"

Page 1, line 3, replace the second comma with "and"

Page 1, line 3, after the third comma insert "subsection 2 of section 30.1-29-14,"

Page 1, line 3, after "and" insert "section"

Page 3, line 12, after "17." insert "Expert examiner" means:

- a. A licensed physician;
- b. A psychiatrist;
- c. A licensed psychologist trained in a clinical program;
- d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
- e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.

18."

Page 3, line 13, overstrike "18." and insert immediately thereafter "19."

Page 3, line 15, overstrike "19." and insert immediately thereafter "20."

Page 3, line 17, overstrike "20." and insert immediately thereafter "21."

Page 3, line 22, overstrike "21." and insert immediately thereafter "22."

Page 3, line 26, overstrike "22." and insert immediately thereafter "23."

Page 3, line 29, overstrike "23." and insert immediately thereafter "24."

Page 3, line 30, overstrike "24." and insert immediately thereafter "25."

Page 4, line 1, overstrike "25." and insert immediately thereafter "26."

Page 4, line 8, overstrike "26." and insert immediately thereafter "27."

Page 4, line 9, overstrike "27." and insert immediately thereafter "28."

Page 4, line 14, overstrike "28." and insert immediately thereafter "29."

Page 4, line 15, overstrike "29." and insert immediately thereafter "30."

Page 4, line 17, overstrike "30." and insert immediately thereafter "31."

Page 4, line 21, overstrike "31." and insert immediately thereafter "32."

Page 4, line 24, overstrike "32." and insert immediately thereafter "33."

Page 4, line 25, overstrike "33." and insert immediately thereafter "34."

Page 4, line 27, overstrike "34." and insert immediately thereafter "35."

Page 4, line 29, overstrike "35." and insert immediately thereafter "36."

Page 5, line 1, overstrike "36." and insert immediately thereafter "37."

Page 5, line 5, overstrike "37." and insert immediately thereafter "38."

Page 5, line 8, overstrike "38." and insert immediately thereafter "39."

Page 5, line 10, overstrike "39." and insert immediately thereafter "40."

Page 5, line 11, overstrike "40." and insert immediately thereafter "41."

Page 5, line 15, overstrike "41." and insert immediately thereafter "42."

Page 5, remove lines 16 through 25

Page 7, line 15, after "60." insert "Visitor means means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings."

61."

Page 7, line 16, replace "61." with "62."

Page 7, remove lines 20 through 30

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 29

Page 10, replace lines 1 through 9 with:

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

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

1. Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual treatment plan

team for the alleged incapacitated person or by any state employee in the performance of official duties.

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; ~~and~~
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; ~~from a physician, mental health services provider, or other health care provider~~ 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.
- 3. Upon the filing of a petition, the court promptly shall set a date for hearing on the issues of incapacity, appoint an attorney to act as guardian ad litem, appoint a ~~physician or clinical psychologist~~ expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward. The proposed guardian shall attend the hearing on the petition unless excused by the court for good cause.
- 4. The duties of the guardian ad litem include:
 - a. Personally interviewing the proposed ward;
 - b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward;
 - c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity; ~~and~~
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.
- 5. The ~~physician or clinical psychologist~~ expert examiner shall examine the proposed ward and submit a written report to the court. The written report must contain:
 - a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
- 6. The visitor shall have the following duties:
 - a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the

interview in a manner the proposed ward can reasonably be expected to understand.

- b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To interview other persons interested in the welfare of the proposed ward.
 - e. To visit the proposed ward's present place of residence.
 - e-f. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f-g. To obtain other relevant information as directed by the court.
 - g-h. To submit a written report to the court.
 - h-i. The visitor's written report must contain:
 - (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;
 - (3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative person or entity who should be appointed as guardian;
 - (4) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and
 - ~~(4)~~(5) An assessment of the capacity of the proposed ward to perform the activities of daily living.
7. In determining whether appointment of a guardian is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem, visitor, and ~~either a physician or a clinical psychologist~~ an expert examiner. The court, guardian ad litem, petitioner, or proposed ward may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined.
8. The proposed ward must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed ~~physician~~ expert examiner and the visitor. The issue may be determined at a closed hearing if the proposed ward or the proposed ward's counsel so requests.

9. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly, the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.
10. If the court approves a visitor, lawyer, ~~physician~~expert examiner, guardian, or emergency guardian appointed in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being."

Page 10, after line 15, insert:

"SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each."

Page 11, line 29, remove "a"

Page 11, line 30, replace "physician, mental health services provider, or other health care provider" with "an expert examiner"

Page 14, line 17, overstrike "a physician"

Page 14, line 17, remove "or clinical"

Page 14, line 18, replace "psychologist" with "an expert examiner"

Page 14, line 18, replace "physician or psychologist" with "expert examiner"

Page 14, line 23, replace "A physician or clinical psychologist" with "An expert examiner"

Page 15, line 10, remove the underscored comma

Page 15, line 10, replace "either a physician or clinical psychologist" with "an expert examiner"

Page 15, line 12, replace "individual" with "expert examiner"

Page 17, after line 26, insert:

"SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any ~~visitor~~, lawyer, ~~physician~~expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate."

Renumber accordingly