

**HOUSE BILL NO. 1354**

Introduced by

Representatives Skroch, J. Nelson, Rohr, Satrom, Schauer, Schneider, Strinden, Weisz

Senators Lee, Mathern, Poolman

1 A BILL for an Act to create and enact subdivision z of subsection 2 of section 28-32-01 and  
2 chapter 54-67 of the North Dakota Century Code, relating to the commission on guardianship;  
3 to amend and reenact subsection 1 of section 50-24.1-07 of the North Dakota Century Code,  
4 relating to the commission on guardianship and exempt administrative agencies; to provide a  
5 penalty; to provide for a legislative management report; and to provide a continuing  
6 appropriation.

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

8 **SECTION 1.** Subdivision z of subsection 2 of section 28-32-01 of the North Dakota Century  
9 Code is created and enacted as follows:

10 z. The commission on guardianship.

11 **SECTION 2. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota  
12 Century Code is amended and reenacted as follows:

13 1. On the death of any recipient of medical assistance who was a resident of a nursing  
14 facility, intermediate care facility for individuals with intellectual disabilities, or other  
15 medical institution and with respect to whom the department determined that resident  
16 reasonably was not expected to be discharged from the medical institution and to  
17 return home, or who was fifty-five years of age or older when the recipient received the  
18 assistance, and on the death of the spouse of the deceased recipient, the total amount  
19 of medical assistance paid on behalf of the recipient following the institutionalization of  
20 the recipient who cannot reasonably be expected to be discharged from the medical  
21 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be  
22 allowed as a preferred claim against the decedent's estate after payment, in the  
23 following order, of:

- 1 a. Recipient liability expense applicable to the month of death for nursing home or
- 2 basic care services;
- 3 b. Funeral expenses not in excess of three thousand dollars;
- 4 c. Expenses of the last illness, other than those incurred by medical assistance;
- 5 d. Expenses of administering the estate, including attorney's fees approved by the
- 6 court;
- 7 e. Claims made under chapter 50-01;
- 8 f. Claims made under chapter 50-24.5;
- 9 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 10 h. Claims made under chapter 54-67; and
- 11 i. Claims made under subsection 4.

12 **SECTION 3.** Chapter 54-67 of the North Dakota Century Code is created and enacted as  
13 follows:

14 **54-67-01. Definitions.**

15 As used in this chapter:

- 16 1. "Commission" means the commission on guardianship.
- 17 2. "Contract guardian" means a professional or nonprofessional guardian contracted with  
18 the commission on guardianship to provide guardianship services.
- 19 3. "Director" means the director of the commission on guardianship.
- 20 4. "Guardian" means an individual employed by the commission on guardianship to  
21 provide guardianship services.
- 22 5. "Guardianship services" means duties, assistance, or resources provided by a  
23 guardian or a contract guardian to an individual determined to be eligible to receive  
24 services.
- 25 6. "Identifiable information" means personal details, including an individual's name,  
26 address, telephone number, facsimile number, social security number, electronic mail  
27 address, program identification number, or any other unique identifying number,  
28 characteristic, or code, as well as demographic information collected from an  
29 individual, which:
  - 30 a. Is created or received by the commission; and
  - 31 b. Relates to:

- 1           (1) Past, present, or future guardianship services applied for or received by an  
2                     individual under any program administered by or under the supervision and  
3                     direction of the commission identifying the individual or with respect to which  
4                     there is a reasonable basis to believe the information can be used to identify  
5                     the individual; or
- 6           (2) A report, or any other information obtained, concerning an applicant, a  
7                     provider, of or an individual applying for or receiving guardianship services  
8                     under any program administered by or under the supervision and direction  
9                     of the commission.

10       **54-67-02. Commission on guardianship - Membership.**

- 11       1. The commission on guardianship is established for the purpose of developing and  
12             monitoring a process for the delivery of state-funded guardianship services under any  
13             applicable statute or court rule. The commission shall provide guardianship services  
14             for an individual determined by the court to be eligible for services in accordance with  
15             the standards and policies of the commission governing eligibility for guardianship  
16             services.
- 17       2. The commission consists of the following members:
- 18           a. Two members appointed by the governor.
- 19           b. Two members of the legislative assembly, one from each house, appointed by the  
20             majority leader of the house of representatives and the majority leader of the  
21             senate.
- 22           c. Two members appointed by the chief justice of the supreme court.
- 23           d. One member appointed by the director of the committee on protection and  
24             advocacy.
- 25           e. One member from the adults and aging services division of the department of  
26             human services appointed by the director of the department of human services.
- 27           f. One member from the developmental disabilities division of the department of  
28             human services appointed by director of the department of human services.
- 29           g. One member who is a professional guardian appointed by the guardianship  
30             association of North Dakota.

- 1       3. Each appointing authority shall make its initial appointments to the commission before  
2       September 1, 2021.
- 3       4. Initially, as determined by lot, one member will serve for one year, four members will  
4       serve for two years, and three members will serve for four years. At the expiration of  
5       the initial terms, the appointing authorities designated in subsection 2 shall make  
6       appointments for three-year terms. A member may not serve more than two  
7       consecutive three-year terms plus any initial term of less than three years.
- 8       5. Individuals appointed to the commission should have experience in guardianship  
9       matters or should have demonstrated a commitment to quality representation in  
10       matters involving potential wards. Membership of the commission may not include any  
11       individual, or the employee of that individual, who is actively serving as a judge.
- 12       6. A member of the commission may not receive compensation for serving on the  
13       commission but is entitled to reimbursement for all reasonable and necessary travel  
14       and expenses incurred in the discharge of the member's duties. The legislative council  
15       shall pay the reimbursement for travel and expenses as provided by law for any  
16       member of the commission who is a member of the legislative assembly.
- 17       7. One of the two appointees of the chief justice, as determined by the chief justice, shall  
18       convene the commission's first meeting no later than September 16, 2021. The  
19       members of the commission shall select the chairman of the commission within thirty  
20       days after the commission's first meeting and annually thereafter.

21       **54-67-03. Commission responsibilities.**

- 22       1. The commission shall:
  - 23       a. Develop standards governing the delivery of guardianship services, including:
    - 24       (1) Standards governing guardianship services in compliance with chapter  
25       30.1-28;
    - 26       (2) Standards for maintaining and operating guardian offices if established;
    - 27       (3) Standards prescribing minimum experience, training, and other  
28       qualifications for contract guardians and guardians;
    - 29       (4) Standards for contract guardian and guardian caseloads, provided a  
30       contract guardian or guardian may not assume responsibility for any ward  
31       beyond the ratio established by the commission;

- 1                   (5) Standards for the evaluation of contract guardians and guardians;  
2                   (6) Standards for independent, competent, and efficient guardianship of an  
3                   individual whose cases present conflicts of interest;  
4                   (7) Standards for the reimbursement of expenses incurred by a contract  
5                   guardian; and  
6                   (8) Other standards considered necessary and appropriate to ensure the  
7                   delivery of adequate guardianship services.  
8           b. Adopt rules and standards for evaluating the financial resources of an eligible  
9           individual or ward for the purpose of determining whether the eligible individual or  
10           ward has the ability to pay for legal or guardianship services received, subject to  
11           the following:  
12           (1) An eligible individual or ward found to have sufficient financial resources  
13           may be required to pay the commission in accordance with standards  
14           established by the commission.  
15           (2) The state has a preferred claim against the estate of any individual for  
16           recovery of funds expended under this chapter for the care of that individual.  
17           All recovery of funds expended under this chapter must be deposited with  
18           the state treasurer and placed in the general fund.  
19           (3) A claim may not be required to be paid and interest may not begin to accrue  
20           during the lifetime of the decedent's surviving spouse, if any.  
21           (4) No statute of limitation or similar statute or the doctrine of laches bars a  
22           claim under this chapter.  
23           c. Establish and implement a process of contracting for guardianship services  
24           through contract guardians.  
25           d. Establish guardian offices in the regions of the state as the commission considers  
26           necessary and appropriate.  
27           e. Establish a method for accurately tracking and monitoring caseloads of contract  
28           guardians and guardians.  
29           f. Approve and submit a biennial budget request to the office of management and  
30           budget.

- 1           g. Take such actions as the commission deems necessary and appropriate to  
2           receive private, federal, or other public funds to help support guardians and to  
3           safeguard the rights of an eligible individual. Private funds and property may be  
4           accepted, held, maintained, administered, and disposed of by the commission as  
5           trustee for public benefit purposes pursuant to the terms of the instrument  
6           granting the funds or property to the commission.
- 7           h. Make and enter contracts necessary or incidental to the performance of the  
8           commission's duties and in furtherance of the purposes set forth in this chapter.
- 9           i. Contract with a local or regional public or private entity to provide guardianship  
10          services if a court determines an individual is eligible to have a guardian  
11          appointed.
- 12          2. The commission shall adopt rules for the exercise of the commission's authority under  
13          this chapter in a manner generally consistent with the notice and comment provisions  
14          of section 28-32-11.
- 15          **54-67-04. Commission director - Responsibilities - Report to legislative management.**
- 16          1. The commission shall appoint a director who must be chosen on the basis of training,  
17          experience, and other qualifications considered appropriate. The director must be a  
18          nationally certified guardian. If the director is not a nationally certified guardian, the  
19          director must become a nationally certified guardian within one year of appointment as  
20          director. The director may be removed for cause by a majority vote of commission  
21          members.
- 22          2. The director shall:
- 23               a. Assist the commission in developing standards for the delivery of adequate  
24               guardianship services;
- 25               b. Administer and coordinate delivery of guardianship services and supervise  
26               compliance with commission standards;
- 27               c. Conduct regular training programs for guardians, contract guardians, and public  
28               administrators;
- 29               d. Subject to policies and procedures established by the commission, hire the  
30               professional, technical, and support personnel, including attorneys, social

- 1           workers, and other qualified professionals to serve as guardians, considered  
2           reasonably necessary for the efficient delivery of guardianship services;  
3       e. Present the commission's proposed budget biennially to the commission and the  
4           legislative council;  
5       f. Before August first of each year, present to the commission and legislative  
6           management an annual report containing pertinent data on the operation, needs,  
7           and costs of the guardian contract system and any established guardian offices,  
8           and any other information as the commission may require; and  
9       g. Perform other duties as the commission may assign.

10       **54-67-05. Guardianship fund - Continuing appropriation.**

11       The guardianship fund is a special fund in the state treasury. The state treasurer shall  
12 deposit in the fund all money collected under section 54-67-03, excluding any funds held by the  
13 commission as a trustee. All money in the guardianship fund is appropriated on a continuing  
14 basis to the commission to be used in the administration of the state-funded guardianship  
15 system.

16       **54-67-06. Records, files, and information - Accessibility - Confidentiality.**

- 17       1. Identifiable information concerning an individual applying for or receiving guardianship  
18           services under any program administered by or under the supervision and direction of  
19           the commission is confidential, except certain information, including an individual's  
20           social security number, may be used and disclosed:  
21           a. In the administration of any program administered by or under the supervision  
22               and direction of the commission;  
23           b. When authorized by the rules of the commission; or  
24           c. When allowed or required by law.  
25       2. A vendor, agent, or contractor of the commission must agree to maintain the  
26           confidentiality of identifiable information disclosed to the person by the commission or  
27           by any individual applying for or receiving guardianship services and may use and  
28           disclose confidential information only to the extent that person's agreement with the  
29           commission allows the use and disclosure of the information.  
30       3. Except as otherwise provided by law, a report concerning an applicant, a provider of,  
31           or an individual applying for or receiving guardianship services under any program

- 1           administered by or under the supervision and direction of the commission, as well as  
2           any other information obtained, is confidential if the report is made in good faith, and  
3           may be disclosed to:
- 4           a.   Authorized staff of the commission and the commission's authorized agents who  
5           further may disclose to a person that has a definite interest in the well-being of  
6           the individual concerned, is in a position to serve the individual's interests, and  
7           that needs to know the contents of the records to assure the well-being and  
8           interests of the individual concerned.
- 9           b.   An individual who is the subject of the report, provided the identity of the person  
10           reporting or supplying information under this chapter is protected until the  
11           information is needed for use in an administrative or legal proceeding arising out  
12           of the report.
- 13           c.   A public official and the public official's authorized agent who requires the  
14           information in connection with the discharge of official duties.
- 15           d.   A court when the court determines the information is necessary for the  
16           determination of an issue before the court.
- 17           4.   A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces  
18           in the disclosure of confidential information in violation of this section is subject to the  
19           penalty provided in section 12.1-13-01.