CHAPTER 30.1-28
GUARDIANS OF INCAPACITATED PERSONS

30.1-28-01. (5-301) Testamentary appointment of guardian for incapacitated person.

1. The guardian spouse or guardian parent of an adjudicated incapacitated person may, by will, appoint a successor guardian of the incapacitated person. A testamentary appointment by a guardian spouse or guardian parent becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person caring for the incapacitated person or to the nearest adult relative of the incapacitated person, the successor guardian files acceptance of appointment in the court in which the will is informally or formally probated.
2. This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.
3. On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this chapter.

30.1-28-02. (5-302) Venue.

The venue for guardianship proceedings for a proposed ward is in the place where the proposed ward resides or is present and expected to remain during the pendency of the proceedings. Notwithstanding section 30.1-02-03, the proposed ward may demand change of venue to either the county of residence or the county where the proposed ward is present. The court shall grant the demand if it is filed and served upon the petitioner more than three days before the hearing. If the demand is filed within three days of the hearing, the court may grant the demand upon good cause shown.

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;
n. In the form of an attached recent statement, the physical, neurological, and psychological limitations of the proposed ward from an expert examiner, if available;
o. Whether the petition seeks to restrict any of the following rights:
(1) To vote;
(2) To seek to change marital status;
(3) To obtain or retain a motor vehicle operator's license; or
(4) To use, own, control, or possess a firearm; and
p. If the proposed guardian seeks authority for involuntary treatment with prescribed mood stabilizer or antipsychotic medication under section 30.1-28-16, facts specified under subsection 3 of section 30.1-28-16. The petitioner also shall attach a recent report under subsection 2 of section 30.1-28-16.

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 an 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;
d. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the proposed ward's ability to attend the hearing either in person or by remote means; 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 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 or physical or mental condition affects the demeanor of the proposed ward or the ability of the proposed ward to attend and 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.
f. To discuss an alternative resource plan with the proposed ward, if appropriate.
g. To obtain other relevant information as directed by the court.
h. To submit a written report to the court.
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 individual or entity that 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;
   (5) An assessment of the capacity of the proposed ward to perform the activities of daily living; and
   (6) An assessment of the proposed ward's ability to attend the hearing either in person or by remote means.

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 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 or by remote means, 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 expert examiner and the visitor.
9. Every hearing under this chapter must be closed to the public unless the proposed ward, the ward, the attorney, or guardian ad litem of the proposed ward or ward requests it remain open. An individual or entity may request permission to observe or participate in the hearing and the request must be granted if the court determines the applicant's participation would be in the best interest of the proposed ward or ward.
10. 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.
11. If the court appoints a visitor, lawyer, or expert examiner 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.
12. If the court approves a guardian or emergency guardian in a guardianship proceeding, that person may receive reasonable compensation and reimbursement from the ward's estate if the compensation and reimbursement will not unreasonably jeopardize the ward's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:

a. The size and nature of the ward's estate;
b. The benefit to the ward, or the ward's estate, of the guardian's services;
c. The necessity for the services performed;
d. The ward's anticipated future needs and income;
e. The time spent by the guardian in the performance of the services;
f. Whether the services were routine or required more than ordinary skill or judgment;
g. Any unusual skill, expertise, or experience brought to the performance of the services;
h. The guardian's estimate of the value of the services performed;
i. The fee customarily charged in the community for similar services;
j. The nature and length of the relationship with the ward;
k. The experience, reputation, diligence, and ability of the person performing the service;
l. Any conflict of interest the guardian may have; and
m. Whether the appointment as guardian precluded the guardian from other employment.

13. The court may determine the weight to be given to each factor under subsection 12, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
14. The court must approve compensation and reimbursement before payment to the guardian is made.

30.1-28-03.1. Confidentiality - Reports - Personal information.

1. A written report prepared and submitted by a guardian ad litem, visitor, or expert examiner and annual and final reports and financial accounting prepared and submitted by a guardian are closed to the public and are not open to inspection except by the court, parties to the proceeding or their counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
2. Medical, psychological, or other treatment information protected by federal law or regulation and any financial account numbers related to a ward or proposed ward are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

30.1-28-03.2. Authorization of a single transaction to sell, encumber, or transfer ownership of real or personal property of the ward.

1. A guardian may move the court for authorization to sell, mortgage, lease, or otherwise encumber or transfer ownership of the real or personal property of the ward, valued at over two thousand five hundred dollars, upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward.
2. The motion must contain:
   a. The type of property;
   b. A description of the property;
   c. The type of transaction;
   d. The details of the transaction;
   e. The reason for the transaction;
   f. The current fair market value of the property:
      (1) For real property, an appraisal must be provided unless good cause is shown; or
      (2) For personal property, a description of how the guardian arrived at the fair market value must be provided;
   g. An explanation of why the transaction is in the best interests of the ward; and

h. A notice that any person interested in the ward's property that opposes the transaction shall file an objection within ten days of the notice and demand a hearing.

3. The motion must be served upon those identified in section 30.1-28-09.1.
4. Any consents of the ward's spouse or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.
5. The court's order must include specific findings regarding whether the transaction is in the best interests of the ward.

30.1-28-03.3. Guardianship proceedings for minor becoming an incapacitated adult.

1. As used in this section:
   a. "Child" means an individual who is under the age of eighteen and is not married.
   b. "Child becoming an incapacitated adult" means a child who has reached age seventeen years and six months and is proposed to become an incapacitated adult at age eighteen.
   c. "Legal decisionmaking" means the legal right and responsibility to make all legal decisions for a child including those regarding education, health care, and personal care decisions.
2. A petition to establish a guardianship for a child becoming an incapacitated adult may be filed by any person interested in the welfare of the child and having knowledge of the facts alleged or information and belief the facts are true.
3. The procedure in this chapter for appointment of a guardian of an incapacitated adult must be the procedure used for appointment of a guardian for a child becoming an incapacitated adult except the court shall appoint as the guardian any person that had legal decisionmaking responsibility for the child when the child turned seventeen years and six months of age. If the court finds the appointment of the person with legal decisionmaking authority would be contrary to the best interests of the incapacitated adult, the priorities listed in section 30.1-28-11 may be followed.
4. A guardianship order under this section may take effect immediately on the day the child turns eighteen years of age.

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 those identified in section 30.1-28-09.1. 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, visitor, or all, 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. If a review hearing cannot be held before the expiration of an initial order for guardianship, the court may extend the initial order for up to an additional ninety days upon good cause shown. New letters of guardianship must be issued reflecting the extended expiration date. 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. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.
8. After the hearing, the guardian ad litem, visitor, and expert examiner must be discharged of their duties.

30.1-28-05. (5-305) Acceptance of appointment - Consent to jurisdiction - Order - Letters of guardianship.

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.
2. A copy of the order appointing the guardian must be served by the petitioner to those given notice under section 30.1-28-09. The order must contain the name and address of the guardian as well as notice of the ward's right to appeal the guardianship appointment and of the ward's right to seek alteration or termination of the guardianship at any time.
3. Letters of guardianship must contain:
   a. The name, address, and telephone number of the guardian;
   b. The name, address, and telephone number of the ward;

c. Specification of the guardian's authority to make decisions on behalf of the ward in residential, educational, medical, legal, vocational, and financial areas. If limited authority has been granted in any area, the letters must describe the nature of the limitations;
d. Specification of any other powers or authority conferred upon the guardian; and
e. Specification of limitations by the court upon the rights and privileges of the ward in matters not governed by powers of the guardian, such as voting, marriage, and driving.

4. The letters must issue to the guardian. The court shall mail copies to the ward and the ward's counsel.

30.1-28-06. (5-306) Termination of guardianship.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, except, the guardian may arrange for a deceased ward's final disposition and refer the ward's estate to probate, if no other person is available to perform those acts, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the ward.

30.1-28-07. (5-307) Change in or termination of guardianship.

1. The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated or no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that the duties and authority of the guardian require modification, or change in the duties and authority of the guardian. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 30.1-28-09.1. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
2. Before changing the guardian's duties and authority, accepting the resignation of a guardian, or on finding that the ward is no longer incapacitated, or no longer incapacitated to the same extent and ordering the guardianship terminated or modified, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the place where the ward resides or is detained, to observe conditions and report in writing to the court.
3. A hearing must be held no later than sixty days following the filing of the petition or informal request, unless good cause is shown. Following the hearing, the court shall make written findings of fact. Before terminating or modifying the guardianship, the court shall find by a preponderance of the evidence that the ward is no longer incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.
4. In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.
5. On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section 30.1-28-09.1. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice to those identified in section 30.1-28-09.1.

6. The court may order a guardian to be listed on a registry if the court removed the guardian for good cause. A guardian listed on the registry is disqualified from acting as a guardian in any guardianship proceeding. The court shall send a copy of the order to the state court administrator, who shall maintain and administer the registry. This subsection does not apply to a licensed guardian. For purposes of this subsection, a licensed guardian includes a guardian whose license has been suspended but excludes a guardian whose license is revoked.

30.1-28-07.1. Removal, resignation, or death of guardian - Appointment of successor guardian.

1. The court may remove a guardian on its own motion or on petition of the ward or any interested person if removal is in the best interests of the ward. A request for this order may be made by informal letter to the court or judge. The clerk of district court shall send a copy of the informal request to the parties and those identified in section 30.1-28-09.1. Any person that knowingly interferes with the transmission of a request under this section may be adjudged guilty of contempt of court.
2. The court may accept the resignation of a guardian upon petition by the guardian.
3. Upon the death of a guardian, the personal representative of the guardian shall submit a final report and accounting to the court. Upon removal or resignation of the guardian, the guardian shall submit a final report and accounting to the court. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice to those identified in section 30.1-28-09.1.
4. A hearing must be held no later than sixty days following the filing of the petition or informal request, unless good cause is shown. Following the hearing, the court shall make written findings of fact and conclusions of law.
5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own motion or upon a motion filed by any interested person, may appoint a successor guardian or make any other appropriate order.
6. A notice of motion must accompany the motion for appointment of successor guardian and must include a statement that provides an opportunity for hearing if requested in regard to the appointment of a successor guardian. The notice of motion and motion must be served on those identified in section 30.1-28-09.1.
7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court may sign an order appointing a successor guardian for that ward.

30.1-28-08. (5-308) Visitor in guardianship proceedings.

Repealed by S.L. 2025, ch. 318, § 28.

30.1-28-09. (5-309) Notices in guardianship proceedings.

1. In a proceeding for the appointment of a guardian and, if notice is required, for the appointment of an emergency guardian, notice of hearing shall be given by the petitioning party, unless otherwise directed by the court, to each of the following:
   a. The ward or the proposed ward and the ward's or proposed ward's spouse, parents, and adult children;
   b. Any person, corporation, or institution who is serving as the ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the ward's care and custody;
   c. If no other person is notified under subdivision a, then the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative; and
   d. The attorney for the proposed ward, the visitor, and the expert examiner, together with a copy of the respective order of appointment for each.

2. The petitioning party, unless otherwise directed by the court, shall cause notice to be served personally on the ward or proposed ward, and the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or proposed ward must be given as provided in section 30.1-03-01.
3. The notice must be printed with not less than double-spaced twelve-point type. The notice must inform the ward or proposed ward of the ward's or proposed ward's rights at the hearing and must include a description of the nature, purpose, and consequences of an appointment of a guardian.

30.1-28-09.1. Notices in guardianship proceedings subsequent to appointment.

Notice in a guardianship proceeding subsequent to appointment of a guardian must be given to the parties, the conservator, if any, the ward, and any interested persons designated in the order of the court.

30.1-28-10. (5-310) Temporary guardians.

Repealed by S.L. 2013, ch. 250, § 3.

30.1-28-10.1. Emergency guardian.

1. On petition by a person interested in the alleged incapacitated individual's welfare, the court may appoint an emergency guardian if the court finds that compliance with the procedures of this chapter likely will result in substantial harm to the alleged incapacitated individual's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances. The court may appoint the guardian for a specified period of time, not to exceed ninety days. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a guardian ad litem to advocate for the best interests of the alleged incapacitated individual in the proceeding and any subsequent proceeding. The court shall hold a hearing within ten days of the filing of the petition to determine if appointment of an emergency guardian is appropriate.
2. An emergency guardian may be appointed without notice to the alleged incapacitated individual and the alleged incapacitated individual's guardian ad litem only if the court finds from affidavit or other sworn testimony that the alleged incapacitated individual will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual and the individual's spouse, if any, and any other person the court directs must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment.
3. If a conservator has not been appointed for the alleged incapacitated individual and the emergency guardian has authority for financial decisionmaking, the court's order of appointment must state that the guardian shall safeguard any assets held by the alleged incapacitated individual and, during the period of appointment and subject to any further order of the court, may expend the individual's assets only for the necessary support and care of the individual.
4. Appointment of an emergency guardian, with or without notice, is not a determination of the alleged incapacitated individual's incapacity.
5. The court may remove an emergency guardian at any time. An emergency guardian shall make any report the court requires. In all other respects, the provisions of this chapter concerning guardians apply to an emergency guardian.
6. The petitioner may request the court extend the emergency order for up to an additional ninety days upon good cause shown. The request must be filed with the court at least fourteen days before the expiration of the emergency order and served on the alleged incapacitated individual, the individual's spouse, if any, and any other persons as the court directs. The court shall hold a hearing on the appropriateness of

the extension within ten days of the request. No additional extensions of the emergency guardianship may be granted.

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:
   a. A person nominated by the incapacitated person prior to being determined to be incapacitated, when nominated by means other than provided in subsection 2, if the incapacitated person is fourteen or more years of age and, in the opinion of the court, acted with or has sufficient mental capacity to make an intelligent choice.
   b. The spouse of the incapacitated person.
   c. An adult child of the incapacitated person.
   d. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
   e. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition.
   f. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
   g. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
   h. Any appropriate government agency, including human service zones, except as limited by subsection 1.
   i. A person nominated by the person who is caring for or paying benefits to the incapacitated person.
4. With respect to persons having equal priority, the court shall select the one it deems best qualified to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority.

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

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. 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 shall:
   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 those identified in section 30.1-28-09.1. The guardian shall exercise care to conserve any excess for the ward's needs.
   c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:
      (1) The real property of the ward; or
      (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
   d. Move the court under section 30.1-28-03.2 for authority to lease the real or personal property of the ward.
   e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.
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.
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.

9. Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to those identified in section 30.1-28-09.1. 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.
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.
11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that duty.
12. A guardian is not liable for the acts of the ward, unless the guardian is grossly negligent as defined in section 1-01-17.
13. A guardian is not required to expend personal funds on behalf of the ward solely by reason of the guardian relationship.
14. A guardian who exercises reasonable care in selecting an individual to provide medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the individual.

30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.

If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply.

30.1-28-12.2. Restrictions on visitation, communication, and interaction with the ward - Removal of restriction.

1. If it is in the best interests of the ward, a guardian may restrict visitation, communication, and interaction with the ward.
2. A family member, friend, the ward, clergy member, attorney, agency charged with the protection of vulnerable adults, or other interested person may move the court to remove the restriction on visitation, communication, and interaction with the ward.
3. The motion must state:
   a. The movant's relationship to the ward;
   b. Whether the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward; and

c. The facts supporting the movant's allegation that the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward.

4. The movant shall serve the motion on those identified in section 30.1-28-09.1.
5. The court shall set a hearing on the motion and provide notice of the hearing to the movant and those identified in section 30.1-28-09.1.
6. The court shall take into consideration the ward's wishes, and may conduct an in-camera interview with the ward and appoint a visitor or guardian ad litem.
7. If the court grants the motion for visitation, communication, or interaction, the court may impose conditions on visitation, communication, and interaction between the restricted party and the ward.
8. If the visitation, communication, or interaction is not in the best interests of the ward, the court may prohibit visitation, communication, or interaction between the restricted party and the ward.
9. The court may award reasonable costs and attorney's fees to the prevailing party if the court finds:
   a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted visitation, communication, or interaction between the restricted party and the ward; or
   b. The motion was frivolous.
10. Costs and attorney's fees awarded against the guardian may not be paid from the ward's estate.
11. If a movant for visitation, communication, and interaction states the ward's health is in significant decline or the ward's death may be imminent, the court shall conduct an emergency hearing on the motion as soon as practicable but not later than fourteen days after the date the motion is filed or at a later date upon a showing of good cause.

30.1-28-13. (5-313) Proceedings subsequent to appointment - Venue.

1. The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship, including proceedings to limit the authority previously conferred on a guardian, or to remove limitations previously imposed.
2. If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation, removing a guardian, or altering a guardian's authority shall be sent to the court in which acceptance of appointment is filed.

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 8 of section 30.1-28-12.

30.1-28-15. Appointment of successor guardian.

Repealed by S.L. 2025, ch. 318, § 28.

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

1. A guardian, upon notice and hearing, may request authorization from the court to consent to a ward to be treated with prescribed mood stabilizer or antipsychotic

medication. The petition may be considered by the court in the initial procedure for court appointment of a guardian or at a separate involuntary treatment hearing pursuant to section 30.1-28-17. Upon filing a petition, the court shall set a hearing date on the issues and appoint an attorney guardian ad litem for the ward.

2. The guardian, as part of the petition, shall provide a report from the treatment expert examiner, treating physician, physician assistant, clinical nurse specialist, or advanced practice registered nurse which must certify:
   a. The ward is a person requiring treatment;
   b. The proposed prescribed mood stabilizer or antipsychotic medication is clinically appropriate and necessary to effectively treat the ward;
   c. The ward was offered the treatment and refused;
   d. The prescribed mood stabilizer or antipsychotic medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
   e. The benefits of the treatment outweigh the known risks to the ward.
3. Evidence of the factors certified under subsection 2 may be presented to the court within the petition, during the initial hearing for court appointment of a guardian under section 30.1-28-03, or at a separate involuntary treatment hearing under section 30.1-28-17. Involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be authorized by the court solely for the convenience of the facility staff or for the purpose of punishment. The court in ruling on the requested authorization to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication shall consider all relevant evidence presented at the hearing including:
   a. The danger the ward presents to self or others;
   b. The ward's current conditions;
   c. The ward's treatment history;
   d. The results of previous medication trials;
   e. The efficacy of current or past treatment modalities concerning the ward;
   f. The ward's prognosis; and
   g. The effect of the ward's mental condition on the ward's capacity to consent.
4. If the factors certified under subsection 2 have been demonstrated by clear and convincing evidence, the court may include a finding in its findings on the petition, or issue a separate order after notice and hearing, authorizing the guardian to provide consent to the treating medical professional to involuntarily treat the ward with prescribed mood stabilizer or antipsychotic medication. The order to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be in effect for more than ninety days, unless specifically authorized by the court.

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

1. The involuntary treatment with prescribed mood stabilizer or antipsychotic medication hearing must be held within three business days of the date of the filing of the petition unless waived by the ward or the ward has been released as a person not requiring treatment. The court may extend the time for hearing for good cause.
2. 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.
3. At the hearing, evidence in support of the request must be presented by the guardian or guardian's 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.
4. All individuals not necessary for the conduct of the proceeding must be excluded, however, individuals having a legitimate interest in the proceeding may be admitted by the court. The hearing must be conducted as informal as practicable, but the issue must be tried as a civil matter.
5. 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 is upon the petitioner to rebut the presumption in support of the petition. If the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition.

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

An initial order for a guardian to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not exceed ninety days, unless the court is presented with evidence that the ward will continue to require treatment beyond the ninety-day period with the prescribed medication and the ward has historically declined treatment with subsequent harm to self or others. If the court determines the ward will continue to require treatment beyond the ninety-day period and orders continuing treatment, the order for a guardian to consent to continuing treatment may not exceed the term of the appointment of the guardian.

30.1-28-19. Application.

This chapter does not limit the use of medications pursuant to sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, or prohibit a hospital or treatment facility from rendering medical care without consultation, if care is immediately necessary and delay would endanger the life of or adversely and substantially affect the health of the ward or others.