

2025 SENATE JUDICIARY

SB 2029

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2029
1/13/2025

Relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.
--

11:27 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Guardianship program consolidation
- Oversight and accountability mechanisms
- Funding for guardianship services
- Role of the judicial branch

11:27 a.m. Adam Mathiak, Legislative Council Fiscal Analyst, testified as neutral.

11:33 a.m. Senator Roers testified in favor.

11:39 a.m. Cynthia M. Feland, District Judge and Chair Task Force on Guardianship Monitoring of South-Central Judicial District, testified in favor and submitted testimony #28561 and #29348.

12:16 p.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Testimony Prepared for the
Senate Judiciary Committee

January 13, 2025

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: SB 2029: Related to Guardianships

Chair Larson, and members of the Senate Judiciary Committee, my name is Kim Jacobson, I am the Director for the Agassiz Valley Human Service Zone, which includes the counties of Traill and Steele Counties. In addition, I serve as President of the North Dakota Human Service Zone Director Association. I am here today to express my support for SB 2029 and request consideration of amendment.

As provided for in NDCC Chapter 50-01, human service zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS) to perform an array of human service duties. This includes legal custodian responsibilities for children in our public foster care system (NDCC 50-01.1-06). Legal custodian duties are specifically assigned to human service zone directors and are considered a core duty.

In North Dakota, there is a specialty foster care program, known as URM. This program has been in operation for over 40 years. This program is provided through a federal grant. Agassiz Valley Human Service Zone serves as the federal sub-recipient grantee to administer and deliver the URM program in North Dakota through a contract with NDHHS. As the Agassiz Valley Human Service Zone Director, I serve as the legal guardian of youth served by this program in North Dakota consistent with NDCC 30.1-27 in addition to serving as legal custodian of foster children served by the human service zone. The NDHHS - Office of Refugee Services provides lead programmatic supervision for the URM grant. NDHHS – Children and Family Services Division provides lead programmatic supervision for the regular foster care program.

Both divisions work closely with Agassiz Valley Human Service Zone in the delivery of custodial/guardianship services.

As a system, human service zones have a unique relationship with NDHHS beyond programmatic supervision. For example, NDCC 50-01.1-09 requires the Department to have a minimum of (2) representatives on the hiring committee for a human service zone director. In addition, the Executive Director of the Department of Human Services must give specific approval prior to any offer of employment being made to a prospective human service zone director. In addition, the Department has official feedback in the annual performance evaluation of each human service zone director. Therefore, there is existing high-level oversight and engagement of the Department in the delivery of custodial/legal guardianship related duties at the human service zone level.

Based on the unique relationship and legal responsibilities already outlined for human service zone directors in performing legal custodian/guardianship duties, the provisions outlined in SB 2029 may not be a good fit for human service zone directors, the Department, as well as the proposed Office for Guardianship and Conservatorship. For these reasons, I respectfully request consideration of amendment to SB 2029. Specifically, I call your attention to page 5 of the bill starting with line 13 (27-27.1-05). This section could be amended by listing human service zones and/or human service zone directors as an exemption.

Thank you for consideration of my testimony regarding Senate Bill 2029. I stand for questions from the committee.

PROPOSED AMENDMENT

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
 - 18 2. "Board" means the guardianship and conservatorship review board.
 - 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security
21 number, electronic mail address, program identification number, or any other unique
22 identifying number, characteristic, or code, and any demographic information collected
23 about the individual.
- 24

1 4. "Investigation counsel" means the guardianship and conservatorship counsel.

2 5. "Licensed conservator" means a person licensed by the office to provide
3 conservatorship services.

4 6. "Licensed guardian" means a person licensed by the office to provide guardianship
5 services.

6 7. "Office" means the office of guardianship and conservatorship.

7 8. "Public conservator" means a conservator under contract with the office to provide
8 conservatorship services for an individual eligible for public services.

9 9. "Public guardian" means a guardian under contract with the office to provide
10 guardianship services for an individual eligible for public services.

11 10. "Public services" means state or federally funded programs available to eligible
12 individuals.

13 11. "Unlicensed conservator" means a person providing conservatorship services without
14 a conservator license.

15 12. "Unlicensed guardian" means a person providing guardianship services without a
16 guardian license.

17 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
18 **duties - Report - Audit.**

19 1. The office of guardianship and conservatorship is created as a division under the
20 supreme court to administer the programs assigned by state law or the supreme court.

21 2. The office shall:

22 a. Develop policies and procedures, including eligibility criteria, for:

23 (1) Receiving public services;

24 (2) A public guardian or a public conservator;

25 (3) A licensed guardian or a licensed conservator; and

26 (4) Distribution of funding for direct payments and expense reimbursements for
27 public services.

28 b. Develop ethical standards for:

29 (1) A licensed guardian or a licensed conservator; and

30 (2) An unlicensed guardian or an unlicensed conservator.

31 c. Develop policies and procedures for proceedings when a guardian or a
32 conservator is unable to fulfill the duties of a guardian or a conservator.

- 1 d. Keep accurate records of all financial transactions performed under this chapter
- 2 in the manner required by the office of management and budget.
- 3 e. Provide a report each biennium to the legislative management regarding the
- 4 operations of the office, including the cost of public guardians and public
- 5 conservators, and any other information requested by the legislative
- 6 management.
- 7 3. The office may:
- 8 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 9 b. Grant licenses to a guardian or conservator and agency permits, including
- 10 revoking or suspending an agency permit.
- 11 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 12 conservator as a condition for licensure.
- 13 d. Establish mandatory disclosure and reporting requirements for a licensed
- 14 guardian or a licensed conservator, including a process to disclose information or
- 15 submit reports to the office.
- 16 e. Provide training for guardians and conservators.
- 17 f. Monitor guardianship and conservatorship services.
- 18 g. Provide annual reports to the supreme court.
- 19 h. Distribute funding for direct payments, expense reimbursements, or other public
- 20 services, including funding for public administrators.
- 21 i. Establish and collect fees to support guardianship and conservatorship services
- 22 and the duties of the office, which must be deposited in the guardianship and
- 23 conservatorship support fund.
- 24 j. Seek and apply for private, federal, or other funds to help support guardians and
- 25 conservators and to safeguard the rights of individuals who receive public
- 26 services.
- 27 k. Accept private funds for deposit in the guardianship and conservatorship support
- 28 fund.
- 29 4. The office may not authorize payment for services for any public guardian or public
- 30 conservator that provides services for more individuals than allowed through statute,
- 31 regulation, court rule, or policy adopted by the office.

1 5. The office, its officers, or its employees, may not act as a public guardian or a public
2 conservator or act in any other representative capacity for any individual. This
3 subsection does not prohibit an officer or employee from acting as a guardian or
4 conservator in a personal capacity apart from any duties as an officer or employee.

5 6. The office is subject to audits by the state auditor under chapter 54-10.

6 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
7 **appropriation.**

8 There is created in the state treasury the guardianship and conservatorship support fund.
9 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
10 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
11 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
12 branch to defray the expenses of the office for supporting guardianship and conservatorship
13 services, including guardianship and conservatorship training and monitoring.

14 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

15 1. Identifiable information concerning an individual who is applying for or receiving public
16 services under this chapter is confidential and may be disclosed only:

17 a. In the administration of any program under the supervision or administration of
18 the office.

19 b. When authorized by a policy or procedure of the office.

20 c. When allowed or required by rule or law.

21 2. A report concerning an applicant, provider, or recipient of public services is confidential
22 if the report is made in good faith and may be disclosed only to:

23 a. Authorized staff and agents of the office, who may further disclose the
24 information to a person that has a definite interest in the well-being of the
25 individual concerned, is in a position to serve the individual's interests, and that
26 needs to know the contents of the records to assure the well-being and interests
27 of the individual concerned.

28 b. An individual who is the subject of the report, if the identity of the person
29 reporting or supplying information under this chapter is protected until the
30 information is needed for use in an administrative, legal, or disciplinary
31 proceeding arising out of the report.

c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.

d. A court when the court determines the information is necessary for the determination of an issue before the court.

e. The investigation counsel.

3. Investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation when investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

27-27.1-05. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

3. A person may represent to the public that the person is licensed to provide public services only if the person is a licensed guardian or a licensed conservator.

4. This section does not apply to:

a. A federal or state agency; or

b. A financial institution under section 6-08.1-01 when appointed as a conservator.

5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

27-27.1-06. Immunity.

A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.

27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.

1. The supreme court has original jurisdiction to revoke or suspend a guardian or a conservator license.

2. The district court has original jurisdiction over licensure denial appeals.

1 3. The courts shall waive court costs and filing fees in any proceeding in which a person
2 is receiving public services under this chapter.

3 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
4 the applicable policies, procedures, and standards of the office, or other approval
5 authority authorized by court rule, if the guardian or the conservator serves an adult
6 ward, adult protected person, or incapacitated person, as defined in title 30.1.

7 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
8 **conservatorship counsel.**

9 1. The supreme court may establish a guardianship and conservatorship review board to
10 conduct disciplinary proceedings for a guardian or conservator.

11 2. The supreme court may appoint a guardianship and conservatorship counsel to
12 investigate noncompliance reported under this chapter.

13 **27-27.1-09. Supreme court - Discretionary powers.**

14 The supreme court may:

15 1. Grant immunity to a member of the board and the board's agents if a district court or
16 the supreme court would have immunity in performing the same functions.

17 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

18 3. Authorize officials, officers, agents, and designees of the office, the board, and the
19 investigation counsel to:

20 a. Administer oaths.

21 b. Order and otherwise provide for the inspection of books and records.

22 c. Issue subpoenas for the attendance of witnesses and the production of
23 designated documents, electronically stored information, or tangible things in
24 accordance with the North Dakota Rules of Civil Procedure.

25 d. Order the deposition of a person residing within or outside the state to be taken in
26 accordance with the North Dakota Rules of Civil Procedure.

27 4. Adopt rules to effectuate the powers and duties under this chapter.

28 **27-27.1-10. Attorney general – Counsel - Bureau of criminal investigation - Primary**
29 **authority for investigations.**

30 1. The attorney general shall act as legal counsel in any particular investigation or
31 proceeding under section 54 12 02. The attorney general shall appear and defend any
32 officer or employee of the office and any member of the board in any action founded

1 on an act or omission arising out of performance of an official duty consistent with
2 section 54 12 01.3.

3 2. Pursuant to chapter 54-12, the attorney general and bureau of criminal investigation
4 have primary authority to investigate criminal cases related to a guardianship or
5 conservatorship.

6 **27-27.1-11. Duty to disclose and cooperate.**

- 7 1. A state and local governmental entity and its officers and employees, and the officials,
8 officers, and employees of the courts of this state shall disclose records and
9 information requested by the board or investigation counsel or any authorized
10 representative of the board or investigation counsel and shall cooperate with and give
11 reasonable assistance to the board or investigation counsel and any authorized
12 representative of the board or counsel unless prohibited by federal regulation or law.
13 2. The service of process extends to all parts of the state in any investigation or
14 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
15 process and execute all lawful orders upon request of the office, its authorized
16 representative, the board, or the investigation counsel.

17 **27-27.1-12. Duties of witnesses - Penalty.**

- 18 1. An individual is obliged to attend as a witness in any investigation or disciplinary
19 proceeding commenced under this chapter.
20 2. If a person refuses to attend, testify, or produce any writings or things required by
21 subpoena, the office, board, or investigation counsel that issued the subpoena may
22 petition the district court ~~overseeing the guardianship or conservatorship proceeding at~~
23 issue of the district in which the attendance or production is required for an order
24 compelling a person to attend and testify or produce the writings or things required by
25 the subpoena. The court shall order a person to appear before the court at a specified
26 time and place to show cause why the person has not attended, testified, or produced
27 the writings or things as required. A copy of the order must be served on the person. If
28 the court determines the subpoena was regularly issued, the court shall order a
29 person to appear at the time and place fixed in the order and testify or produce the
30 required writings or things.
31 3. An individual who fails to obey an order under this section is guilty of a class A
32 misdemeanor.

27-27.1-13. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.
2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.
3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 2. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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 is inapplicable to licensed guardians. For purposes of this subsection, a licensed guardian includes a guardian whose license has been suspended but excludes a guardian whose license is revoked.

Clarification
on why offense

SECTION 3. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship proceeding. The court shall send a copy of the order to the state court administrator, who shall maintain and administer the registry. This subsection is inapplicable to licensed conservators. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

1 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. On the death of any recipient of medical assistance who was a resident of a nursing
4 facility, intermediate care facility for individuals with intellectual disabilities, or other
5 medical institution and with respect to whom the department determined that resident
6 reasonably was not expected to be discharged from the medical institution and to
7 return home, or who was fifty-five years of age or older when the recipient received the
8 assistance, and on the death of the spouse of the deceased recipient, the total amount
9 of medical assistance paid on behalf of the recipient following the institutionalization of
10 the recipient who cannot reasonably be expected to be discharged from the medical
11 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
12 allowed as a preferred claim against the decedent's estate after payment, in the
13 following order, of:
 - 14 a. Recipient liability expense applicable to the month of death for nursing home or
15 basic care services;
 - 16 b. Funeral expenses not in excess of three thousand five hundred dollars;
 - 17 c. Expenses of the last illness, other than those incurred by medical assistance;
 - 18 d. Expenses of administering the estate, including attorney's fees approved by the
19 court;
 - 20 e. Claims made under chapter 50-01;
 - 21 f. Claims made under chapter 50-24.5;
 - 22 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
 - 23 h. Claims made under chapter 27-27.1; and
 - 24 i. Claims made under subsection 4.

25 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

26 **SECTION 6. APPROPRIATION – ONE-TIME FUNDING – JUDICIAL BRANCH - OFFICE**
27 **OF GUARDIANSHIP AND CONSERVATORSHIP.**

- 28 1. The funds provided in this section, or so much of the funds as may be necessary, are
29 appropriated out of any moneys in the general fund in the state treasury, not otherwise
30 appropriated, to the judicial branch for the purpose of defraying the expenses of the
31 office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and
32 ending June 30, 2027, as follows:

Sixty-ninth
Legislative Assembly

1	Salaries and wage – agents	\$960,000
2	Operating expenses – agents	322,000
3	Establishment costs - indigents	1,550,000
4	Establishment costs - developmentally disabled	1,296,400
5	Public guardian and conservator fees - indigents	8,638,020
6	Guardianship contracts - developmentally disabled	<u>6,835,136</u>
7	Total general fund	\$18,319,556

8 Full-time equivalent positions 4

9 2. The following amounts reflect the 2025-27 biennium one time funding items included in
10 the appropriation under subsection 1, which are not part of the entity's base budget for
11 the 2027-29 biennium:

12	Agent equipment	\$322,000
13	Total general fund	<u>\$322,000</u>

14 3. The judicial branch shall report to the appropriations committees of the seventieth
15 legislative assembly on the use of the one-time funding under subsection 2.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Peace Garden Room, State Capitol

SB 2029
1/13/2025

Relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

2:54 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Senators: Paulson, Castaneda, Cory, Luick, Myrdal, Braunberger

Discussion Topics:

- Funding allocation and appropriations
- Waiting list for guardianship services
- Professional guardianship oversight
- Training and education

2:55 p.m. Cynthia M. Feland, District Judge and Chair Task Force on Guardianship Monitoring of South Central Judicial District, testified in favor and referenced previous testimony #28651.

3:19 p.m. Melissa Hauer, General Counsel/VP, North Dakota Hospital Association (NDHA), testified in favor and submitted testimony #28792.

3:26 p.m. Kimberly K. Jacobson, Director, Agassiz Valley Human Service Zone, testified in favor and submitted testimony #28561.

03:31 p.m. Margo Haut, President & Director, GAND Guardian Angels Inc., testified in opposition and submitted testimony #28545.

3:45 p.m. Melanie Gaebe, North Dakota Public Policy Director, testified as neutral and submitted testimony #28808.

3:49 p.m. Donna Byzewski, Program Director, Guardianship for individuals with Intellectual Disabilities, testified as neutral and submitted testimony #28589.

3:55 p.m. Scott Bernstein, Guardian and Protective Services, testified as neutral and submitted testimony #28631.

04:11 p.m. Chair Larson adjourned.

Kendra McCann, Committee Clerk

Senate Judiciary Committee | Senator Diane Larson - Chairman
Testimony via Senate Bill 2029| January 13, 2025

Chairman Larson & Members of the Senate Judiciary Committee, my name is Margo Haut, Founder and Co-Director of Guardian Angels, Inc., a nonprofit corporation located in Jamestown, ND. I also am a Member & the current President of the Guardianship Association of ND (GAND).

Members of GAND consist of professional guardians & family guardians. To provide guardianship services in ND, professional guardians must obtain the national certification per the Center of Guardianship Certification along with state certification via the Court. The Guardianship Association of ND has had a unique opportunity & professional relationship over this past decade working with the Courts in launching much needed legislation including Rule 59. This professional working relation continues today via SB 2029.

From GAND's perspective, the vision of drafting Senate Bill 2029 consisted of legislation that would create an oversight of professional guardians & reduce current waitlists. SB 2029 does not meet this expectation. Based on feedback from the Members of GAND, as President, I have great concern that the passing of SB 2029 will result in even fewer professional guardians in ND.

To reiterate, GAND respects that our current oversight is not the answer. Nor is Senate Bill 2029. As professional guardians, not only do we have a professional working relationship with the Courts, but we also answer to the Courts. GAND knows professional guardians need oversight, it's crucial that the oversight has a full understanding of what we do in our day-to-day work.

GAND requests consideration to slow down the timeline per the following:

- Members of GAND support the creation of the Office of Guardianship & Conservatorship with the suggestion that the PASS Program & funding via CCND remain active for the next biennium allowing time to establish the necessary systems, policies & procedures of the Office of Guardianship & Conservatorship. If feasible, it would be advantageous to designate a Pilot Program allowing GAND Members the opportunity to observe, participate and/or assist in establishing a successful transition to the Office of Guardianship & Conservatorship.

GAND respects the process of SB 2029 setting the structure with the specifics being addressed via its Rules. However, as it currently stands, GAND has more questions than answers:

- What are the contents or expectations of a “Contract”? | Pg 2 #8&9
- What’s the difference between a licensed guardian, public guardian and public administrator? | Referenced throughout SB 2029
- What are the contents & regulations of an “agency permit?” | Pg 3 #3-b
 - Is this different from the license mentioned?
 - How is this different from the requirements in Rule 59?
- Are individuals or professional guardianship agencies being sought to serve as guardians?
- Who will manage the referrals? | No Reference via SB 2029
- There is a cycle of money that is not clear:
 - What is the support fund? And what is the source of the private funds? Pg 3 #3-k
 - Under preferred claim, what would require the office to make a claim against the protected person’s estate? Pg 8 27-27.1-13.
 - What would require reimbursement? Pg 8 27-27.1-13.
- Budget refers to public guardians – is that licensed guardians? Pg 9 #30
 - Or is this the fall back for when no entity accepts cases?

GAND acknowledges there is a shortage of guardians in ND. Currently, SB 2029 is not designed to build-up and support this need. As President, I reiterate, this will have a direct impact as Professional Guardians across ND are watching and hoping that this Committee doesn’t rubberstamp SB 2029 but assesses what’s behind the paper...Professional Guardians serving thousands of Protected Persons, residents of our great state of ND!

Thank you for your time and consideration. I’d be happy to answer any questions.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

To: Senate Judiciary Committee
From: Donna Byzewski
Date: Jan 13, 2025
Re: Senate Bill 2029 - Office of Guardianship and Conservatorship

Chairman Larson and members of the Senate Judiciary Committee, my name is Donna Byzewski and I am the Program Director of the corporate guardianship program for individuals with intellectual disabilities at Catholic Charities North Dakota. I am respectfully offering input highlighting the positive aspects of SB 2029 as well as areas where further exploration and study may be a consideration.

For more than 37 years, the Developmental Disabilities (DD) Division has contracted with Catholic Charities ND to provide guardianship services on behalf of adults with intellectual disabilities. Our current contract includes funding to serve 529 individuals. As of today, we are serving as legal guardian for 522 individuals with intellectual disabilities. It is important to note that many adults with intellectual disabilities are their own decision maker. However, there are critical times when a person may need the services of a guardian, and if no one else is available or appropriate, corporate guardianship is a necessity. Corporate guardianship is the guardian of last resort. Our contract with the DD Division specifies that Catholic Charities ND can only accept referrals from Developmental Disabilities Program Managers from the regional human service centers in North Dakota. We have a waiting list of 142 people at this time.

SB 2029 has several positive aspects:

- It is a guardian's primary duty and responsibility to act in the best interest of the individuals under guardianship and to safeguard their health and safety. SB 2029 promotes the best interest of individuals

served by establishing policies, procedures and ethical standards of practice for guardians to follow.

- As guardians, we are very aware of the depth of our responsibilities as we are serving people who are vulnerable and at risk of harm. SB 2029 emphasizes guardian accountability as guardians, the court, family members and individuals under guardianship expect guardians to be well-trained, ethical and responsible. If a guardian or professional guardianship service provider abuses, neglects or exploits an individual(s) under guardianship or routinely neglects their duties, SB 2029 gives the court the tools to protect the individual and remove the guardian or professional guardianship service provider in a timely manner. In the past, it would often take months if not years to make this happen.

I respectfully offer three areas for further exploration:

- SB 2029 requires the creation of an Office of Guardianship and Conservatorship. The appropriation of \$18,319,556 pulls all legislative funding for guardianship related services into one pool. There is no funding for the Office of Guardianship and Conservatorship included in SB 2029. It is very worrisome to guardianship service providers that the expected cost of \$2.2 million for the Office of Guardianship and Conservatorship may inadvertently come out of the above appropriation of \$18,319,556 which would have an immediate and extremely negative impact on individuals served as well as guardianship service providers.
- I have been a professional corporate guardian for 35 years and the provision of quality, ethical and responsible guardianship services is of utmost importance to me. Having a mechanism or process to follow if a guardian or guardianship service provider is not fulfilling their duties is critical. That said, there are aspects of the review board that concern me. The review board appears to assume a guardian's guilt as evidenced by the need for subpoenas and depositions. To protect themselves, guardians and guardianship service providers will need to hire attorneys

to protect their staff during this process which will be expensive. There are only a handful of guardianship service providers in North Dakota and all are non-profits. The funding they receive goes toward the provision of direct guardianship services to individuals. The review board will have counsel as well as the Attorney General office to assist in carrying out its duties – guardians and guardianship service providers are outgunned and at a disadvantage from the get-go. It is my fear that the increased legal expenses for guardianship service providers could be devastating to their budgets which already operate on very thin margins.

- While I agree with the need for a review board for possible cases of neglect, abuse or exploitation by a guardian, I believe that there should be a focus on a vigorous education and training program for guardians and guardianship service providers. By giving them the opportunity to improve their services, if appropriate, rather than removing them from the guardianship would lead to positive outcomes such as guardians knowing the expectations and requirements and better meeting the needs of the individuals served; education may reduce the number of complaints towards guardians as they will be better trained; and if the focus is solely on disciplining guardians or is more punitive in nature, then good guardians may leave the profession when there already exists a shortage of people willing to take on the comprehensive and complex duties of a guardian.

Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

SB 2029
Senate Judiciary Committee
Testimony Presented by Scott Bernstein, NCG
Executive Director of Guardian and Protective Services
January 13, 2025

Chairman Larson, members of the Senate Judiciary Committee, I am Scott Bernstein, Executive Director of Guardian and Protective Services and a member of the Task Force on Guardianship Monitoring and serve on the Guardianship Association of North Dakota board.

The work of the Taskforce, under the leadership of Judge Feland, has been commendable. Believe me, that word doesn't begin to capture the moral compass and commitment of the members. Everyone has been focused on assuring our most vulnerable citizens are guarded, afforded the greatest degree of autonomy based on their capacity and never, never exploited.

Guardian and Protective Services have been ethically and sacrificially serving vulnerable adults since 1996. Not just as Professional Guardians but as the Court Appointed Public Administrator for eight counties. We have consistently governed our practice according to Rule 59. I stand on the shoulders of my predecessors who have consistently beat the drum of accountability and living out our commitment with the highest ethical standards. GaPS was an active participant in the Winsor Schmidt Report completed in 2012. We have never shied away from accountability.

As you read through this bill, I would encourage you to put yourself in the place of a guardian. After all, this entire bill is focused on The Guardian. Ethical guardians are unwavering in their commitment to accountability. When it has been shown that a guardian is acting in their own personal interest and not the best interest of the protected person, they should be removed. End of story.

However, the Office of Guardianship and Conservatorship is a complex mechanism to achieve accountability. Read the bill and you will see it houses a review board and an investigation council. It will license, establish a registry, grant permits, seek private and federal funding, and accept private funds. Authorize payment, establish regulations, rules and policies, possibly assess fees, draft appropriations, establish caseloads. Engage in administrative, legal and disciplinary proceedings pertaining to a guardian. The OGC is protected by immunity while a guardian can be sued for the actions of a protected person. The OGC can administer oaths, issue subpoenas for production of documents and appearances of witnesses. It can order depositions. It establishes the Attorney General to act as legal counsel. Given the extent of the legal implications, a guardian or conservator better have an attorney because failure to obey an order is a class A misdemeanor and the list goes on.

Do we need accountability mechanisms? Yes. Is the idea of pooling appropriations for the various facets of guardianship under a clearly defined entity a good step to take? Yes. However, in North Dakota history, there has been nothing enacted by this legislature that will more dramatically change the landscape of guardianship than SB 2029...and that isn't hyperbole.

This bill clearly outlines all the structural elements of the OGC. It has all the goods but there is a baseline disadvantage to the family guardian and the professional provider. I believe the most obvious disadvantage will be in the willingness of family guardians to step into the role of a guardian and the staying power of professional guardians. Keep in mind that guardianship, whether recognized legally or operating informally, has been taking place in North Dakota for decades. Clearly, it hasn't always been done ethically and with the best of intent.

This is why we are here. There are big consequences to not doing something. But it must be said out loud! There will be unintended consequences by passing SB 2029. The bill is the structure. The structure will be covered with rules. Rules will proliferate. Not all bad, but pages of them will be coming – on top of what already exists. More expenses will be incurred.

When looking at this bill you could infer that the 55 professional guardians that are either Certified through the National Guardianship Association and Center for Guardianship Certification or another entity of equal rigor, operate outside the realm of accountability. Nothing could be further from the truth. Certified guardians, much like CPAs, have accountability and ethics top of mind. At the end of this testimony, I have a short list of accountability mechanisms that already exist that the OGC will have minimal or no authority to influence. You can scan through them later. **(See Accountability for Professional Guardians).**

FUNDING: Unfortunately, this bill is not only a bill to establish the OGC it is an appropriations bill to operate guardianship funded through PASS. I hate to get into these weeds but it's in the bill and could create confusion.

SB 2029 focuses on the framework of the OGC **BUT NOT THE FUNDING of the OGC.** The \$2.2 million for the OGC is in Judiciary. The dollars you see listed in **Section 6: Appropriation...** is simply the consolidation of all the dollars that appear in the budgets of other departments related to guardianship. **PLEASE NOTE: The amounts listed in this bill are not the amounts delineated in other appropriations presently under consideration.** In other words, the various departments of government holding the money still have the money and have drafted their own appropriations.

For example, PASS funding, that provides guardianship for people below the poverty line, falls in the OMB budget. This year it is on the docket in HB 1015 Section 1. As you can see from the Governor's Budget we are going backwards from the base level of funding.

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and Wages	\$23,510,218	\$ 6,042,622	\$29,552,840
Operating Expenses	18,217,793	10,624,081	28,841,874
Contingency Fund	750,000	(22,500)	727,500
Capital Assets	308,355	7,023,649	7,332,004
Guardianship Grants	7,100,000	(213,000)	6,887,000
Community Service Grants	350,000	(35,000)	315,000
Prairie Public Broadcasting	1,200,000	(36,000)	1,164,000
Deferred Maintenance	0	40,000,000	40,000,000
State Student Internship	0	500,000	500,000

It is listed as Guardianship Grants. Note the amount. \$7.1 was appropriated last session. What we were requesting in the last biennium was \$8.1 million, at a minimum.

The appropriation in the last session was established to cover 596 clients at a daily reimbursement rate of \$20 a day. To date, we have not received \$20 a day. Sadly, you are at a

disadvantage because you have none of the foundational history on which this appropriation is built. I would be more than willing to meet with any of you to walk you through funding details.

On page 9, line 30 of SB 2029: Public guardian and conservator fees- indigent, you see \$8,638,020. As providers, we had minimal input in determining this dollar amount. I find this disconcerting and I hope would not be a foretaste of how the OGC would operate in the future.

Last biennium we indicated that \$8.1 was the baseline funding necessary to maintain a case load of 596 and increase the number of clients served at \$20 a day. As mentioned, we have yet to be reimbursed \$20 a day. The need for guardianship continues to grow and will only increase. Due to inflation and the need to increase the case load, we need \$22 a day with a total appropriation of \$9.1 million. That is \$461,980 more than what is being requested in SB 2029.

I need to be assured that any funds allocated to provide reimbursement for guardianship services and establishment of guardianships are held separately from the operational costs of the OGC. For example, PASS funding should never be used to offset OGC deficits should that ever occur.

I'm putting you on notice. We will be back every year asking for more money. Yet, I can statistically assure you, the Government and Private Provider partnership is still the best return on your investment. Hands down. Yes, Guardianship is a legal issue. But at its core it is a human services issue. Trust me, the OGC will not be awakened at 2:30 AM to make a life altering decision. There is and will continue to be an increasing demand for guardianship. The aging population with cognitive decline, the rise of mental illness, the fractured family and the harsh reality of addictions that impact the brain project an almost alarming future need for guardians.

Last year in a senate floor session Senator Dever put it so well: The devolution of our culture only means the needs in Human Services will increase and so will the dollars spent.

Finally, I am guardedly optimistic that the OGC is a possible solution. For too long there has been a hodgepodge approach that is increasingly difficult to manage and clearly define. However, I would recommend a carefully phased in approach with a focus on training for excellence.

Thank you for listening and I am happy to answer any questions.

(See Challenges Facing The OGC)

A Short List of Existing Forms of Accountability For Professional Guardians

- Complete an annual report on every person under guardianship that is submitted to the Court for review.
- There are five year reviews that must also be completed with hearings.
- Monitored by the Court Monitor.
- Required to submit requests for any possible change in the scope of the guardianship to the Court.
- Required to submit to the Court any requests for the sale or transfer of property of a person under guardianship.
- No co-mingling of funds. A person under guardianship has their account balanced monthly.
- Wellness reports are completed and submitted.
- Requests for PASS reimbursement is done monthly and processed by the ND Association of Counties office.
- We are on a weekly call with Social Security and are audited by Social Security and this audit will be beyond the jurisdiction of the OGC.
- We file claims with Medicare and face similar scrutiny to that of the SSA. This is well beyond the jurisdiction of the OGC.
- Medicaid, managed by ND, requires us to fill out various forms and verifications. This is beyond the jurisdiction of the OGC.
- We complete taxes for clients and are subject to the scrutiny of the IRS.
- GaPS manages the ND Pooled Trust and Third-Party Pooled Trust. This is beyond the scope of the OGC. It is established with strong fire walls between GaPS and the managing bank and transactions require multiple eyes on the transaction and prior approval.
- Guardians are subject to reports made to Adult Protective Services regarding a person under guardianship.
- We report to and inform 'interested persons' regarding the welfare of the person under guardianship.
- We comply with HIPAA and medical providers recommendations for each person under guardianship.
- Case managers that are license social workers are held accountable to the ethical standards established by the Board of Social Work and must fulfill the required CEUs to maintain licensure. Individuals working with individuals with intellectual disabilities are accountable to Protection and Advocacy.
- Guardians are members of the National Guardianship Association and certified by the Center for Guardianship Certification. This requires testing and ongoing CEU hours every year. *A license issued by the State of North Dakota by the OGC will have no reciprocity with any other state. Some guardians are credentialed through an organization specializing in DD Certification.

A VERY short list of the Challenges Facing The OGC

- The shortage of professional guardians in ND. There are fewer than 55. And the numbers are shrinking. Guardianship Association of North Dakota has only 63 members.
- The growing number of family guardians that are seeking to step out of guardianship.
- The increasing exploitation of vulnerable adults by family members and the lack of prosecutorial interest in pursuing the cases. GaPS has uncovered a few million dollars' worth of family exploitation in our 50 years. All have been reported only two were minimally prosecuted.
- The best guess is there could be as many as 4,000 'family' guardians (fulfilling the role informally). Will the OGC put out a welcome mat to these people? Can they streamline a process and de-jargon documents?
- There is a consistent disregard on the part of Banks, Medical Providers, hospitals and law enforcement to honor the Letters of Guardianship for which the guardian will be held accountable. How does the OGC hold other entities accountable for complying with Letters of Guardianship?
- The SB 2029 speaks of licensing, contracting and possible determination of caseloads. There is no clearly defined weighting of cases. An entire system will need to be developed before 'contracting' can begin. Not all cases and clients are created equal. A Grandma needing a guardian is significantly different than a homeless, felon drug addict...their actions could open the door to a third-party lawsuit against the guardian.
- You will hear support for this bill based on extended hospital stays by individuals that could be safely discharged if they had a guardian. As a result, the State is paying large amounts in hospital bills. The problem is obvious, but the OGC is not a guardian, it can't be a guardian nor is it empowered to start a State Office of Guardianship where it hires guardians. To resolve this issue the OGC will have to work to find ways to make guardianship attractive to professionals and doable by family members.
- The accountability of the OGC may require the guardian hire an attorney to represent them. Guardians do not have funds to hire an attorney. On the other hand, the proposed staff of the OGC does have an attorney. As previously noted, much of the OGC is biased against guardians and in favor of legal methods of resolution. This will present a challenge in attracting and retaining guardians. It would be advantageous if the tone of the OGC and bias was toward an emphasis on instructing guardians, assisting them overcome challenges and arbitration rather than legal action.
- The overlapping relationship between the various departments that initiate and provide the services that are necessary to wrap a protected person in services.
- Rules are developed based on structure. The structure of the OGC is comprehensive and legal in nature. It foreseeably will struggle to focus on education rather than 'ruling' guardians.

Senate Bill 2029
Senate Judiciary Committee

Testimony of Cynthia M. Feland
Distirct Court Judge
Chair, Task Force on Guardianship Monitoring
January 13, 2025

Chair Larsom, members of the Senate Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District and chair of the Task Force on Guardianship Monitoring established under Section 27-27-01 of the North Dakota Century Code to address the accountability of guardians and to provide for further protection of individuals under guardianship by recommending to the North Dakota Supreme Court the regulations necessary to enhance the guardianship monitoring program and to investigate suspected guardian mismanagement or illegal behavior. The Government Finance Committee of the 68th Legislative Assembly also indicated its interest in consolidating general fund guardianship programs under one funding umbrella.

To accomplish these duties, the Task Force implemented a four-phased approach to create three independent entities that would all be under the supervision of the Supreme Court. Phase One involves drafting a bill that creates the Office of Guardianship and Conservatorship (OGC) and authorizes the Supreme Court to create the Guardianship and Conservator Review Board (Review Board) and the Office of Guardianship and Conservatorship Counsel (Investigation Counsel). Phase Two involves the recommendation of court rules to the Supreme Court. Phase Three involves establishing policies for these three entities. Phase Four involves the establishment of internal operating procedures and drafting standard forms to be used by the OGC, Review Board, and Investigation Counsel. Appendices 1, 2 and 3 are attached to my testimony illustrating the creation of these entities.

The Task Force coordinated with Legislative Counsel to draft the bill envisioned in Phase One, creating the OGC, which will administer public guardianship and conservatorship programs. The end result is Senate Bill 2029 which was submitted and sponsored by the Government Finance Committee. After submission, the Task Force noted additional language was needed to further the investigative goal of the legislation and is requesting a few amendments to the bill. The proposed amended bill is submitted with my testimony with the amendments reflected in green. Senate Bill 2029.

SECTION 1.

Section 1, the primary section of the bill, creates and enacts Chapter 27-27.1, a new chapter establishing the OGC and outlining its duties and powers.

Section 27-27.1-01. Definitions. This section provides the general definitions for the chapter.

An “agency permit” allows the OGC to grant individual employees of a professional guardianship or conservatorship entity the authority to provide guardian or conservator services without obtaining an individual license. The license would be held by the professional guardianship or conservatorship entity. The permit is “temporary” as the OGC would have the authority to revoke it if the permit holder is found to have committed misconduct.

The Guardianship and Conservator Review Board (Review Board) would be independent of the OGC and function as a hearing panel to adjudicate allegations of misconduct against a guardian and conservator.

“Identifiable information” encompasses personal information provided to the OGC when public services are requested.

“Investigation counsel” is the guardianship and conservatorship counsel, which is independent of both the OGC and the Review Board. The investigation counsel will receive, screen, and investigate allegations of guardian or conservator misconduct.

Conservators and guardians will either be “licensed” or “unlicensed.” Different duties and powers apply to licensed and unlicensed conservators and guardians. The Task Force determined that licensure would create a mechanism for preventing a professional guardian, with the ability to act as guardian for multiple wards in multiple areas of the state, from continuing to provide services following a finding of mismanagement or illegal behavior. Currently, if a professional guardian commits misconduct and is removed in a particular case, there is no clear mechanism to address the other cases in which the professional guardian has been appointed. If professional guardians or conservators are subject to license revocation, then the professional guardian or conservator could be removed in mass, thereby protecting vulnerable people from predatory behavior. Actions taken toward Non-professional or family guardians and conservators would be addressed through a register maintained by the Supreme Court.

The bill also defines public conservator and public guardian. The intent and purpose of public conservators and public guardians is to distinguish those cases where the OGC has “contracted” with another to provide guardianship or conservatorship services for individuals who are eligible for public services but have no one that is able or willing to provide those guardianship or conservatorship services.

Public services are state or federally-funded programs available to eligible individuals. Initially, the OGC will offer four public services for eligible individuals: two covering the payment of guardianship and conservatorship service fees (formerly DD contract and PASS

funding), and two cover petitioning costs for the establishment a guardianship and conservatorship (Establishment Funds, DD contract, DD family establishment funds).

Section 27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and duties - Report - Audit.

Subsection 1 creates the OGC under the Supreme Court as a centralized point for guardianship and conservatorship services. All of the guardianship programs (PASS, Establishment, DD) financed by the general fund will be consolidated under the OGC.

Subsection 2 provides the required duties of the OGC to develop policies and procedures governing public guardianship and conservatorship services, ethical standards for licensed and unlicensed guardians and conservators, and policies and procedures for proceedings when a guardian or conservator is unable to fulfill their duties. The OGC is also required to maintain accurate records of all financial transactions and provide a biennium report to legislative management regarding the operations of the OGC.

Distinguishing licensed or professional guardians and conservators from unlicensed or family guardians and conservators in the bill draft recognizes the inherent differences between the two types of guardians and conservators and ensures that the requirements for family guardians and conservators are not too onerous.

Subsection 3 provided the OGC with discretionary power, including the recommendation of rules applicable to guardians and conservators, establishment of training and mentoring for guardians and conservators, and monitoring of guardianship and conservatorship services. In addition, the OGC would have the ability to exercise a preferred claim against the estate of an individual receiving public guardianship and conservatorship services in the event the

individual's estate is able to provide reimbursement and receive private, federal, and other public funds. The Task Force felt it would be important to have the ability to accept private funds if such funds were offered. There may be individuals or families wishing to donate funds and this would allow the acceptance of those gifts and a way to hold and use them appropriately.

Subsection 4 prohibits the OGC from authorizing payment to a public guardian or public conservator who exceeds a specific case threshold. The OGC would be required to develop caseload ratios.

Subsection 5 prohibits the OGC and any employee or officers from acting as a "public" guardian or conservator or otherwise representing a person in their official capacity. The OGC does not provide direct services.

Section 27-27.1-03. Guardianship and conservatorship support fund - Continuing appropriation.

This section creates the guardianship and conservatorship support fund to hold all money transferred by the legislative assembly and collected by the OGC as a continuing appropriation for use in administering guardianship and conservatorship services and programs.

Section 27-27.1-04. Records - Confidentiality - Disclosure - Penalty.

This section identifies information and reports that are classified as confidential and the policies and procedures for disclosure of the information and records. The proposed legislation is modeled after the confidentiality and access statute of the Department of Health and Human Services (DHHS).

To address concerns raised after the Task Force submitted a draft bill to the Government Finance Committee surrounding the ability of investigation counsel to share information involving potential criminal activity uncovered during an investigation with the Office of the

Attorney General (AG) and Bureau of Criminal Investigation (BCI), a new subsection 3 is proposed permitting disclosure of the same.

A penalty for unauthorized disclosure is also provided in subsection 4.

Section 27-27.1-05. Guardianship and conservatorship limitations - Representation to the public - Exemption.

Subsection 1 prohibits a person from acting as guardian or conservator for three or more adult individuals at the same time without a license. The proposed language is modeled after Rule 59 of the North Dakota Supreme Court Administrative Rules.

Subsection 2 prohibits a public guardian or conservator from providing services to minors unless the minor is seeking guardianship as an incapacitated adult.

Subsection 3 prohibits unlicensed guardians and conservators from representing themselves to the public as licensed.

Subsection 4 exempts federal and state agencies and financial institutions from the licensing requirement when appointed as conservators. Financial institutions include any organization authorized to do business under state or federal laws as a financial institution, including, a bank, the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.

Subsection 5 creates a penalty for violation of this section. The penalty provision does not take effect until after August 1, 2026, to allow the OGC time to develop licensure standards and process licensure applications. The effective date is also delayed to provide time for guardians and conservators to understand and satisfy the standards and to submit an application for licensure.

Section 27-27.1-06. Immunity.

Provides civil immunity to anyone who provides good faith information or testimony regarding a guardian or conservator's misconduct or lack of professionalism.

27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.

Subsection 1 grants the Supreme Court original jurisdiction to revoke or suspend guardian or conservator licenses.

Subsection 2 allows district courts to hear appeals when the OGC denies a license application.

Subsection 3 requires courts to waive court costs and filing fees if a person is receiving public services.

Subsection 4 requires all guardians and conservators to adhere to ethical standards adopted by the OGC or Supreme Court.

Section 27-27.1-08. Guardianship and conservatorship review board - Guardianship and conservator counsel.

Authorizes the Supreme Court to create the Review Board, defined in section 27-27.1-01(2), and Investigation Counsel, defined in section 27-27.1-01(4) above.

Although primarily responsible for resolving informal and formal complaints alleging guardian or conservator misconduct, the Review Board is also intended to be a mechanism for providing education and resources to all guardians and conservators to allow them to overcome deficiencies and continue to provide guardianship services. Currently, there is no uniform process for addressing concerns or complaints of alleged misconduct by the guardian and

conservator. Further, if action is taken against a guardian or conservator there is no mechanism currently for review of other cases involving the same guardian or conservator.

Investigation Counsel would be responsible for receiving, screening, and investigating allegations of guardian or conservator misconduct and reporting Counsel's findings and recommendations to the Review Board.

The creation, composition, standards, and procedure applicable to the Review Board and the Investigation Counsel would be promulgated by the Supreme Court rulemaking process.

Section 27-27.1-09. Supreme Court - Discretionary powers.

This section authorizes the Supreme Court to grant immunity to members of the Review Board, develop confidentiality and disclosure standards for disciplinary hearings, grant subpoena and other investigative powers, and adopt rules related to guardian and conservator investigations and hearings.

Section 27-27.1-10. Attorney General - Counsel.

An amendment is proposed by the Task Force dividing Section 27-27.1-10 into two subsections.

Subsection 1 is unchanged from the pre-filed version of the bill and provides that the AG will represent the OGC, Review Board, or Investigation Counsel when the cause of action is against either entity or its officers or employees while performing an official duty.

Subsection 2, is proposed to be added to clarify that the AG and BCI are the primary authorities to conduct criminal investigations, while investigation counsel will conduct disciplinary investigations.

Section 27-27.1-11. Duty to disclose and cooperate.

Subsection 1 requires state and local governments and their officers and employees to cooperate with investigations by providing requested information and documentation unless disclosure is prohibited by federal law or regulation.

Subsection 2 provides that service of process extends to the entire State and mandates sheriffs and police officers to serve process and execute all lawful orders of the OGC, the Review Board, or the Investigation Counsel.

Section 27-27.1-12. Duties of witnesses – Penalty.

This section requires a person to attend a disciplinary proceeding as a witness if subpoenaed. There is a proposed amendment in subsection 2, which provides a mechanism for the OGC, Review Board, or Investigation Counsel to seek enforcement of a subpoena by the district court. The proposed amendment changes the enforcement authority from the district court overseeing the guardianship or conservatorship case at issue to the district court where attendance or production is required. This amendment is being sought to limit the involvement of a district court overseeing a guardianship or conservatorship case being investigated until a final disciplinary order has been issued.

Section 27-27.1-13. Preferred claim.

This section grants the state a preferred claim against the estate of an individual receiving public guardian or conservatorship services in the event the individual's estate is able to provide reimbursement. The language of this section is similar to estate recovery processes used by DHHS and was developed with the assistance of DHHS's counsel who is a member of the Task Force.

SECTION 2.

Section 2 creates a new subsection to 30.1-28-07, authorizing the creation of a disqualification roster to be maintained by the state court administrator to identify nonprofessional guardians or conservators that are removed for cause. The disqualification roster is the alternative to licensure for nonprofessional or family guardians to prevent an individual removed by a court for misconduct from being appointed as a guardian or conservator in another case.

A proposed amendment is made in the last sentence of this new subsection. The amendment clarifies that a licensed guardian or conservator must go through the license revocation process before being added to the disqualification roster. This amendment is made to prevent one district court judge from adding a licensed guardian or conservator to the disqualification roster, which could affect other guardianship and conservatorship cases throughout the state.

SECTION 3.

Section 3 creates a new subsection to section 30.1-29-15, authorizing the creation of a disqualification roster to be maintained by the state court administrator to identify unlicensed conservators that are removed for cause. As in Section 2, the disqualification roster is the alternative to licensure for nonprofessional conservators to prevent an individual removed by a court for misconduct from being appointed as a conservator in another case. An amendment that mirrors the amendment in Section 2 is also proposed here.

SECTION 4.

This section amends the Medicaid statute in section 50-24.1-07 to allow the OGC to claim funds paid out for public guardianship services above DHHS's Medicaid claim. The "preferred claim" status allows the state to recover OGC funding before sharing any balance with the federal government. On Medicaid claims, the federal government receives approximately 50% of the amount collected by DHHS.

SECTION 5.

This section repeals Chapter 27-27, which created the Guardianship Monitoring Task Force. The Task Force will accomplish its mission before this bill goes into effect on August 1, 2025.

SECTION 6.

The proposed amendment to the bill divides section 6 into three subsections. Subsection 1 has six-line items. The three proposed amendments to subsection 1 include adding the "Salaries and wage - agents," "Operating expenses – agents," and the "Full-time equivalent positions" line items. The amended line items will not be part of the OGC budget, and will instead be directed to BCI enabling the hiring of four specialized investigators.

Subsection 2 explains that "operating expenses" in subsection 1 is one-time funding, and Subsection 3 requires the Judicial Branch to submit a report on the use of the one-time funding to the Appropriations Committee of the 70th Legislative Assembly.

The remainder of subsection 1 consolidates all of the existing guardianship programs into one budget. Currently, three agencies receive guardianship appropriations that cover at least eight programs related to adult guardianships. The majority of guardianship programs are

administered under the DHHS through the Aging Services Division, Developmental Disabilities (DD) Services Division, North Dakota State Hospital (NDSH), and Life Skills Transition Center (LSTC).

The Aging Services Division administers the Guardianship Establishment Fund, which covers the petitioning costs to establish guardianship for qualified individuals. Petitioning costs include fees for the services of the petitioning attorney, guardian ad litem (GAL), and court visitor. Under the Aging Services Establishment Fund, petitioning costs are capped at \$3,000 per case.

The DD Services Division administers the DD Guardianship Establishment Program and the Corporate Guardianship Contract. Under the DD Establishment Program, funds are available to cover the petitioning costs to establish guardianship for family members or friends who are willing to serve as guardians of DD adults. To qualify for services, the proposed ward must be 18 years of age or older, eligible for DD case management services as defined in section 25-01.2-01 of the North Dakota Century Code, and be at or below the 100% federal poverty level or Medicaid-eligible. Like the Establishment Fund administered by Aging Services, the petitioning costs are capped at \$3,000 per case.

Under the Corporate Guardianship Contract, the DD Services Division contracts with Catholic Charities to provide guardianship services for 529 DD adults receiving DD case management services. The Corporate Contract includes two-line items: one covering the petitioning costs to establish the guardianship and one covering guardianship fees.

As part of its operating costs, the North Dakota State Hospital establishes guardianships for individuals with a mental illness who are receiving treatment at its facility. Generally, guardianships initiated by NDSH begin with the establishment of an emergency guardianship

while the petition for long-term guardianship is pending. After guardianship is established, NDSH also expends funds for the appointment of successor guardians, for medication orders, and for court orders to continue treatment at their facility. As expenditures by the NDSH for guardianship services are part of its operating expenses, no guardianship bills or summaries have included these guardianship costs.

Guardianships are also established by the Life Skills Transition Center (LSTC) for minors with an intellectual or developmental disability who are becoming incapacitated adults for whom LSTC is continuing to provide services. Guardianship petition costs as well as costs for the appointment of successor guardians, and medication or continued treatment orders, similar to the NDSH, are part of the professional services or operating expenses line items of the LSTC's budget. Here again, LSTC's guardianship costs have not been included in guardianship bills and summaries.

The Office of Management and Budget (OMB) administers the Public Administrator Support Services (PASS) program through the North Dakota Association of Counties (NDACo). PASS funds are grants provided to pay a flat rate to cover the cost of guardianship services for vulnerable adults. To qualify for PASS funding, the vulnerable adult must be at least 18 years of age, and at or below 100% of the federal poverty level or Medicaid eligible. Adults with developmental disabilities (DD) are not eligible to receive PASS funding and are funded through either the DD Establishment Fund or DD Corporate Contract. The petitioning costs to establish a guardianship are not covered under the PASS program. By the end of the 2023-25 biennium, approximately 600 individuals are projected to be enrolled in the PASS program.

Lastly, the Judicial Branch administers and operates the Guardianship Monitoring Program, to conduct well-being and financial reviews referred to the program by district courts.

In addition to referrals from district courts, the program manager also conducts random financial reviews and provides educational guardianship training. Funds are also expended under the monitoring program for the appointment of court visitors to conduct well-being reviews. Reimbursement for each visitor appointment is capped at \$300 (6-hours at \$50.00/hr.). For more complex cases, the court-appointed visitor may request approval for additional time.

The costs to staff the existing Guardianship Monitoring Program, the proposed OGC, Review Board, and Investigative Counsel are not included in the appropriation in Section 6 of this bill, rather they are included in the Judicial Branch's budget. The cost to staff and administer the OGC, Review Board, Investigative Counsel, and existing Monitoring program is approximately \$2.2 million.

Under this bill draft, administration of all of the existing guardianship programs currently administered by DHHS and OMB would become the responsibility of the OGC. The four original line items categorize the existing expenditures into establishment costs for DD and non-DD cases, and guardianship and conservatorship services for DD and non-DD cases.

The third line item on the proposed amended bill, "Establishment costs – indigents," incorporates the DHHS Aging Services Division Guardianship Establishment Fund. The OGC would continue to cover petitioning costs for indigent adults. For the current biennium, 2023-25, the Guardianship Establishment Fund was increased to \$423,000 which included an increase in the per case cap from \$2,500 to \$3,000. Even with the increased appropriation, the Aging Service's Establishment Fund was exhausted sometime in late March or early April of 2024. A major contributing factor to the rapid depletion of the Aging Service's Establishment Fund was due to deficit spending during the prior biennium. During the 2021-23 biennium, the Aging Service's Establishment Fund ran at a deficit that was balanced at the beginning of the current

biennium. In May 2024, DHHS used its authority to conduct inter-department transfers, allocated \$300,000 to replenish the Aging Service's Establishment Fund. The Aging Service's Establishment Fund is on track to receive 292 referrals this biennium.

Other factors contributing to the rapid depletion of the Aging Service's Establishment Fund are rising costs for services and increased demand. Under the current \$3,000 per case cap, unpaid services totaled \$139,909 as of January 8, 2024. At the current rate, unpaid services could exceed \$177,600 by the end of the biennium. The funding request for the 2025-27 biennium listed in the bill would increase the per-case cap to \$5,000 to ensure that we are able to continue to find providers willing to perform the necessary services to establish guardianships.

The forth line item on the proposed amended bill, "Establishment costs - developmentally disabled," incorporates both of the DD establishment funds administered by the DD Services Division: DD Guardianship Establishment Funds for families and DD contract cases with Catholic Charities. The OGC would continue to cover petitioning costs for both types of DD cases. For the current biennium, the DD Services Division was appropriated \$500,192: \$300,000 for family cases under the DD Establishment Fund and \$200,195 under the Corporate Guardianship Contract with Catholic Charities.

The requested appropriation for the 2025-27 biennium in line four is \$1,296,400. Two major justifications warrant the substantial increase requested. First, the original amount appropriated to the DD Guardianship Establishment Fund was not even close to meeting the demand. As of January 7, 2025, the DD Services Division approved 112 of the 124 requests for "family" Establishment Funds. At the current rate, the projected demand for "family" referrals by the end of the current biennium would be approximately 166. The average cost to establish a guardianship for a DD individual is approximately \$3,000 per case. However, many of these

referrals require the establishment of an emergency guardianship which increases the cost to approximately \$4,000 per case. The DD Services Division has already obligated all of its funding for family guardians this biennium. Additional funding for 40 more slots was added in September of 2024, but 80% of those funds have already been exhausted. Meaning, the 2023-25 appropriation amount was insufficient to meet demand.

The second major justification for the funding request is to deplete the current waiting list for DD corporate guardianship services. Maintaining a waiting list for DD adults in need of guardianship services is nothing new to Catholic Charities. In 2012, Windsor Schmidt, in his report to this Legislature, reported that Catholic Charities was facing a waiting list of 25. Not even 10 years later, in 2021, Catholic Charities' waiting list surpassed 90, more than triple the total on the 2012 list. At the beginning of this year, Catholic Charities has a waiting list of approximately 142 individuals seeking to receive guardianship services.

As the waiting list grows, it is not uncommon for some of these individuals to remain on the Catholic Charities waiting list for a year or more before receiving services. In some cases, DD adults have been on Catholic Charities' waiting list for over four years. The need for crisis management has significantly contributed to the extended wait times for these DD adults who remain one crisis away from becoming an emergency case themselves. The availability of guardianship services should not be crisis-driven. The increased funding request is intended to enable all of those currently on the waiting list to receive guardianship services. The funding request also incorporates the establishment costs incurred by the North Dakota State Hospital and DHHS Life Skills Transition Center.

The fifth line item on the proposed amended bill, "Public guardian and conservator fees – indigents" incorporates the PASS program. The OGC would continue to cover public guardian

conservator fees. During the 2023 special session, PASS funding was increased to \$7.1 million. Without the additional appropriation during the 2023 special session, not only would PASS funding have been exhausted before the end of the biennium, but the Guardianship Association of North Dakota (GAND) and guardianship providers would have been asked to take clients and wait for reimbursement of their services until the subsequent biennium.

At the present funding level, PASS funds are again projected to be exhausted at the end of the current biennium. While the increased PASS funding has had a significant positive impact on public guardians; the \$7.1 million is insufficient to maintain the program for the 2025-27 biennium. At the end of the 2023-25 biennium, it is estimated that approximately 600 individuals will be enrolled in the PASS program. Enrollment is projected to continue to increase by five individuals a month. The 2025-27 funding request of \$8.6 million is based on an \$18/day rate, a one-dollar increase over the current \$17 daily rate, which may already be insufficient to adequately reimburse guardianship providers for services. During the 2023 legislative session, the PASS daily rate was increased from \$10/day to \$14/day. Additional appropriations during the 2023 special legislative session allowed PASS to offer a daily rate of \$17.

Guardianship service providers have indicated that a \$20.00 per day reimbursement rate is more appropriate, as even at \$18 per day, PASS funding does not cover all of the service provider's expenses in individual cases. Since the last biennium, guardianship service providers have reported a substantial increase in the cost of providing services due to increased insurance rates (some by as much as 20%), inflation rates, and wages. To offset the growing costs of providing guardianship services, professional guardianship service providers report that they must pursue grants and donations.

The sixth line item on the proposed amended bill, “Guardianship contracts - developmentally disabled” incorporates the portion of the DD Corporate Guardianship Contract with Catholic Charities that covers fees for providing guardianship services. The OGC would continue to cover fees for guardianship services for DD adults. The DD Services Division has appropriated \$4,288,349 for its corporate guardianship contract for this biennium. The current contract provides funding for guardianship services for 529 DD adults. Catholic Charities provides guardianship services for between 60 to 80 new DD adults in each biennium. Thus, although 40 of the DD adults receiving services from Catholic Charities died during the 21-23 biennium, the standard demand for services requires an increase in the number of individuals to be served. The line item request in this bill is \$6,835,136 which would provide funding to cover guardianship services for the 760 DD adults thereby incorporating the existing waiting list of 142 and the projected demand for additional DD guardianship services. The daily rate for DD guardianship fees is generally less than non-DD guardianship fees. The rate used for this line item is \$12.14 for the first year and \$12.50 for the second year.

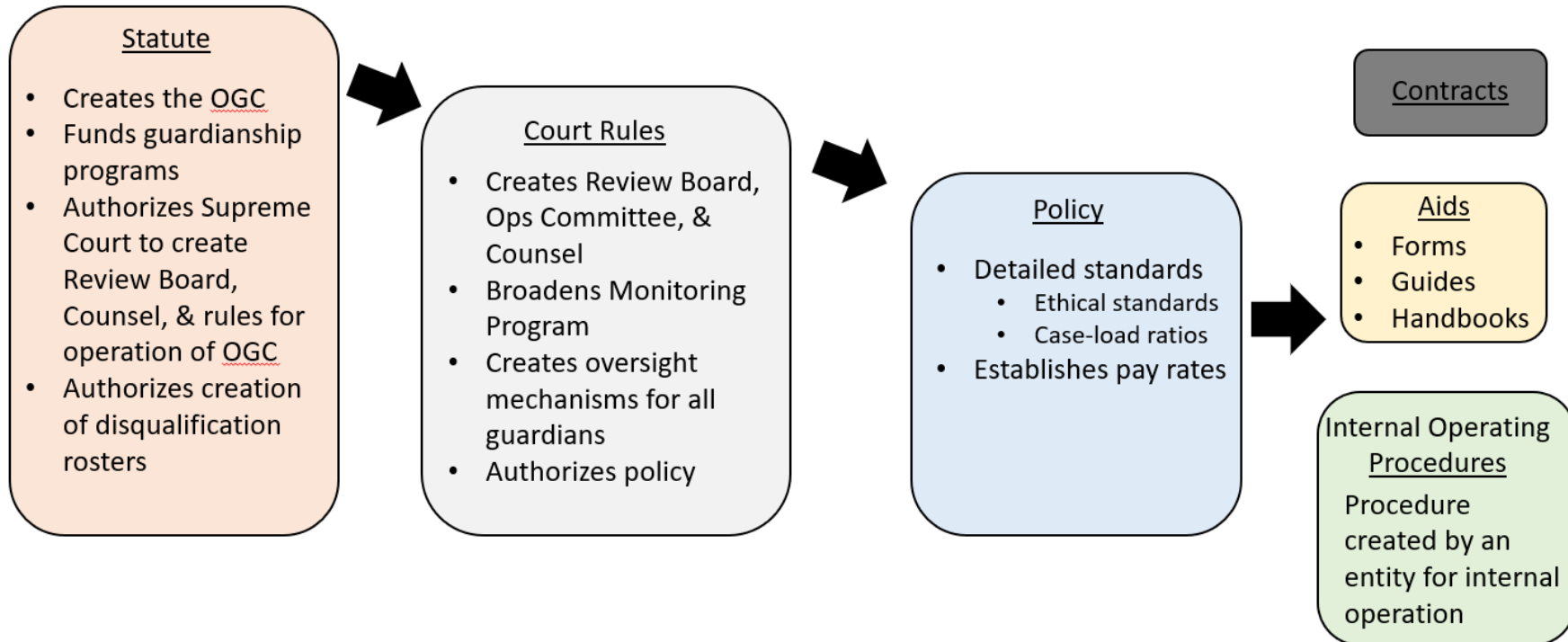
Given the number of programs to be covered under this legislation, for quick reference, attached to my testimony are two appendices. Appendix 4 provides a summary of guardianship funding and can be used as a quick reference of each of the existing guardianship programs encompassed in each of the appropriation line items reflected in this bill, the current appropriation for each of the individual guardianship programs, and the requested appropriation of the 2025-27 biennium. In addition, I’ve included the amounts that will be reflected in the Judicial Budget for the existing Guardianship Monitoring Program and the new programs proposed under this bill: the OGC, Review Board, and Investigative Counsel.

Appendix 5 is a brief outline that summarizes each of the existing guardianship programs and identifies each of their respective administrating agencies.

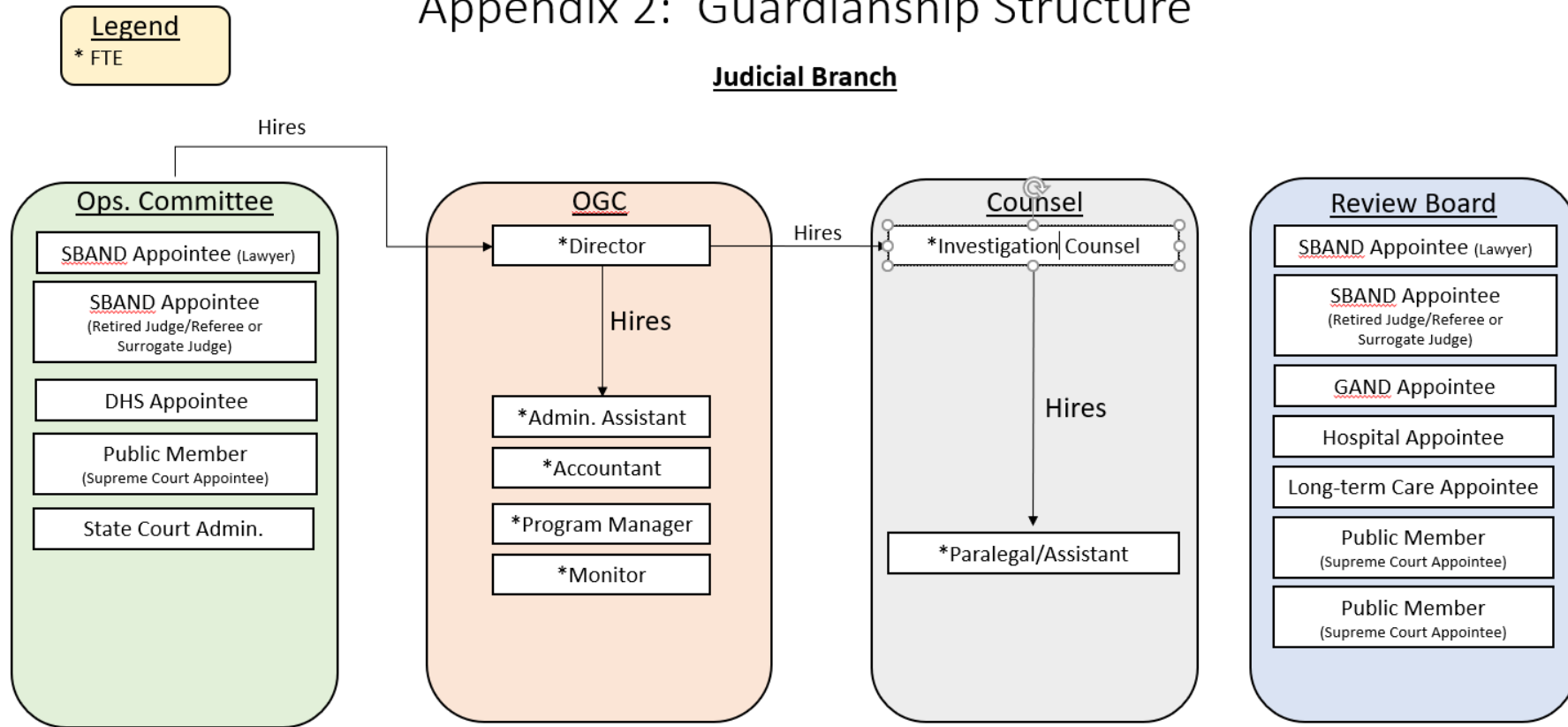
Respectfully Submitted:

Cynthia M. Feland
District Judge
Chair, Task Force on Guardianship Monitoring

Appendix 1: Authorities & Purpose



Appendix 2: Guardianship Structure



Appendix 3: Guardianship Structure Roles & Responsibilities

Ops. Committee

- Approve budgets for OGC, Counsel, and Review Board
- Enact policies

Think Legislative Equivalent

OGC

- Administer funds for public services (PASS, DD, establishment funds)
- Draft budget & policies
- Administer Monitoring & Education Programs
- Process licenses

Think Executive Equivalent

Counsel

- Validate legitimacy of concerns
- Investigate legitimate concerns
- Initiate formal proceedings
- Present findings to Review Board

Think independent AG Equivalent

Review Board

- Conduct oversight review hearings
- Issue findings and order

Think Judicial Equivalent

Appendix 4: Summary of Guardianship Funding

Office	Program	23-25 Funding	25-27 Funding Request	New Line Item in Bill
Bureau of Criminal Investigation (BCI)			960,000	Salaries and wage – agents
			322,000	Operating expenses – agents
Department of Health & Human Services (DHHS) Aging Services Division	Guardianship Establishment Fund	423,000	1,550,000	Establishment costs - indigents
DHHS Developmental Disabilities (DD) Services Division	DD Guardianship Establishment Fund	300,000	750,000	Establishment costs - developmentally disabled
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Petitioning Costs	200,195	230,000	Establishment costs - developmentally disabled
DHHS North Dakota State Hospital (NDSH)	NDSH professional services/operating costs	193,596	288,000	Establishment costs - developmentally disabled
DHHS Life Skills and Transition Center (LSTC)	LSTC professional services/operating costs	23,388	28,400	Establishment costs - developmentally disabled
Office of Management and Budget (OMB)	Public Administrator Support Services (PASS)	7,100,000	8,638,020	Public guardian and conservator fees - indigents
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Guardian Fees	4,288,349	6,835,136	Guardianship contracts - developmentally disabled
Supreme Court	Guardianship Monitoring Program*	624,008	2,202,543	Judicial Branch Budget
	OGC, Review Board, Investigative Counsel			Judicial Branch Budget
TOTAL			\$21,804,099	
*Includes current program manager and attorney hired under N.D.C.C. § 27-27-01				

Appendix 5: Summary of Current Guardianship Programs & Services

DHHS Aging Services Division - Guardianship Establishment Fund. Covers petitioning costs to establish guardianships for adults eligible to receive DD case management services.

- Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor.
- To qualify for services, the proposed ward must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.

DHHS DD Services Division - DD Guardianship Establishment Fund. Covers petitioning costs for families or friends who are willing to serve as guardian for a DD adult.

- To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- Current funding covers 100 cases at \$3,000 per case.

DHHS DD Services Division - Corporate Guardianship Contract. DHHS DD Services Division contract with Catholic Charities to cover petitioning costs and guardianship services for 529 DD individuals.

- To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- The total contract price includes two line items: one covers petitioning costs and the other covers guardianship services fees.
- Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor.
- Guardianship fees for each case are \$10.82/day for the first year of the biennium and \$11.36/day for the second.

NDSH - Professional Services / Operating Costs. NDSH establishes guardianships for individuals with a mental illness while receiving treatment.

- Generally, includes petitioning costs for establishment of emergency guardianships prior to regular guardianship
- Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order.
- Expended funds are part of the agency's operating costs

LSTC - Professional Services / Operating Costs. LSTC establishes guardianships when a minor is becoming a DD adult needing guardianship services while LSTC is providing services

- Petitioning costs for the services of the petitioning attorney, GAL and court visitor.
- Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order.
- Expended funds are part of the agency's operating costs

OMB - PASS Program. Provides guardianship grants to private agencies and individuals who serve as public guardians for vulnerable adults.

- Pays for guardian fees (\$17 per day), directly to the guardian.
- Does not cover petitioning costs.
- To qualify for services, individuals must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
- The program is administered by the ND Association of Counties with funds that are passed to NDACO from OMB.
- Projected to have approximately 600 individuals who qualify for services at the end of the 23-25 biennium.

Judicial Branch. Currently operates the Guardianship Monitoring Program, which takes referrals from district courts to conduct wellbeing and financial reviews for existing guardianship cases.

- Referrals to the program are made by district courts
- Program manager also conducts random financial reviews and provides educational guardianship training.
- Court visitors are contracted to conduct wellbeing checks.



2025 SB 2029
Senate Judiciary Committee
Senator Diane Larson, Chairman
January 13, 2025

Chairman Larson and members of the Senate Judiciary Committee, I am Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association (NDHA). I am here to testify in support of Senate Bill 2029. I ask that you give this bill a **Do Pass** recommendation.

Hospitals appreciate the Legislature's study of our state's guardianship system during the last interim and for introducing this bill. We also greatly appreciate the legislature's past funding of programs that support public guardianship programs.

There are three broad categories of guardians: family, professional, and public. A family guardian is one who is related to a ward by blood or marriage. A professional guardian is any guardian who receives compensation for services to more than two wards. A public guardian is a person or organization that provides guardianship services for an individual who is indigent and incapacitated and has no family or friend available to serve.

The guardianship process takes time and resources even when there is a family member or friend willing to serve as guardian. When a patient has no friend or family member to serve and cannot afford a private guardian, public guardianship often becomes the only option. With increasing frequency, hospitals encounter patients who need someone to make medical decisions for them, but because the patient does not have a power of attorney or any family or friend who are willing or able to make those decisions, the only resort is to ask a court to appoint a guardian. We believe this situation is only going to increase due to our aging population and more mobile society where people lose touch with family members who may live thousands of miles away. An adequately funded public guardian program is a crucial safety net for these patients.

Finding a public guardian and waiting for the process to be finalized for a hospital patient often delays discharge to a more appropriate level of care, runs up the cost of health care,

Establishing guardianship is a complex and time consuming challenge, especially when a patient has no friend or family member willing to serve as guardian, and it is complicated further by a lack of standardized processes and difficulty finding qualified public guardians. We feel that the creation of an Office of Guardianship and Conservatorship as provided in the bill would help alleviate these challenges. It would serve as a centralized point for guardianship and conservatorship services and provide a regulatory framework for, and funding of, public guardianship services for eligible individuals. The bill addresses the most difficult barriers in this process and allows vulnerable patients to be more efficiently connected to the services they greatly need.

In summary, we support passage of this bill and hope that you will give it a **Do Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association



Minnesota - North Dakota Chapter

**Testimony
Senate Bill 2029
Human Services
Sen Diane Larson, Chair
January 13, 2025**

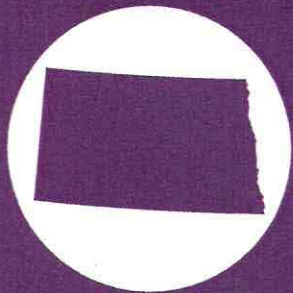
Good morning Chair Larson and members of the committee. My name is Melanie Gaebe and I am the North Dakota Public Policy Director for the Minnesota-North Dakota Chapter of the Alzheimer's Association. I am here to provide neutral testimony on Senate Bill 2029. Alzheimer's and dementia touch our lives as caregivers, loved ones, friends, and family. I usually ask those in the room to raise their hand if they have been touched by this disease. However, in my time with the Alzheimer's Association, I have learned that the majority of the people we come into contact with on a daily basis would raise their hands.

I was struggling with how to label my testimony this morning. Is it truly neutral? Is it more like conditional support? I'm still not certain so we are calling it neutral. There are a number of items in this bill that are a good foundation for providing high quality care to the most vulnerable people in North Dakota. The point of hesitation or concern about supporting this bill outright, is subsection 3e. The office MAY provide training for guardians and conservators. Every job I have ever held has guaranteed training to set me up for success and we owe the same consideration to guardians and conservators, as well as their clients.

If we do not provide a guardian with the proper training and education, how can we expect them to provide the highest quality of care possible to our constituents? If you become a guardian of an adult with cognitive impairment but have little to no experience with Alzheimer's and dementia, effective communication with a person living with cognitive impairment, or even the basics of person centered care, you are being set up to fail.

If that may is changed to shall and stakeholders were able to assist in planning the education needed to protect their constituents, my testimony could change from neutral to supportive.

Thank you for your time, I'm happy to take questions.



2024 NORTH DAKOTA ALZHEIMER'S STATISTICS



PREVALENCE

Number of People Aged 65 and Older with Alzheimer's (2020)

13,700

% of Adults Over 65 with Alzheimer's

11.1%



CAREGIVING

of Caregivers

19,000

Caregivers with Chronic Health Conditions

60.1%

Total Hours of Unpaid Care

25,000,000

Caregivers with Depression

30.4%

Total Value of Unpaid Care

\$465,000,000

Caregivers in Poor Physical Health

8.6%



WORKFORCE

of Geriatricians in 2021

12

of Home Health and Personal Care Aides in 2020

6,790

Increase Needed to Meet 2050 Demand

183.3%

Increase Needed to Meet 2030 Demand

25.8%



HEALTH CARE

of People in Hospice (2017) with a Primary Diagnosis of Dementia

468

Dementia Patient Hospital Readmission Rate (2018)

18.4%

Hospice Residents with a Primary Diagnosis of Dementia

18%

Medicaid Costs of Caring for People with Alzheimer's (2020)

\$190M

of Emergency Department Visits per 1,000 People with Dementia (2018)

1,173

Projected Change in Medicaid Costs from 2020 to 2025

13.2%

Per Capita Medicare Spending on People with Dementia in 2023 Dollars

\$21,711



MORTALITY

of Deaths from Alzheimer's Disease (2021)

325

Alzheimer's Disease as Cause of Death Rank

5th

Nearly **7 million Americans** are living with Alzheimer's, and more than **11 million** provide their unpaid care. The cost of caring for those with Alzheimer's and other dementias is estimated to total **\$360 billion** in 2024, increasing to nearly **\$1 trillion** (in today's dollars) by mid-century. For more information, view the **2024 Alzheimer's Disease Facts and Figures** report at alz.org/facts.

© 2024 Alzheimer's Association® All Rights Reserved. Alzheimer's Association is a not-for-profit 501(c)(3) organization.



2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2029
1/14/2025

AN ACT to create and enact a new subsection to section 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of guardianship and conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 and section 54-68-02.1 of the North Dakota Century Code, relating to the task force on guardianship monitoring and transition requirements; to provide a penalty; to provide for a report; to provide an appropriation; to provide a continuing appropriation; to provide for a transfer; and to provide an effective date.

8:47 a.m. Chair Larson called the hearing to order.

Members present:

Chair Larson, Vice Chair Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger

Discussion Topics:

- Sub-Committee appointments

8:47 a.m. Chair Larson appoints Senators Patten, Braunberger, and Myrdal to sub-committee.

8:49 a.m. Chair Larson closed the meeting.

Kendra McCann, Committee Clerk by Lynn Wolf, Chief Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2029
1/15/2025
Subcommittee

Relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

3:05 p.m. Chairman Paulson opened the hearing.

Members present:

Chairman Paulson, Senators: Myrdal, Braunberger.

Discussion Topics:

- Guardianship program structure
- Funding allocation
- Conflict of interest concerns
- Stakeholder input
- Legal liability for guardians

3:09 p.m. Trevor Vannet testified as neutral.

3:12 p.m. Christopher Dodson, ND Catholic Conference, testified as neutral.

3:19 p.m. Sally Holewa, Court Administrator, ND Court System, testified as neutral and answered committee questions.

3:40 p.m. Chairman Paulson closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2029
1/20/2025
Subcommittee

Relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

3:00 p.m. Chairman Paulson opened the hearing.

Members present:

Chairman Paulson, Senators: Myrdal, Braunberger.

Discussion Topics:

- Guardianship accountability
- Oversight mechanisms
- Guardianship monitoring program
- Funding distribution
- Legislative recommendations

3:01 p.m. Senator Judy Lee, District 13, provided insight on past session work relating to this topic.

3:05 p.m. Scott Bernstein, Guardian and Protective Services, testified as neutral.

3:31 p.m. Sally Holewa, State Court Administrator, testified as neutral.

3:41 p.m. Margo Haut, President Director of Guardian Angeles Inc., testified as neutral.

3:53 p.m. Chairman Paulson adjourned.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2029
1/28/2025
Subcommittee

Relating to the expansion of medical examinations of victims of criminal conduct.

8:02 a.m. Chairman Paulson opened the hearing.

Members present:

Chairman Paulson, Senators: Myrdal and Braunberger.

Discussion Topics:

- Guardianship oversight structure
- Conflict of interest concerns
- Role of the Office of Guardianship and Conservatorship
- Funding sources for guardianship programs
- Appeals process for guardianship decisions

8:04 a.m. Margo Haut, President Director of Guardian Angels Inc. (GAND), testified in opposition and submitted testimony #31997 and #31998.

8:14 a.m. Garrick R. Voigt, Staff Attorney, testified as neutral.

8:24 a.m. Sally Holewa, State Court Administrator, testified as neutral.

8:30 a.m. Senator Kathy Hogan, District 21, testified as neutral.

8:34 a.m. Christopher Dodson, Co-Director of ND Catholic Conference, testified as neutral.

8:39 a.m. Chairman Paulson closed the hearing.

Kendra McCann, Committee Clerk

DATE: January 28, 2025

RE: Request of Chairman Bob Paulson, Chairman of the Senate Judiciary Subcommittee, for suggested changes & input to SB 2029.

The request was made to Margo Haut, President of the Guardianship Association of North Dakota. (GAND)

Chairman Paulson and members of the Senate Judiciary Subcommittee:

On behalf of GAND, thank you for this opportunity to present input via our Proposal recently submitted to the Senate Subcommittee regarding SB 2029. Attached is the Proposal that offers an alternate approach to the Office of Guardianship and Conservatorship outlined in SB 2029. The materials provide a brief organizational overview & description outlining the Office of Guardianship and Conservatorship, the Review Board and the Ethics & Rules Committee. Unlike SB 2029, this Proposal rests on three philosophical pillars of training, monitoring & accountability.

This Proposal shouldn't come as a surprise to the Taskforce as ideas were requested but fell on deaf ears. To take it a step further, it's become very apparent over time of the disconnect that is occurring for GAND & members of the Taskforce with the reality, Guardians aren't Judges. While GAND stands in opposition of SB 2029, GAND also acknowledges there are items in SB 2029 that have merit. However, the structure and rules as proposed are presently biased against guardians. Modeling the OGC after the Judicial Conduct Commission is not the best place to start for an entity that will dramatically change the guardianship landscape for years to come.

Again, I come before you as the voice of GAND and its members, what's most concerning is the continued response of "it will be addressed in the future". I can tell you, the future is now. As President of GAND, I have the privilege of knowing our members who are the Professional Guardians serving throughout ND. Recently, I met with the Directors of Family Voices who offer support & training to Family Guardians; they currently have a mailing list of over 8,700 individuals associated with family guardianship. SB 2029, if passed with its current structure, will result in not only professional guardians walking away but families may seriously reconsider this commitment due to the reality of being drawn under the umbrella of the OGC with again, more questions than answers. Many are carefully watching this bill.

Also, I think it is fair to remind you that we're here today because last biennium the legislature ordered a "Shall Study." Part of the concern for legislators was over the dollars that appear under different titles. For example, Developmental Disabilities, Guardianship Establishment Funds, the PASS Program, etc. I grant you, if you don't work in this every day you may ask, "Why are all the guardianship dollars designated in so many areas?" Well, they serve various functions and populations. It only continues to become more confusing when you consider that some of the appropriations fall in DHHS and some in OMB.

Historically, there have been those that have viewed the dollars related to guardianship in DHHS as a conflict of interest. However, it's obvious that Catholic Charities North Dakota has operated under

a contract with the appropriation of funds per the DD Division of DHHS for 37 years without a single surfaced incident of 'conflict'.

For this reason, GAND does not believe that a sweeping reform is necessary. However, a consolidation of the funding source in an appropriate home could help fulfill some of the confusion that was a matter of concern in the last biennium.

In addition, per SB 2029, GAND believes the OGC is, in many regards, a regulatory board. This raises a difficult question. Where does the OGC belong? Courts traditionally have been responsible for guardianship oversight and because this will continue, it will open the door for the potential conflict of interest if the Supreme Court oversees the Office of Guardianship and Conservatorship. Should guardians be supervised by the Court? The job of the guardian is to manage the affairs of an incapacitated person. Other entities, such as a nursing home, manage the affairs of people not able to care for themselves. Banks house money for the incapacitated individuals, but neither are supervised by the court. This is why it is the request of GAND, the consideration that the Office of Guardianship & Conservatorship be served by the Executive Branch of the ND Government per the experience & expertise of its members.

Thank you for your time & consideration of this purposed option to SB 2029, GAND urges your support. I stand for any questions from the Senate Subcommittee Members.

DATE: January 23, 2025

RE: Request of Chairman Bob Paulson, Chairman of the Senate Judiciary Subcommittee, for suggested changes to SB 2029

The request was made to Margo Haut, President of the Guardianship Association of North Dakota (GAND)

Chairman Paulson and members of the Senate Judiciary Subcommittee:

Please find enclosed the document that focuses on providing the Subcommittee with an alternate approach to the Office of Guardianship and Conservatorship outlined in SB 2029. The materials provide a brief organizational overview and then a brief description outlining where each position of the Office of Guardianship and Conservatorship would focus their attention and efforts.

The material is intentionally brief. Unlike SB 2029, this proposal rests on three philosophical pillars:

1. **Training:** Guardians and Conservators, due to the complexity of the job, need remarkable training.
2. **Monitoring:** Guardians and Conservators, due to the complexity of the job, need monitoring that is thorough, streamlined and not onerous.
3. **Accountability:** Guardians and Conservators need to be held accountable to high ethical standards and practices. When acts of the guardian or conservator violate those best practices, they should be held accountable, up to and including removal from ever acting as a guardian.

Overall, our intent is to provide a plan that will ensure good quality ethical guardians & conservators to enhance & grow the profession.

While GAND stands in opposition of SB 2029, GAND also acknowledges there are items in SB 2029 that have merit. However, the structure and rules as proposed are unnecessarily biased against the guardian. Patterning the OGC after the Judicial Conduct Commission is not the best place to start for an entity that will dramatically change the guardianship & conservatorship landscape for years to come. We must consider there are conceivably over 4,000 family guardians that ultimately need to be drawn under the umbrella of the OGC. Many are carefully watching this bill.

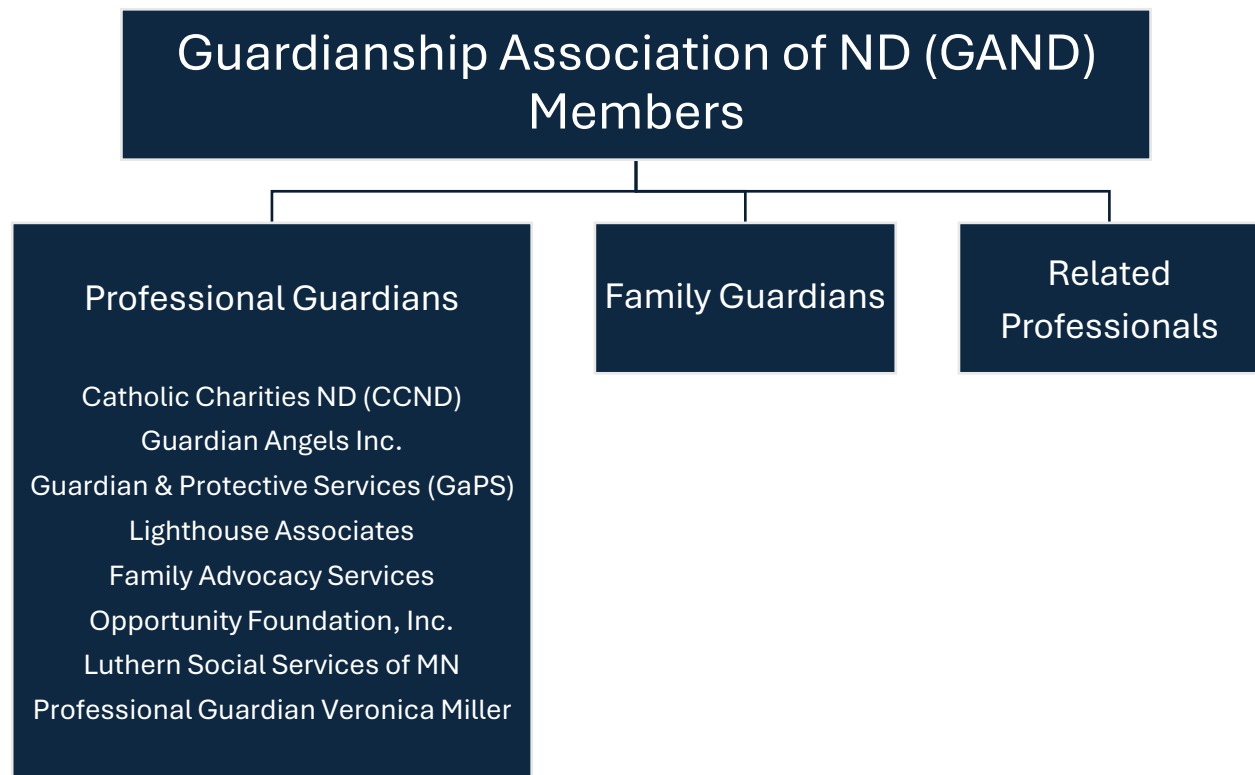
Thank you for providing GAND and its members with the opportunity to propose a simpler, scaled approach to the OGC focused on positively impacting guardianship & conservatorship while assuring high quality services.

**RESPONSE TO SENATE SUBCOMMITTEE
SENATE BILL 2029
GUARDIANSHIP ASSOCIATION OF ND
MARGO HAUT, PRESIDENT
JANUARY 23, 2025**

Guardianship Association of ND

The Guardianship Association of ND aka GAND is a 501(c)3 nonprofit organization established in 1987. GAND provides educational resources and collaboration for guardianship providers while advocating for guardianship services throughout the state of ND. Numerous staff from each entity are members of GAND, with a current total of 64 members.

Professional Providers of Guardianship Services listed below are nonprofit corporations that collaborate but work independently from one another.



Office of Guardianship & Conservatorship

Enhance & Grow Profession

- Comprised of an Executive Director of the OGC, Monitor, Education/Standards Coordinator
- Develop & implement the overall plan of Guardianship & Conservatorship
- Develop Policies & Procedures
- Collaborate with the Courts to create a database for Guardians & Conservators
- Process & investigate grievances, if necessary refer to the Review Board
- Establish method to address Findings of the Review Board in "real time"
- Create & oversee Rules & Regulations of the Ethics & Rules Committee

Review Board

Authority to investigate & act on findings of Grievances

- Comprised of the following:
Professional Guardian
Family Guardian
DD Corporate Guardian
Adult Protective Services
Protection & Advocacy
Retired Judge
Attorney
- Investigate the alleged Grievance of a Guardian or Conservator
- Make recommendations to the District Court of Jurisdiction
- Collaborate with the Attorney General's Office, Bureau of Criminal Investigation & Forensic Accountant when appropriate
- Rely on the assistance of existing Departments per expertise

Ethics & Rules Committee

Creates & Implements Standards of Practice for Guardians

- Overseen by the Education/Standards Coordinator
- Members also include:
The Executive Director
Monitor &
Education/Standards Coordinator
Professional Guardian
Family Guardian
DD Corporate Guardian
Retired Judge
Attorney
- The Executive Director of the OGC shall be the Chairperson of the Committee
- Develop Rules & Regulations for all types of Guardians and Conservators
- Create mechanism to remove Guardian or Conservator via the Court
- Develop & offer statewide training for new & existing Guardians & Conservators
- Establish & oversee a registry of all Guardians & Conservators

Office of Guardianship & Conservatorship

Members/ Purpose

Job requirement for every member | Obtain the Guardianship & Conservatorship national certification & complete state online training

Executive Director

- Oversee the duties and responsibilities of the OGC
- Chair the Ethics & Rules Committee

Monitor

- Complete audits of random & referred case reviews
- Oversee the process of grievances
- Provide financial & wellbeing expertise
- Complete Certification of the Guardianship/Conservatorship National Investigator Training Program via National Guardianship Association (NGA)

Education/Standards Coordinator

- Create statewide training & support for Guardians & Conservators
- Create system for open communication and availability to Guardians & Conservators
- Create and provide CEU training to ensure certifications & licensure or accreditation
- Create standards of practice for all types of Guardians & Conservators
- Create & maintain registry of Certifications or Accreditation & Renewals for every Guardian or Conservator

Duties of the OGC consist of the following:

- Develop Policies & Procedures to enhance and grow Guardianship & Conservatorship
- Implement regulations to enhance the monitoring & ethical fulfilment of a Guardian's or Conservator's duties & responsibilities
- Process & investigate grievances with potential to refer to the Review Board.
- Provide accountability for Guardianships & Conservatorships
- Establish ongoing communication with the ND Guardianship Referral Coalition

Review Board

Members / Purpose / Duties

Professional Guardian | Family Guardian | DD Corporate Guardian | Adult Protective Services Protection & Advocacy | Retired Judge | Attorney with expertise in the field of guardianship

- Investigate an alleged grievance of a Guardian or Conservator
- Obtain the authority to act on the findings of the grievance
- Collaborate with the Attorney General's Office, Bureau of Criminal Investigation or a Forensic Accountant when deemed necessary to complete investigation
- Rely on additional Departments such as Medicaid Fraud Control Unit, Consumer Protection Division & Office of State Tax Commissioner per their expertise
- Provide recommendations per the Review Board's findings of the grievance to the District Court of Jurisdiction
- Members of the Review Board are not compensated except for mileage and travel expenses approved by State Policy

Ethics & Rules Committee

Members / Purpose

The Education/ Standards Coordinator will oversee the Ethics & Rules Committee. Other Members of the Committee will consist of the Executive Director & Monitor via the OGC, Professional Guardian, Family Guardian, DD Corporate Guardian, Retired Judge, Attorney with expertise in the field of guardianship

Duties of the Ethics & Rules Committee consist of the following:

- Establish & implement the Standards of Practices for Guardians & Conservators
- Create the Rules & Regulations for all types of Guardians & Conservators
- Create & oversee the registry of every Guardian & Conservator to ensure Certifications or Accreditation & Renewals
- Incorporate a mechanism via the Courts per the suspension or dismissal of a Guardian or Conservator
- Create and/or implement training & support for all Guardians & Conservators
- Establish ongoing assessment via the Standards & Rules to meet the overall needs and/or expectations of a Guardian or Conservator
- Assess areas of potential needs of Guardians or Conservators by enhancing accountability, clearly defining expectations allowing both negative & positive feedback utilizing tracking tools to assist in addressing the need.

Furthermore, GAND requests the consideration that the Office of Guardianship & Conservatorship be served via the Executive Branch of the ND Government per the experience & expertise of its members.

Thank you for your time & consideration of this purposed option to SB 2029, GAND urges your support. I stand for any questions from the Senate Subcommittee Members.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Peace Garden Room, State Capitol

SB 2029

2/4/2025

Subcommittee

Relating to the expansion of medical examinations of victims of criminal conduct.

4:00 p.m. Chairman Paulson opened the hearing.

Members present:

Chairman Paulson, Senators: Myrdal and Braunberger.

Discussion Topics:

- Taking out policy
- Different construct
- Money flow
- Time constraint

4:01 p.m. Chairman Paulson led subcommittee discussion on potential amendments.

4:09 p.m. Chairman Paulson closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2029
2/5/2025

Relating to the expansion of medical examinations of victims of criminal conduct.

10:35 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Conflict of interest concerns
- Operations committee structure

10:35 a.m. Senator Paulson introduced proposed amendment and submitted testimony #38383.

10:39 a.m. Senator Paulson moved amendment LC# 25.0224.02002.

10:39 a.m. Senator Braunberger seconded.

10:39 a.m. Voice Vote - Motion Passed.

10:39 a.m. Senator Paulson moved a Do Pass as amended.

10:40 a.m. Senator Braunberger seconded.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

10:40 a.m. Senator Paulson will carry the bill.

10:42 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

35 2/5/25
10411

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security

1 number, electronic mail address, program identification number, or any other unique
2 identifying number, characteristic, or code, and any demographic information collected
3 about the individual.

4 4. "Investigation counsel" means the guardianship and conservatorship counsel.

5 5. "Licensed conservator" means a person licensed by the office to provide
6 conservatorship services.

7 6. "Licensed guardian" means a person licensed by the office to provide guardianship
8 services.

9 7. "Office" means the office of guardianship and conservatorship.

10 8. "Public conservator" means a conservator under contract with the office to provide
11 conservatorship services for an individual eligible for public services.

12 9. "Public guardian" means a guardian under contract with the office to provide
13 guardianship services for an individual eligible for public services.

14 10. "Public services" means state or federally funded programs administered by the office
15 available to eligible individuals.

16 11. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.

18 12. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
21 **duties - Report - Audit.**

22 1. The office of guardianship and conservatorship is created as a division under the
23 supreme court to administer the programs assigned by state law or the supreme court.

24 2. The office shall:

25 a. Develop policies and procedures, including eligibility criteria, for:

26 (1) Receiving public services;

27 (2) A public guardian or a public conservator;

28 (3) A licensed guardian or a licensed conservator; and

29 (4) Distribution of funding for direct payments and expense reimbursements for
30 public services.

31 b. Develop ethical standards for:

- 1 (1) A licensed guardian or a licensed conservator; and
- 2 (2) An unlicensed guardian or an unlicensed conservator.
- 3 c. Develop policies and procedures for proceedings when a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Keep accurate records of all financial transactions performed under this chapter
- 6 in the manner required by the office of management and budget.
- 7 e. Provide a report each biennium to the legislative management regarding the
- 8 operations of the office, including the cost of public guardians and public
- 9 conservators, and any other information requested by the legislative
- 10 management.
- 11 3. The office may:
- 12 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 13 b. Grant licenses to a guardian or conservator and agency permits, including
- 14 revoking or suspending an agency permit.
- 15 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 16 conservator as a condition for licensure.
- 17 d. Establish mandatory disclosure and reporting requirements for a licensed
- 18 guardian or a licensed conservator, including a process to disclose information or
- 19 submit reports to the office.
- 20 e. Provide training for guardians and conservators.
- 21 f. Monitor guardianship and conservatorship services.
- 22 g. Provide annual reports to the supreme court.
- 23 h. Distribute funding for direct payments, expense reimbursements, or other public
- 24 services, including funding for public administrators.
- 25 i. Establish and collect fees to support guardianship and conservatorship services
- 26 and the duties of the office, which must be deposited in the guardianship and
- 27 conservatorship support fund.
- 28 j. Seek and apply for private, federal, or other funds to help support guardians and
- 29 conservators and to safeguard the rights of individuals who receive public
- 30 services.

1 k. Accept private funds for deposit in the guardianship and conservatorship support
2 fund.

3 4. The office may not authorize payment for services for any public guardian or public
4 conservator that provides services for more individuals than allowed through statute,
5 regulation, court rule, or policy adopted by the office.

6 5. The office, its officers, or its employees, may not act as a public guardian or a public
7 conservator or act in any other representative capacity for any individual. This
8 subsection does not prohibit an officer or employee from acting as a guardian or
9 conservator in a personal capacity apart from any duties as an officer or employee.

10 6. The office is subject to audits by the state auditor under chapter 54-10.

11 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
12 **appropriation.**

13 There is created in the state treasury the guardianship and conservatorship support fund.
14 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
15 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
16 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
17 branch to defray the expenses of the office for supporting guardianship and conservatorship
18 services, including guardianship and conservatorship training and monitoring.

19 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

20 1. Identifiable information concerning an individual who is applying for or receiving public
21 services under this chapter is confidential and may be disclosed only:

22 a. In the administration of any program under the supervision or administration of
23 the office.

24 b. When authorized by a policy or procedure of the office.

25 c. When allowed or required by rule or law.

26 2. A report concerning an applicant, provider, or recipient of public services is confidential
27 if the report is made in good faith and may be disclosed only to:

28 a. Authorized staff and agents of the office, who may further disclose the
29 information to a person that has a definite interest in the well-being of the
30 individual concerned, is in a position to serve the individual's interests, and that

1 needs to know the contents of the records to assure the well-being and interests
2 of the individual concerned.

3 b. An individual who is the subject of the report, if the identity of the person
4 reporting or supplying information under this chapter is protected until the
5 information is needed for use in an administrative, legal, or disciplinary
6 proceeding arising out of the report.

7 c. A public official and the public official's authorized agent who requires the
8 information in connection with the discharge of official duties.

9 d. A court when the court determines the information is necessary for the
10 determination of an issue before the court.

11 e. The investigation counsel.

12 3. The investigation counsel may disclose information uncovered during a disciplinary
13 investigation to the attorney general or bureau of criminal investigation related to a
14 criminal investigation when the investigation counsel suspects the subject of the
15 investigation has committed a crime.

16 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
17 in the disclosure of confidential information in violation of this section is guilty of a
18 class C felony.

19 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
20 **public - Exemption.**

21 1. A person may not serve as a guardian or a conservator for three or more adult
22 individuals at the same time unless that person is a licensed guardian or a licensed
23 conservator or has an agency permit.

24 2. A public guardian or a public conservator may not provide services to a minor unless
25 authorized by a proceeding under section 30.1-28-03.3.

26 3. A person ~~may represent to the public that the person is licensed to provide public~~
27 ~~services only if the person is~~ must be a licensed guardian or a licensed conservator to
28 offer guardianship or conservatorship services to the public.

29 4. This section does not apply to:

30 a. A federal or state agency; ~~or.~~

31 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

1 c. An individual appointed as a guardian or conservator for a family member.

2 5. A person who violates this section after August 1, 2026, is guilty of a class B
3 misdemeanor.

4 **27-27.1-06. Immunity.**

5 A person who in good faith provides information or testimony regarding a guardian's or
6 conservator's misconduct or lack of professionalism is not subject to civil liability.

7 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

8 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
9 conservator license.

10 2. The ~~district court has original jurisdiction over licensure denial appeals~~ supreme court
11 must establish a process to appeal license denials and board orders.

12 3. The courts shall waive court costs and filing fees in any proceeding in which a person
13 is receiving public services under this chapter.

14 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
15 the applicable policies, procedures, and standards of the office, or other approval
16 authority authorized by court rule, if the guardian or the conservator serves an adult
17 ward, adult protected person, or incapacitated person, as defined in title 30.1.

18 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
19 **conservatorship counsel - Guardianship and conservatorship operations committee.**

20 1. The supreme court may establish a guardianship and conservatorship review board to
21 conduct disciplinary proceedings for a guardian or conservator.

22 2. The supreme court may ~~appoint~~ establish a guardianship and conservatorship counsel
23 to investigate noncompliance reported under this chapter. The director of the office is
24 the hiring authority for the investigation counsel.

25 3. The supreme court must create a guardianship and conservatorship operations
26 committee to supervise the operations of the office and investigation counsel. The
27 operations committee:

28 a. Must develop and submit budgets for the office, board, and investigation counsel.

29 b. Is the hiring authority for the office director.

30 c. May adopt policies recommended by the office.

27-27.1-09. Supreme court - Discretionary powers.

The supreme court may:

1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.
2. Establish confidentiality and disclosure standards for disciplinary proceedings.
3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:
 - a. Administer oaths.
 - b. Order and otherwise provide for the inspection of books and records.
 - c. Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.
 - d. Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.
4. Adopt rules to effectuate the powers and duties under this chapter.

27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the board in any action founded on an act or omission arising out of performance of an official duty consistent with section 54-12-01.3.
2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

27-27.1-11. Duty to disclose and cooperate.

1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give

1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.

3 2. The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 **27-27.1-12. Duties of witnesses - Penalty.**

8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.

10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court ~~overseeing the guardianship or conservatorship proceeding at~~
13 ~~issue~~of the district in which the attendance or production is required for an order
14 compelling the individual to attend and testify or produce the writings or things
15 required by the subpoena. The court shall order the individual to appear before the
16 court at a specified time and place to show cause why the individual has not attended,
17 testified, or produced the writings or things as required. A copy of the order must be
18 served on the individual. If the court determines the subpoena was regularly issued,
19 the court shall order the individual to appear at the time and place fixed in the order
20 and testify or produce the required writings or things.

21 3. An individual who fails to obey an order under this section is guilty of a class A
22 misdemeanor.

23 **27-27.1-13. Preferred claim.**

24 1. The office has a preferred claim against the estate of an individual or an individual's
25 spouse for recovery of funds expended under this chapter for the care of that
26 individual or the individual's spouse. All funds recovered under this chapter must be
27 deposited in the general fund.

28 2. A claim may not be required to be paid and interest may not begin to accrue during the
29 lifetime of the decedent's surviving spouse, if any.

30 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
31 under this chapter.

1 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
2 created and enacted as follows:

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

10 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 13 1. The court may remove a conservator for good cause, upon notice and hearing, or
14 accept the resignation of a conservator. After a conservator's death, resignation, or
15 removal, the court may appoint another conservator. A conservator so appointed
16 succeeds to the title and powers of the predecessor.
- 17 2. The court may order a conservator to be listed on a registry if the court removed the
18 conservator for good cause. A conservator listed on the registry is disqualified from
19 acting as a conservator in any conservatorship proceeding. The court shall send a
20 copy of the order to the state court administrator, who shall maintain and administer
21 the registry. This subsection does not apply to a licensed conservator. For purposes of
22 this subsection, a licensed conservator includes a conservator whose license has
23 been suspended but excludes a conservator whose license is revoked.

24 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. On the death of any recipient of medical assistance who was a resident of a nursing
27 facility, intermediate care facility for individuals with intellectual disabilities, or other
28 medical institution and with respect to whom the department determined that resident
29 reasonably was not expected to be discharged from the medical institution and to
30 return home, or who was fifty-five years of age or older when the recipient received the
31 assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter 27-27.1; and
- i. Claims made under subsection 4.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP

AND CONSERVATORSHIP. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,296,400
Public guardian and conservator fees - indigents	8,638,020
Guardianship contracts - developmentally disabled	<u>6,835,136</u>
Total general fund	\$18,319,556

**SECTION 7. APPROPRIATION - ATTORNEY GENERAL - FULL-TIME EQUIVALENT
POSITION AUTHORIZATION - ONE-TIME FUNDING.**

95
11.0.11

1 1. The funds provided in this section, or so much of the funds as may be necessary, are
2 appropriated out of any moneys in the general fund in the state treasury, not otherwise
3 appropriated, to the attorney general for the purpose of defraying the expenses of
4 full-time equivalent positions, for the biennium beginning July 1, 2025, and ending
5 June 30, 2027, as follows:

6	Salaries and wages	\$1,304,676
7	Operating expenses	365,700
8	Capital assets	<u>256,400</u>
9	Total general fund	\$1,926,776
10	Full-time equivalent positions	5.00

11 2. The following amounts reflect the 2025-27 biennium one-time funding items included
12 in the appropriation under subsection 1, which are not part of the entity's base budget
13 for the 2027-29 biennium:

14	<u>One-Time Funding Description</u>	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
15	Operating expenses - small equipment	\$79,140	\$0	\$79,140
16	Capital assets - cars and radios	<u>256,400</u>	<u>0</u>	<u>256,400</u>
17	Grand total	\$335,540	\$0	\$335,540

**REPORT OF STANDING COMMITTEE
SB 2029**

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS** ([25.0224.02002](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2029 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0224.02002
Title.03000

Prepared by the Legislative Council
staff for Senator Paulson
February 4, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security

1 number, electronic mail address, program identification number, or any other unique
2 identifying number, characteristic, or code, and any demographic information collected
3 about the individual.

4 4. "Investigation counsel" means the guardianship and conservatorship counsel.

5 5. "Licensed conservator" means a person licensed by the office to provide
6 conservatorship services.

7 6. "Licensed guardian" means a person licensed by the office to provide guardianship
8 services.

9 7. "Office" means the office of guardianship and conservatorship.

10 8. "Public conservator" means a conservator under contract with the office to provide
11 conservatorship services for an individual eligible for public services.

12 9. "Public guardian" means a guardian under contract with the office to provide
13 guardianship services for an individual eligible for public services.

14 10. "Public services" means state or federally funded programs **administered by the office**
15 available to eligible individuals.

16 11. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.

18 12. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
21 **duties - Report - Audit.**

22 1. The office of guardianship and conservatorship is created as a division under the
23 supreme court to administer the programs assigned by state law or the supreme court.

24 2. The office shall:

25 a. Develop policies and procedures, including eligibility criteria, for:

26 (1) Receiving public services;

27 (2) A public guardian or a public conservator;

28 (3) A licensed guardian or a licensed conservator; and

29 (4) Distribution of funding for direct payments and expense reimbursements for
30 public services.

31 b. Develop ethical standards for:

1 (1) A licensed guardian or a licensed conservator; and

2 (2) An unlicensed guardian or an unlicensed conservator.

3 c. Develop policies and procedures for proceedings when a guardian or a
4 conservator is unable to fulfill the duties of a guardian or a conservator.

5 d. Keep accurate records of all financial transactions performed under this chapter
6 in the manner required by the office of management and budget.

7 e. Provide a report each biennium to the legislative management regarding the
8 operations of the office, including the cost of public guardians and public
9 conservators, and any other information requested by the legislative
10 management.

11 3. The office may:

12 a. Recommend rules applicable to a licensed guardian or a licensed conservator.

13 b. Grant licenses to a guardian or conservator and agency permits, including
14 revoking or suspending an agency permit.

15 c. Require insurance or bond coverage for a licensed guardian or a licensed
16 conservator as a condition for licensure.

17 d. Establish mandatory disclosure and reporting requirements for a licensed
18 guardian or a licensed conservator, including a process to disclose information or
19 submit reports to the office.

20 e. Provide training for guardians and conservators.

21 f. Monitor guardianship and conservatorship services.

22 g. Provide annual reports to the supreme court.

23 h. Distribute funding for direct payments, expense reimbursements, or other public
24 services, including funding for public administrators.

25 i. Establish and collect fees to support guardianship and conservatorship services
26 and the duties of the office, which must be deposited in the guardianship and
27 conservatorship support fund.

28 j. Seek and apply for private, federal, or other funds to help support guardians and
29 conservators and to safeguard the rights of individuals who receive public
30 services.

k. Accept private funds for deposit in the guardianship and conservatorship support fund.

4. The office may not authorize payment for services for any public guardian or public conservator that provides services for more individuals than allowed through statute, regulation, court rule, or policy adopted by the office.

5. The office, its officers, or its employees, may not act as a public guardian or a public conservator or act in any other representative capacity for any individual. This subsection does not prohibit an officer or employee from acting as a guardian or conservator in a personal capacity apart from any duties as an officer or employee.

6. The office is subject to audits by the state auditor under chapter 54-10.

27-27.1-03. Guardianship and conservatorship support fund - Continuing appropriation.

There is created in the state treasury the guardianship and conservatorship support fund. The fund consists of all moneys transferred to the fund by the legislative assembly, interest upon moneys in the fund, fee collections, donations, grants, and other contributions received for deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial branch to defray the expenses of the office for supporting guardianship and conservatorship services, including guardianship and conservatorship training and monitoring.

27-27.1-04. Records - Confidentiality - Disclosure - Penalty.

1. Identifiable information concerning an individual who is applying for or receiving public services under this chapter is confidential and may be disclosed only:

a. In the administration of any program under the supervision or administration of the office.

b. When authorized by a policy or procedure of the office.

c. When allowed or required by rule or law.

2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:

a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that

1 needs to know the contents of the records to assure the well-being and interests
2 of the individual concerned.

3 b. An individual who is the subject of the report, if the identity of the person
4 reporting or supplying information under this chapter is protected until the
5 information is needed for use in an administrative, legal, or disciplinary
6 proceeding arising out of the report.

7 c. A public official and the public official's authorized agent who requires the
8 information in connection with the discharge of official duties.

9 d. A court when the court determines the information is necessary for the
10 determination of an issue before the court.

11 e. The investigation counsel.

12 3. The investigation counsel may disclose information uncovered during a disciplinary
13 investigation to the attorney general or bureau of criminal investigation related to a
14 criminal investigation when the investigation counsel suspects the subject of the
15 investigation has committed a crime.

16 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
17 in the disclosure of confidential information in violation of this section is guilty of a
18 class C felony.

19 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
20 **public - Exemption.**

21 1. A person may not serve as a guardian or a conservator for three or more adult
22 individuals at the same time unless that person is a licensed guardian or a licensed
23 conservator or has an agency permit.

24 2. A public guardian or a public conservator may not provide services to a minor unless
25 authorized by a proceeding under section 30.1-28-03.3.

26 3. A person ~~may represent to the public that the person is licensed to provide public~~
27 ~~services only if the person is~~ must be a licensed guardian or a licensed conservator to
28 offer guardianship or conservatorship services to the public.

29 4. This section does not apply to:

30 a. A federal or state agency; ~~or.~~

31 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

1 c. An individual appointed as a guardian or conservator for a family member.

2 5. A person who violates this section after August 1, 2026, is guilty of a class B
3 misdemeanor.

4 **27-27.1-06. Immunity.**

5 A person who in good faith provides information or testimony regarding a guardian's or
6 conservator's misconduct or lack of professionalism is not subject to civil liability.

7 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

8 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
9 conservator license.

10 2. The ~~district court has original jurisdiction over licensure denial appeals~~supreme court
11 must establish a process to appeal license denials and board orders.

12 3. The courts shall waive court costs and filing fees in any proceeding in which a person
13 is receiving public services under this chapter.

14 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
15 the applicable policies, procedures, and standards of the office, or other approval
16 authority authorized by court rule, if the guardian or the conservator serves an adult
17 ward, adult protected person, or incapacitated person, as defined in title 30.1.

18 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
19 **conservatorship counsel - Guardianship and conservatorship operations committee.**

20 1. The supreme court may establish a guardianship and conservatorship review board to
21 conduct disciplinary proceedings for a guardian or conservator.

22 2. The supreme court may ~~appoint~~establish a guardianship and conservatorship counsel
23 to investigate noncompliance reported under this chapter. The director of the office is
24 the hiring authority for the investigation counsel.

25 3. The supreme court must create a guardianship and conservatorship operations
26 committee to supervise the operations of the office and investigation counsel. The
27 operations committee:

28 a. Must develop and submit budgets for the office, board, and investigation counsel.

29 b. Is the hiring authority for the office director.

30 c. May adopt policies recommended by the office.

1 **27-27.1-09. Supreme court - Discretionary powers.**

2 The supreme court may:

- 3 1. Grant immunity to a member of the board and the board's agents if a district court or
4 the supreme court would have immunity in performing the same functions.
5 2. Establish confidentiality and disclosure standards for disciplinary proceedings.
6 3. Authorize officials, officers, agents, and designees of the office, the board, and the
7 investigation counsel to:
8 a. Administer oaths.
9 b. Order and otherwise provide for the inspection of books and records.
10 c. Issue subpoenas for the attendance of witnesses and the production of
11 designated documents, electronically stored information, or tangible things in
12 accordance with the North Dakota Rules of Civil Procedure.
13 d. Order the deposition of a person residing within or outside the state to be taken in
14 accordance with the North Dakota Rules of Civil Procedure.
15 4. Adopt rules to effectuate the powers and duties under this chapter.

16 **27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**
17 **authority for investigations.**

- 18 1. The attorney general shall act as legal counsel in any particular investigation or
19 proceeding under section 54-12-02. The attorney general shall appear and defend any
20 officer or employee of the office and any member of the board in any action founded
21 on an act or omission arising out of performance of an official duty consistent with
22 section 54-12-01.3.
23 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
24 investigation have primary authority to investigate criminal cases related to a
25 guardianship or conservatorship.

26 **27-27.1-11. Duty to disclose and cooperate.**

- 27 1. A state and local governmental entity and its officers and employees, and the officials,
28 officers, and employees of the courts of this state shall disclose records and
29 information requested by the board or investigation counsel or any authorized
30 representative of the board or investigation counsel and shall cooperate with and give

- 1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.
3 2. The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 **27-27.1-12. Duties of witnesses - Penalty.**

- 8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.
10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court ~~overseeing the guardianship or conservatorship proceeding at~~
13 ~~issue~~of the district in which the attendance or production is required for an order
14 compelling the individual to attend and testify or produce the writings or things
15 required by the subpoena. The court shall order the individual to appear before the
16 court at a specified time and place to show cause why the individual has not attended,
17 testified, or produced the writings or things as required. A copy of the order must be
18 served on the individual. If the court determines the subpoena was regularly issued,
19 the court shall order the individual to appear at the time and place fixed in the order
20 and testify or produce the required writings or things.
21 3. An individual who fails to obey an order under this section is guilty of a class A
22 misdemeanor.

23 **27-27.1-13. Preferred claim.**

- 24 1. The office has a preferred claim against the estate of an individual or an individual's
25 spouse for recovery of funds expended under this chapter for the care of that
26 individual or the individual's spouse. All funds recovered under this chapter must be
27 deposited in the general fund.
28 2. A claim may not be required to be paid and interest may not begin to accrue during the
29 lifetime of the decedent's surviving spouse, if any.
30 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
31 under this chapter.

1 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
2 created and enacted as follows:

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

10 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 13 1. The court may remove a conservator for good cause, upon notice and hearing, or
14 accept the resignation of a conservator. After a conservator's death, resignation, or
15 removal, the court may appoint another conservator. A conservator so appointed
16 succeeds to the title and powers of the predecessor.
- 17 2. The court may order a conservator to be listed on a registry if the court removed the
18 conservator for good cause. A conservator listed on the registry is disqualified from
19 acting as a conservator in any conservatorship proceeding. The court shall send a
20 copy of the order to the state court administrator, who shall maintain and administer
21 the registry. This subsection does not apply to a licensed conservator. For purposes of
22 this subsection, a licensed conservator includes a conservator whose license has
23 been suspended but excludes a conservator whose license is revoked.

24 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. On the death of any recipient of medical assistance who was a resident of a nursing
27 facility, intermediate care facility for individuals with intellectual disabilities, or other
28 medical institution and with respect to whom the department determined that resident
29 reasonably was not expected to be discharged from the medical institution and to
30 return home, or who was fifty-five years of age or older when the recipient received the
31 assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter 27-27.1; and
- i. Claims made under subsection 4.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP

AND CONSERVATORSHIP. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,296,400
Public guardian and conservator fees - indigents	8,638,020
Guardianship contracts - developmentally disabled	<u>6,835,136</u>
Total general fund	\$18,319,556

**SECTION 7. APPROPRIATION - ATTORNEY GENERAL - FULL-TIME EQUIVALENT
POSITION AUTHORIZATION - ONE-TIME FUNDING.**

- 1 1. The funds provided in this section, or so much of the funds as may be necessary, are
2 appropriated out of any moneys in the general fund in the state treasury, not otherwise
3 appropriated, to the attorney general for the purpose of defraying the expenses of
4 full-time equivalent positions, for the biennium beginning July 1, 2025, and ending
5 June 30, 2027, as follows:

6	Salaries and wages	\$1,304,676
7	Operating expenses	365,700
8	Capital assets	<u>256,400</u>
9	Total general fund	\$1,926,776
10	Full-time equivalent positions	5.00

- 11 2. The following amounts reflect the 2025-27 biennium one-time funding items included
12 in the appropriation under subsection 1, which are not part of the entity's base budget
13 for the 2027-29 biennium:

14	<u>One-Time Funding Description</u>	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
15	Operating expenses - small equipment	\$79,140	\$0	\$79,140
16	Capital assets - cars and radios	<u>256,400</u>	<u>0</u>	<u>256,400</u>
17	Grand total	\$335,540	\$0	\$335,540

2025 SENATE APPROPRIATIONS

SB 2029

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Education and Environment Division Sakakawea Room, State Capitol

SB 2029
2/11/2025

A BILL for an Act, relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, and relating to the task force on guardianship monitoring.

3:06 p.m. Chairman Sorvaag called the meeting to order.

Members Present: Chairman Ronald Sorvaag, Senator Cole Conley, Senator Scott Meyer, Senator Donald Schaible, Senator Paul J. Thomas.

Discussion Topics:

- Guardianship Structure.
- Authorities and purpose of guardian.

3:06 p.m. Senator Thomas Introduced the bill and testified in neutral and referenced testimony #37186.

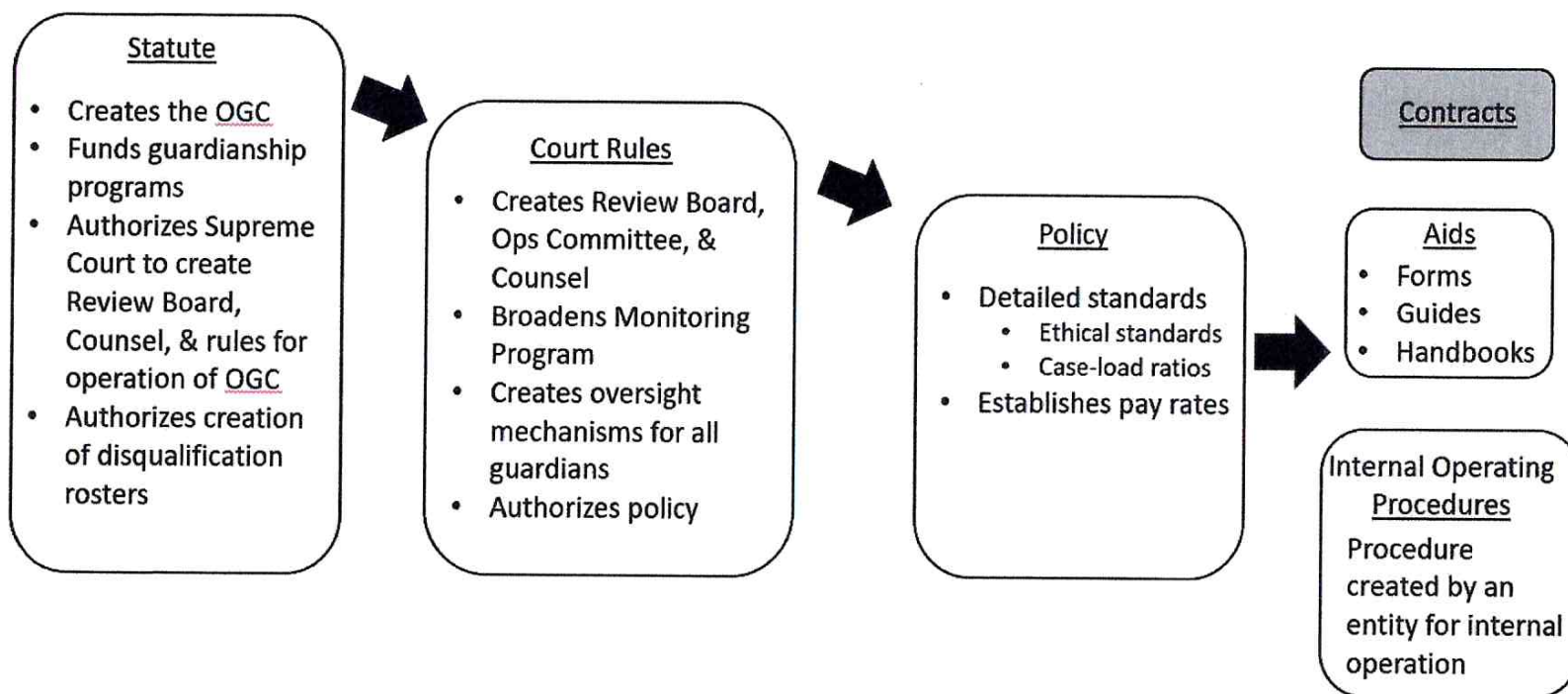
3:07 p.m. Sally Holewa, State Court Administrator, State of ND, testified in favor and submitted testimony #37186.

3:19 p.m. Lonnie Grabowska, Director, ND Bureau of Criminal Investigation, testified in favor.

3:25 p.m. Chairman Sorvaag closed the meeting.

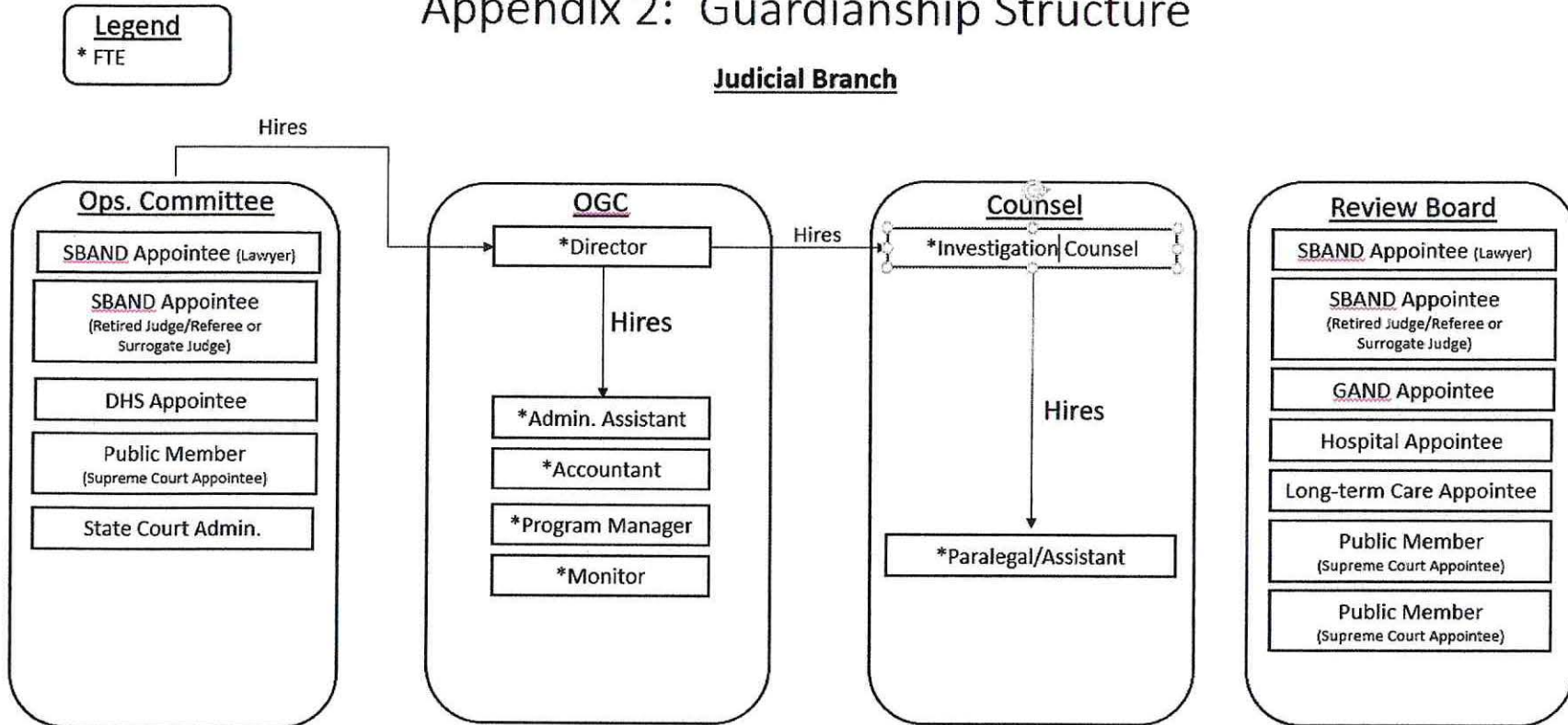
Steven Hall, Committee Clerk

Appendix 1: Authorities & Purpose



Appendix 2: Guardianship Structure

Judicial Branch



Appendix 3: Guardianship Structure Roles & Responsibilities

Ops. Committee

- Approve budgets for OGC, Counsel, and Review Board
- Enact policies

Think Legislative Equivalent

OGC

- Administer funds for public services (PASS, DD, establishment funds)
- Draft budget & policies
- Administer Monitoring & Education Programs
- Process licenses

Think Executive Equivalent

Counsel

- Validate legitimacy of concerns
- Investigate legitimate concerns
- Initiate formal proceedings
- Present findings to Review Board

Think independent AG Equivalent

Review Board

- Conduct oversight review hearings
- Issue findings and order

Think Judicial Equivalent

Appendix 4: Summary of Guardianship Funding

Office	Program	23-25 Funding	25-27 Funding Request	New Line Item in Bill
Bureau of Criminal Investigation (BCI)			960,000	Salaries and wage – agents
			322,000	Operating expenses – agents
Department of Health & Human Services (DHHS) Aging Services Division	Guardianship Establishment Fund	423,000	1,550,000	Establishment costs - indigents
DHHS Developmental Disabilities (DD) Services Division	DD Guardianship Establishment Fund	300,000	750,000	Establishment costs - developmentally disabled
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Petitioning Costs	200,195	230,000	Establishment costs - developmentally disabled
DHHS North Dakota State Hospital (NDSH)	NDSH professional services/operating costs	193,596	288,000	Establishment costs - developmentally disabled
DHHS Life Skills and Transition Center (LSTC)	LSTC professional services/operating costs	23,388	28,400	Establishment costs - developmentally disabled
Office of Management and Budget (OMB)	Public Administrator Support Services (PASS)	7,100,000	8,638,020	Public guardian and conservator fees - indigents
DHHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Guardian Fees	4,288,349	6,835,136	Guardianship contracts - developmentally disabled
Supreme Court	Guardianship Monitoring Program*	624,008	2,202,543	Judicial Branch Budget
	OGC, Review Board, Investigative Counsel			Judicial Branch Budget
TOTAL			\$21,804,099	
*Includes current program manager and attorney hired under N.D.C.C. § 27-27-01				

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Education and Environment Division Sakakawea Room, State Capitol

SB 2029
2/17/2025

A BILL for an Act to create and enact chapter relating to an office of guardianship and conservatorship and the removal of a guardian; to amend and reenact of the North Dakota Century Code, relating to the removal of a conservator and the recovery of medical assistance expenses; and relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

8:30 a.m. Chairman Sorvaag called the meeting to order.

Members Present: Chairman Ronald Sorvaag, Senator Cole Conley, Senator Scott Meyer, Senator Donald Schaible, Senator Paul J. Thomas.

Discussion Topics:

- Sections that are to be moved to a different budget.
- Guardianship Funds and Contracts.
- Operating Costs.

8:32 a.m. Senator Thomas testified in neutral and submitted testimony in favor #37950 and #38171.

8:35 a.m. Senator Thomas moved to adopt amendment LC #25.0224.03001 #37950.

8:36 a.m. Senator Conley Seconded.

Senators	Vote
Senator Ronald Sorvaag	Y
Senator Cole Conley	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Paul J. Thomas	Y

Motion Passed: 5-0-0.

8:37 a.m. Senator Thomas moved a Do Pass as amended.

8:37 a.m. Senator Conley Seconded.

Senators	Vote
Senator Ronald Sorvaag	Y
Senator Cole Conley	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Paul J. Thomas	Y

Motion Passed: 5-0-0.

Senator Thomas will carry the bill.

8:38 a.m. Chairman Sorvaag closed the meeting.

Steven Hall, Committee Clerk

25.0224.03001
Title.

Prepared by the Legislative Council
staff for Senate Appropriations -
Education and Environment Division
Committee

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 27-27.1-01. Definitions.

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.

- 1 3. "Identifiable information" means an individual's personal details, including the
2 individual's name, address, telephone number, facsimile number, social security
3 number, electronic mail address, program identification number, or any other unique
4 identifying number, characteristic, or code, and any demographic information collected
5 about the individual.
- 6 4. "Investigation counsel" means the guardianship and conservatorship counsel.
- 7 5. "Licensed conservator" means a person licensed by the office to provide
8 conservatorship services.
- 9 6. "Licensed guardian" means a person licensed by the office to provide guardianship
10 services.
- 11 7. "Office" means the office of guardianship and conservatorship.
- 12 8. "Public conservator" means a conservator under contract with the office to provide
13 conservatorship services for an individual eligible for public services.
- 14 9. "Public guardian" means a guardian under contract with the office to provide
15 guardianship services for an individual eligible for public services.
- 16 10. "Public services" means state or federally funded programs administered by the office
17 available to eligible individuals.
- 18 11. "Unlicensed conservator" means a person providing conservatorship services without
19 a conservator license.
- 20 12. "Unlicensed guardian" means a person providing guardianship services without a
21 guardian license.

22 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
23 **duties - Report - Audit.**

- 24 1. The office of guardianship and conservatorship is created as a division under the
25 supreme court to administer the programs assigned by state law or the supreme court.
- 26 2. The office shall:
 - 27 a. Develop policies and procedures, including eligibility criteria, for:
 - 28 (1) Receiving public services;
 - 29 (2) A public guardian or a public conservator;
 - 30 (3) A licensed guardian or a licensed conservator; and

- 1 (4) Distribution of funding for direct payments and expense reimbursements for
- 2 public services.
- 3 b. Develop ethical standards for:
- 4 (1) A licensed guardian or a licensed conservator; and
- 5 (2) An unlicensed guardian or an unlicensed conservator.
- 6 c. Develop policies and procedures for proceedings when a guardian or a
- 7 conservator is unable to fulfill the duties of a guardian or a conservator.
- 8 d. Keep accurate records of all financial transactions performed under this chapter
- 9 in the manner required by the office of management and budget.
- 10 e. Provide a report each biennium to the legislative management regarding the
- 11 operations of the office, including the cost of public guardians and public
- 12 conservators, and any other information requested by the legislative
- 13 management.
- 14 3. The office may:
- 15 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 16 b. Grant licenses to a guardian or conservator and agency permits, including
- 17 revoking or suspending an agency permit.
- 18 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 19 conservator as a condition for licensure.
- 20 d. Establish mandatory disclosure and reporting requirements for a licensed
- 21 guardian or a licensed conservator, including a process to disclose information or
- 22 submit reports to the office.
- 23 e. Provide training for guardians and conservators.
- 24 f. Monitor guardianship and conservatorship services.
- 25 g. Provide annual reports to the supreme court.
- 26 h. Distribute funding for direct payments, expense reimbursements, or other public
- 27 services, including funding for public administrators.
- 28 i. Establish and collect fees to support guardianship and conservatorship services
- 29 and the duties of the office, which must be deposited in the guardianship and
- 30 conservatorship support fund.

1 j. Seek and apply for private, federal, or other funds to help support guardians and
2 conservators and to safeguard the rights of individuals who receive public
3 services.

4 k. Accept private funds for deposit in the guardianship and conservatorship support
5 fund.

6 4. The office may not authorize payment for services for any public guardian or public
7 conservator that provides services for more individuals than allowed through statute,
8 regulation, court rule, or policy adopted by the office.

9 5. The office, its officers, or its employees, may not act as a public guardian or a public
10 conservator or act in any other representative capacity for any individual. This
11 subsection does not prohibit an officer or employee from acting as a guardian or
12 conservator in a personal capacity apart from any duties as an officer or employee.

13 6. The office is subject to audits by the state auditor under chapter 54-10.

14 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
15 **appropriation.**

16 There is created in the state treasury the guardianship and conservatorship support fund.
17 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
18 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
19 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
20 branch to defray the expenses of the office for supporting guardianship and conservatorship
21 services, including guardianship and conservatorship training and monitoring.

22 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

23 1. Identifiable information concerning an individual who is applying for or receiving public
24 services under this chapter is confidential and may be disclosed only:

25 a. In the administration of any program under the supervision or administration of
26 the office.

27 b. When authorized by a policy or procedure of the office.

28 c. When allowed or required by rule or law.

29 2. A report concerning an applicant, provider, or recipient of public services is confidential
30 if the report is made in good faith and may be disclosed only to:

- 1 a. Authorized staff and agents of the office, who may further disclose the
2 information to a person that has a definite interest in the well-being of the
3 individual concerned, is in a position to serve the individual's interests, and that
4 needs to know the contents of the records to assure the well-being and interests
5 of the individual concerned.
- 6 b. An individual who is the subject of the report, if the identity of the person
7 reporting or supplying information under this chapter is protected until the
8 information is needed for use in an administrative, legal, or disciplinary
9 proceeding arising out of the report.
- 10 c. A public official and the public official's authorized agent who requires the
11 information in connection with the discharge of official duties.
- 12 d. A court when the court determines the information is necessary for the
13 determination of an issue before the court.
- 14 e. The investigation counsel.
- 15 3. The investigation counsel may disclose information uncovered during a disciplinary
16 investigation to the attorney general or bureau of criminal investigation related to a
17 criminal investigation when the investigation counsel suspects the subject of the
18 investigation has committed a crime.
- 19 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
20 in the disclosure of confidential information in violation of this section is guilty of a
21 class C felony.

22 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
23 **public - Exemption.**

- 24 1. A person may not serve as a guardian or a conservator for three or more adult
25 individuals at the same time unless that person is a licensed guardian or a licensed
26 conservator or has an agency permit.
- 27 2. A public guardian or a public conservator may not provide services to a minor unless
28 authorized by a proceeding under section 30.1-28-03.3.
- 29 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
30 or conservatorship services to the public.
- 31 4. This section does not apply to:

- 1 a. A federal or state agency.
- 2 b. A financial institution under section 6-08.1-01 when appointed as a conservator.
- 3 c. An individual appointed as a guardian or conservator for a family member.
- 4 5. A person who violates this section after August 1, 2026, is guilty of a class B
- 5 misdemeanor.

6 **27-27.1-06. Immunity.**

- 7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
11 conservator license.
- 12 2. The supreme court must establish a process to appeal license denials and board
13 orders.
- 14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
15 is receiving public services under this chapter.
- 16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
17 the applicable policies, procedures, and standards of the office, or other approval
18 authority authorized by court rule, if the guardian or the conservator serves an adult
19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

- 22 1. The supreme court may establish a guardianship and conservatorship review board to
23 conduct disciplinary proceedings for a guardian or conservator.
- 24 2. The supreme court may establish a guardianship and conservatorship counsel to
25 investigate noncompliance reported under this chapter. The director of the office is the
26 hiring authority for the investigation counsel.
- 27 3. The supreme court must create a guardianship and conservatorship operations
28 committee to supervise the operations of the office and investigation counsel. The
29 operations committee:
- 30 a. Must develop and submit budgets for the office, board, and investigation counsel.
31 b. Is the hiring authority for the office director.

1 c. May adopt policies recommended by the office.

2 **27-27.1-09. Supreme court - Discretionary powers.**

3 The supreme court may:

4 1. Grant immunity to a member of the board and the board's agents if a district court or
5 the supreme court would have immunity in performing the same functions.

6 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

7 3. Authorize officials, officers, agents, and designees of the office, the board, and the
8 investigation counsel to:

9 a. Administer oaths.

10 b. Order and otherwise provide for the inspection of books and records.

11 c. Issue subpoenas for the attendance of witnesses and the production of
12 designated documents, electronically stored information, or tangible things in
13 accordance with the North Dakota Rules of Civil Procedure.

14 d. Order the deposition of a person residing within or outside the state to be taken in
15 accordance with the North Dakota Rules of Civil Procedure.

16 4. Adopt rules to effectuate the powers and duties under this chapter.

17 **27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**
18 **authority for investigations.**

19 1. The attorney general shall act as legal counsel in any particular investigation or
20 proceeding under section 54-12-02. The attorney general shall appear and defend any
21 officer or employee of the office and any member of the board in any action founded
22 on an act or omission arising out of performance of an official duty consistent with
23 section 54-12-01.3.

24 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
25 investigation have primary authority to investigate criminal cases related to a
26 guardianship or conservatorship.

27 **27-27.1-11. Duty to disclose and cooperate.**

28 1. A state and local governmental entity and its officers and employees, and the officials,
29 officers, and employees of the courts of this state shall disclose records and
30 information requested by the board or investigation counsel or any authorized
31 representative of the board or investigation counsel and shall cooperate with and give

1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.

3 2. The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 **27-27.1-12. Duties of witnesses - Penalty.**

8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.

10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court of the district in which the attendance or production is
13 required for an order compelling the individual to attend and testify or produce the
14 writings or things required by the subpoena. The court shall order the individual to
15 appear before the court at a specified time and place to show cause why the individual
16 has not attended, testified, or produced the writings or things as required. A copy of
17 the order must be served on the individual. If the court determines the subpoena was
18 regularly issued, the court shall order the individual to appear at the time and place
19 fixed in the order and testify or produce the required writings or things.

20 3. An individual who fails to obey an order under this section is guilty of a class A
21 misdemeanor.

22 **27-27.1-13. Preferred claim.**

23 1. The office has a preferred claim against the estate of an individual or an individual's
24 spouse for recovery of funds expended under this chapter for the care of that
25 individual or the individual's spouse. All funds recovered under this chapter must be
26 deposited in the general fund.

27 2. A claim may not be required to be paid and interest may not begin to accrue during the
28 lifetime of the decedent's surviving spouse, if any.

29 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
30 under this chapter.

1 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
2 created and enacted as follows:

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

10 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 13 1. The court may remove a conservator for good cause, upon notice and hearing, or
14 accept the resignation of a conservator. After a conservator's death, resignation, or
15 removal, the court may appoint another conservator. A conservator so appointed
16 succeeds to the title and powers of the predecessor.
- 17 2. The court may order a conservator to be listed on a registry if the court removed the
18 conservator for good cause. A conservator listed on the registry is disqualified from
19 acting as a conservator in any conservatorship proceeding. The court shall send a
20 copy of the order to the state court administrator, who shall maintain and administer
21 the registry. This subsection does not apply to a licensed conservator. For purposes of
22 this subsection, a licensed conservator includes a conservator whose license has
23 been suspended but excludes a conservator whose license is revoked.

24 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. On the death of any recipient of medical assistance who was a resident of a nursing
27 facility, intermediate care facility for individuals with intellectual disabilities, or other
28 medical institution and with respect to whom the department determined that resident
29 reasonably was not expected to be discharged from the medical institution and to
30 return home, or who was fifty-five years of age or older when the recipient received the
31 assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter 27-27.1; and
- i. Claims made under subsection 4.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP

AND CONSERVATORSHIP. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,296,400
Public guardian and conservator fees - indigents	8,638,020
Guardianship contracts - developmentally disabled	6,835,136
Total general fund	\$18,319,556
<u>Establishment costs - indigents</u>	<u>\$1,550,000</u>
<u>Establishment costs - developmentally disabled</u>	<u>1,096,400</u>
<u>Public guardian and conservator fees - indigents</u>	<u>7,100,000</u>

Guardianship contracts - developmentally disabled 5,500,000

Total general fund \$15,246,400

~~SECTION 7. APPROPRIATION - ATTORNEY GENERAL - FULL-TIME EQUIVALENT~~

~~POSITION AUTHORIZATION - ONE-TIME FUNDING.~~

~~1. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the attorney general for the purpose of defraying the expenses of full-time equivalent positions, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:~~

Salaries and wages \$1,304,676

Operating expenses 365,700

Capital assets 256,400

Total general fund \$1,926,776

Full-time equivalent positions 5.00

~~2. The following amounts reflect the 2025-27 biennium one-time funding items included in the appropriation under subsection 1, which are not part of the entity's base budget for the 2027-29 biennium:~~

~~One-Time Funding Description General Fund Other Funds Total~~

~~Operating expenses - small equipment \$79,140 \$0 \$79,140~~

~~Capital assets - cars and radios 256,400 0 256,400~~

~~Grand total \$335,540 \$0 \$335,540~~

Appendix 5: Guardianship Funding Comparison

Office	Program	23-25 Funding	25-27 Funding	Sen. Thomas Recommendation	New Line Item in Bill
Department of Health & Human Services (HHS) Aging Divison	Guardinaship	423,000	1,550,000	1,550,000	Establishment costs- indigents
	Establishment Fund	300,000			
HHS Developmental Dissabilities (DD) Services Division	DD Guardianship	300,000	750,000	550,000	Establishment costs - developmentally disabled
	Establishment Fund	120,000			
HHS DD Services	Corporate Guardianship Contract - Catholic Charities - Petitioning Costs	200,195	230,000	230,000	Establishment costs developmentally disabled
HHS North Dakota State Hospital (NDSH)	NSDH professional Services/operating costs	193,596	288,000	288,000	Establishment costs developmentally disabled
HHS life Skills and Tansition Center (LSTC)	LSTC professional services/operating costs	23,388	28,400	28,400	Establishment costs developmentally disabled
Office of Management and Budget (OMB)	Public Administrator Support Services (PASS)	7,100,000	8,638,020	7,100,000	Public guardian and conservator fees - indigents
HHS DD Service Division	Corporate Guardianship Contract - Catholic Charities - Guardian Fees	4,288,349	6,835,136	5,500,000	Guardianship contracts - developmentally disabled
Supreme Court	Guardinaship Monitoring Program	624,008	2,202,543	1,400,000	Judicial Branch Budget
	OGC, Review Board, Investigative Council				
Attorney General			960,000	770,000	Salaries and wage
			322,000		Operating expenses
			256,400		Capital Assets
TOTAL		13,572,536	22,060,499	17,416,400	

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2029
2/19/2025

Relating to an office of guardianship and conservatorship and the removal of a guardian, the removal of a conservator and the recovery of medical assistance expenses, the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

9:23 a.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Meyer, Schaible, Sickler, Sorvaag, Thomas, Wanzek.

Discussion Topics:

- Management of Budget Moved to the Judiciary Branch
- Concerns About Moving Budget Management

9:24 a.m. Senator Thomas introduced the bill and submitted testimony #38039.

9:29 a.m. Senator Thomas moved amendment LC 25.0224.03001.

9:29 a.m. Senator Sorvaag seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 16-0-0.

9:41 a.m. Senator Thomas moved a Do Pass as Amended.

9:41 a.m. Senator Sorvaag seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	N
Senator Randy A. Burckhard	Y
Senator Sean Cleary	N
Senator Cole Conley	N
Senator Kyle Davison	Y
Senator Dick Dever	N
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	N
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	N

Motion Passed 10-6-0.

Senator Paulson will carry the bill.

9:42 a.m. Chairman Bekkedahl closed the hearing.

Elizabeth Reiten, Committee Clerk

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

2-19-25

JB 10/11

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.

18 2. "Board" means the guardianship and conservatorship review board.

2011

- 1 3. "Identifiable information" means an individual's personal details, including the
- 2 individual's name, address, telephone number, facsimile number, social security
- 3 number, electronic mail address, program identification number, or any other unique
- 4 identifying number, characteristic, or code, and any demographic information collected
- 5 about the individual.
- 6 4. "Investigation counsel" means the guardianship and conservatorship counsel.
- 7 5. "Licensed conservator" means a person licensed by the office to provide
- 8 conservatorship services.
- 9 6. "Licensed guardian" means a person licensed by the office to provide guardianship
- 10 services.
- 11 7. "Office" means the office of guardianship and conservatorship.
- 12 8. "Public conservator" means a conservator under contract with the office to provide
- 13 conservatorship services for an individual eligible for public services.
- 14 9. "Public guardian" means a guardian under contract with the office to provide
- 15 guardianship services for an individual eligible for public services.
- 16 10. "Public services" means state or federally funded programs administered by the office
- 17 available to eligible individuals.
- 18 11. "Unlicensed conservator" means a person providing conservatorship services without
- 19 a conservator license.
- 20 12. "Unlicensed guardian" means a person providing guardianship services without a
- 21 guardian license.

22 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**

23 **duties - Report - Audit.**

- 24 1. The office of guardianship and conservatorship is created as a division under the
- 25 supreme court to administer the programs assigned by state law or the supreme court.
- 26 2. The office shall:
- 27 a. Develop policies and procedures, including eligibility criteria, for:
- 28 (1) Receiving public services;
- 29 (2) A public guardian or a public conservator;
- 30 (3) A licensed guardian or a licensed conservator; and

- 1 (4) Distribution of funding for direct payments and expense reimbursements for
- 2 public services.
- 3 b. Develop ethical standards for:
- 4 (1) A licensed guardian or a licensed conservator; and
- 5 (2) An unlicensed guardian or an unlicensed conservator.
- 6 c. Develop policies and procedures for proceedings when a guardian or a
- 7 conservator is unable to fulfill the duties of a guardian or a conservator.
- 8 d. Keep accurate records of all financial transactions performed under this chapter
- 9 in the manner required by the office of management and budget.
- 10 e. Provide a report each biennium to the legislative management regarding the
- 11 operations of the office, including the cost of public guardians and public
- 12 conservators, and any other information requested by the legislative
- 13 management.
- 14 3. The office may:
- 15 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 16 b. Grant licenses to a guardian or conservator and agency permits, including
- 17 revoking or suspending an agency permit.
- 18 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 19 conservator as a condition for licensure.
- 20 d. Establish mandatory disclosure and reporting requirements for a licensed
- 21 guardian or a licensed conservator, including a process to disclose information or
- 22 submit reports to the office.
- 23 e. Provide training for guardians and conservators.
- 24 f. Monitor guardianship and conservatorship services.
- 25 g. Provide annual reports to the supreme court.
- 26 h. Distribute funding for direct payments, expense reimbursements, or other public
- 27 services, including funding for public administrators.
- 28 i. Establish and collect fees to support guardianship and conservatorship services
- 29 and the duties of the office, which must be deposited in the guardianship and
- 30 conservatorship support fund.

- 1 j. Seek and apply for private, federal, or other funds to help support guardians and
- 2 conservators and to safeguard the rights of individuals who receive public
- 3 services.
- 4 k. Accept private funds for deposit in the guardianship and conservatorship support
- 5 fund.
- 6 4. The office may not authorize payment for services for any public guardian or public
- 7 conservator that provides services for more individuals than allowed through statute,
- 8 regulation, court rule, or policy adopted by the office.
- 9 5. The office, its officers, or its employees, may not act as a public guardian or a public
- 10 conservator or act in any other representative capacity for any individual. This
- 11 subsection does not prohibit an officer or employee from acting as a guardian or
- 12 conservator in a personal capacity apart from any duties as an officer or employee.
- 13 6. The office is subject to audits by the state auditor under chapter 54-10.

14 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**

15 **appropriation.**

16 There is created in the state treasury the guardianship and conservatorship support fund.

17 The fund consists of all moneys transferred to the fund by the legislative assembly, interest

18 upon moneys in the fund, fee collections, donations, grants, and other contributions received for

19 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial

20 branch to defray the expenses of the office for supporting guardianship and conservatorship

21 services, including guardianship and conservatorship training and monitoring.

22 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

- 23 1. Identifiable information concerning an individual who is applying for or receiving public
- 24 services under this chapter is confidential and may be disclosed only:
- 25 a. In the administration of any program under the supervision or administration of
- 26 the office.
- 27 b. When authorized by a policy or procedure of the office.
- 28 c. When allowed or required by rule or law.
- 29 2. A report concerning an applicant, provider, or recipient of public services is confidential
- 30 if the report is made in good faith and may be disclosed only to:

- 1 a. Authorized staff and agents of the office, who may further disclose the
2 information to a person that has a definite interest in the well-being of the
3 individual concerned, is in a position to serve the individual's interests, and that
4 needs to know the contents of the records to assure the well-being and interests
5 of the individual concerned.
- 6 b. An individual who is the subject of the report, if the identity of the person
7 reporting or supplying information under this chapter is protected until the
8 information is needed for use in an administrative, legal, or disciplinary
9 proceeding arising out of the report.
- 10 c. A public official and the public official's authorized agent who requires the
11 information in connection with the discharge of official duties.
- 12 d. A court when the court determines the information is necessary for the
13 determination of an issue before the court.
- 14 e. The investigation counsel.
- 15 3. The investigation counsel may disclose information uncovered during a disciplinary
16 investigation to the attorney general or bureau of criminal investigation related to a
17 criminal investigation when the investigation counsel suspects the subject of the
18 investigation has committed a crime.
- 19 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
20 in the disclosure of confidential information in violation of this section is guilty of a
21 class C felony.

22 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
23 **public - Exemption.**

- 24 1. A person may not serve as a guardian or a conservator for three or more adult
25 individuals at the same time unless that person is a licensed guardian or a licensed
26 conservator or has an agency permit.
- 27 2. A public guardian or a public conservator may not provide services to a minor unless
28 authorized by a proceeding under section 30.1-28-03.3.
- 29 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
30 or conservatorship services to the public.
- 31 4. This section does not apply to:

- 1 a. A federal or state agency.
- 2 b. A financial institution under section 6-08.1-01 when appointed as a conservator.
- 3 c. An individual appointed as a guardian or conservator for a family member.
- 4 5. A person who violates this section after August 1, 2026, is guilty of a class B
- 5 misdemeanor.

6 **27-27.1-06. Immunity.**

7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
11 conservator license.
- 12 2. The supreme court must establish a process to appeal license denials and board
13 orders.
- 14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
15 is receiving public services under this chapter.
- 16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
17 the applicable policies, procedures, and standards of the office, or other approval
18 authority authorized by court rule, if the guardian or the conservator serves an adult
19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

- 22 1. The supreme court may establish a guardianship and conservatorship review board to
23 conduct disciplinary proceedings for a guardian or conservator.
- 24 2. The supreme court may establish a guardianship and conservatorship counsel to
25 investigate noncompliance reported under this chapter. The director of the office is the
26 hiring authority for the investigation counsel.
- 27 3. The supreme court must create a guardianship and conservatorship operations
28 committee to supervise the operations of the office and investigation counsel. The
29 operations committee:
 - 30 a. Must develop and submit budgets for the office, board, and investigation counsel.
 - 31 b. Is the hiring authority for the office director.

1 c. May adopt policies recommended by the office.

2 **27-27.1-09. Supreme court - Discretionary powers.**

3 The supreme court may:

4 1. Grant immunity to a member of the board and the board's agents if a district court or
5 the supreme court would have immunity in performing the same functions.

6 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

7 3. Authorize officials, officers, agents, and designees of the office, the board, and the
8 investigation counsel to:

9 a. Administer oaths.

10 b. Order and otherwise provide for the inspection of books and records.

11 c. Issue subpoenas for the attendance of witnesses and the production of
12 designated documents, electronically stored information, or tangible things in
13 accordance with the North Dakota Rules of Civil Procedure.

14 d. Order the deposition of a person residing within or outside the state to be taken in
15 accordance with the North Dakota Rules of Civil Procedure.

16 4. Adopt rules to effectuate the powers and duties under this chapter.

17 **27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**
18 **authority for investigations.**

19 1. The attorney general shall act as legal counsel in any particular investigation or
20 proceeding under section 54-12-02. The attorney general shall appear and defend any
21 officer or employee of the office and any member of the board in any action founded
22 on an act or omission arising out of performance of an official duty consistent with
23 section 54-12-01.3.

24 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
25 investigation have primary authority to investigate criminal cases related to a
26 guardianship or conservatorship.

27 **27-27.1-11. Duty to disclose and cooperate.**

28 1. A state and local governmental entity and its officers and employees, and the officials,
29 officers, and employees of the courts of this state shall disclose records and
30 information requested by the board or investigation counsel or any authorized
31 representative of the board or investigation counsel and shall cooperate with and give

1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.

3 2. The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 **27-27.1-12. Duties of witnesses - Penalty.**

8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.

10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court of the district in which the attendance or production is
13 required for an order compelling the individual to attend and testify or produce the
14 writings or things required by the subpoena. The court shall order the individual to
15 appear before the court at a specified time and place to show cause why the individual
16 has not attended, testified, or produced the writings or things as required. A copy of
17 the order must be served on the individual. If the court determines the subpoena was
18 regularly issued, the court shall order the individual to appear at the time and place
19 fixed in the order and testify or produce the required writings or things.

20 3. An individual who fails to obey an order under this section is guilty of a class A
21 misdemeanor.

22 **27-27.1-13. Preferred claim.**

23 1. The office has a preferred claim against the estate of an individual or an individual's
24 spouse for recovery of funds expended under this chapter for the care of that
25 individual or the individual's spouse. All funds recovered under this chapter must be
26 deposited in the general fund.

27 2. A claim may not be required to be paid and interest may not begin to accrue during the
28 lifetime of the decedent's surviving spouse, if any.

29 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
30 under this chapter.

SECTION 2. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 3. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 4. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter 27-27.1; and
- i. Claims made under subsection 4.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP

AND CONSERVATORSHIP. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,296,400
Public guardian and conservator fees - indigents	8,638,020
Guardianship contracts - developmentally disabled	6,835,136
Total general fund	\$18,319,556
<u>Establishment costs - indigents</u>	<u>\$1,550,000</u>
<u>Establishment costs - developmentally disabled</u>	<u>1,096,400</u>
<u>Public guardian and conservator fees - indigents</u>	<u>7,100,000</u>

Guardianship contracts - developmentally disabled 5,500,000

Total general fund \$15,246,400

~~SECTION 7. APPROPRIATION - ATTORNEY GENERAL - FULL-TIME EQUIVALENT~~

~~POSITION AUTHORIZATION - ONE-TIME FUNDING.~~

~~1. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the attorney general for the purpose of defraying the expenses of full-time equivalent positions, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:~~

Salaries and wages \$1,304,676

Operating expenses 365,700

Capital assets 256,400

Total general fund \$1,926,776

Full-time equivalent positions 5.00

~~2. The following amounts reflect the 2025-27 biennium one-time funding items included in the appropriation under subsection 1, which are not part of the entity's base budget for the 2027-29 biennium:~~

One-Time Funding Description	General Fund	Other Funds	Total
---	-------------------------	------------------------	------------------

Operating expenses - small equipment	\$79,140	\$0	\$79,140
---	---------------------	----------------	---------------------

Capital assets - cars and radios	256,400	0	256,400
---	--------------------	--------------	--------------------

Grand total	\$335,540	\$0	\$335,540
------------------------	----------------------	----------------	----------------------

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2029**

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS** ([25.0224.03001](#)) and when so amended, recommends **DO PASS** (10 YEAS, 6 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2029 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0224.03001
Title.

Prepared by the Legislative Council
staff for Senate Appropriations -
Education and Environment Division
Committee

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
18 2. "Board" means the guardianship and conservatorship review board.

- 1 3. "Identifiable information" means an individual's personal details, including the
2 individual's name, address, telephone number, facsimile number, social security
3 number, electronic mail address, program identification number, or any other unique
4 identifying number, characteristic, or code, and any demographic information collected
5 about the individual.
- 6 4. "Investigation counsel" means the guardianship and conservatorship counsel.
- 7 5. "Licensed conservator" means a person licensed by the office to provide
8 conservatorship services.
- 9 6. "Licensed guardian" means a person licensed by the office to provide guardianship
10 services.
- 11 7. "Office" means the office of guardianship and conservatorship.
- 12 8. "Public conservator" means a conservator under contract with the office to provide
13 conservatorship services for an individual eligible for public services.
- 14 9. "Public guardian" means a guardian under contract with the office to provide
15 guardianship services for an individual eligible for public services.
- 16 10. "Public services" means state or federally funded programs administered by the office
17 available to eligible individuals.
- 18 11. "Unlicensed conservator" means a person providing conservatorship services without
19 a conservator license.
- 20 12. "Unlicensed guardian" means a person providing guardianship services without a
21 guardian license.

22 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
23 **duties - Report - Audit.**

- 24 1. The office of guardianship and conservatorship is created as a division under the
25 supreme court to administer the programs assigned by state law or the supreme court.
- 26 2. The office shall:
 - 27 a. Develop policies and procedures, including eligibility criteria, for:
 - 28 (1) Receiving public services;
 - 29 (2) A public guardian or a public conservator;
 - 30 (3) A licensed guardian or a licensed conservator; and

- 1 (4) Distribution of funding for direct payments and expense reimbursements for
- 2 public services.
- 3 b. Develop ethical standards for:
- 4 (1) A licensed guardian or a licensed conservator; and
- 5 (2) An unlicensed guardian or an unlicensed conservator.
- 6 c. Develop policies and procedures for proceedings when a guardian or a
- 7 conservator is unable to fulfill the duties of a guardian or a conservator.
- 8 d. Keep accurate records of all financial transactions performed under this chapter
- 9 in the manner required by the office of management and budget.
- 10 e. Provide a report each biennium to the legislative management regarding the
- 11 operations of the office, including the cost of public guardians and public
- 12 conservators, and any other information requested by the legislative
- 13 management.
- 14 3. The office may:
- 15 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 16 b. Grant licenses to a guardian or conservator and agency permits, including
- 17 revoking or suspending an agency permit.
- 18 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 19 conservator as a condition for licensure.
- 20 d. Establish mandatory disclosure and reporting requirements for a licensed
- 21 guardian or a licensed conservator, including a process to disclose information or
- 22 submit reports to the office.
- 23 e. Provide training for guardians and conservators.
- 24 f. Monitor guardianship and conservatorship services.
- 25 g. Provide annual reports to the supreme court.
- 26 h. Distribute funding for direct payments, expense reimbursements, or other public
- 27 services, including funding for public administrators.
- 28 i. Establish and collect fees to support guardianship and conservatorship services
- 29 and the duties of the office, which must be deposited in the guardianship and
- 30 conservatorship support fund.

1 j. Seek and apply for private, federal, or other funds to help support guardians and
2 conservators and to safeguard the rights of individuals who receive public
3 services.

4 k. Accept private funds for deposit in the guardianship and conservatorship support
5 fund.

6 4. The office may not authorize payment for services for any public guardian or public
7 conservator that provides services for more individuals than allowed through statute,
8 regulation, court rule, or policy adopted by the office.

9 5. The office, its officers, or its employees, may not act as a public guardian or a public
10 conservator or act in any other representative capacity for any individual. This
11 subsection does not prohibit an officer or employee from acting as a guardian or
12 conservator in a personal capacity apart from any duties as an officer or employee.

13 6. The office is subject to audits by the state auditor under chapter 54-10.

14 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
15 **appropriation.**

16 There is created in the state treasury the guardianship and conservatorship support fund.
17 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
18 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
19 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
20 branch to defray the expenses of the office for supporting guardianship and conservatorship
21 services, including guardianship and conservatorship training and monitoring.

22 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

23 1. Identifiable information concerning an individual who is applying for or receiving public
24 services under this chapter is confidential and may be disclosed only:

25 a. In the administration of any program under the supervision or administration of
26 the office.

27 b. When authorized by a policy or procedure of the office.

28 c. When allowed or required by rule or law.

29 2. A report concerning an applicant, provider, or recipient of public services is confidential
30 if the report is made in good faith and may be disclosed only to:

- 1 a. Authorized staff and agents of the office, who may further disclose the
- 2 information to a person that has a definite interest in the well-being of the
- 3 individual concerned, is in a position to serve the individual's interests, and that
- 4 needs to know the contents of the records to assure the well-being and interests
- 5 of the individual concerned.
- 6 b. An individual who is the subject of the report, if the identity of the person
- 7 reporting or supplying information under this chapter is protected until the
- 8 information is needed for use in an administrative, legal, or disciplinary
- 9 proceeding arising out of the report.
- 10 c. A public official and the public official's authorized agent who requires the
- 11 information in connection with the discharge of official duties.
- 12 d. A court when the court determines the information is necessary for the
- 13 determination of an issue before the court.
- 14 e. The investigation counsel.
- 15 3. The investigation counsel may disclose information uncovered during a disciplinary
- 16 investigation to the attorney general or bureau of criminal investigation related to a
- 17 criminal investigation when the investigation counsel suspects the subject of the
- 18 investigation has committed a crime.
- 19 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
- 20 in the disclosure of confidential information in violation of this section is guilty of a
- 21 class C felony.

22 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**

23 **public - Exemption.**

- 24 1. A person may not serve as a guardian or a conservator for three or more adult
- 25 individuals at the same time unless that person is a licensed guardian or a licensed
- 26 conservator or has an agency permit.
- 27 2. A public guardian or a public conservator may not provide services to a minor unless
- 28 authorized by a proceeding under section 30.1-28-03.3.
- 29 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
- 30 or conservatorship services to the public.
- 31 4. This section does not apply to:

- 1 a. A federal or state agency.
- 2 b. A financial institution under section 6-08.1-01 when appointed as a conservator.
- 3 c. An individual appointed as a guardian or conservator for a family member.
- 4 5. A person who violates this section after August 1, 2026, is guilty of a class B
- 5 misdemeanor.

6 **27-27.1-06. Immunity.**

7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
- 11 conservator license.
- 12 2. The supreme court must establish a process to appeal license denials and board
- 13 orders.
- 14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
- 15 is receiving public services under this chapter.
- 16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
- 17 the applicable policies, procedures, and standards of the office, or other approval
- 18 authority authorized by court rule, if the guardian or the conservator serves an adult
- 19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

- 22 1. The supreme court may establish a guardianship and conservatorship review board to
- 23 conduct disciplinary proceedings for a guardian or conservator.
- 24 2. The supreme court may establish a guardianship and conservatorship counsel to
- 25 investigate noncompliance reported under this chapter. The director of the office is the
- 26 hiring authority for the investigation counsel.
- 27 3. The supreme court must create a guardianship and conservatorship operations
- 28 committee to supervise the operations of the office and investigation counsel. The
- 29 operations committee:
- 30 a. Must develop and submit budgets for the office, board, and investigation counsel.
- 31 b. Is the hiring authority for the office director.

1 c. May adopt policies recommended by the office.

2 **27-27.1-09. Supreme court - Discretionary powers.**

3 The supreme court may:

4 1. Grant immunity to a member of the board and the board's agents if a district court or
5 the supreme court would have immunity in performing the same functions.

6 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

7 3. Authorize officials, officers, agents, and designees of the office, the board, and the
8 investigation counsel to:

9 a. Administer oaths.

10 b. Order and otherwise provide for the inspection of books and records.

11 c. Issue subpoenas for the attendance of witnesses and the production of
12 designated documents, electronically stored information, or tangible things in
13 accordance with the North Dakota Rules of Civil Procedure.

14 d. Order the deposition of a person residing within or outside the state to be taken in
15 accordance with the North Dakota Rules of Civil Procedure.

16 4. Adopt rules to effectuate the powers and duties under this chapter.

17 **27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**
18 **authority for investigations.**

19 1. The attorney general shall act as legal counsel in any particular investigation or
20 proceeding under section 54-12-02. The attorney general shall appear and defend any
21 officer or employee of the office and any member of the board in any action founded
22 on an act or omission arising out of performance of an official duty consistent with
23 section 54-12-01.3.

24 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
25 investigation have primary authority to investigate criminal cases related to a
26 guardianship or conservatorship.

27 **27-27.1-11. Duty to disclose and cooperate.**

28 1. A state and local governmental entity and its officers and employees, and the officials,
29 officers, and employees of the courts of this state shall disclose records and
30 information requested by the board or investigation counsel or any authorized
31 representative of the board or investigation counsel and shall cooperate with and give

1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.

3 2. The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 **27-27.1-12. Duties of witnesses - Penalty.**

- 8 1. An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.
- 10 2. If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court of the district in which the attendance or production is
13 required for an order compelling the individual to attend and testify or produce the
14 writings or things required by the subpoena. The court shall order the individual to
15 appear before the court at a specified time and place to show cause why the individual
16 has not attended, testified, or produced the writings or things as required. A copy of
17 the order must be served on the individual. If the court determines the subpoena was
18 regularly issued, the court shall order the individual to appear at the time and place
19 fixed in the order and testify or produce the required writings or things.
- 20 3. An individual who fails to obey an order under this section is guilty of a class A
21 misdemeanor.

22 **27-27.1-13. Preferred claim.**

- 23 1. The office has a preferred claim against the estate of an individual or an individual's
24 spouse for recovery of funds expended under this chapter for the care of that
25 individual or the individual's spouse. All funds recovered under this chapter must be
26 deposited in the general fund.
- 27 2. A claim may not be required to be paid and interest may not begin to accrue during the
28 lifetime of the decedent's surviving spouse, if any.
- 29 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
30 under this chapter.

1 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
2 created and enacted as follows:

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

10 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

13 1. The court may remove a conservator for good cause, upon notice and hearing, or
14 accept the resignation of a conservator. After a conservator's death, resignation, or
15 removal, the court may appoint another conservator. A conservator so appointed
16 succeeds to the title and powers of the predecessor.

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

24 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. On the death of any recipient of medical assistance who was a resident of a nursing
27 facility, intermediate care facility for individuals with intellectual disabilities, or other
28 medical institution and with respect to whom the department determined that resident
29 reasonably was not expected to be discharged from the medical institution and to
30 return home, or who was fifty-five years of age or older when the recipient received the
31 assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter 27-27.1; and
- i. Claims made under subsection 4.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP

AND CONSERVATORSHIP. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,296,400
Public guardian and conservator fees - indigents	8,638,020
Guardianship contracts - developmentally disabled	6,835,136
Total general fund	\$18,319,556
<u>Establishment costs - indigents</u>	<u>\$1,550,000</u>
<u>Establishment costs - developmentally disabled</u>	<u>1,096,400</u>
<u>Public guardian and conservator fees - indigents</u>	<u>7,100,000</u>

Guardianship contracts - developmentally disabled 5,500.000

Total general fund \$15,246,400

~~SECTION 7. APPROPRIATION - ATTORNEY GENERAL - FULL-TIME EQUIVALENT~~

~~POSITION AUTHORIZATION - ONE-TIME FUNDING.~~

~~1. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the attorney general for the purpose of defraying the expenses of full-time equivalent positions, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:~~

~~Salaries and wages~~ ~~\$1,304,676~~

~~Operating expenses~~ ~~365,700~~

~~Capital assets~~ ~~256,400~~

~~Total general fund~~ ~~\$1,926,776~~

~~Full-time equivalent positions~~ ~~5.00~~

~~2. The following amounts reflect the 2025-27 biennium one-time funding items included in the appropriation under subsection 1, which are not part of the entity's base budget for the 2027-29 biennium:~~

~~One-Time Funding Description~~ ~~General Fund~~ ~~Other Funds~~ ~~Total~~

~~Operating expenses - small equipment~~ ~~\$70,140~~ ~~\$0~~ ~~\$70,140~~

~~Capital assets - cars and radios~~ ~~256,400~~ ~~0~~ ~~256,400~~

~~Grand total~~ ~~\$335,540~~ ~~\$0~~ ~~\$335,540~~

2025 HOUSE HUMAN SERVICES

SB 2029

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2029
3/10/2025

relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

8:57 a.m. Chairman M. Ruby called the hearing to order.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

Discussion Topics:

- Guardianship Monitoring
- Winsor Schmidt Report
- ND Judicial Branch
- Guardianship Licensing
- Office of Guardianship and Conservatorship (OGC)
- Current Guardianship Programs
- PASS funding
- Human Service Zones

9:00 a.m. Garrick Voigt, Staff Attorney, North Dakota Supreme Court, testified in favor and submitted testimony #39583.

9:57 a.m. Sara Behrens, Staff Attorney, North Dakota Supreme Court, answered questions for the committee.

10:01 a.m. Kimberly Jacobson, Director, Agassiz Valley Human Service Zone, testified in favor and submitted testimony #39729.

10:06 a.m. Melissa Hauer, NDHA General Counsel and VP, North Dakota Hospital Association, testified in favor and submitted testimony #39599.

10:11 a.m. Amy Cleary, Lobbyist, Guardianship Association of North Dakota, testified in opposition.

10:12 a.m. Margo Haut, President, Guardianship Association of North Dakota, testified in opposition and submitted testimony #39944.

10:21 a.m. Trevor Vannett, Citizen, testified in opposition.

10:23 a.m. Donna Byzewski, Program Director, Corporate Guardianship Program at Catholic Charities, testified in opposition and submitted testimony #39949.

10:31 a.m. Scott Bernstein, Executive Director, Guardian and Protective Services, testified in opposition and submitted testimony #39955.

10:40 a.m. Christopher Dodson, Co-Director, North Dakota Catholic Conference, testified in opposition and submitted testimony #39865.

10:46 a.m. Chairman M. Ruby closed the hearing.

Madaline Cooper, Committee Clerk for Jackson Toman, Committee Clerk

Senate Bill 2029
House Human Services Committee
March 10, 2025

Testimony of Garrick R. Voigt
Office of the State Court Administrator
Staff Attorney

INTRODUCTION: Chairman Ruby and members of the House Human Services Committee, my name is Garrick Voigt, a staff attorney with the Office of the State Court Administrator and staff for the Task Force on Guardianship Monitoring. I am here today in support of SB 2029. This testimony will provide background on events leading up to SB 2029, explain the substance of the bill, summarize the current adult guardianship structure and programs in North Dakota, and explain discussions that occurred during Senate hearings.

PART 1: BACKGROUND

General: It is important to have general knowledge of two significant events that gave widespread attention to guardianship in North Dakota to understand SB 2029. Likewise, being aware of recent guardianship reform attempts is critical to understand the bill.

Winsor Schmidt Report: The first significant event that gave widespread attention to guardianship in North Dakota occurred in 2012 when Dr. Winsor Schmidt, a nationally recognized expert on elder law and guardianship, conducted a comprehensive analysis of guardianship and conservatorship systems in North Dakota. This report is commonly referred to as the Winsor Schmidt Report. The 63rd Legislative Assembly requested the study to evaluate the effectiveness, oversight, and accountability of guardianship services within North Dakota. The Winsor Schmidt Report contained many findings and recommendations, including:

Key Findings from the Winsor Schmidt Report:

1. **Lack of Oversight.** The report identified that North Dakota's guardianship system had insufficient monitoring and oversight of both professional and family guardians, increasing the risk of abuse, neglect, and financial exploitation of vulnerable individuals.
2. **Insufficient Resources.** The system was under-resourced, making it difficult for courts and state agencies to adequately monitor and support guardianship cases.
3. **Training and Education Gaps.** Guardians, particularly family members who took on guardianship roles, often did not receive adequate training or resources to understand their duties and responsibilities.
4. **Inadequate Data Collection.** The report highlighted that North Dakota lacked a centralized system for collecting data on guardianship cases, which hindered the ability to track outcomes, patterns of misconduct, or emerging trends.

Recommendations from the Winsor Schmidt Report:

1. Creation of a state office for guardianship monitoring to provide oversight, education, and accountability.
2. Adopt minimum ethical standards for guardians.
3. Development of training programs for both professional and family guardians.
4. Establishment of clear protocols for handling complaints and misconduct.
5. Implementation of better data collection to monitor guardianship trends and outcomes across the state.

The findings and recommendations of the Winsor Schmidt report have since influenced past and present legislative and policy discussions around guardianship reform in North Dakota. Many of the recommendations found in the Winsor Schmidt report have been implemented in North Dakota; however, many key issues, mainly the aforementioned issues, have yet to be resolved.

Mismanagement of Professional Guardianship Entity: The second significant event that gave widespread attention to guardianship in North Dakota occurred in 2015, when two owners of North Dakota's then-largest guardianship entity were convicted on federal charges for stealing Supplemental Nutrition Assistance Program (SNAP) benefits from their clients. The conviction was reported to the National Center of Guardian Accreditation (NCGA), a Pennsylvania-based nonprofit that certifies guardians in our state, but it took no action on the report. Despite the criminal conviction, the professional guardianship entity continued to receive public funds from the Public Administrator Support Services (PASS) program for 157 clients.

That same guardianship entity was sued civilly in 2018 for significant mismanagement of a client's trust, which included farmland, and fraudulent conduct. In 2021, the court found the officers of the professional guardianship entity engaged in fraudulent activities, including unauthorized withdrawals, self-dealing, violating federal probation terms, breaching their fiduciary duties, and engaging in deceptive practices. They were ordered to pay damages, reimburse unauthorized fees, and cover potential tax liabilities. The professional guardians were ordered to pay over \$800,000. The misconduct of the professional guardianship entity was not limited to that one ward. After the 2021 judgment was entered, the NCGA finally took action; however, it took over 11 months to decertify the guardianship entity. During those 11 months, the guardianship entity was providing guardianship services for 218 individuals and were conservators for two individuals.

Misconduct is not limited to that one guardianship entity. Some other examples of guardian misconduct include guardians failing to apply for government benefits when the ward is entitled to them, allowing a guardian's family or friends to live in a ward's home or use the ward's property after the ward has been moved to assisted

living, purchasing insurance and/or other products from the guardian's friends or family, requiring wards to relocate to the guardian's city of residence to reduce the guardian's travel time, charging excessive fees, etc. The Court System and the Task Force recognize that the misconduct of a few guardians does not diminish the integrity of the majority of guardians, who are compassionate and diligent. However, these examples of misconduct emphasize that enhanced monitoring is necessary to protect some of North Dakota's most vulnerable citizens.

Legislative History: After the misconduct of the professional guardianship entity was discovered, the Guardianship Work Group (Work Group) under the Supreme Court began discussing ways to protect wards. The Work Group proposed House Bill 1354 during the 67th Legislative Assembly (2021), which would have established an independent commission to develop and monitor a process for the delivery of state-funded guardianship services. House Bill 1354 was defeated in the House of Representatives because there were concerns with the independent nature of the proposed commission. Instead, there was a desire to assign the task to either the Executive or Judicial Branch. During the 68th Legislative Assembly (2023), SB 2345 passed both chambers of the General Assembly and was signed by the governor.

Senate Bill 2345 enacted Chapter 27-27 of the North Dakota Century Code, creating the Task Force on Guardianship Monitoring (Task Force). The Task Force is comprised of 14 current voting members and five former members, totaling 19 individuals with diverse expertise. The 19 individuals who served on the Task Force can be found on Appendix A, on page 18 of this testimony. In addition to these members, the president of the Guardianship Association of North Dakota attended and actively participated in a majority of Task Force meetings. The Task Force's mission is to address matters of guardianship accountability and further protections of individuals under guardianship and to recommend the regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior.

In addition to these duties, the Task Force assisted the Interim Government Finance Committee of the 68th General Assembly, which was tasked with studying the North Dakota guardianship system, to ascertain whether it was feasible to consolidate all guardianship programs under one agency, and to determine an appropriate level of funding for each program. The Task Force finished drafting a proposed bill in May, 2024 and presented its findings and recommendations to the Government Finance Committee during its June and September meetings. The Government Finance Committee voted unanimously (with two members absent) to sponsored the bill that ultimately became SB 2029.

PART 2: SB 2029 OVERVIEW

Summary: Senate Bill 2029 is an enabling statute, allowing the Supreme Court to create a new guardianship structure in North Dakota. The Task Force identified multiple issues with the current guardianship system in North Dakota, and each problem has a specific solution. Appendix B, on pages 19-20 of this testimony, is a visual aid that identifies some of the most important issues identified by the Task Force, a solution for each problem, and an explanation providing context to the problem and/or the solution, which has been incorporated into SB 2029.

The Task Force proposed a four-phased approach to implement this new guardianship structure. Phase One was drafting SB 2029. Phase Two is drafting and presenting proposed court rules to the Supreme Court. Phase Three involves drafting policies for the new guardianship structure, and Phase Four involves the drafting of internal operating procedures, standard forms, and guides. Appendix C, on page 21 of this testimony, is an aid to visualize each phase.

Senate Bill 2029 creates four independent entities under the Supreme Court to satisfy specific functions. The four entities created or authorized by SB 2029 are the:

1. Office of Guardianship and Conservatorship (OGC), which will contract for public guardianship services, process professional guardian and conservator licenses, and provide educational resources and information to assistance family guardians.
2. Office of Guardianship and Conservatorship Counsel (Investigation Counsel), which will investigate allegations of guardian misconduct.
3. Guardianship and Conservatorship Review Board (Review Board), which will conduct administrative hearings to resolve concerns about guardian misconduct.
4. Guardianship and Conservatorship Operations Committee (Operations Committee), which will adopt policies for these four entities and establish the budget for them.

Appendix D on page 22 of this testimony is a visual aid that goes over the tentative composition, roles, and responsibilities of these four entities. Four new fulltime equivalent (FTE) positions will be required in the Judicial Branch to staff these four entities. The Review Board and Operations Committee will not consist of FTEs, as those positions are unpaid. The reason the Task Force recommended the creation of four separate entities is to limit the power of these entities and to limit potential conflicts of interest.

Purpose: Senate Bill 2029 has three primary objectives:

1. Protect wards by providing oversight of guardians, which is achieved by expanding the current Monitoring Program and implementing a complaint review process.
2. Account for taxpayer funds, which is achieved by transferring all public adult guardianship program to the Judicial Branch, thereby subjecting the funds to review by the State Auditor.
3. Consolidate public adult guardianship programs under one funding umbrella, which is achieved by transferring it to the only entity willing to take on the responsibly, the Judicial Branch.

In addition to achieving these primary goals, SB 2029 also allows the OGC to support family guardians by providing more information about options and resource than is currently allowed.

PART 3: BILL SUBSTANTIVE EXPLANATION

Section 1: Section 1, the primary section of the bill, creates and enacts Chapter 27-27.1, a new chapter establishing the OGC and outlines its duties and powers.

Section 27-27.1-01: This section provides the general definitions for the chapter. To understand the definition of “agency permit” in subsection 1, it is important to note that SB 2029 will create a licensing structure for professional guardians and conservators. Conservators and guardians will either be “licensed” or “unlicensed.” Different duties and powers apply to licensed and unlicensed conservators and guardians.

Agency permits were proposed as a mechanism to alleviate a concern professional guardianship entities had concerning licensing all of its employees. Employees of a licensed guardianship entity could apply for an agency permit as opposed to a license. Agency permits allow the employee to provide guardianship and conservatorship services or be appointed as guardian or conservator in a case. The permit is “temporary” because it is attached to the employment with the licensed guardianship entity, meaning if the permit holder quits working for the professional guardianship entity, then the permit would be void.

The bill also defines public conservator and public guardian. The intent and purpose of public conservators and public guardians is to distinguish those cases where the OGC has “contracted” with another to provide guardianship or conservatorship services for individuals who are eligible for public services but have no one who is able or willing to provide those guardianship or conservatorship services. Public services are state or federally-funded programs administered by the OGC and available to eligible individuals.

Section 27-27.1-02: Subsection 1 creates the OGC under the Supreme Court. Subsection 2 provides the duties of the OGC, including developing policies and procedures governing public guardianship and conservatorship services and ethical standards for licensed and unlicensed guardians and conservators. The OGC must also maintain accurate records of all financial transactions and provide a biennial report to legislative management. Subsection 3 provides discretionary powers, including recommending rules and policies regarding guardians and conservators, establishing training and mentoring programs, and monitoring guardianship and conservatorship services, exercising a preferred claim against the estate of an individual receiving public service under certain circumstances, and receiving private, federal, and other public funds. Subsection 4 prohibits the OGC from authorizing payment to a public guardian or public conservator who exceeds a specific case threshold, which would be set by the Operations Committee. Subsection 5 prohibits the OGC and any employee or officers from acting as a “public” guardian or conservator or otherwise representing a person in their official capacity.

Section 27-27.1-03: This section creates a new fund to hold all money transferred by the legislative assembly and collected by the OGC as a continuing appropriation for use in administering guardianship and conservatorship services and programs.

Section 27-27.1-04: This section identifies information and reports that are classified as confidential and the policies and procedures for disclosure of the information and records. The proposed legislation is modeled after the confidentiality and access statute used by the Department of Health and Human Services (HHS) excluding subsection 3, which was added so Investigation Counsel may share information with the Office of the Attorney General (AG) or Bureau of Criminal Investigation (BCI) if Investigation Counsel suspects a guardian or conservator committed a crime.

Section 27-27.1-05: This section prohibits a person from acting as guardian or conservator for three or more adult individuals at the same time without a license, prohibits public services from being extended to minors unless the minor is seeking guardianship as an incapacitated adult, and requires a person to be a licensed guardian or conservator to advertise guardianship or conservatorship services to the public. Subsection 4 lists exceptions to these prohibitions. Subsection 5 provides that violating the section is a class B misdemeanor after August 1, 2026.

Section 27-27.1-06: Provides civil immunity to anyone who provides good faith information or testimony regarding a guardian or conservator’s misconduct or lack of professionalism.

Section 27-27.1-07: This section grants the Supreme Court original jurisdiction to revoke and suspend guardian and conservator licenses. It also requires the Supreme Court to establish an appeal process for OGC and Review Board actions. Subsection 3 requires courts to waive court costs and filing fees if a person is receiving public services. Subsection 4 requires all guardians and conservators to adhere to ethical standards adopted by the OGC or Supreme Court.

Section 27-27.1-08: This section authorizes the Supreme Court to create the Review Board and Investigation Counsel and requires the Supreme Court to establish an Operations Committee. The composition of the Review Board and Operations Committee would be promulgated by the Supreme Court rulemaking process.

Section 27-27.1-09: This section authorizes the Supreme Court to grant immunity to members of the Review Board, develop confidentiality and disclosure standards for disciplinary hearings, grant subpoena and other investigative powers, and adopt rules related to guardian and conservator investigations and hearings.

Section 27-27.1-10: Subsection 1 provides that the AG will defend the OGC and its officers if a case is filed against it/them. Subsection 2 clarifies that the AG and BCI handle criminal investigations.

Section 27-27.1-11: This section requires state and local governments and their officers and employees to cooperate with investigations by providing requested information and documentation unless disclosure is prohibited by federal law or regulation, and mandates sheriffs and police officers to serve process and execute all lawful orders of the OGC, the Review Board, or the Investigation Counsel.

Section 27-27.1-12: This section requires a person to attend a disciplinary proceeding as a witness if subpoenaed and provides a subpoena enforcement mechanism.

Section 27-27.1-13: This section grants the state a preferred claim against the estate of an individual receiving public guardian or conservatorship services in the event the individual's estate is able to provide reimbursement. The language of this section is similar to the estate recovery processes used by HHS and was developed with the assistance of HHS's counsel.

Sections 2 & 3: Section 2 creates a new subsection to section 30.1-28-07 and Section 3 creates a new subsection to section 30.1-29-15. These new subsections authorize the creation of a disqualification roster to be maintained by the State Court Administrator to identify nonprofessional (family) guardians or conservators that are removed for cause. The disqualification roster is the alternative to licensure for nonprofessional guardians to prevent an individual from being appointed as a guardian or conservator in another case. This section only applies to nonprofessionals because professionals will go through a license revocation process.

Section 4: This section amends the Medicaid statute in section 50-24.1-07 to allow the OGC to claim funds paid out for public guardianship services above HHS's Medicaid claim. The "preferred claim" status allows the state to recover OGC funding before sharing any balance with the federal government. On Medicaid claims, the federal government receives approximately 50% of the amount collected by HHS.

Section 5: This section repeals Chapter 27-27, which created the Task Force. The Task Force will accomplish its mission before this bill goes into effect on July 1, 2025.

Section 6: The appropriation clause of SB 2029 consolidates the existing guardianship programs under one agency. To understand Section 6, it will be helpful to understand the current programs and the history of their funding. Because there is a bit of material to digest, Appendix E, on page 23 of this testimony provides a summary of the current adult guardianship programs discussed in Part 4 of this testimony. The historical funding of adult guardianship programs is covered in Part 5 of this testimony. Appendix F on page 24 of this testimony is a visual aid that shows the 23-25 biennium appropriations for these programs and compares it to the appropriation clause of SB 2029.

Administration of all of the existing adult guardianship programs would become the responsibility of the OGC. The four line items in Section 6 of the bill categorize the existing expenditures into establishment costs for developmentally disabled (DD) and non-DD cases, and guardianship and conservatorship services for DD and non-DD cases. The OGC would continue to cover costs and fees covered under the current programs. The first line item, "Establishment costs – indigents," on p. 10, line 12, incorporates the HHS Aging Services Division Guardianship Establishment Fund. The second line item on line 13, "Establishment costs - developmentally disabled," incorporates the DD establishment funds administered by the DD Services Division. The third line item on line 14, "Public guardian and conservator fees – indigents" incorporates the OMB PASS program. The fourth line item on line 15, "Guardianship contracts - developmentally disabled" incorporates the portion of the DD Corporate Guardianship Contract with Catholic Charities that covers fees for providing guardianship services.

PART 4: CURRENT ADULT GUARDIANSHIP PROGRAMS EXPLANATION

Current DHS Programs: The majority of adult guardianship programs are administered under HHS through the Aging Services Division, DD Services Division, North Dakota State Hospital (NDSH), and Life Skills Transition Center (LSTC).

Establishment Fund. The HHS Aging Services Division administers the Guardianship Establishment Fund, which Covers petitioning costs to establish guardianships for adults eligible to receive case management services. Petitioning costs include service fees for the petitioning attorney, guardian ad litem (GAL), and court visitor. To qualify for services, the proposed ward must be at least 18 years of age, not eligible for DD case management services, and at or below 100% federal poverty level or Medicaid eligible. The program is capped at \$3,000 per case.

DD Establishment Fund. The DD Services Division administers the DD Guardianship Establishment Program and the Corporate Guardianship Contract. Under the DD Establishment Program, funds are available to cover the petitioning costs to establish guardianship for those willing to serve as guardians of DD adults. To qualify for services, the proposed ward must be 18 years of age or older, eligible for DD case management services, and be at or below the 100% federal poverty level or Medicaid-eligible. Like the Establishment Fund administered by Aging Services, the petitioning costs are capped at \$3,000 per case.

Corporate Guardianship Contract. Under the Corporate Guardianship Contract, the DD Services Division contracts with Catholic Charities to provide guardianship services for 529 DD adults receiving DD case management services. The Corporate Contract includes two line items: one covering the petitioning costs to establish the guardianship and one covering guardianship fees.

State Hospital. As part of its operating costs, NDSH establishes guardianships for individuals with a mental illness who are receiving treatment at its facility. Generally, guardianships initiated by NDSH begin with the establishment of an emergency guardianship while the petition for long-term guardianship is pending. After guardianship is established, NDSH also expends funds for the appointment of successor guardians, for medication orders, and for court orders to continue treatment at their facility. Expenditures by the NDSH for guardianship services are part of its operating expenses, so this spending is not generally captured when calculating guardianship services for the purpose of appropriations.

Life Skills Transition Center. Guardianships are also established by LSTC for minors with an intellectual or developmental disability who are becoming incapacitated adults for whom LSTC is continuing to provide services. Guardianship petition costs as well as costs for the appointment of successor guardians, and medication or continued treatment orders, similar to the NDSH, are

part of the professional services or operating expenses line items of the LSTC's budget. Here again, LSTC's guardianship costs have not been included in guardianship bills and summaries.

Current OMB Program: The Office of Management and Budget (OMB) administers the PASS program through the North Dakota Association of Counties (NDACo). PASS funds are grants provided to pay a flat rate to cover the cost of guardianship services for vulnerable adults. To qualify for PASS funding, the vulnerable adult must be at least 18 years old and at or below 100% of the federal poverty level or Medicaid eligible. Adults eligible for DD programs are not eligible for PASS funding and are funded through either the DD Establishment Fund or DD Corporate Contract. The petitioning costs to establish a guardianship are not covered under the PASS program. By the end of the 2023-25 biennium, approximately 600 individuals are projected to be enrolled in the PASS program.

Current Judicial Branch Program: The Judicial Branch administers and operates the Guardianship Monitoring Program to conduct well-being and financial reviews referred to the program by district courts. In addition to referrals from district courts, the program manager also conducts random financial reviews and provides educational guardianship training. The monitoring program funds court visitor appointments for well-being reviews. Reimbursement for each visitor appointment is capped at \$300 (6-hours at \$50.00/hr.). For more complex cases, the court-appointed visitor may request approval for additional time.

PART 5: HISTORICAL FUNDING FOR ADULT GUARDIANSHIP

Establishment Fund: For the 2023-25 biennium, the Guardianship Establishment Fund was increased to \$423,000, which included an increase in the per case cap from \$2,500 to \$3,000. Even with the increased appropriation, the Aging Service's Establishment Fund was exhausted sometime in late March or early April of 2024. A major contributing factor to the rapid depletion of the Aging Service's Establishment Fund was due to deficit spending during the prior biennium. During the 2021-23 biennium, the Aging Service's Establishment Fund ran at a deficit that was balanced at the beginning of the current biennium.

In May 2024, HHS used its authority to conduct inter-department transfers and allocated \$300,000 to replenish the Aging Service's Establishment Fund, which is on track to receive 292 referrals this biennium. Other factors contributing to the rapid depletion of the Aging Service's Establishment Fund are rising costs for services and increased demand. Under the current \$3,000 per case cap, unpaid services totaled \$139,909 (as of January 8, 2024). If trends continue, unpaid services could exceed \$177,600 by the end of the biennium. The funding request for the 2025-27 biennium listed in the bill would increase the per-case cap to \$5,000 to ensure providers are paid for and willing to perform the necessary services to

establish guardianships. The original funding request in SB 2029 was \$1,500,000, and the Senate Appropriations Committee did not change that figure.

DD Establishment Fund: For the current biennium, the DD Services Division was appropriated \$500,192 (\$300,000 for the DD Establishment Fund and \$200,195 under the Corporate Guardianship Contract with Catholic Charities). As of January 7, 2025, the DD Services Division approved 112 of the 124 requests for Establishment Funds. If trends continue, the projected demand for referrals by the end of the current biennium would be approximately 166. The average cost to establish a guardianship for a DD individual is approximately \$3,000 per case. However, many of these referrals require the establishment of an emergency guardianship which increases the cost to approximately \$4,000 per case. The DD Services Division has already obligated all of its funding for Establishment Fund referrals this biennium. Additional funding for 40 more slots was added in September of 2024. As of early January 2025, 80% of those funds have been exhausted. Meaning the 23-25 appropriation amount was insufficient to meet demand. The original appropriation request for the 2025-27 biennium was \$1,296,400. The Senate Appropriations committee reduced the amount of this line item by \$200,000, totaling \$1,096,400.

PASS Program: During the 2023 legislative session, the PASS daily rate was increased from \$10/day to \$14/day. Additional appropriations during the 2023 special legislative session increased PASS funding to \$7.1 million, and it offered guardianship provides a daily rate of \$17. At the end of the 2023-25 biennium, it is estimated that approximately 600 individuals will be enrolled in the PASS program. Enrollment is projected to continue to increase by five individuals a month. That's why the original funding request for the "Public guardian and conservator fees – indigents" line item was \$8.6 million (offering a \$18/day rate and meeting the increased demand for services). The Senate Appropriations Committee reduced the \$8.6 million to \$7.1 million.

Corporate Guardianship Contract: The DD Services Division has appropriated \$4,288,349 for its corporate guardianship contract for this biennium. The current contract provides funding for guardianship services for 529 DD adults. Catholic Charities provides guardianship services for between 60 to 80 new DD adults in each biennium. Although 40 of the DD adults receiving services from Catholic Charities died during the 21-23 biennium, the standard demand for services requires an increase in the number of individuals to be served. The DD waitlist has approximately 147 individuals waiting to receive guardianship services. The original line item requested for this program was \$6,835,136 which would provide funding to cover guardianship services for 760 DD adults (incorporating the existing waiting list and the projected demand). The daily rate for DD guardianship fees is generally less than non-DD guardianship fees. The rate used for this line item is \$12.14 for the first year and \$12.50 for the second year. The Senate Appropriations Committee reduced the line item to \$5.5 million.

PART 6: DISCUSSION TOPICS DURING SENATE HEARINGS

Introduction: This segment of testimony will cover topics that were raised during Senate hearings. There was substantial discussion about how transferring these programs to the Judicial Branch could impact guardians and the people they serve.

Structure & Conflicts of Interest: The branch of government that should house these entities and potential conflicts of interest was the most discussed topic during Senate hearings. The Winsor Schmidt Report explains a few public guardianship models on pages 17-19. Those models are a(n): (1) court model, (2) independent state office model, (3) social service agency model, and (4) county model. An independent state office model was attempted and rejected by the House previously. The resources are no longer available to use a county model. The Governor's Office was asked whether it would house the OGC, and it declined, opining that the Judicial Branch seemed a more appropriate fit. That leaves a court model or social service agency model. HHS requested that it not house the OGC because it would create a conflict of interest since HHS provides direct services to individuals. The concern HHS has regarding a potential conflict of interest is supported by the Winsor Schmidt Report (p. 18 (stating “[t]he placement of the public guardianship function in an agency providing direct services to [incapacitated persons] presents a clear conflict of interest”)).

The Governor's Office and HHS would prefer not to oversee the OGC. The Court System wasn't exactly thrilled to take on the responsibility of overseeing the OGC, but it is willing to do so. The reluctance of state agencies to oversee the OGC led the Task Force to draft a court model. While a court model primarily utilizes court rule, SB 2029 is the statutory authority the Court System requests to properly establish a new guardianship system for North Dakota that achieves all the goals identified by the Task Force.

Sample language for a court model is on pages 66-73 of the Winsor Schmidt Report. That proposed language is far more centralized and directly under the Office of the State Court Administrator than the structure proposed in SB 2029, yet Winsor Schmidt raises no conflict of interest concerns with his proposed structure. The term “conflict of interest” appears 20 times in the Winsor Schmidt Report and is used when discussing:

1. The placement of a public guardian services under a social service agency (pp. 18-19, 44).
2. Conflicts of interest involving a guardianship agency (pp. 40-41).
3. Proposed bill and rule language (pp. 59-60).

The term “conflict of interest” also appears once as it relates to placing an office of public guardianship under a court system (p. 18, fn. 52. (explaining that judges felt there could be a potential conflict of interest if a judge oversaw a guardianship case and had the responsibility of administering a public guardian's activities)). Since

North Dakota district court judges oversee guardianship proceedings, it is important for district court judges to have no involvement in administering the public guardian program or be involved in Review Board proceedings, which is the structure proposed under SB 2029. Moreover, eight jurisdictions have their office of public guardian under their respective judicial branch (CO, DE, HI, IN, KS, MA, NE, and WA), while seven jurisdictions have an entity within its judicial branch to process complaints against guardian (AZ, CO, MN, NE, NV, TX, and WA).

The Task Force determined that the creation of the Operations Committee was necessary to create an arms-length relationship between the OGC and the Supreme Court. The Operations Committee would decide who is entitled for OGC public services, hire the OGC director, and create the budget for the OGC and Investigation Counsel, not the Supreme Court. The OGC would contract with public guardians and administer the public, adult guardianship programs. The OGC director would hire and oversee OGC staff. Investigation Counsel would conduct administrative investigations while the Review Board would hold administrative hearings, when necessary. This decentralized and independent structure was chosen to limit conflicts of interest and is modeled after the Judicial Conduct Commission. While district court judges would continue to hear guardianship petitions, district court judges would have no influence on the OGC, Investigation Counsel, or Review Board actions. Likewise, these entities would be unable to mandate district court action for a guardianship or conservatorship proceeding. For these reasons, the Court System is confident that SB 2029 does not create a conflict of interest by placing the OGC, Review Board, Investigation Counsel, and Operations Committee under the Judicial Branch.

Judicial Oversight: Some opposing the bill claim that oversight of guardian conduct is not a judicial function. All 50 states have a statute mandating the judicial branch to oversee guardian conduct. That's the whole reason judges may remove a guardian from a case. Traditionally, the way a judge provides oversight is based on reports from the guardian and holding hearings, when necessary. This traditional approach can be very time consuming for the overseeing court. Additionally, the traditional method gets complicated when a guardian has wards scattered throughout judicial districts and other jurisdictions. Due to the flaws with the traditional oversight approach, 21 states, including North Dakota, have implemented what I call an enhanced, proactive guardianship monitoring program.

These monitoring programs generally assist district court judges in overseeing a guardianship by allowing select individuals with expertise relevant to guardianship to review guardian reports and alert the judge, when necessary. Twenty of the 21 monitoring programs, including North Dakota's, is administered by that state's respective judicial branch. Former Chief Justice VandeWalle created the Guardianship Monitoring Program in 2018 through North Dakota Supreme Court Administrative Order 24, and judicial oversight over guardian conduct has been a judicial function ever since.

Legislative Oversight: Some legislators have concerns that transferring these programs to the Judicial Branch will remove legislative oversight over public guardianship programs. First, it should be noted the OGC will be required to provide a report each biennium to Legislative Management regarding the operation of these programs. That mandate is on p. 3, lines 5-8 of SB 2029. Furthermore, the Legislature has many courses of actions to check the OGC, such as: moving the OGC to a state agency, ceasing to fund certain programs or personnel, moving the entity or program to the counties, amending the North Dakota Century Code to mandate certain action from the Judicial Branch, etc. Additionally, it should be noted that the Legislature has zero oversight over the PASS program other than appropriating its funding, so the increased transparency by transferring the program to the Court System will actually increase legislative oversight over the PASS program.

Operations Committee Composition: Some guardians contest being excluded from the Operations Committee. The Task Force determined that having a professional guardian on the Operations Committee would be a direct conflict of interest because the Operations Committee would set the pay for public guardians, set the OGC budget, and adopt ethical standards applicable to guardians. Public guardians do not currently set their pay under state-funded programs and the Task Force determined that should not change. The Operations Committee would consult with professional guardians to determine appropriate pay rates (which is what the NDACo currently does with the PASS program).

State Licensure: The purpose of licensure was also a highly discussed topic. The risk associated with relying on an out-of-state body to certify and decertify guardians became apparent when the NCGA failed to revoke a professional guardian's certification following a federal conviction and took 11 months to decertify a professional guardianship following a civil judgment entered against it. Relying on an out-of-state- entity which has no responsibility for the actions of guardians and whose primary purpose is training and testing is an ineffective method of oversight and provides a false sense that there is some kind of investigative or enforcement mechanism in place. Establishing state licensure removes that reliance. State licensure for guardians and conservators would not be unique to North Dakota. Six states have some type state registration, certification, or licensure for professional guardians (AK, AZ, CA, FL, TX, and WA).

The Task Force determined that licensure would create a mechanism for preventing a professional guardian from continuing to provide services following a finding of severe mismanagement or illegal behavior since professional guardians are typically appointed as guardians for wards across the state. Currently, if a professional guardian commits misconduct and is removed in a particular case, there is no clear mechanism to address the other cases in which the professional guardian has been appointed. If professional guardians or conservators are subject to license revocation, then the professional guardian or conservator could be

removed in mass, thereby protecting vulnerable people from predatory behavior and increasing court efficiency, which saves taxpayer dollars.

Proactive & Reactive Nature: Some commented that the bill is too reactive because it focuses solely on disciplining guardians after misconduct had occurred instead of focusing on education as a preventative measure. That's simply untrue. The plan is to expand the existing monitoring program into a monitoring and education program and add one FTE to the program. The OGC will function as an educational resource to prevent misconduct while the Investigation Counsel satisfies the reactive function. This proactive and reactive dichotomy work in tandem to maximize the efficiency of the guardianship structure in North Dakota.

Legal Fees: There was also concerns about guardians being required to retain a lawyer to respond to administrative investigations. A guardian will not be required to retain a lawyer to participate in administrative investigations or hearings. The North Dakota Rules of Civil Procedure and North Dakota Rules of Evidence will generally not apply to these administrative proceedings, and these proceedings are not intended to be adversarial in nature, instead being rehabilitative. These administrative proceedings are not court proceedings and are more akin to a relaxed version of an administrative hearing held by a state agency. Furthermore, the Review Board will be unable to impose punitive sanctions on a guardian.

The plan is to allow corporate guardians to select an agent to represent its business interest. That agent need not be an attorney, and that non-attorney agent would likely be sufficient to represent the corporate guardian's interest in a vast majority of circumstances. Conversely, a guardian would likely retain counsel when license revocation or suspension is sought; however, the Task Force anticipates the number of those proceedings to be extremely low. Lastly, the Investigation Counsel and OGC will not file against a guardian in court; therefore, it seems unlikely that this bill will increase a guardian provider's legal fees or require family guardians to retain attorneys.

Cumbersome Licensing Standards: Some guardians expressed concern that the OGC would impose cumbersome licensing standards. The Supreme Court already promulgates minimum qualifications for guardians through Rule 59 of the North Dakota Supreme Court Administrative Rules. Initially, the criteria outlined in Admin. R. 59 would be the criteria for a professional guardian to obtain a license. Senate Bill 2029 does authorize the OGC to implement a licensing fee, which could be considered extra criteria, but it has yet to be decided whether an application fee will be imposed. If one is implemented, it would be based on incidental costs directly attributable to the licensing process.

Payment: Professional guardians were also worried about timely payments immediately after the transition. The Court plans to maintain the payment procedures of current programs to ensure a smooth transition and to ensure that no delay in payment occurs.

Family Guardians: There have been concerns that passing SB 2029 would make it more difficult for individuals to be appointed and act as a guardian for family members. The appointment qualifications for family guardians would not be changed. Another concern that arose was that passing SB 2029 would make individuals less likely to serve as guardian for family members. Family guardians are already subject to civil and criminal liability for their conduct as a family guardian. It doesn't seem like a logical conclusion for family guardians to be more hesitant to serve as a guardian simply because they may be subject to an administrative hearing. Furthermore, establishing the OGC would make it easier for family guardians to fulfill their duties because a family guardian could call the OGC to ask for assistance or information.

Program Eligibility: Some fear that individuals currently receiving public services would become ineligible for a service if program eligibility changed. The plan is to keep the eligibility criteria for these programs the same for that reason. The goal is for no one to fall off the current public programs after the transition.

Moving Social Services: There were some concerns about moving social services out of HHS, but those comments must be grounded on confusion. Senate Bill 2029 does not remove direct services provided by HHS. Those services will remain and not be affected. Individuals who receive services from HHS would continue to get services, including case managers and benefits. The functionality of the LSTC and NDSH will not be adversely impacted by this legislation.

Operating Costs: Senate Bill 2029 does not include the costs to staff the proposed OGC and Investigation Counsel, which would include increasing the Judicial Branch budget by \$936,405.

Savings: As mentioned in this testimony, some individuals have discharge delays because they do not have a guardian. One function of the OGC would be finding public guardians for individuals when no family or friends are available to serve as guardians; thereby, preventing hospital discharge delays. The general counsel and vice-president of the North Dakota Hospital Association gave testimony in support of SB 2029 on January 13, explaining that in 2023, the six acute care prospective payment system hospitals in North Dakota (making up approximately 80% of the hospital care in the state) experienced at least 1,373 avoidable patient days because the patient lacked a guardian. This represents approximately \$1,945,725 of cost to the North Dakota healthcare delivery system that could have been avoided.

PASS Funding: There were some concerns with transferring the PASS program from the NDACo to the Judicial Branch. First, it is extremely important to understand that it is the NDACo's position that the PASS program should not be administered by the NDACo, which was asked to temporarily administer the program for two years. Unfortunately, those two years have gone by, and the NDACo is still stuck administering the program. Furthermore, because the NDACo is a non-profit organization, the PASS program is not subject to audit by the North Dakota Auditor. Transferring the PASS program to the Judicial Branch would subject those taxpayer dollars to the State Auditor.

CONCLUSION: Enacting SB 2029 would resolve issues that have been persisting in North Dakota for over a decade by adding protections for some of North Dakota's most vulnerable citizens. This will be achieved by increasing guardian accountability while also assisting guardians, especially family guardians, by providing resources and information so guardians can fulfill their duties. Enacting this legislation would establish accountability for millions of taxpayer dollars and simplify the appropriation process for adult guardianship programs throughout the State. For these reasons, it is urged that you recommend a do pass for SB 2029. I stand for questions.

Appendix A: Task Force on Guardianship Monitoring Composition

Name	Organization	Title
Cynthia Feland, Chair	South Central Judicial District	Presiding Judge
Jon Alm	Department of Health and Human Services	Chief Legal Officer
Cheryl Bergian	Cheryl Bergian Law Office	Owner; Attorney
Scott Bernstein	Guardian & Protective Services	Executive Director
Reid Brady	East Central Judicial District	Judge
Donna Byzewski	Catholic Charities North Dakota	Director of the Guardianship Division/Intellectual Disabilities
James Carkuff	Bureau of Criminal Investigation	Agent, Medicaid Fraud Control Unit
Megan Carmichael	Office of the Attorney General (former)	Assistant Attorney General (former)
Paul Emerson	Cass County State's Attorney's Office	Assistant State's Attorney
Jeremy Ensrud	Office of the Attorney General	Assistant Attorney General
Michelle Gayette	Assistant Director (former)	Adult & Aging Services (former)
Sally Holewa	North Dakota Court System	State Court Administrator
Thomas Jackson	Jackson, Welder & Arthurs, Inc	Partner; Attorney
Tracy Laaveg	LS Law Group, PC	Partner; Attorney
Ariah Magness	Sanford South Clinic	Care Manager; Licensed Baccalaureate Social Worker
Rose Nichols	North Dakota Court System	Guardianship Monitoring Program, Program Manager
Micah Olson	Protection & Advocacy Project	Attorney
Dean Rummel	Legislative Assembly	Senator (37th Legislative District)
Charles Stroup (deceased)	Retired	Nonprofessional guardian/conservator; banking consultant

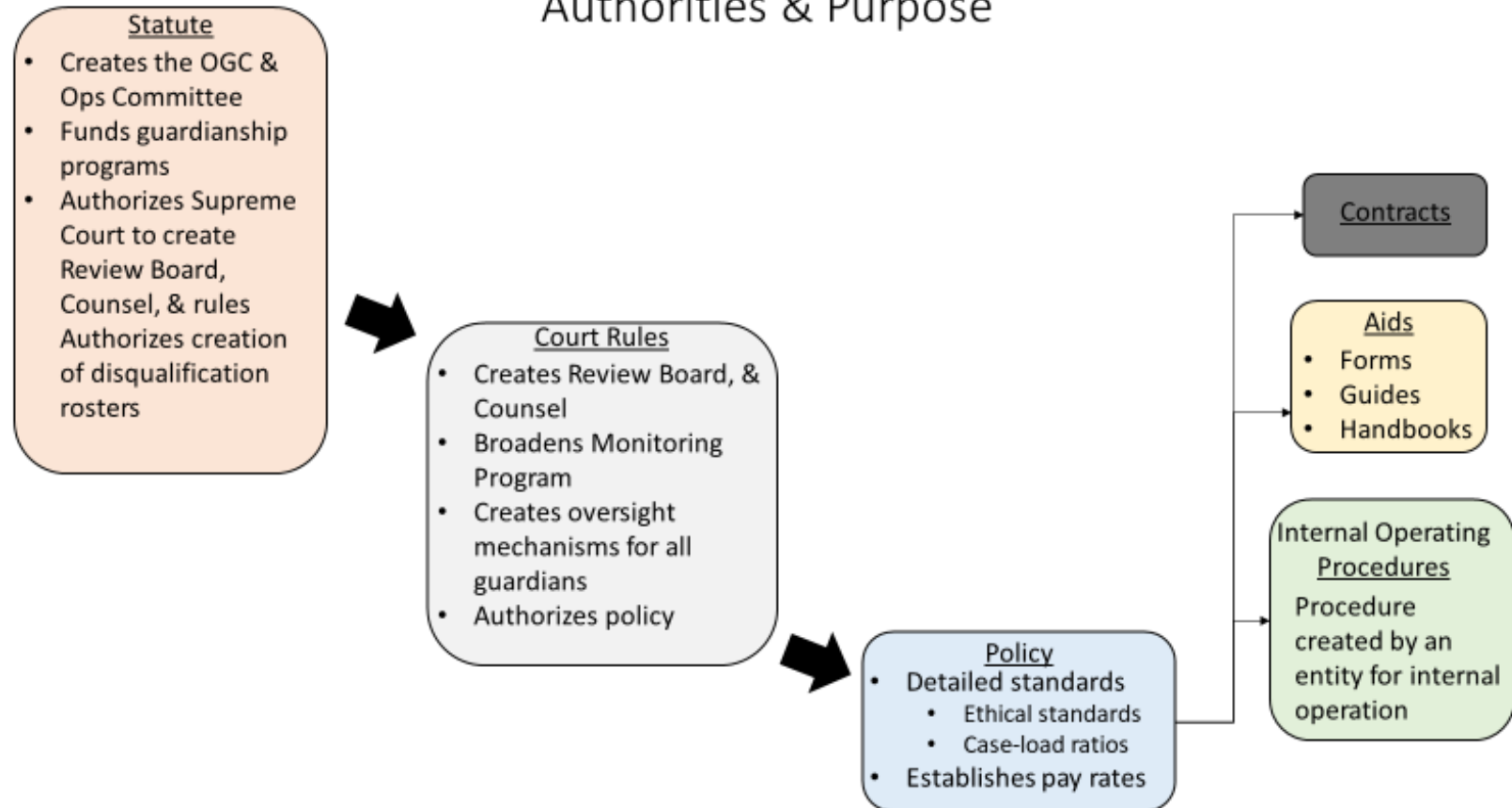
Appendix B: Problems, Solutions & Explanations

1	Problem: State-wide removal of professional guardians following serious misconduct.
	Solution: Implement licensing requirements for guardians and conservators and establish a review board.
	Explanation: A professional guardianship entity exploited its wards' estates, necessitating individual petitions and separate proceedings for removal in each case. Licensing professional guardians and conservators would create an efficient, streamlined process for mass removal, saving time and resources for both the wards and the court system.
2	Problem: Preventing reappointment of family guardians with a history of misconduct.
	Solution: Establish disqualification rosters.
	Explanation: Currently, there is no mechanism to prevent family guardians removed for misconduct from being reappointed in future proceedings. The disqualification rosters in Sections 2 and 3 of the bill empower district courts to place individuals on a roster if they were removed for cause. The courts will develop rules governing the roster procedures. This measure is specific to family guardians, as licensed guardians will continue to be subject to the license revocation process.
3	Problem: Investigating alleged misconduct.
	Solution: Establish an investigative counsel.
	Explanation: Law enforcement agencies and various investigative bodies within the Department of Health and Human Services often decline to investigate allegations of guardian misconduct, even in cases of abuse, exploitation, or neglect of vulnerable adults. An investigative counsel would ensure that valid complaints are thoroughly examined. Investigations would be confidential and aimed at gathering facts for potential disciplinary actions.
4	Problem: Addressing both intentional and unintentional misconduct by guardians.
	Solution: Establish an investigative counsel, a review board, and expand the current monitoring program.
	Explanation: Despite investigations, victims of guardian misconduct often lack civil or criminal recourse. The creation of a Review Board would provide a structured forum to address complaints. The investigative counsel would negotiate corrective actions with the guardian. If no resolution is reached, an administrative-style hearing would be held, with limited adversarial proceedings and would not apply the Rule of Evidence. Sanctions may include license revocation, probation, restitution, administrative fees, or letters of reprimand. Probation conditions might include additional education or mentorship. The expanded monitoring program would oversee guardians on probation. The Review Board would focus solely on administrative sanctions and would not have authority to initiate civil or criminal lawsuits.
5	Problem: Providing educational resources and assistance to family guardians.
	Solution: Expand the Monitoring Program and introduce Advisory Opinions.
	Explanation: Family guardians often lack the necessary knowledge and resources, leading to unintentional misconduct. Expanding the monitoring program into an educational and monitoring program would allow monitors to provide direct assistance and resources. Additionally, guardians could request ethical advisory opinions from the investigative counsel for guidance.

6	Problem: Streamlining funding for guardianship programs across multiple entities.
	Solution: Centralize all public guardianship services under the Office of Guardianship and Conservatorship.
	Explanation: Guardianship programs are currently managed by multiple entities, making financial tracking challenging. Consolidating funding under a single office would improve efficiency and oversight of state-funded guardianship programs.
7	Problem: Difficulty in locating successor guardians.
	Solution: Establish the Office of Guardianship and Conservatorship.
	Explanation: The inability to find successor guardians leads to delays in court proceedings and prolonged hospital stays for individuals requiring guardianship, incurring significant costs to the State. The new office would be tasked with locating potential family or professional guardians, thereby expediting the discharge process and reducing financial burdens on the State.
8	Problem: Long waiting lists for guardians.
	Solution: Properly fund the Office of Guardianship and Conservatorship.
	Explanation: The current corporate guardian contract with Catholic Charities lacks sufficient funding to address its waiting list of 142 individuals. Increased funding for developmental disability (DD) guardianship services could significantly reduce the backlog.
9	Problem: Ensuring ethical standards for guardians.
	Solution: Establish enforceable ethical standards for guardians and conservators.
	Explanation: Currently, the National Guardianship Association sets standards, with noncompliance addressed by the Center for Guardianship Certification. Establishing state-specific ethical standards would provide clear, centralized expectations for both family and professional guardians. The Review Board would oversee compliance and enforcement.
10	Problem: Auditing the PASS Program funds.
	Solution: Transfer the PASS program under the Office of Guardianship and Conservatorship.
	Explanation: The PASS program, currently administered by the Association of Counties, is not subject to state auditing. Moving it under the Judicial Branch would ensure proper financial oversight and accountability.

Appendix C: Approach for Implementing Guardianship Structure

Authorities & Purpose



Appendix D: Tentative Roles & Responsibilities

Guardianship Structure

Judicial Branch

Legend
 * New FTE
 ** Existing FTE

Hires

Hires

Hires

Ops. Committee

SBAND Appointee (Lawyer)
 SBAND Appointee
 (Retired Judge/Referee or
 Surrogate Judge)
 DHS Appointee
 Public Member
 (Supreme Court Appointee)
 State Court Admin.

OGC

*Director

*Admin. Assistant
 *Accountant
 *Program Manager
 **Monitor

Counsel

**Investigation Counsel

Review Board

SBAND Appointee (Lawyer)
 SBAND Appointee
 (Retired Judge/Referee or
 Surrogate Judge)
 GAND Appointee
 Hospital Appointee
 Long-term Care Appointee
 Public Member
 (Supreme Court Appointee)
 Public Member
 (Supreme Court Appointee)

Ops. Committee

- Approve budgets for OGC, Counsel, and Review Board
- Enact policies

Think Legislative Equivalent

OGC

- Administer funds for public services (PASS, DD, establishment funds)
- Draft budget & policies
- Administer Monitoring & Education Programs
- Process licenses

Think Executive Equivalent

Counsel

- Validate legitimacy of concerns
- Investigate legitimate concerns
- Initiate formal proceedings
- Present findings to Review Board

Think Independent AG Equivalent

Review Board

- Conduct oversight review hearings
- Issue findings and order

Think Judicial Equivalent

Appendix E: Summary of Current Adult Guardianship Programs

Dept.	Division	Program	Description
HHS	Aging Services	Establishment Fund	Covers petitioning costs to establish guardianships for adults eligible to receive case management services. Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor. To qualify for services, the proposed ward must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible.
HHS	DD	DD Establishment Fund	Covers petitioning costs for persons willing to serve as guardian for a DD adult. To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible. Current funding covers 100 cases at \$3,000 per case.
HHS	DD	Corporate Guardianship Contract	HHS DD Services Division contract with Catholic Charities to cover petitioning costs and guardianship services for 529 DD individuals. To qualify for services, the proposed ward must be at least 18 years of age, eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible. The total contract price includes two line items: one covers petitioning costs and the other covers guardianship services fees. Petitioning costs include service fees for petitioning attorney, guardian ad litem (GAL), and court visitor. Guardianship fees for each case are \$10.82/day for the first year of the biennium and \$11.36/day for the second.
HHS	NDSH	Professional Services / Operating Costs	NDSH establishes guardianships for individuals with a mental illness while receiving treatment. Generally, includes petitioning costs for establishment of emergency guardianships prior to regular guardianship. Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order. Expended funds are part of the agency's operating costs
HHS	LSTC	Professional Services / Operating Costs	LSTC establishes guardianships when a minor is becoming a DD adult needing guardianship services while LSTC is providing services. Petitioning costs for the services of the petitioning attorney, GAL and court visitor. Funds also expended for orders appointing successor guardians, and for medication, and continued treatment at an institution order. Expended funds are part of the agency's operating costs
OMB	Delegated to NDACo	PASS	Provides guardianship grants to private agencies and individuals who serve as public guardians for vulnerable adults. Pays for guardian fees (\$17 per day), directly to the guardian. Does not cover petitioning costs. To qualify for services, individuals must be at least 18 years of age, NOT eligible for DD case management services and at or below 100% federal poverty level or Medicaid eligible. Projected to have approximately 600 individuals who qualify for services at the end of the 23-25 biennium.
Judicial Branch	Guardianship Monitoring Program		Currently operates the Guardianship Monitoring Program, which takes referrals from district courts to conduct wellbeing and financial reviews for existing guardianship cases. Referrals to the program are made by district courts. Program manager also conducts random financial reviews and provides educational guardianship training. Court visitors are contracted to conduct wellbeing checks.

Appendix F: Guardianship Program Funding Comparison

Office	Program	New Line Item in Bill	23-25 Funding	25-27 Funding	Increase
Department of Health & Human Services (HHS) Aging Services Division	Guardianship Establishment Fund*	Establishment costs - indigents	423,000	1,550,000	827,000
			300,000		
HHS Developmental Disabilities (DD) Services Division	DD Guardianship Establishment Fund**	Establishment costs - developmentally disabled	300,000	780,000	360,000
			120,000		
HHS North Dakota State Hospital (NDSH)	NDSH professional services/operating costs	Establishment costs - developmentally disabled	193,596	288,000	94,404
HHS Life Skills and Transition Center (LSTC)	LSTC professional services/operating costs	Establishment costs - developmentally disabled	23,388	28,400	5,012
Office of Management and Budget (OMB)	Public Administrator Support Services (PASS)	Public guardian and conservator fees - indigents	7,100,000	7,100,000	0
HHS DD Services Division	Corporate Guardianship Contract - Catholic Charities - Guardian Fees	Guardianship contracts - developmentally disabled	4,288,349	5,500,000	1,211,651
TOTAL IN SB 2029			\$12,748,333	\$15,246,400	\$2,498,067
* Inter-department transfer after original funds were exhausted					
** 40 slots added in September 2024					



2025 SB 2029
House Human Services Committee
Representative Matthew Ruby, Chairman
March 10, 2025

Chairman Ruby and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association (NDHA). I testify in support of Senate Bill 2029 and ask that you give the bill a **Do Pass** recommendation.

Hospitals appreciate the Legislature's study of our state's guardianship system during the last interim and for introducing this bill. We also greatly appreciate the legislature's past funding of programs that support public guardianship programs.

There are three broad categories of guardians: family, professional, and public. A family guardian is one who is related to a ward by blood or marriage. A professional guardian is any guardian who receives compensation for services to more than two wards. A public guardian is a person or organization that provides guardianship services for an individual who is indigent and incapacitated and has no family or friend available to serve.

The guardianship process takes time and resources even when there is a family member or friend willing to serve as guardian. When a patient has no friend or family member to serve and cannot afford a private guardian, public guardianship often becomes the only option. With increasing frequency, hospitals encounter patients who need someone to make medical decisions for them, but because the patient does not have a power of attorney or any family or friend who are willing or able to make those decisions, the only resort is to ask a court to appoint a guardian. We believe this situation is only going to increase due to our aging population and more mobile society where people lose touch with family members who may live thousands of miles away. An adequately funded public guardian program is a crucial safety net for these patients.

Finding a public guardian and waiting for the process to be finalized for a hospital patient often delays discharge to a more appropriate level of care, runs up the cost of health care,

and creates challenges for hospitals to serve other patients. In 2023, the average direct cost for one unnecessary day in a North Dakota hospital was \$1,417. The burden of finding a guardian is frequently placed on the hospital in these situations and is especially challenging and time consuming when the incapacitated patient lacks a family member or friend willing to serve.

Once appointed by a court, a guardian must determine a discharge plan for the patient, identify an appropriate care setting, and ensure a payment source, which often requires paperwork, such as a Medicaid application. Each of these steps cause additional hospital discharge delays. Every medically unnecessary day poses risks to the patient and the health care system, such as delay of rehabilitation, unavailable bed space for other patients, an unnecessary workforce burden, and uncompensated cost to the hospital.

The six acute care PPS hospitals in North Dakota - which provide approximately 80% of the hospital care in the state - were surveyed recently regarding patients who experienced discharge delays waiting for guardianship after medical clearance. As you can see, some patients remain in the hospital for hundreds of days past when they could have been discharged just because they lack guardianship services. In 2023, there were at least 1,373 avoidable patient days in these six hospitals alone because the patient lacked a guardian. This represents approximately \$1,945,725 of cost to the North Dakota health care delivery system that could have been avoided. These funds could be used more productively to support the health and well-being of North Dakotans or lessen delays in the guardianship process.

2023 avoidable PPS hospital days waiting for a guardian		Cost¹
Hospital One	354 days	\$ 495,554
Hospital Two	216 days	\$ 306,379
Hospital Three	60 days	\$ 100,993
Hospital Four	393 days	\$ 577,364
Hospital Five	120 days	\$ 136,740
Hospital Six	230 days	\$ 328,695
TOTAL	1,373 days	\$1,945,725

¹ Source: Medicare Cost Report 2023 for room cost, nursing, and minimal supplies plus allocated overhead like plant operations, general administration and not including ancillary charges like pharmaceuticals, respiratory therapy, etc.

Establishing guardianship is a complex and time consuming challenge, especially when a patient has no friend or family member willing to serve as guardian, and it is complicated further by a lack of standardized processes and difficulty finding qualified public guardians. We feel that the creation of an Office of Guardianship and Conservatorship as provided in the bill would help alleviate these challenges. It would serve as a centralized point for guardianship and conservatorship services and provide a regulatory framework for, and funding of, public guardianship services for eligible individuals. The bill addresses the most difficult barriers in this process and allows vulnerable patients to be more efficiently connected to the services they greatly need.

In summary, we support passage of this bill and hope that you will give it a **Do Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association



Testimony prepared for the House Human Services Committee
SB 2029 – Related to Guardianships
March 10, 2025
Kim Jacobson, Agassiz Valley Human Service Zone Director

Chair Ruby, and members of the House Human Services Committee, my name is Kim Jacobson, I serve as the Director for the Agassiz Valley Human Service Zone, which includes Traill and Steele Counties, and as President of the North Dakota Human Service Zone Director Association. I am here today to express my support for SB 2029, and to request an amendment.

As provided for in NDCC Chapter 50-01, human service zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS). A core duty for all human service zone directors is to serve as the legal custodian for children in public custody, pursuant to a Juvenile Court order (NDCC 50-01.1-06).

This bill impacts North Dakota's (19) human service zones in two ways. First, a youth who is developmentally disabled and unable to make decisions on their own may require a public or private guardian past their eighteenth birthday. If that youth is in human service zone custody at the time this determination is made, a zone director can be named temporary guardian of the new adult while actively pursuing a long-term plan.

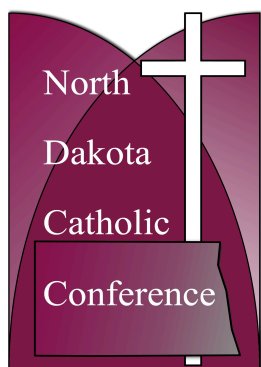
Second, for over forty years, a specialty foster care program has been operation in North Dakota as part of federal grant to state grant. Agassiz Valley Human Service Zone serves as the federal sub-recipient grantee. As the director of that zone, I oversee service delivery and serve as the legal guardian of minor children who are served by this program consistent with NDCC Chapter 30.1-27.

Human service zones have a comprehensive and unique oversight relationship with the NDHHS. Built-in components of this system include program oversight, technical assistance, compliance, operations, funding, and reporting. Furthermore, state law requires the Department to have a minimum of two representatives on the hiring committee for a human service zone director. The Executive Director of NDHHS must provide specific approval before an offer of employment is made to a prospective zone director. Annually, the Department provides official feedback in the annual performance evaluation of each zone director. By these

processes, the Department provides high-level oversight and ongoing engagement with zone program delivery, including Department supervision of public custody and legal guardianship matters at the zone level.

Due to a zone director's legal custodianship obligations, and the unique relationship between human service zones and NDHHS, certain provisions outlined in SB 2029 may not be a good fit for zone directors, the Department, and the proposed Office of Guardianship and Conservatorship. For these reasons, I respectfully request your consideration of amendments to SB 2029. Specifically, the exemptions starting on page 5, line 26 of this bill could be **amended to include human service zone directors as an exempted party**, which would be similar to a federal or state agency.

Thank you for your consideration. I stand for questions from the committee.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

103 South Third Street
Suite 10
Bismarck ND 58501
701-223-2519
ndcatholic.org
ndcatholic@ndcatholic.org

To: House Human Services
From: Christopher Dodson - Co-Director
Date: March 10, 2025
Re: Senate Bill 2029 - Office of Guardianship and Conservatorship

The North Dakota Catholic Conference opposes Senate Bill 2029 in its current form.

Senate Bill 2029 touches upon many entities and persons, including courts, guardians, the Attorney General, the Bureau of Criminal Investigation, the proposed Office of Guardianship and Conservatorship, and a proposed Guardianship and Conservatorship Review Board. Faced with these many persons and entities, and all the complexities of the bill we can lose sight of what matters most.

Senate Bill 2029 should be about the people served by guardians. Guardianship services help ensure that the inherent dignity of every individual is respected and preserved. This is particularly true for guardianship for persons with intellectual disabilities and guardianship for vulnerable adults. These services have legal aspects, but they are ultimately human services. As such, they belong in the executive branch, not the judiciary.

For more than 37 years, the Department of Health and Human Services has provided guardianship services for persons with intellectual disabilities. It is an integral and connected part of the Department's services under the Developmentally Disabled Division. The Department determines who is eligible for the services, how many guardianships will be included in the contract, and all the contract requirements. Severing this program from its related programs and moving it to the judicial branch makes no sense from a policy perspective.

The Public Administrator Support Services (PASS) grants also fund human services. Catholic Charities, which is one of the recipients of the grants, serves as the guardian of last resort for individuals with dementia/Alzheimer's, persistent mental illness, traumatic brain injury, cognitive impairment, chemical dependency, homelessness, or other related vulnerabilities. This funding is currently included in the Office of Management and Budget. Although OMB may not be the best location for this appropriation, moving it to the judicial branch fails to respect that this is a human service, not a judicial function.

Not only does moving these programs to the judicial branch threaten the identity and mission of the programs, SB 2029 could disrupt the services currently provided to people in need. Senate Bill 2029 picks up, part and parcel, a program well-established in one branch of government and drops

it into an office that does not yet exist within another branch of government. In fact, SB 2029 requires the new Office of Guardianship and Conservatorship to take over the Developmentally Disabled and PASS programs on July 1, 2025, but the office cannot legally come into existence until August 1, 2025.

Moving the appropriation and operation of these services to the judicial branch raises other problems. The principle of the separation of powers states that the execution, that is, the operation, of government functions belongs in the executive branch, following review and appropriation by the legislative branch. Senate Bill 2029 moves executive functions to the judicial branch.

While it may be appropriate for the judiciary to have oversight over qualifications and appointments of guardians — it already does — it is not appropriate for the judiciary to oversee the funding and operations of guardianship services. By analogy, the judiciary sets the standards of admission and rules of ethics for attorneys, but it does not hire and oversee the lawyers for the Attorney General's office.

Finally, SB 2029 prevents the legislature from reviewing and approving any rules adopted pursuant to the bill, even if the rules pertain to service programs. The rules would not be subject to review by the Administrative Rules Committee.

For these reasons, the North Dakota Catholic Conference opposes Senate Bill 2029 and asks for a **Do Not Pass** recommendation.



HOUSE HUMAN SERVICES COMMITTEE

CHAIRMAN MATTHEW RUBY

SENATE BILL 2029

GUARDIANSHIP ASSOCIATION OF ND

MARGO HAUT, PRESIDENT

MARCH 10, 2025

Chairman Ruby & Members of the House Human Services Committee, my name is Margo Haut, Founder and Co-Director of Guardian Angels, Inc., a nonprofit corporation located in Jamestown, ND. I also am a member & the current President of the **Guardianship Association of ND (GAND)**.

The Guardianship Association of ND is a 501(c)3 nonprofit organization established in 1987. GAND provides educational resources and collaboration for guardianship providers while advocating for guardianship services throughout ND. Numerous staff from each entity are members of GAND, with a current total of 55 members.

A Guardian is a person or entity legally entrusted by the Court, utilized when a person is deemed incapacitated and can no longer make or communicate safe or sound decisions about his/her person and/or property or has become susceptible to fraud or undue influence.

When the court appoints a guardian of the person, the guardian may have the following responsibilities:

- Determine and monitor residence;
- Consent to and monitor medical treatment;
- Consent and monitor non-medical services such as education and counseling;
- Consent and release of confidential information;
- Make end-of-life decisions;
- Oversee and manage assets/finances;
- Act as representative payee;
- Maximize independence in least restrictive manner;
- Report to the court about the guardianship status on an annual basis.

GAND respectfully opposes the current version of SB 2029. Our opposition to the current SB 2029 is **straightforward** and based on concerns that have been consistently communicated throughout the discussion:

- **Creates a New, Biased Government Branch** – Establishes the Office of Guardianship & Conservatorship (OGC) within the Judicial Branch, modeled after the Judicial Conduct Commission, **unfairly positioning it against guardians.**
- **Conflicts of Interest** – Concentrates appropriation, oversight, accountability, and discipline within the Supreme Court, making it both the **appointer, appropriator, monitor, complaint processor, and adjudicator** – a closed-loop system with no external checks.



- **Disconnects the Legislative Branch** – Distances guardians and vulnerable individuals from the legislative process, **limiting their ability to advocate for their rights** despite having the oversight of a guardian.

Professional Guardians in North Dakota do important work, worthy of respect. Currently, SB 2029 **speaks strictly of disciplinary action and red tape, where there should be support and collaboration.** In our current shortage of guardians, we're asking the state to **build-up and support guardians** to address future need.

Accordingly, we respectfully ask for **your consideration of amendments** that address these concerns, including but not limited to the following:

- **Independent Oversight Structure** – Position the Office of Guardianship & Conservatorship (OGC) within **Health & Human Services (DHHS), the Office of Management and Budget (OMB),** or another non-judicial entity.
- **Incorporate Guardian Representation** – Incorporate guardian input and participation within the Office of Guardianship & Conservatorship and Review Board.
- **Ensure Transparency & Accountability** – Promote **open communication without conflicts of interest.** For example, under DHHS, Catholic Charities of ND has provided guardianship services for individuals with intellectual disabilities for 37 years without issue.
- **Protect Due Process** – Guarantee **access to all branches of government,** safeguarding the rights of both guardians and vulnerable individuals across North Dakota.

Overall, it's GAND's **vision to ensure good quality ethical guardians & conservators to enhance & grow the profession.** GAND knows the importance of training, monitoring & accountability:

- **Training** – Given the complexity of the role, Guardians and Conservators require extensive training. In North Dakota, professional guardians must obtain national certification through the Center for Guardianship Certification and state certification via the Court.
- **Monitoring** – Guardians must be monitored thoroughly in a way that is efficient, fair, and non-oppressive. While GAND supports oversight, it must be conducted by those who fully understand the realities of guardianship.
- **Accountability** – Guardians must uphold high ethical standards. Those who violate best practices should face appropriate consequences, including potential removal from guardianship practice.

Chairman Ruby & Members of the Committee, thank you again for providing GAND and its members the opportunity to request a simpler, scaled approach to the OGC **focused on positively impacting guardians & conservators while assuring high quality services, without conflict.**

Thank you for your time.

Margo Haut
President, Guardianship Association of North Dakota (GAND)

House Human Services Committee

Testimony on Senate Bill 2029

Representative Matthew Ruby – Chairman

March 10th, 2025

Chairman Ruby and members of the House Human Services Committee, my name is Donna Byzewski and I am the Program Director of the corporate guardianship program for individuals with intellectual disabilities at Catholic Charities North Dakota. I oppose Senate Bill 2029 in its current form.

For more than 37 years, the Developmental Disabilities (DD) Division of the ND Department of Health and Human Services has contracted with Catholic Charities ND to provide corporate guardianship services on behalf of adults with intellectual disabilities. The contract is very specific. We can only accept referrals from Developmental Disabilities Program Managers from the human service centers. There must be no other appropriate alternative such as family or friends who could serve as guardian. We are the guardian of last resort. The contract also specifies that we cannot refuse to serve a referral because of where that person might live – our services must be available statewide. There are critical times when a person may need the services of a guardian, and if no one else is available or appropriate, a corporate guardianship is a necessity.

For thirty-five of the 37 years, I have been with the corporate guardianship program and I have worked closely with the DD Division. At no time has the working relationship between the DD Division and corporate guardianship created a conflict of interest. The role of the DD Division and the role of corporate guardianship are separate and distinct. The contract lays out our role within the scope of service of the contract as well as expectations that we have policies and procedures, guardianship workers who have a certain educational background and skill set, insurance, etc. Through the contract, we have provided quality, person-centered services for individuals with intellectual disabilities for 37 years.

The corporate guardianship program provides a very efficient, cost-effective and state-wide service. The process is streamlined with almost all of our resources being dedicated to the direct provision of guardianship services. We are a frugal program that takes very seriously that we be good stewards of the funds that we receive from the legislature through the contract. Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

SB 2029
House Human Services Committee
Testimony Presented by Scott Bernstein, NCG
Executive Director of Guardian and Protective Services
May 10, 2025

Chairman Ruby, members of the House Human Services Committee, for the record, I am Scott Bernstein, Executive Director of Guardian and Protective Services, a member of the Task Force and I also serve on the board of Guardianship Association of North Dakota.

I stand in **opposition** to SB 2029, and I will attempt to be succinct in clearly identifying my points of opposition.

1. **I believe this solution represents overreach.** I do not believe that the legislature in the last session, when they approved the SHALL STUDY, were giving the Judicial Branch complete freedom to step in and take over guardianship and absorb guardianship into the Judicial Branch.

I was in the room when Representative Kempenich, sitting on the OMB Committee, suggested it would be a good idea to take a closer look at where the various forms of funding for guardianship landed. His hope was the Shall Study may be able to offer a possible solution that would consolidate the funding in one department. **At no time, to my recollection, did he ever suggest moving it to a different branch of government, taking it out of the reach of the legislature.**

2. Historically, there has been reticence on the part of DHHS to bring all things guardianship under their purview due to a perceived conflict of interest.

Right from the top, the court has an obvious conflict of interest.

- No one receives a guardian without Court appointment.
- Only the Court can strip a person of their human rights and delegate them to an individual named as the guardian. I will return to this point later.
- The Court has the power to remove a guardian, terminate a guardianship, and they must approve a successor guardianship.
- The Court can, and frequently does, request that a Court Visitor visit a person under guardianship for any reason.

- The Court requires guardians to turn in reports to the Court verifying the well-being and the appropriate handling of all the finances and benefits related to the person under guardianship.
- Guardians appear before the Court for a whole host of reasons AND are required to gain the Court's approval for the sale of a protected person's property, potential required injections, Court Ordered stays for psychiatric treatment – and the list goes on.

I think it is clear to see that the Court is intimately connected to the person under guardianship. If this doesn't represent a conflict of interest, I don't know what does.

The proposed solution is to form a new Office of Guardianship and Conservatorship that supposedly creates an arms-length relationship between the Court and the oversight of the guardian.

I would suggest this is a VERY SHORT arm. The Court cannot abrogate responsibility that solely belongs to the Court. Establishing a new office that essentially holds 50 professional guardians accountable is overkill. Minnesota has nearly 400 professional guardians. Do they have an Office of Guardianship and Conservatorship? No. They have adopted technology that creates greater transparency between the Court and the guardian. I don't believe the legislature needs to create an office, under judiciary, focused on disciplining a guardian gone rogue, that the Court has the power to remove.

Please understand, guardians are not opposed to accountability. Not only are we entrusted to care for the most vulnerable – many for the rest of their lives, but we are required to submit copious numbers of reports and accountings to agencies, benefit providers, banks, and the list goes on. GaPS has a team of five professionals whose job is to pay the bills of clients, complete court reports, submit information and affidavits to Social Security. And that's just the tip of the iceberg. At times it is overwhelming. But at the end of the day, we know why we are doing this.

We, the guardian team, are the voice for the voiceless. We speak on their behalf. We strive to make decisions that would be the decisions they would make if they were capable...right down to the most crucial end of life decisions. We take this seriously 24/7, 365 days a year.

Remember I said I would return to the point of stripping an individual of their human rights? Who speaks for them? The guardian. I'm deeply concerned that under this proposed bill

the people that speak for them, the guardian, will also lose their voice. I feel strongly that the legislature is accountable to ALL people. One of the few rights that the Court frequently leaves in tack, when appointing a guardian, is the right to vote. I think that's vitally important. You will not see our clients sitting here. **But we sit here. Putting guardians behind the door of the Judiciary indirectly silences their voices.** Approving this bill creates an office, with significant authority, to flesh out rules. Which is just another word for laws that never come before the legislature.

There is a reason why all the professional guardians in North Dakota stand in opposition to this bill. We believe there is a better solution. For this reason, I urge you to vote against the bill as it now stands.

Thank you for listening and I will be happy to answer your questions.

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2029
3/18/2025

Relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

2:40 p.m. Chairman M. Ruby opened the hearing.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

Discussion Topics:

- Proposed amendments relating to an office of guardianship and conservatorship
- Effective integration of services
- Guardian representation
- Transparency and accountability
- Protections for due process
- Consolidation of funding
- Proposed amendments relating to exemptions

2:41 p.m. Senator Lee, District 13, introduced proposed amendments #25.0224.04003 and submitted testimony, #42903.

2:49 p.m. Margo Haut, Founder and Co-Director of Guardian Angels Inc., testified in favor of the .04003 amendments and submitted testimony, #42910.

2:59 p.m. Donna Byzewski, Program Director of the Corporate Guardianship Program for Individuals with Intellectual Disabilities at Catholic Charities North Dakota, testified in favor of the .04003 amendments and submitted testimony, #42912.

3:04 p.m. Karissa Azure, Finance Director of Guardian and Protective Services, testified in favor of the .04003 amendments and submitted testimony, #42913.

3:13 p.m. Scott Bernstein, Executive Director of Guardian and Protective Services, testified in favor of the .04003 amendments and submitted testimony, #42914.

3:29 p.m. Garrick Voigt, Office of the State Court Administrator, introduced amendments #25.0224.04001, and submitted testimony, #42821 and #42822.

3:46 p.m. Chairman M. Ruby adjourned the meeting.

Jackson Toman, Committee Clerk

Senate Bill 2029
House Human Services Committee
March 18, 2025

Testimony of Garrick R. Voigt
Office of the State Court Administrator
Staff Attorney

Introduction: Chairman Ruby and members of the House Human Services Committee, for the record, my name is Garrick Voigt, staff attorney for the Office of the State Court Administrator and staff for the Task Force on Guardianship Monitoring. My testimony today will primarily address concerns about SB 2029, clarify responses to questions from the March 10 hearing and propose an amendment.

Conflicts of Interest: Opposition testimony has largely focused on the claim that housing the Office of Guardianship and Conservatorship (OGC), the Guardianship and Conservatorship Counsel (Investigation Counsel), the Guardianship and Conservatorship Review Board (Review Board), and the Guardianship and Conservatorship Operations Committee (Operations Committee) within the Judicial Branch creates a conflict of interest. These arguments rely on a misunderstanding of the term "the Court."

The North Dakota Supreme Court, the Court System, and the district courts are not the same entity. Yes, they are all part of the Judicial Branch, and the Chief Justice is the administrative head of the Supreme Court, Court System, and Judicial Branch. However, ignoring independent divisions within the Judicial Branch generates misconceptions about conflicts of interest. For example, if you applied that standard when looking at the Executive Branch, it would have many conflicts of interest because it oversees so many programs and agencies. Yet, conflicts of interest are limited because the Executive Branch is made up of various departments, which are divided into divisions, which are often further subdivided into sections, bureaus, and units, all handling specific functions ranging in scope and functioning independently from one another. Now, let's apply that same concept to the Judicial Branch when assessing conflicts of interest.

The North Dakota Supreme Court, the Court System, and the district courts operate as distinct entities within the Judicial Branch. There was a comment that the structure proposed under SB 2029 creates a conflict of interest because the "Supreme Court" will become the appointer, appropriator, monitor, complaint processor, and adjudicator. That's not the proposal. Under the proposed structure, the appointer is the district court; the appropriator is a Legislature (though the budget proposal will be made by the Operations Committee); the monitor will be the OGC; the complaint processor will be the Investigation Counsel; the adjudicator will be the Review Board; and appellate review will be handled by the Supreme Court.

It was also argued that there is a conflict of interest because “the Court” is intimately connected to the ward because “the Court” appoints and removes guardians, appoints court visitors, conducts hearings on various petitions, etc. Yes, the district courts have the authority to perform these functions. These powers remain exclusive to district courts under SB 2029. As mentioned, the district courts will not generally be involved in the proposed complaint process except for receiving notices. The Review Board may make recommendations to the district court overseeing a guardianship or conservatorship case, but that judge will not be bound to those recommendations. It is best to think of the district courts, OGC, Review Board, Investigation Counsel, Operations Committee, and the Supreme Court as separate departments under the Judicial Branch because each serves a separate function.

Legislative Oversight: It was again argued that Legislative oversight will be lessened if the bill passes because transferring these programs to the Judicial Branch will remove the Legislature’s ability to oversee changes to the Administrative Code, which is a valid concern. I wanted to measure the legislative oversight being lost if SB 2029 is enacted, so I looked at the ND Admin Code. I found that no Admin Code provision touches on the details of the Department of Health and Human Services (HHS) programs impacted by SB 2029. Those programs are governed by agency policies and contracts, which are not subject to legislative review. If anything, SB 2029 enhances legislative oversight by consolidating adult guardianship program appropriations and making expenditures more transparent and reviewable by the Legislature.

Judicial Overreach: Some have claimed that SB 2029 represents judicial overreach. However, the Supreme Court’s involvement in this matter is the direct result of two legislative studies from the 68th Legislative Assembly, one mandated by enacting Chapter 27-27, and the other conducted by the Interim Government Finance Committee.

Chapter 27-27: Chapter 27-27 is short. It mandated the Supreme Court to create the Task Force on Guardianship Monitoring (Task Force). The Task Force was asked to address matters of guardianship accountability and further protections of individuals under guardianship. It was also tasked with recommending to the Supreme Court the regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior. Therefore, one of the asks was to create a guardian investigator position and put it under the Supreme Court, while the other ask was creating court rules to improve the current guardianship structure in North Dakota.

Furthermore, Article VI, Section 3 of the North Dakota Constitution gives the Supreme Court rulemaking authority. The Court System does not believe it is

judicial overreach to use constitutionally granted powers after going through the legislative process to obtain a grant of statutory authority, especially when the Court System was asked to do so by the Legislature. Additionally, it was alleged that passing SB 2029 would unfairly subjugate guardians and conservators to court rules; however, guardians and conservators are already subject to court rules regarding minimum qualifications and procedures for appointment.

Interim Government Finance Committee Study: The study conducted by the 68th Interim Government Finance Committee considered the existing structure for adult guardianship programs under the Office of Management and Budget, Judicial Branch, and HHS; the feasibility of consolidating the programs under one agency; and an appropriate level of funding for the programs. Again, that committee sponsored the bill that became SB 2029, meaning a legislative body suggested putting the programs under the Judicial Branch. The Court System does not see how it is judicial overreach to transfer these programs to the Judicial Branch when a legislative body used the legislative process to do so.

Judicial Function: Critics have pointed to the age of the Winsor Schmidt Report, arguing that its recommendations must be reconsidered in light of changes in the guardianship landscape. While some aspects of the report are outdated (such as moot recommendations), its core findings on conflicts of interest and the distinction between direct and indirect services remain relevant. Dr. Schmidt specifically advised against placing a public guardianship office within a social service agency due to its role in providing direct services to wards, which could create conflicts of interest. In contrast, the Court System does not provide direct services—it contracts with providers, ensuring indirect oversight. Some jurisdictions have gone far beyond what is proposed in SB 2029. For example, the Nebraska Legislature established its Office of Public Guardian (OPG) within the Judicial Branch in 2014 to serve as a guardian of last resort. Nebraska's OPG employees provide direct services, whereas SB 2029 proposes a model with far less direct involvement.

Program Placement: Some have argued that HHS should continue administering the developmentally disabled (DD) corporate contract and take responsibility for the Public Administrator Support Services (PASS) program. This argument assumes that long-standing practices with the DD corporate contract are inherently correct. However, even HHS acknowledged it has a conflict of interest in administering the PASS program. Additionally, both the Governor's Office and HHS have declined responsibility for these entities. Ultimately, the decision on where to house these programs is a policy choice. The Task Force recommended placing the entities and programs proposed in SB 2029 within the Court System because: (1) the Court System has experience with similar structures; (2) the Court System's conflict of interest is lower than that of HHS; and (3) it requires fewer fulltime equivalent (FTEs) positions to administer the programs, minimizing government expansion.

Biased Against Guardians: Some claim SB 2029 is biased against guardians, though no specific examples have been provided. The bill's investigative and administrative procedures mirror those of the Judicial Conduct Commission and the Attorney Disciplinary Board, ensuring fairness. Arguing that these procedures are biased against guardians is akin to arguing that judicial and attorney disciplinary procedures are inherently unfair against attorneys and judges.

Additionally, concerns about SB 2029 not including advanced monitoring technology like Minnesota's system are misplaced. The Court System intends to explore enhanced monitoring software regardless of the bill's passage. Furthermore, it was claimed that Minnesota does not have an office of public guardian, which is true; however, about three years ago, its state court system created a pilot project to receive and investigate allegations of guardian and conservator misconduct.

Policy Effective Date: This was addressed in my March 10 testimony, but as a reminder, because there is an appropriation attached to this policy, the policy's effective date is July 1, 2025, not August 1.

Judicial Branch Licensing: A question was raised about whether the Court System currently licenses any professions. While it does not issue formal licenses other than attorney licenses, it establishes and enforces professional standards in multiple areas, including:

1. Guardians (N.D. Sup. Ct. Admin. R. 59)
2. Family mediators (N.D.R.Ct. 8.1)
3. Parenting investigators (N.D.R.Ct. 8.6)
4. Guardians ad litem (N.D.R.Ct. 8.7)
5. Alternative dispute resolution professionals (N.D.R.Ct. 8.9)
6. Parenting coordinators (N.D.R.Ct. 8.11)

The licensing framework in SB 2029 is modeled after attorney licensing and disciplinary procedures, making it well within the Court System's existing capabilities.

Admin. R. 59 Qualifications: There was a question on the current standards to become a guardian under N.D. Sup. Ct. Admin. R. 59. Standards under Rule 59 are separated into three categories: nonprofessional, professional entity, and professional individual.

Nonprofessional: A nonprofessional guardian need only: (1) complete the mandatory, online training provided by the Supreme Court; (2) provide a criminal history record check report; (3) provide an affidavit stating whether proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation; and (4) provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

Professional Individual: A professional individual must satisfy all the requirements stated for a nonprofessional plus possess certification through the Center for Guardianship Certification. Additionally, professional individuals must disclose whether they have been the subject of any disciplinary proceeding by a licensing entity or by an agency accredited through the Council on Accreditation.

Professional Entity: A professional entity must be accredited through the Council on Accreditation or have its employed guardians be certified through the Center for Guardianship Certification. Otherwise, the employed guardians must meet the same qualifications as professional individuals.

Opposition Amendment: The Court System acknowledges that an opposition amendment will be proposed. We request sufficient time to review and consider it. For context, the Court System is not opposed to placing these programs outside the Judicial Branch if an alternative structure effectively:

- Protects wards through robust guardian oversight.
- Ensures accountability for taxpayer funds.
- Consolidates public adult guardianship programs under a single funding source.

If the Committee reviews Appendix B of my March 10 testimony (p. 19, no. 3), it will note that getting HHS and law enforcement to investigate allegations of guardian misconduct has been very difficult, so it is critical that the proposed amendments have enforceable investigative mechanisms and be broad in scope. If an alternative proposal meets these objectives, the Court System is open to supporting it. That said, HHS and the Court System understand that the Governor's Office will oppose any amendment shifting the programs and entities proposed in SB 2029 from the Court System to HHS.

Proposed Amendment: Lastly, I have submitted a proposed amendment along with my testimony, which can be found on page five. This amendment adds Human Service Zones to the list of exceptions and relocates the previous subdivision 27-27.1-05(4)(c) to subsection 27-27.1-05(1). This change is necessary because the original placement of subdivision (c) would create an unintended interaction with subsection 3. Without this amendment, an individual appointed as a guardian or conservator for a family member could also offer guardianship or conservatorship services to the public, which is not the intent of subsection 3. The family member exception was included to ensure individuals are not required to obtain a license to care for their relatives. Moving this language to subsection 1 ensures it applies only in that specific context.

Conclusion: That concludes my testimony, and I will take any questions.

25.0224.04001draft

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT TO REENGROSSED SENATE BILL NO. 2029

SECOND ENGROSSMENT

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security
21 number, electronic mail address, program identification number, or any other unique

1 identifying number, characteristic, or code, and any demographic information collected
2 about the individual.

3 4. "Investigation counsel" means the guardianship and conservatorship counsel.

4 5. "Licensed conservator" means a person licensed by the office to provide
5 conservatorship services.

6 6. "Licensed guardian" means a person licensed by the office to provide guardianship
7 services.

8 7. "Office" means the office of guardianship and conservatorship.

9 8. "Public conservator" means a conservator under contract with the office to provide
10 conservatorship services for an individual eligible for public services.

11 9. "Public guardian" means a guardian under contract with the office to provide
12 guardianship services for an individual eligible for public services.

13 10. "Public services" means state or federally funded programs administered by the office
14 available to eligible individuals.

15 11. "Unlicensed conservator" means a person providing conservatorship services without
16 a conservator license.

17 12. "Unlicensed guardian" means a person providing guardianship services without a
18 guardian license.

19 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
20 **duties - Report - Audit.**

21 1. The office of guardianship and conservatorship is created as a division under the
22 supreme court to administer the programs assigned by state law or the supreme court.

23 2. The office shall:

24 a. Develop policies and procedures, including eligibility criteria, for:

25 (1) Receiving public services;

26 (2) A public guardian or a public conservator;

27 (3) A licensed guardian or a licensed conservator; and

28 (4) Distribution of funding for direct payments and expense reimbursements for
29 public services.

30 b. Develop ethical standards for:

31 (1) A licensed guardian or a licensed conservator; and

32 (2) An unlicensed guardian or an unlicensed conservator.

- c. Develop policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.
- d. Keep accurate records of all financial transactions performed under this chapter in the manner required by the office of management and budget.
- e. Provide a report each biennium to the legislative management regarding the operations of the office, including the cost of public guardians and public conservators, and any other information requested by the legislative management.

3. The office may:

- a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- b. Grant licenses to a guardian or conservator and agency permits, including revoking or suspending an agency permit.
- c. Require insurance or bond coverage for a licensed guardian or a licensed conservator as a condition for licensure.
- d. Establish mandatory disclosure and reporting requirements for a licensed guardian or a licensed conservator, including a process to disclose information or submit reports to the office.
- e. Provide training for guardians and conservators.
- f. Monitor guardianship and conservatorship services.
- g. Provide annual reports to the supreme court.
- h. Distribute funding for direct payments, expense reimbursements, or other public services, including funding for public administrators.
- i. Establish and collect fees to support guardianship and conservatorship services and the duties of the office, which must be deposited in the guardianship and conservatorship support fund.
- j. Seek and apply for private, federal, or other funds to help support guardians and conservators and to safeguard the rights of individuals who receive public services.
- k. Accept private funds for deposit in the guardianship and conservatorship support fund.

1 4. The office may not authorize payment for services for any public guardian or public
2 conservator that provides services for more individuals than allowed through statute,
3 regulation, court rule, or policy adopted by the office.

4 5. The office, its officers, or its employees, may not act as a public guardian or a public
5 conservator or act in any other representative capacity for any individual. This
6 subsection does not prohibit an officer or employee from acting as a guardian or
7 conservator in a personal capacity apart from any duties as an officer or employee.

8 6. The office is subject to audits by the state auditor under chapter 54-10.

9 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
10 **appropriation.**

11 There is created in the state treasury the guardianship and conservatorship support fund.
12 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
13 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
14 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
15 branch to defray the expenses of the office for supporting guardianship and conservatorship
16 services, including guardianship and conservatorship training and monitoring.

17 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

18 1. Identifiable information concerning an individual who is applying for or receiving public
19 services under this chapter is confidential and may be disclosed only:

20 a. In the administration of any program under the supervision or administration of
21 the office.

22 b. When authorized by a policy or procedure of the office.

23 c. When allowed or required by rule or law.

24 2. A report concerning an applicant, provider, or recipient of public services is confidential
25 if the report is made in good faith and may be disclosed only to:

26 a. Authorized staff and agents of the office, who may further disclose the
27 information to a person that has a definite interest in the well-being of the
28 individual concerned, is in a position to serve the individual's interests, and that
29 needs to know the contents of the records to assure the well-being and interests
30 of the individual concerned.

31 b. An individual who is the subject of the report, if the identity of the person
32 reporting or supplying information under this chapter is protected until the

information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.

c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.

d. A court when the court determines the information is necessary for the determination of an issue before the court.

e. The investigation counsel.

3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

27-27.1-05. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.

4. This section does not apply to:

a. A federal or state agency.

b. A financial institution under section 6-08.1-01 when appointed as a conservator.

c. ~~An individual appointed as a guardian or conservator for a family member.~~ Human service zones, including human service zone directors or team members, as defined in section 50-01.1-01.

5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

1 **27-27.1-06. Immunity.**

2 A person who in good faith provides information or testimony regarding a guardian's or
3 conservator's misconduct or lack of professionalism is not subject to civil liability.

4 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

5 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
6 conservator license.

7 2. The supreme court must establish a process to appeal license denials and board
8 orders.

9 3. The courts shall waive court costs and filing fees in any proceeding in which a person
10 is receiving public services under this chapter.

11 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
12 the applicable policies, procedures, and standards of the office, or other approval
13 authority authorized by court rule, if the guardian or the conservator serves an adult
14 ward, adult protected person, or incapacitated person, as defined in title 30.1.

15 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
16 **conservatorship counsel - Guardianship and conservatorship operations committee.**

17 1. The supreme court may establish a guardianship and conservatorship review board to
18 conduct disciplinary proceedings for a guardian or conservator.

19 2. The supreme court may establish a guardianship and conservatorship counsel to
20 investigate noncompliance reported under this chapter. The director of the office is the
21 hiring authority for the investigation counsel.

22 3. The supreme court must create a guardianship and conservatorship operations
23 committee to supervise the operations of the office and investigation counsel. The
24 operations committee:

25 a. Must develop and submit budgets for the office, board, and investigation counsel.

26 b. Is the hiring authority for the office director.

27 c. May adopt policies recommended by the office.

28 **27-27.1-09. Supreme court - Discretionary powers.**

29 The supreme court may:

30 1. Grant immunity to a member of the board and the board's agents if a district court or
31 the supreme court would have immunity in performing the same functions.

32 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

1 3. Authorize officials, officers, agents, and designees of the office, the board, and the
2 investigation counsel to:

3 a. Administer oaths.

4 b. Order and otherwise provide for the inspection of books and records.

5 c. Issue subpoenas for the attendance of witnesses and the production of
6 designated documents, electronically stored information, or tangible things in
7 accordance with the North Dakota Rules of Civil Procedure.

8 d. Order the deposition of a person residing within or outside the state to be taken in
9 accordance with the North Dakota Rules of Civil Procedure.

10 4. Adopt rules to effectuate the powers and duties under this chapter.

11 **27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**
12 **authority for investigations.**

13 1. The attorney general shall act as legal counsel in any particular investigation or
14 proceeding under section 54-12-02. The attorney general shall appear and defend any
15 officer or employee of the office and any member of the board in any action founded
16 on an act or omission arising out of performance of an official duty consistent with
17 section 54-12-01.3.

18 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
19 investigation have primary authority to investigate criminal cases related to a
20 guardianship or conservatorship.

21 **27-27.1-11. Duty to disclose and cooperate.**

22 1. A state and local governmental entity and its officers and employees, and the officials,
23 officers, and employees of the courts of this state shall disclose records and
24 information requested by the board or investigation counsel or any authorized
25 representative of the board or investigation counsel and shall cooperate with and give
26 reasonable assistance to the board or investigation counsel and any authorized
27 representative of the board or counsel unless prohibited by federal regulation or law.

28 2. The service of process extends to all parts of the state in any investigation or
29 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
30 process and execute all lawful orders upon request of the office, its authorized
31 representative, the board, or the investigation counsel.

27-27.1-12. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.
2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.
3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

27-27.1-13. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.
2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.
3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 2. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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

1 licensed guardian includes a guardian whose license has been suspended but
2 excludes a guardian whose license is revoked.

3 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

6 1. The court may remove a conservator for good cause, upon notice and hearing, or
7 accept the resignation of a conservator. After a conservator's death, resignation, or
8 removal, the court may appoint another conservator. A conservator so appointed
9 succeeds to the title and powers of the predecessor.

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

17 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
18 Century Code is amended and reenacted as follows:

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

- 30 a. Recipient liability expense applicable to the month of death for nursing home or
31 basic care services;
32 b. Funeral expenses not in excess of three thousand five hundred dollars;

- 1 c. Expenses of the last illness, other than those incurred by medical assistance;
- 2 d. Expenses of administering the estate, including attorney's fees approved by the
- 3 court;
- 4 e. Claims made under chapter 50-01;
- 5 f. Claims made under chapter 50-24.5;
- 6 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
- 7 h. Claims made under chapter 27-27.1; and
- 8 i. Claims made under subsection 4.

9 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

10 **SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP**

11 **AND CONSERVATORSHIP.** The funds provided in this section, or so much of the funds as may
12 be necessary, are appropriated out of any moneys in the general fund in the state treasury, not
13 otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the
14 office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending
15 June 30, 2027, as follows:

16 Establishment costs - indigents	\$1,550,000
17 Establishment costs - developmentally disabled	1,096,400
18 Public guardian and conservator fees - indigents	7,100,000
19 Guardianship contracts - developmentally disabled	<u>5,500,000</u>
20 Total general fund	\$15,246,400

Proposed Amendments to First Engrossment of Engrossed Senate Bill 2029, 3/18/25
Senator Judy Lee

This bill is a hoghouse amendment on a very important subject, which is the establishment of an office of guardianship and conservatorship. It would oversee assignment of guardians to those individuals who are incapable of managing their own affairs, monitor the activity, and assure quality guardians are serving the vulnerable residents of North Dakota.

Section 1 creates a registry on which a guardian who has been removed for good cause would be listed and who would be disqualified from acting as a guardian and lists details.

Section 2 addresses conservators who could be placed on a registry, if removed for good cause.

Section 3 has definitions and also establishes the Office of guardianship and conservatorship. It will be a division of the Department of Health and Human Services to administer programs assigned by state law. The Office's responsibilities are listed, including establishing rules, providing reports, training, and monitoring services. Funds will be distributed and other financial services are listed.

Subsection 3 lists additional duties, including, on request from a district court judge, reviewing cases to identify deficiencies, examine reports, and report back to the court.

It also states that the Office's officers and employees may not act as a public guardian or conservator, but that other employees of DHHS outside of the Office of guardianship and conservatorship may act as a guardian or conservator in a personal capacity. The office is subject to audits by the State Auditor.

The Guardianship and Conservatorship Support Fund will be created in the state treasury and all funds will be appropriated on a continuing basis to DHHS to defray expenses of the office for supporting guardianship and conservatorship services, including training and monitoring.

It also discusses records, confidentiality and disclosure.

Guardianship and conservatorship limitations are described, including that an individual (not "person") may not serve as a guardian or conservator for 3 or more adults at the same time, unless that person is licensed or has an agency permit.

It states that the section does not apply to a human service one director as an addition.

Immunity of an individual providing information regarding misconduct or lack of professionalism is not subject to civil liability.

The district court has jurisdiction to revoke or suspend a guardian or a conservator license. The Office of Guardianship and Conservatorship must establish a process to appeal license denials and board orders.

Other statements about court actions are listed.

A guardianship and conservatorship review board is established to investigate and conduct disciplinary proceedings. The requirements for the membership area listed.

The office has a preferred claim against the estate for recovery of funds. It includes the order of claims.

Chapter 27-27 is repealed, which is the task force on guardianship monitoring.

The appropriation to DHHS Office of Guardianship and Conservatorship includes establishment cosets for indigents and for those with developmental disabilities. Total general funds are \$18,446,400 which used to be split between the Office of Management and Budget for indigent guardianships and Department of Health and Human Services for e DHHS. 4 FTE's are requested.

This version of the guardian and conservatorship work and oversight is the result of many months of discussions with guardians and the task force members who were also involved in the efforts to provide more appropriate organization and oversight.

It is removed from the courts, because of the conflict of interest. The courts take away the rights of the ward, assign a guardian to handle the ward's affairs, finances, health decisions, and more, and it would be inappropriate for them to also be the overseer without any accountability on their part.

This amendment makes the Office of Guardianship and Conservatorship a separate division of DHHS, similar to the divisions of behavioral health, Medicaid, developmental disabilities, and more.

In my opinion and that of the guardians who do this work, it is an appropriate way for this important service to be overseen. It also will permit legislative involvement through policy and appropriations. It applies only to professional guardians, not family guardians.

These professional guardians are wonderful, caring custodians of the affairs of the people whom they serve. Including financial affairs and health care decisions in combination with other appropriate parties. They make less than \$20/day, something we need to address also.

The people who will follow me will go through more of the details of the bill, and they are the experts. I encourage you to look favorably on this collaborative recommendation to manage the guardianship and conservatorship programs and support these amendments.

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and a new chapter to title 50 of the North Dakota Century Code, relating to ~~an office~~
3 ~~of guardianship and conservatorship and~~ the removal of a guardian and an office of
4 guardianship and conservatorship; to amend and reenact section 30.1-29-15 and subsection 1
5 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of a
6 conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
7 North Dakota Century Code, relating to the task force on guardianship monitoring; ~~to provide a~~
8 ~~penalty~~; to provide for a legislative management report; ~~to provide a penalty~~; to provide an
9 appropriation; and to provide a continuing appropriation.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 **SECTION 1.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
12 created and enacted as follows:

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

1 **SECTION 2. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

4 1. The court may remove a conservator for good cause, upon notice and hearing, or
5 accept the resignation of a conservator. After a conservator's death, resignation, or
6 removal, the court may appoint another conservator. A conservator so appointed
7 succeeds to the title and powers of the predecessor.

8 2. The court may order a conservator to be listed on a registry if the court removed the
9 conservator for good cause. A conservator listed on the registry is disqualified from
10 acting as a conservator in any conservatorship proceeding. The court shall send a
11 copy of the order to the state court administrator, who shall maintain and administer
12 the registry. This subsection does not apply to a licensed conservator. For purposes of
13 this subsection, a "licensed conservator" includes a conservator whose license has
14 been suspended but excludes a conservator whose license is revoked.

15 ~~— SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
16 ~~follows:~~

17 **SECTION 3.** A new chapter to title 50 of the North Dakota Century Code is created and
18 enacted as follows:

19 ~~27-27.1-01. Definitions.~~

20 As used in this chapter:

- 21 1. "Agency permit" means temporary authorization given by the office to an employee of
22 a professional guardianship or professional conservatorship entity which allows the
23 permitholder to provide guardianship or conservatorship services as an agent of the
24 entity.
- 25 2. "Board" means the guardianship and conservatorship review board.
- 26 3. "Identifiable information" means an individual's personal details, including the
27 individual's name, address, telephone number, facsimile number, ~~social~~
28 ~~security~~ employment identification number, electronic mail address, program
29 identification number, or any other unique identifying number, characteristic, or code, .
30 and any demographic information collected about the individual.
- 31 4. ~~"Investigation counsel" means the guardianship and conservatorship counsel.~~

- 1 ~~5.~~ "Licensed conservator" means a person licensed by the office to provide
2 conservatorship services.
- 3 ~~6-5.~~ "Licensed guardian" means a person licensed by the office to provide guardianship
4 services.
- 5 ~~7-6.~~ "Office" means the office of guardianship and conservatorship.
- 6 ~~8-7.~~ "Public conservator" means a conservator under contract with the office to provide
7 conservatorship services for an individual eligible for public services.
- 8 ~~9-8.~~ "Public guardian" means a guardian under contract with the office to provide
9 guardianship services for an individual eligible for public services.
- 10 ~~10-9.~~ "Public services" means state or federally funded programs administered by the office
11 available to eligible individuals.
- 12 ~~11-10.~~ "Unlicensed conservator" means a person providing conservatorship services without
13 a conservator license.
- 14 ~~12-11.~~ "Unlicensed guardian" means a person providing guardianship services without a
15 guardian license.
- 16 ~~27-27.1-02.~~ **Office of guardianship and conservatorship - Purpose - Powers and**
17 **duties - Report - Audit.**
- 18 1. The office of guardianship and conservatorship is created as a division under the
19 ~~supreme court~~ department of health and human services to administer the programs
20 assigned by state law ~~or the supreme court~~.
- 21 2. The office must consist of an executive director, a court monitor, an accountant, and
22 an ethical standards coordinator, however designated.
- 23 3. The office shall:
- 24 a. Develop rules, training, and policies and procedures, including eligibility criteria,
25 for:
- 26 (1) Receiving public services;
- 27 (2) A public guardian or a public conservator;
- 28 (3) A licensed guardian or a licensed conservator; and
- 29 (4) Distribution of funding for direct payments and expense reimbursements for
30 public services.
- 31 b. Develop ethical standards for:

- 1 (1) A licensed guardian or a licensed conservator; and
- 2 (2) An unlicensed guardian or an unlicensed conservator.
- 3 c. Develop policies and procedures for proceedings when a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Keep accurate records of all financial transactions performed under this chapter
- 6 in the manner required by the office of management and budget.
- 7 e. Provide a report each biennium to the legislative management regarding the
- 8 operations of the office, including the cost of public guardians and public
- 9 conservators, and any other information requested by the legislative
- 10 management.
- 11 ~~3. The office may:~~
- 12 a.f. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 13 b.g. Grant licenses to a guardian or conservator and agency permits, including
- 14 revoking or suspending an agency permit.
- 15 e.h. Require insurance or bond coverage for a licensed guardian or a licensed
- 16 conservator as a condition for licensure.
- 17 d.i. Establish mandatory disclosure and reporting requirements for a licensed
- 18 guardian or a licensed conservator, including a process to disclose information or
- 19 submit reports to the office.
- 20 e.j. Provide training for guardians and conservators.
- 21 f.k. Monitor guardianship and conservatorship services.
- 22 ~~g. Provide annual reports to the supreme court.~~
- 23 h.l. Distribute funding for direct payments, expense reimbursements, or other public
- 24 services, including funding for public administrators.
- 25 i.m. Establish and collect fees to support guardianship and conservatorship services
- 26 and the duties of the office, which must be deposited in the guardianship and
- 27 conservatorship support fund.
- 28 j.n. Seek and apply for private, federal, or other funds to help support guardians and
- 29 conservators and to safeguard the rights of individuals who receive public
- 30 services.

1 k.o. Accept private funds for deposit in the guardianship and conservatorship support
2 fund.

3 p. Be available, as resources permit, on request from a district court judge, to
4 review guardianship cases to identify reporting deficiencies, examine annual
5 reports and accounting, and report findings back to the district court.

6 q. Be available, as resources permit, on request from a district court judge, licensed
7 conservator, public conservator, licensed guardian, or public guardian to review
8 information regarding possible financial abuse or exploitation.

9 r. Report findings regarding financial abuse or exploitation to the attorney general
10 or bureau of criminal investigation.

11 4. The office may not authorize payment for services for any public guardian or public
12 conservator that provides services for more individuals than allowed through statute,
13 regulation, court rule, or policy adopted by the office.

14 5. The office, its officers, or its employees, may not act as a public guardian or a public
15 conservator or act in any other representative capacity for any individual. This
16 subsection does not apply to employees of the department of health and human
17 services outside of the office of guardianship and conservatorship and does not
18 prohibit an officer or employee from acting as a guardian or conservator in a personal
19 capacity apart from any duties as an officer or employee.

20 6. The office is subject to audits by the state auditor under chapter 54-10.

21 ~~27-27.1-03. Guardianship and conservatorship support fund - Continuing~~
22 appropriation.

23 There is created in the state treasury the guardianship and conservatorship support fund.
24 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
25 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
26 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the ~~judicial~~
27 ~~branch~~ department of health and human services to defray the expenses of the office for
28 supporting guardianship and conservatorship services, including guardianship and
29 conservatorship training and monitoring.

~~27-27.1 04. Records - Confidentiality - Disclosure - Penalty.~~

1. Identifiable information concerning an individual who is applying for or receiving public services under this chapter is confidential and may be disclosed only:
 - a. In the administration of any program under the supervision or administration of the office.
 - b. When authorized by a policy or procedure of the office.
 - c. When allowed or required by rule or law.
2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:
 - a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.
 - b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.
 - c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.
 - d. A court when the court determines the information is necessary for the determination of an issue before the court.
 - ~~e. The investigation counsel.~~
3. The ~~investigation counsel~~ office may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.
4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

1 ~~27-27.1-05. Guardianship and conservatorship limitations - Representation to the~~
2 ~~public - Exemption.~~

- 3 1. A person may not serve as a guardian or a conservator for three or more adult
4 individuals at the same time unless that person is a licensed guardian or a licensed
5 conservator or has an agency permit.
6 2. A public guardian or a public conservator may not provide services to a minor unless
7 authorized by a proceeding under section 30.1-28-03.3.
8 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
9 or conservatorship services to the public.
10 4. This section does not apply to:
11 a. A federal or state agency.
12 b. A financial institution under section 6-08.1-01 when appointed as a conservator.
13 c. An individual appointed as a guardian or conservator for a family member.
14 d. A human service zone director.
15 5. A person who violates this section after August 1, 2026, is guilty of a class B
16 misdemeanor.

17 ~~27-27.1-06. Immunity.~~

18 A person who in good faith provides information or testimony regarding a guardian's or
19 conservator's misconduct or lack of professionalism is not subject to civil liability.

20 ~~27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.~~

- 21 1. The ~~supreme~~ district court has original jurisdiction to revoke or suspend a guardian or a
22 conservator license.
23 2. The ~~supreme court~~ office of guardianship and conservatorship must establish a
24 process to appeal license denials and board orders.
25 3. The courts shall waive court costs and filing fees in any proceeding in which a person
26 is receiving public services under this chapter.
27 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
28 the applicable policies, procedures, and standards of the office, or other approval
29 authority authorized by court rule, if the guardian or the conservator serves an adult
30 ward, adult protected person, or incapacitated person, as defined in title 30.1.

~~27-27.1-08. Guardianship and conservatorship review board – Guardianship and conservatorship counsel – Guardianship and conservatorship operations committee.~~

~~1. The supreme court may office of guardianship and conservatorship shall establish a guardianship and conservatorship review board to investigate and conduct disciplinary proceedings for a guardian or conservator. The review board must consist of:~~

~~1. A licensed guardian who provides services to individuals with developmental disabilities;~~

~~2. A licensed guardian who provides services to indigent individuals;~~

~~3. An unlicensed family guardian;~~

~~4. A retired judge;~~

~~5. An attorney with experience in guardianship;~~

~~6. A representative from adult protective services;~~

~~7. A representative from the protection and advocacy project; and~~

~~8. A member of the public.~~

~~2. The supreme court may establish a guardianship and conservatorship counsel to investigate noncompliance reported under this chapter. The director of the office is the hiring authority for the investigation counsel.~~

~~3. The supreme court must create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The operations committee:~~

~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~

~~b. Is the hiring authority for the office director.~~

~~c. May adopt policies recommended by the office.~~

~~27-27.1-09. Supreme court – Discretionary powers:~~

~~The supreme court may:~~

~~1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.~~

~~2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~

~~3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:~~

~~a. Administer oaths.~~

- 1 ~~b. Order and otherwise provide for the inspection of books and records;~~
- 2 ~~c. Issue subpoenas for the attendance of witnesses and the production of~~
- 3 ~~designated documents, electronically stored information, or tangible things in~~
- 4 ~~accordance with the North Dakota Rules of Civil Procedure;~~
- 5 ~~d. Order the deposition of a person residing within or outside the state to be taken in~~
- 6 ~~accordance with the North Dakota Rules of Civil Procedure;~~
- 7 ~~4. Adopt rules to effectuate the powers and duties under this chapter;~~
- 8 ~~27-27.1-10. Attorney general – Counsel – Bureau of criminal investigation – Primary~~
- 9 ~~authority for investigations;~~
- 10 ~~1. The attorney general shall act as legal counsel in any particular investigation or~~
- 11 ~~proceeding under section 54-12-02. The attorney general shall appear and defend any~~
- 12 ~~officer or employee of the office and any member of the board in any action founded~~
- 13 ~~on an act or omission arising out of performance of an official duty consistent with~~
- 14 ~~section 54-12-01.3;~~
- 15 ~~2. In accordance with chapter 54-12, the attorney general and bureau of criminal~~
- 16 ~~investigation have primary authority to investigate criminal cases related to a~~
- 17 ~~guardianship or conservatorship;~~
- 18 ~~27-27.1-11. Duty to disclose and cooperate;~~
- 19 ~~1. A state and local governmental entity and its officers and employees, and the officials,~~
- 20 ~~officers, and employees of the courts of this state shall disclose records and~~
- 21 ~~information requested by the board or investigation counsel or any authorized~~
- 22 ~~representative of the board or investigation counsel and shall cooperate with and give~~
- 23 ~~reasonable assistance to the board or investigation counsel and any authorized~~
- 24 ~~representative of the board or counsel unless prohibited by federal regulation or law;~~
- 25 ~~2. The service of process extends to all parts of the state in any investigation or~~
- 26 ~~disciplinary proceeding under this chapter. A sheriff or police officer shall serve~~
- 27 ~~process and execute all lawful orders upon request of the office, its authorized~~
- 28 ~~representative, the board, or the investigation counsel;~~
- 29 ~~27-27.1-12. Duties of witnesses – Penalty;~~
- 30 ~~1. An individual is obliged to attend as a witness in any investigation or disciplinary~~
- 31 ~~proceeding commenced under this chapter;~~

~~2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.~~

~~3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.~~

27-27.1-13. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

~~SECTION 2: A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:~~

~~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.~~

~~SECTION 4. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:~~

~~30.1-29-15. (5-415) Death, resignation, or removal of conservator.~~

~~1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.~~

~~2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.~~

SECTION 4. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
 - b. Funeral expenses not in excess of three thousand five hundred dollars;
 - c. Expenses of the last illness, other than those incurred by medical assistance;

- 1 d. Expenses of administering the estate, including attorney's fees approved by the
2 court;
3 e. Claims made under chapter 50-01;
4 f. Claims made under chapter 50-24.5;
5 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
6 h. Claims made under chapter 27-27.1 section 3 of this Act; and
7 i. Claims made under subsection 4.

8 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

9 **SECTION 6. APPROPRIATION - ~~JUDICIAL BRANCH~~ DEPARTMENT OF HEALTH AND**
10 **HUMAN SERVICES - OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP.** The funds
11 provided in this section, or so much of the funds as may be necessary, are appropriated out of
12 any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial~~
13 ~~branch~~ department of health and human services for the purpose of defraying the expenses of
14 the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and
15 ending June 30, 2027, as follows:

16	Establishment costs - indigents	\$1,550,000
17	<u>Office of guardianship and conservatorship</u>	<u>1,200,000</u>
18	Establishment costs - developmentally disabled	1,096,400
19	Public guardian and conservator fees - indigents	7,100,000
20	<u>Public guardian and conservator fees - indigents</u>	<u>9,100,000</u>
21	Guardianship contracts - developmentally disabled	<u>5,500,000</u>
22	Total general fund	\$15,246,400
23	<u>Total general fund</u>	<u>\$18,446,400</u>
24	<u>Full-time equivalent positions</u>	<u>4.0</u>



HOUSE HUMAN SERVICES COMMITTEE
CHAIRMAN MATTHEW RUBY
SENATE BILL 2029
GUARDIANSHIP ASSOCIATION OF ND
MARGO HAUT, PRESIDENT
MARCH 18, 2025

Chairman Ruby & Members of the House Human Services Committee, my name is Margo Haut, Founder and Co-Director of Guardian Angels, Inc., a nonprofit corporation located in Jamestown, ND. I also am a member & the current President of the **Guardianship Association of ND (GAND)**.

The Guardianship Association of ND is a 501(c)3 nonprofit organization established in 1987. GAND provides educational resources and collaboration for guardianship providers while advocating for guardianship services throughout ND. Numerous staff from each entity are members of GAND, with a current total of 55 members.

GAND asks for your consideration to adopt Senator Judy Lee's proposed amendments. We extend our appreciation to Senator Lee & Austin Gunderson of the Legislative Council for their time, expertise and vision.

Guardianship is a relationship between a court appointed competent adult or agency designated as the Guardian & the Protected Person who has been deemed incapacitated by the courts. This determination is by reason of mental illness, physical illness, disability or chemical dependency lacking the capacity to make or communicate responsible decisions. This law applies to persons over the age of eighteen.

In launching Guardian Angels, Inc. in 2014, I was shocked to learn the only statute in ND to be a legal guardian was to be 18 years of age. Over the following years, the continued work and efforts provided by the Guardianship Workgroup resulted in Administrative Rule 59 which came into effect on March 1, 2018.

To summarize, the purpose of Administrative Rule 59 establishes qualifications and training requirements for nonprofessional and professional guardians appointed under N.D.C.C. ch. 30.1-28. For purposes of this rule, "nonprofessional guardian" means an individual who serves as guardian for two or fewer individuals at the same time, and "professional guardian" means an individual or entity that serves as guardian for three or more individuals at the same time, an individual or entity appointed to serve as a public guardian or administrator, or an individual or entity that holds itself out as providing guardianship services for hire.

The qualifications for an entity proposed to serve as a professional guardian must either be accredited through the Council on Accreditation or its employed guardians must possess certification through the Center for Guardianship Certification (CGC).



As Director for Guardian Angels Inc & a Professional Guardian with the CGC since 2015, I personally observed the impact of Administrative Rule 59. The mandate of Certification from the Center for Guardianship Certification (CGC) resulted in several guardianship entities closing their doors due to lack of interest in testing the national exam. I personally observed the standards for guardianship services throughout ND were raised due to the mandate & resources via the Center for Guardianship Certification including but not limited to training, accountability & oversight. Guardians who made the decision not to meet the criteria of Administrative Rule 59 were given a timeframe by the court to seek successor guardians for their caseloads by 2019. Guardian Angels, Inc. & other Guardianship entities accepted cases throughout ND.

The other important guide & resource for Professional Guardians is the National Guardianship Association (NGA) Standards of Practice adopted in 2000 with the fifth edition in 2022. The NGA Standards of Practice capture the fundamental principles for use by all guardians. The Standards seek to shape a mirror that guardians can use to evaluate their efforts. The Standards also reflect the mandate that all guardians must perform in accordance with current state law governing guardianships and certification of guardians.

To be frank, **the current version of SB 2029 proposed by the judicial branch is perceived as an ideal solution – for them, but the Amended Version of SB 2029 reflects reality – for guardians.**

As you heard last week, GAND has consistently reiterated our opposition and concerns throughout the interim and legislative discussion to date. I will direct you to my previous testimony for more detail, but to summarize: we cannot support the current version as it 1) unfairly positions a new office against guardians; 2) constitutes a clear conflict of interest placing the court as appointer, appropriator, monitor, complaint processor, and adjudicator; and 3) limits the advocacy of both guardians and the vulnerable individuals they serve.

GAND now supports the proposed amendments to SB 2029 for the following reasons:

- **Integrates Services Effectively** – Creates an independent division of the Office of Guardianship & Conservatorship (OGC) under **Health & Human Services (DHHS)**, warranting a **seamless continuum of care** (page 3, line 19).
- **Incorporates Guardian Representation** – Incorporates guardian input and participation within the Office of Guardianship & Conservatorship and Review Board (pg. 3, lines 21-22; pg. 3, line 24; pg. 6, line 24; pg. 8, lines 3-14), in place of the Supreme Court's discretionary powers and penalties which are removed (page 8, lines 15-31 through page 10, line 12) – all while establishing accountability and standards of practice for guardians.
- **Ensures Transparency & Accountability** – Promotes **open communication without conflicts of interest**, as seen with Catholic Charities of ND, which has provided guardianship services for individuals with intellectual disabilities for 37 years without issue.



- **Protects Due Process** – Guarantees access to all branches of government, safeguarding the rights of both guardians and vulnerable individuals across North Dakota.
- **Consolidates Necessary Funding** – Centralizes funding for guardianship services in a single location, as initially requested by the legislature. The budget change to include \$1.2 million reflects the funding that is necessary for the various functions and operation costs of the office, and the change from \$7.1 million to \$9.1 million reflects support for additional guardians (page 12, lines 17 and 20).

Overall, it's GAND's vision to ensure good quality ethical guardians & conservators to enhance & grow the profession. GAND knows the importance of training, monitoring & accountability, which is also addressed in the amendments:

- **Training** – Given the complexity of the role, Guardians and Conservators require extensive training. In North Dakota, professional guardians must obtain national certification through the Center for Guardianship Certification and state certification via the Court (page 3, line 24).
- **Monitoring** – Guardians must be monitored thoroughly in a way that is efficient, fair, and non-oppressive. While GAND supports oversight, it must be conducted by those who fully understand the realities of guardianship (page 3, lines 21-22).
- **Accountability** – Guardians must uphold high ethical standards. Those who violate best practices should face appropriate consequences, including potential removal from guardianship practice (page 1, lines 13-19 & page 2, lines 8-14; page 4, lines 12-30 & page 5, lines 1-10 – changing these lines from a “may” to a “shall”; page 6, line 24; page 8, line 3-14).

In closing, Chairman Ruby & Members of the Committee, thank you again for providing GAND and its members the opportunity to work with Senator Lee to propose a simpler approach to the OGC. We stand united in favor of this amendment, **focused on positively impacting guardians & conservators while assuring high quality services.**

We respectfully request your consideration to adopt these amendments and thank you for your time.

Margo Haut
President, Guardianship Association of North Dakota (GAND)

Breakdown of Appropriations in Senator Lee's Amended Version of SB 2029

Establishment costs for indigent individuals who are not eligible for DD services	<ul style="list-style-type: none"> • 310 petitioning cases @ \$5,000 cap each = \$1,550,000 • Presently the cap is \$3,000 each...unless changed in SB 2029. 	\$1,550,000
Establishment costs for individuals with developmental disabilities	<ul style="list-style-type: none"> • 100 petitioning cases @ \$3,000 cap each for families wanting to be guardian for individuals with DD = \$300,000 • Petitioning expenses for cases within the DD corporate guardianship contract = \$480,000 • \$288,000 for State Hospital petitioning expenses for individuals with DD • \$28,400 for petitioning costs at LSTC in Grafton 	$\$300,000 + \$480,000 + \$288,000 + \$28,400 =$ \$1,096,400
Public guardian and conservator fees – indigent (PASS funding)	<ul style="list-style-type: none"> • The appropriation is in the OMB Budget. • It is transferred to NDACo at their request. • They charge no fee to handle the funding. • The daily rate was set by a collaborative group but now appears to be set in a conversation with the court. • Present daily rate of reimbursement: \$17 a day...less than needed to add staff. 	\$9,100,000 *Requesting an appropriation of \$9.1 to lift the daily rate to a minimum of \$20 a day to allow agencies to increase staffing and take more cases.

Breakdown of Appropriations in Senator Lee's Amended Version of SB 2029

Guardianship contracts for individuals with developmental disabilities	611 cases at \$12.14 per day/ per individual for 1 st year of biennium = \$2,707,402; 611 cases at \$12.50 per day/per individual for 2 nd year = \$2,787,688	\$5,500,000
Office of Guardianship and Conservatorship. The office consists of a staff of four.	The OGC consists of a staff of four: Executive Director, Court Monitor, Accountant and an Ethical Standards/Training Coordinator.	\$1,200.000

TOTAL APPROPRIATION: \$18,446,400

Senator Lee's amended version has PASS fund appropriation at \$9.1.

The Office of Guardianship and Conservatorship ship is \$1.2.

House Human Services Committee

Testimony on Senate Bill 2029

Representative Matthew Ruby – Chairman

March 18th, 2025

Chairman Ruby and members of the House Human Services Committee, my name is Donna Byzewski and I am the Program Director of the corporate guardianship program for individuals with intellectual disabilities at Catholic Charities North Dakota. I oppose Senate Bill 2029 in its current form but I wholeheartedly support the amendments presented today by Senator Lee.

These amendments are a win for individuals served under guardianship, the courts, guardianship providers and the legislature:

- The amendments change the wording from a “may” to a “shall” in key areas such as:
 - the requirement that guardians and conservators be licensed in North Dakota, giving the courts a clear path to remove unethical guardians or conservators;
 - the requirement that guardians and conservators carry insurance or are bonded which will help in the financial recovery of the individual if funds or assets are mismanaged or exploited by the guardian or conservator;
 - the provision of training for guardians and conservators. Having well trained guardians and conservators will improve the services that individuals under guardianship receive and, in turn, reduce the number of complaints and investigations. Training and education are great tools to prevent issues before they become a problem.
- Funding of additional slots which will have an immediate and positive impact for the person who is vulnerable and at risk of abuse, neglect or exploitation. The additional slots will assist in the reduction of waiting lists for guardianship services and help reduce the stress for the courts when they are in need of a guardian.
- The amendments move the home of the Office of Guardianship and Conservatorship (OGC) from under the Supreme Court to a division under the Department of Health and Human Services (DHHS). This provides a neutral home for the OGC which is especially important to guardianship providers. This neutrality of the OGC is also a critical point

for guardianship providers as the OGC will be responsible for the creation of the administrative rules that will carry out the intent of the provisions of SB 2029.

- The amendments create a more collaborative effort between guardians, the courts and protective services by the creation of the Review Board whose members include a retired judge, an attorney with experience in guardianship, a representative from adult protective services, a representative from the Protection and Advocacy Project, a licensed guardian who provides services for individuals with intellectual disabilities, a licensed guardian who provides services for indigent individuals, a family guardian and a member of the public. Per the amendment, the makeup of the Review Board includes people who have experience and/or expertise in the area of guardianship. While the primary focus of the Review Board is to protect the individual under guardianship, a critical secondary focus is to help family guardians and professional guardians have an opportunity to improve their care and services, if appropriate, rather than removing them from the guardianship. Recommendations for more education or training for the family guardian or professional guardian would be critical. Recommendations by the Review Board could also include suggestions to improve the professional guardian's policies and procedures. That said, there is no professional guardian in this room who would oppose actions by the Review Board that could include referrals for criminal investigation and/or removal of the guardian's license. We want compassionate and caring guardians who perform their complex duties with expertise, competence and diligence.
- The amendments also fulfill the wishes of the 2023 legislature as the OGC will address the need to improve guardian accountability as well as placing all legislative funding for guardianship services in one location - the OGC.

I respectfully ask that the House Human Services Committee support the amendments as presented today. Thank you for the opportunity to stand before you today and I would be happy to try to answer any questions you may have.

SB 2029
House Human Services Committee
Testimony Presented by Karissa Azure, NCG
Finance Director of Guardian and Protective Services
March 18, 2025

Chairman Ruby, members of the House Human Services Committee, I am Karissa Azure, Finance Director of Guardian and Protective Services and I also serve on the board of Guardianship Association of North Dakota.

I stand in support of Senator Lee's proposed Amended Version of SB 2029. Thank you for the thoughtful attention you are giving to this very important issue.

I was present at the last hearing and there were things said that greatly concerned me as the person charged with overseeing the financial well-being of vulnerable adults. I thought it might be helpful to provide some background information from the finance side of guardianship and conservatorship.

As I listened to the testimony of all parties In Favor of this bill, I couldn't help but think about how little they know about guardianship and what a guardian does for the vulnerable adults of our state.

In the testimony offered on March 10, written testimony touched on the repeated misconduct of one guardianship agency (page 2 Mismanagement of Professional Guardianship Entity). What the testimony failed to mention is that **ND courts had the power to reassign the guardianship cases** appointed to that entity each time they were found guilty of or liable for misconduct, and the court did, somewhat. GaPS received 10 of those guardianship cases in October 2014, after the first incident.

It was ND Courts who continued to appoint cases to this felony convicted agency. The Fargo Forum published an article in the May 31, 2022, edition titled Why North Dakota Can't Stop Hiring a Guardianship Company with a Dubious Record, in which, the State Court Administrator, was interviewed. In the article they are quoted as saying, "because of a shortage of guardianship services many guardianship cases were given back to DKK." They went on to say, "even if the civil judgement against the Koropatnicki's and DKK is upheld on appeal, it's likely that judges will continue to allow the company to handle guardianship cases, simply because there are no alternatives."

In the testimony it was referenced that the entity that does national certification didn't pull their certification. This was given as a reason for the lack of response by the Court. It

should be noted that North Dakota Courts have their own certification process for guardians. I guess the question would be, **why did they not strip this agency of their certification when the inappropriate actions were discovered?** Frankly, waiting for the National Guardianship Agency to rescind certification was unnecessary.

Ultimately, the Court did intervene. Professional guardians came to the rescue. They voluntarily absorbed the clients that had been poorly served by an agency we all knew was acting unethically and illegally. It was the guardians that stepped in and helped the court ensure quality guardianship services for ND vulnerable adults in a deplorable situation.

The same testimony also states that there is no oversight of guardians. This is wrong and clearly indicates that the individual, speaking on behalf of the Judiciary, does not know or understand the monitoring that is already in place.

Donna Byzewski, of Catholic Charities, touched on the oversight she faces in DD guardianship cases. Guardian and Protective Services does not serve DD clients. However, we have plenty of oversight and processes of accountability and are not opposed to it. For example:

- Guardians submit annual breakdowns of all assets, liabilities, income, and expenses to ND Courts
- Cases will get pulled into the Guardianship Monitoring Program where guardians are required to submit bank statements, receipts, and any other documents requested. From this same review by the Guardianship Monitor there will be a series of questions pertaining to the information provided.
- Guardians also must do an annual report to the Social Security Administration for those whose SSA/SSI/SSDI funds we manage, as well as an audit on six random recipients of the funds. In fact, GaPS have a standing weekly call with the SSA.
- If guardians manage Veteran Administration funds for a client, the VA conducts an annual report and verbal review.
- As a company, GaPS has internal procedures for managing client's assets and finances, such as a multi person approval process for check writing, making sure all receipts/invoices are saved as backup for every penny spent of a clients.
- GaPS also utilizes a safe web-based data program for client data and demographics, case note entry, and finance management. A system, if the Court wanted to, could be accessed by the Monitoring Program where they could see in 'real time' all the transactions, and generate reports.
- We also hold ourselves to high ethical standards.

I would also like to provide some insight into the concerns surfaced by the NDHA Representative. They are hoping that SB 2029 will resolve the issue with long, non-medical-related hospital stays. That somehow a guardian will appear and solve all problems related to extensive unnecessary hospitalizations. It will not.

GaPS has been appointed guardian on several cases where the client is hospitalized and needs immediate placement. For example, GaPS was appointed the guardian of a vulnerable adult after a bank filed a report with Adult Protective Services. Once appointed guardian, GaPS applied for ND Medicaid with the intention of moving the client to a long-term care facility, but the client had been significantly exploited financially.

After a forensic audit it was clear this individual had been exploited out of at least \$90,000. We know it was more, but this is all we could concretely prove. That amount, in the ND Medicaid world is known as a disqualifying transfer. They will only approve Medicaid AFTER the client has accrued a bill totaling the amount of the disqualifying transfer. In this case \$90,000.

This client did not get accepted at a long-term care facility because no facility was willing to take on \$90,000 in debt. In other words, they didn't want the individual living there for 'free' until they had accrued a debt equal to the disqualifying transfer.

Sadly, this client never left the hospital and died 5 months after GaPS was appointed, leaving CHI with a debt...and this was all after a guardian had been appointed. SB2029 provides no quick fix for this.

Unfortunately, this bill does not solve several significant problems this state is currently having. The largest problems this state currently has is:

- A lack of guardians due to minimal reimbursement rate for services
- A lack of prosecution on exploitation cases
- A lack of education to those outside the guardianship world required to interface with guardians on a regular basis.

Senator Lee's amended version of SB 2029 creates an office that will protect and serve the vulnerable by training the next generation of guardians and providing functional, not retributinal, accountability. The focus of the OGC, in the amended version, will be helping those who face challenges every day.

Senator Lee's Amended Version is an excellent step in the right direction.

Thank you for listening and I stand for any questions.

ONE MINUTE SUMMARY

The document is summary of testimony presented by **Karissa Azure, NCG**, the Finance Director of Guardian and Protective Services, to the **House Human Services Committee** on **March 18, 2025**. Karissa Azure stands in support of the Senator Lee's Amended Version of **SB 2029** and provides background information from the finance side of guardianship and conservatorship.

Karissa Azure addresses concerns raised during previous hearings, emphasizing the importance of guardianship and the oversight mechanisms in place. She highlights the misconduct of a guardianship agency and the subsequent actions taken by the ND Courts to reassign guardianship cases.

Karissa Azure also discusses the oversight faced by guardians, including annual breakdowns of assets, liabilities, expenses, and income submitted to the ND Courts, as well as reports to the Social Security Administration and the Veteran Administration.

Karissa Azure provides insight into the challenges faced by guardians, such as the lack of guardians due to minimal reimbursement rates, lack of prosecution on exploitation cases, and lack of education for those outside the guardianship world. She concludes by Senator Lee's Amended Version of SB 2029 is a significant step in helping to solve issues currently faced by the State regarding guardianship.

SB 2029
House Human Services Committee
Testimony Presented by Scott Bernstein, NCG
Executive Director of Guardian and Protective Services
March 18, 2025

Chairman Ruby, members of the House Human Services Committee, I am Scott Bernstein, Executive Director of Guardian and Protective Services and a member of the Task Force on Guardianship Monitoring. I also serve on the board of the Guardianship Association of North Dakota.

First, I want to say **thank you to the committee for your support for Senator Dwyer's amended version of SB 2291**. SB 2291 contained very significant changes and amendments that provide safeguards for ALL guardians as we do our work. It is much appreciated.

I would also like to acknowledge family guardians in the room. I know several are watching online. Thank you for what you do each and every day to admirably serve vulnerable children and adults. A word to Family and friend guardians, who have stepped into a difficult spot, you remind us of what it means to lay down your life for a friend. Thank you!

Members of the committee, **This is a defining moment for guardianship in North Dakota.** Every professional guardian in North Dakota opposes the Judiciary's SB 2029 as it stands. However, **I stand in support of Senator Lee's proposed Amended Version of SB 2029. In fact, 100% of the professional guardians, and their support teams, who dedicate their days to guardianship, stand in support of Senator Lee's amended version of SB 2029.**

It is important to acknowledge that the **Judiciary and Guardians want the same things.**

1. We want to make sure vulnerable adults are treated with dignity.
2. To the greatest extent possible we want to involve the vulnerable person in all decision making.
3. We are both committed to the least restrictive option with the objective of maximizing self-reliance, dignity, and independence.
4. We must respect and responsibly and ethically manage money, property, anything that belongs to the vulnerable person.

These are non-negotiable. Any guardian that acts like these are only suggestions, and willfully violates these principles, should be removed from serving as a guardian. I know I speak for all guardians...we don't want violators ever serving. The court has the authority and should take appropriate action to remove them. Their name should be on a registry identifying them as a guardian disqualified from serving.

If we clearly value and want some of the same things, the question remains. Why do 100% of professional guardians believe the Court's Proposal Doesn't Work?

You've probably heard the adage "**Form Follows Function.**" It's a design principle that simply means the appearance of something should be based on its intended purpose. In this case, the intent of **the original bill reflects a Judicial approach to solving a real human services problem.** Everything from the architecture of a courtroom to the judicial procedures clearly exhibits a top-down model. The same is true in their version of SB 2029.

How does Senator Lee's Amended Version resolve this top down, them-us issue?

The Office of Guardianship and Conservatorship (OGC), standing as a division underneath HHS, can fulfill all the responsibilities the Court believes are important. However, to be thorough and successful in fulfilling their mission, the OGC must be aware that when rights are removed, someone is required to step in and protect the vulnerable individual. A guardian. Protecting the individual requires providing services that an indigent adult literally needs to survive with a degree of independence and dignity. That's what the Letters of Guardianship, signed by the Court, have ordered the guardian to do. **Those services are Human Services. Human Services that are actualized 24/7, 365 days a year.**

Guardianship, by its very nature, is a team endeavor. The form of the OGC must reflect the intended purpose. The form must follow the function.

In a nutshell, here's what the amended version of SB 2029 proposed by Senator Lee accomplishes:

- 1. Fulfills the primary reasons the SHALL STUDY was adopted in the last session by:**
 - A. Consolidating the primary providers of guardianship services under one department.
 - B. Reducing confusion and providing transparency legislators were requesting when determining the appropriations for all things guardianship.
- 2. Senator Lee's proposed amended version establishes mechanisms of accountability.** A review board can investigate complaints, require the production of documents and render a decision that could ultimately result in removing the license of a guardian. That decision would then be recorded in the court to ensure the guardian was not appointed as a guardian AND appropriate steps taken to find a successor guardian.
- 3. Senator Lee's proposed amended version includes guardians as participants on the review board.** The composition of the board is multi-disciplinary. It allows professionals to both protect the vulnerable and discipline a bad actor. This is hardly

extraordinary. The nursing board has nurses participating. The Disciplinary Board, handling attorney discipline, has attorneys participating. This is not a conflict of interest. It simply requires trust.

4. **Senator Lee's proposed amended version requires a professional guardian to be licensed if they intend to provide services.** This protects guardians adhering to the rules and affords the court the ability to recommend removing a guardian's license. I already alluded to this. The court would have an accessible registry that clearly indicates the guardians that carry the Office of Guardianship and Conservatorship seal of approval.
5. **Senator Lee's proposed amended version provides the court with a one stop contact where a concern about a guardian or request for an audit can be made.** However, it also provides BOTH the court and the guardian a place to report exploitation and fraud they uncover. The OGC can then provide this information to entities like the BCI or the Attorney General for further investigation. This has become a pressing issue with an aging population where elder exploitation is now projected to be \$28.3 billion a year in the US.
6. **Senator Lee's proposed amended version consolidates the budget** and accurately reflects the funding that is necessary to fund the various functions outlined for the office and the operational costs of the office. You have a template showing the funding breakdown by category and the amount that needs to be appropriated to provide for all the existing services.
7. **Senator Lee's proposed amended version prioritizes the need for training.** To hold guardians to a standard of excellence, while working to attract people who know nothing about guardianship, requires training. The best way to accomplish both is to effectively train for results. As you are aware, there is a dire shortage of guardians. The OGC should focus on consistent, strategic training. States like Alaska and Pennsylvania, to name only two, are using similar OGCs and available grant funding to attract people to the guardianship profession. They do this by bolstering innovation focused on training guardians, and those involved with guardianship. The training isn't limited to guardians but includes Judiciary, Attorneys, and law enforcement. I know the Alzheimer's Association, already receiving funding from the State, would be an enthusiastic partner in training.

We have to get this right.

The Court needs Guardians. Guardians need the Court. I know each of our motives are honorable and that we are fellow travelers on a quest to better understand and solve a common set of challenges. We have a common goal: To provide the best outcomes for

vulnerable North Dakotans. That means **the structure of the OGC must align with its intended purpose.**

The courts will always serve as the appointer and final arbiter, as they should. But the guardians are the ones serving—and protecting—people that have a life debilitating mental illness, addictions, limited cognition due to disease or poor choices. Many, for the rest of their lives.

The Court's version of SB 2029 was causing many guardians to have second thoughts about their future in the profession. Losing even one guardian is not an option in our already dire guardianship crisis. As I indicated, there are only 55 Professional Guardians in North Dakota. Look at the ages of the presenters here today. Well, at least look at my age. We must attract younger people willing to enter the profession.

Good news: Fifty-five professional guardians stand in full support of Senator Lee's amended version of SB 2029. **The amended version is a 'crisis averted version.'** Those we serve may not fully grasp the impact of Senator Lee's Amended version. However, when the guardian is supported, equipped, mentored, funded, and held accountable, the outcome for the ward will undoubtedly be much better.

The demand for guardianship will only rise. As Senator Dever rightly stated last session, "The devolution of our culture only means the needs in Human Services will increase—and so will the dollars spent."

I am optimistic that Senator Lee's amended SB 2029 is a long-overdue step in the right direction. For too long, guardianship has been a fragmented system, difficult to manage and define. This amendment provides a clear path forward, addressing the concerns of the legislature, the courts, guardians, and, most importantly, the individuals we serve.

I urge a Do Pass on the Amended Version of SB 2029 as proposed by Senator Lee.

Thank you for listening and I am happy to answer any questions.

One Minute Summary

The testimony presented by Scott Bernstein, Executive Director of Guardian and Protective Services, before the House Human Services Committee on March 18, 2025, addresses the amended version of SB 2029 proposed by Senator Lee.

Scott Bernstein expresses gratitude for the committee's support for Senator Dwyer's amended version of SB 2291, which provides significant safeguards for all guardians. He acknowledges the efforts of family guardians and emphasizes the importance of treating vulnerable adults with dignity, involving them in decision-making, and ethically managing their assets.

Scott Bernstein supports Senator Lee's amended version of SB 2029, which consolidates guardianship services under HHS. The OGC, Office of Guardianship and Conservatorship, establishes accountability mechanisms, requires professional guardians to be licensed and determines ethical standards and training.

He highlights the need for a human-centered approach to guardianship, contrasting it with the judicial model. The amended version includes guardians as participants on the review board, ensuring a multidisciplinary approach to protect the vulnerable and discipline bad actors.

Scott Bernstein emphasizes the importance of training for guardians, judiciary, attorneys, and law enforcement to attract people to the guardianship profession and improve outcomes for vulnerable adults.

He urges support for the amended version of SB 2029, expressing optimism about its positive impact on the guardianship system and the individuals served.

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2029
3/24/2025
Subcommittee

relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

11:04 a.m. Chairman Frelich opened the meeting.

Members Present: Chairman Frelich, Representatives Davis, Hendrix, Rohr

Discussion Topics:

- Accountability and training
- Full time employees
- speakers

11:08 a.m. Garrick Voigt, North Dakota Supreme Court Staff Attorney, answered questions relating to Full Time Employees, and amendment version 04001 relating to speakers.

11:28 a.m. Scott Bernstein, Executive Director of Guardian and Protective Services, answered questions relating to amendment version 04003 relating to accountability and training.

11:45 a.m. Micah Olson, Attorney for the North Dakota Protection and Advocacy, answered questions.

11:47 a.m. Chairman Frelich adjourned the meeting.

Jackson Toman, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2029
4/1/2025
Subcommittee

Relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

9:38 a.m. Chairman Frelich opened the meeting.

Members Present: Chairman Frelich, Representatives Davis, Hendrix, Rohr

Discussion Topics:

- Service zones
- Review board
- Committee discussion

9:38 a.m. Chairman Frelich introduced amendments LC#25.0224.04005, #44514.

9:56 p.m. Chairman Frelich closed the meeting.

Jackson Toman, Committee Clerk

25.0224.04005
Title.

Prepared by the Legislative Council
staff for Representative Frelich
March 28, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation.

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

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security

- 1 number, electronic mail address, program identification number, or any other unique
- 2 identifying number, characteristic, or code, and any demographic information collected
- 3 about the individual.
- 4 4. "Investigation counsel" means the guardianship and conservatorship counsel.
- 5 5. "Licensed conservator" means a person licensed by the office to provide
- 6 conservatorship services.
- 7 6. "Licensed guardian" means a person licensed by the office to provide guardianship
- 8 services.
- 9 7. "Office" means the office of guardianship and conservatorship.
- 10 8. "Public conservator" means a conservator under contract with the office to provide
- 11 conservatorship services for an individual eligible for public services.
- 12 9. "Public guardian" means a guardian under contract with the office to provide
- 13 guardianship services for an individual eligible for public services.
- 14 10. "Public services" means state or federally funded programs administered by the office
- 15 available to eligible individuals.
- 16 11. "Unlicensed conservator" means a person providing conservatorship services without
- 17 a conservator license.
- 18 12. "Unlicensed guardian" means a person providing guardianship services without a
- 19 guardian license.

20 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
21 **duties - Report - Audit.**

- 22 1. The office of guardianship and conservatorship is created as a division under the
- 23 supreme court to administer the programs assigned by state law or the supreme court.
- 24 2. The office shall:
- 25 a. Develop policies and procedures, including eligibility criteria, for:
- 26 (1) Receiving public services;
- 27 (2) A public guardian or a public conservator;
- 28 (3) A licensed guardian or a licensed conservator; and
- 29 (4) Distribution of funding for direct payments and expense reimbursements for
- 30 public services.
- 31 b. Develop ethical standards for:

- 1 (1) A licensed guardian or a licensed conservator; and
- 2 (2) An unlicensed guardian or an unlicensed conservator.
- 3 c. Develop policies and procedures for proceedings when a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Keep accurate records of all financial transactions performed under this chapter
- 6 in the manner required by the office of management and budget.
- 7 e. Provide a report each biennium to the legislative management regarding the
- 8 operations of the office, including the cost of public guardians and public
- 9 conservators, and any other information requested by the legislative
- 10 management.
- 11 3. The office may:
- 12 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 13 b. Grant licenses to a guardian or conservator and agency permits, including
- 14 revoking or suspending an agency permit.
- 15 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 16 conservator as a condition for licensure.
- 17 d. Establish mandatory disclosure and reporting requirements for a licensed
- 18 guardian or a licensed conservator, including a process to disclose information or
- 19 submit reports to the office.
- 20 e. Provide training for guardians and conservators.
- 21 f. Monitor guardianship and conservatorship services.
- 22 g. Provide annual reports to the supreme court.
- 23 h. Distribute funding for direct payments, expense reimbursements, or other public
- 24 services, including funding for public administrators.
- 25 i. Establish and collect fees to support guardianship and conservatorship services
- 26 and the duties of the office, which must be deposited in the guardianship and
- 27 conservatorship support fund.
- 28 j. Seek and apply for private, federal, or other funds to help support guardians and
- 29 conservators and to safeguard the rights of individuals who receive public
- 30 services.

1 k. Accept private funds for deposit in the guardianship and conservatorship support
2 fund.

3 4. The office may not authorize payment for services for any public guardian or public
4 conservator that provides services for more individuals than allowed through statute,
5 regulation, court rule, or policy adopted by the office.

6 5. The office, its officers, or its employees, may not act as a public guardian or a public
7 conservator or act in any other representative capacity for any individual. This
8 subsection does not prohibit an officer or employee from acting as a guardian or
9 conservator in a personal capacity apart from any duties as an officer or employee.

10 6. The office is subject to audits by the state auditor under chapter 54-10.

11 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
12 **appropriation.**

13 There is created in the state treasury the guardianship and conservatorship support fund.
14 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
15 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
16 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
17 branch to defray the expenses of the office for supporting guardianship and conservatorship
18 services, including guardianship and conservatorship training and monitoring.

19 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

20 1. Identifiable information concerning an individual who is applying for or receiving public
21 services under this chapter is confidential and may be disclosed only:

22 a. In the administration of any program under the supervision or administration of
23 the office.

24 b. When authorized by a policy or procedure of the office.

25 c. When allowed or required by rule or law.

26 2. A report concerning an applicant, provider, or recipient of public services is confidential
27 if the report is made in good faith and may be disclosed only to:

28 a. Authorized staff and agents of the office, who may further disclose the
29 information to a person that has a definite interest in the well-being of the
30 individual concerned, is in a position to serve the individual's interests, and that

1 needs to know the contents of the records to assure the well-being and interests
2 of the individual concerned.

3 b. An individual who is the subject of the report, if the identity of the person
4 reporting or supplying information under this chapter is protected until the
5 information is needed for use in an administrative, legal, or disciplinary
6 proceeding arising out of the report.

7 c. A public official and the public official's authorized agent who requires the
8 information in connection with the discharge of official duties.

9 d. A court when the court determines the information is necessary for the
10 determination of an issue before the court.

11 e. The investigation counsel.

12 3. The investigation counsel may disclose information uncovered during a disciplinary
13 investigation to the attorney general or bureau of criminal investigation related to a
14 criminal investigation when the investigation counsel suspects the subject of the
15 investigation has committed a crime.

16 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
17 in the disclosure of confidential information in violation of this section is guilty of a
18 class C felony.

19 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
20 **public - Exemption.**

21 1. A person may not serve as a guardian or a conservator for three or more adult
22 individuals at the same time unless that person is a licensed guardian or a licensed
23 conservator or has an agency permit. This subsection does not apply to an individual
24 appointed as a guardian or conservator for a family member.

25 2. A public guardian or a public conservator may not provide services to a minor unless
26 authorized by a proceeding under section 30.1-28-03.3.

27 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
28 or conservatorship services to the public.

29 4. This section does not apply to:

30 a. A federal or state agency.

31 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

1 c. ~~An individual appointed as a guardian or conservator for a family member~~Human
2 service zones, including human service zone directors or human service zone
3 team members, as defined in section 50-01.1-01.

4 5. A person who violates this section after August 1, 2026, is guilty of a class B
5 misdemeanor.

6 **27-27.1-06. Immunity.**

7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
11 conservator license.
- 12 2. The supreme court must establish a process to appeal license denials and board
13 orders.
- 14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
15 is receiving public services under this chapter.
- 16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
17 the applicable policies, procedures, and standards of the office, or other approval
18 authority authorized by court rule, if the guardian or the conservator serves an adult
19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

- 22 1. The supreme court ~~may~~shall establish a guardianship and conservatorship review
23 board to conduct disciplinary proceedings for a guardian or conservator. The
24 guardianship and conservatorship review board shall consist of:
- 25 a. Three members representing guardians, appointed by the guardianship
26 association of North Dakota;
- 27 b. One member representing family guardians, appointed by the guardianship
28 association of North Dakota;
- 29 c. One member representing the protection and advocacy project, appointed by the
30 committee on protection and advocacy;

- 1 d. Two members appointed by the state bar association of North Dakota, consisting
2 of:
3 (1) One lawyer licensed to practice law in the state; and
4 (2) One retired judge, judicial referee, or surrogate judge; and
5 e. Two members of the public, appointed by the supreme court.
- 6 2. The supreme court may establish a guardianship and conservatorship counsel to
7 investigate noncompliance reported under this chapter. The director of the office is the
8 hiring authority for the investigation counsel.
- 9 3. The supreme court must create a guardianship and conservatorship operations
10 committee to supervise the operations of the office and investigation counsel.
- 11 a. The guardianship and conservatorship operations committee shall consist of:
12 (1) Two members of the legislative assembly, one from each chamber,
13 appointed by the chairman of the legislative management;
14 (2) Two members appointed by the state bar association of North Dakota,
15 consisting of:
16 (a) One lawyer licensed to practice law in the state; and
17 (b) One retired judge, judicial referee, or surrogate judge;
18 (3) Two members appointed by the chief justice of the supreme court; and
19 (4) The state court administrator, or the state court administrator's designee,
20 who serves as an ex officio member.
- 21 b. Initially, members of the guardianship and conservatorship operations committee
22 shall serve staggered terms as follows:
23 (1) Two members shall serve a term of one year;
24 (2) Two members shall serve a term of two years; and
25 (3) Two members shall serve a term of three years.
- 26 c. After the expiration of initial terms, all appointments must be for a term of three
27 years. A member may not serve more than two consecutive terms of three years.
- 28 d. A member of the guardianship and conservatorship operations committee
29 concurrently serving as a member of the legislative assembly shall receive
30 per diem compensation in accordance with section 54-35-10.
- 31 e. The guardianship and conservatorship operations committee:

- 1 a. (1) Must develop and submit budgets for the office, board, and investigation
2 counsel.
3 b. (2) Is the hiring authority for the office director.
4 c. (3) May adopt policies recommended by the office.

27-27.1-09. Supreme court - Discretionary powers.

The supreme court may:

- 7 1. Grant immunity to a member of the board and the board's agents if a district court or
8 the supreme court would have immunity in performing the same functions.
- 9 2. Establish confidentiality and disclosure standards for disciplinary proceedings.
- 10 3. Authorize officials, officers, agents, and designees of the office, the board, and the
11 investigation counsel to:
- 12 a. Administer oaths.
- 13 b. Order and otherwise provide for the inspection of books and records.
- 14 c. Issue subpoenas for the attendance of witnesses and the production of
15 designated documents, electronically stored information, or tangible things in
16 accordance with the North Dakota Rules of Civil Procedure.
- 17 d. Order the deposition of a person residing within or outside the state to be taken in
18 accordance with the North Dakota Rules of Civil Procedure.
- 19 4. Adopt rules to effectuate the powers and duties under this chapter.

27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

- 22 1. The attorney general shall act as legal counsel in any particular investigation or
23 proceeding under section 54-12-02. The attorney general shall appear and defend any
24 officer or employee of the office and any member of the board in any action founded
25 on an act or omission arising out of performance of an official duty consistent with
26 section 54-12-01.3.
- 27 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
28 investigation have primary authority to investigate criminal cases related to a
29 guardianship or conservatorship.

27-27.1-11. Duty to disclose and cooperate.

1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give reasonable assistance to the board or investigation counsel and any authorized representative of the board or counsel unless prohibited by federal regulation or law.
2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.

27-27.1-12. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.
2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.
3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

27-27.1-13. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

1 2. A claim may not be required to be paid and interest may not begin to accrue during the
2 lifetime of the decedent's surviving spouse, if any.

3 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
4 under this chapter.

5 **SECTION 2.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
6 created and enacted as follows:

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

14 **SECTION 3. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

17 1. The court may remove a conservator for good cause, upon notice and hearing, or
18 accept the resignation of a conservator. After a conservator's death, resignation, or
19 removal, the court may appoint another conservator. A conservator so appointed
20 succeeds to the title and powers of the predecessor.

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

28 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 1. On the death of any recipient of medical assistance who was a resident of a nursing
31 facility, intermediate care facility for individuals with intellectual disabilities, or other

1 medical institution and with respect to whom the department determined that resident
2 reasonably was not expected to be discharged from the medical institution and to
3 return home, or who was fifty-five years of age or older when the recipient received the
4 assistance, and on the death of the spouse of the deceased recipient, the total amount
5 of medical assistance paid on behalf of the recipient following the institutionalization of
6 the recipient who cannot reasonably be expected to be discharged from the medical
7 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
8 allowed as a preferred claim against the decedent's estate after payment, in the
9 following order, of:

- 10 a. Recipient liability expense applicable to the month of death for nursing home or
11 basic care services;
- 12 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 13 c. Expenses of the last illness, other than those incurred by medical assistance;
- 14 d. Expenses of administering the estate, including attorney's fees approved by the
15 court;
- 16 e. Claims made under chapter 50-01;
- 17 f. Claims made under chapter 50-24.5;
- 18 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
- 19 h. Claims made under chapter 27-27.1; and
- 20 i. Claims made under subsection 4.

21 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

22 **SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP**

23 **AND CONSERVATORSHIP.** The funds provided in this section, or so much of the funds as may
24 be necessary, are appropriated out of any moneys in the general fund in the state treasury, not
25 otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the
26 office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending
27 June 30, 2027, as follows:

28 Establishment costs - indigents	\$1,550,000
29 Establishment costs - developmentally disabled	1,096,400
30 Public guardian and conservator fees - indigents	7,100,000

Sixty-ninth
Legislative Assembly

1	Guardianship contracts - developmentally disabled	<u>5,500,000</u>
2	Total general fund	\$15,246,400

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2029
4/2/2025

Relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

3:25 p.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios
Members Absent: Representative Rohr

Discussion Topics:

- Committee action

3:26 p.m. Vice-chairman Frelich discussed amendments from the sub-committee, LC#25.0224.04007, #44592.

3:30 p.m. Vice-chairman Frelich moved to adopt the LC#25.0224.04007 amendment.

3:30 p.m. Representative Hendrix seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	Y
Representative Karen Rohr	AB

3:33 p.m. Motion passed 12-0-1.

3:33 p.m. Vice-chairman Frelich introduced amendments from the sub-committee, LC#25.0224.04006, #44591.

3:40 p.m. Vice-chairman Frelich moved a Do Pass as amended and rerefer to appropriations.

3:40 p.m. Representative K. Anderson seconded the motion.

Representatives	Vote
Representative Matthew Ruby	N
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	N
Representative Macy Bolinske	N
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Cleyton Fegley	N
Representative Jared Hendrix	N
Representative Dawson Holle	N
Representative Dwight Kiefert	N
Representative Nico Rios	Y
Representative Karen Rohr	AB

3:44 p.m. Motion failed 3-9-1.

3:46 p.m. Representative Holle moved to adopt the LC#25.0224.04006 amendment.

3:46 p.m. Representative Davis seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	Y
Representative Karen Rohr	AB

3:48 p.m. Motion passed 12-0-1.

3:48 p.m. Representative Holle moved a Do Pass as amended and rerefer to appropriations.

3:48 p.m. Representative Kiefert seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y

Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	N
Representative Macy Bolinske	N
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	Y
Representative Karen Rohr	AB

3:49 p.m. Motion passed 10-2-1.

Vice-chairman Frelich will carry the bill.

3:49 p.m. Chairman M. Ruby closed the meeting.

Jackson Toman, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT**

VC 4/2/25
1 of 19

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 of the North Dakota Century Code, relating to the task force on guardianship
7 monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to
8 provide a continuing appropriation.

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

10 ~~SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
11 ~~follows:~~

12 ~~**27-27.1-01. Definitions.**~~

13 ~~As used in this chapter:~~

14 ~~1. "Agency permit" means temporary authorization given by the office to an employee of~~
15 ~~a professional guardianship or professional conservatorship entity which allows the~~
16 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
17 ~~entity.~~

18 ~~2. "Board" means the guardianship and conservatorship review board.~~

19 ~~3. "Identifiable information" means an individual's personal details, including the~~
20 ~~individual's name, address, telephone number, facsimile number, social security~~

1 ~~number, electronic mail address, program identification number, or any other unique~~
2 ~~identifying number, characteristic, or code, and any demographic information collected~~
3 ~~about the individual.~~

4 ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~

5 ~~5. "Licensed conservator" means a person licensed by the office to provide~~
6 ~~conservatorship services.~~

7 ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
8 ~~services.~~

9 ~~7. "Office" means the office of guardianship and conservatorship.~~

10 ~~8. "Public conservator" means a conservator under contract with the office to provide~~
11 ~~conservatorship services for an individual eligible for public services.~~

12 ~~9. "Public guardian" means a guardian under contract with the office to provide~~
13 ~~guardianship services for an individual eligible for public services.~~

14 ~~10. "Public services" means state or federally funded programs administered by the office~~
15 ~~available to eligible individuals.~~

16 ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
17 ~~a conservator license.~~

18 ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
19 ~~guardian license.~~

20 ~~**27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**~~
21 ~~**duties - Report - Audit.**~~

22 ~~1. The office of guardianship and conservatorship is created as a division under the~~
23 ~~supreme court to administer the programs assigned by state law or the supreme court.~~

24 ~~2. The office shall:~~

25 ~~a. Develop policies and procedures, including eligibility criteria, for:~~

26 ~~(1) Receiving public services;~~

27 ~~(2) A public guardian or a public conservator;~~

28 ~~(3) A licensed guardian or a licensed conservator; and~~

29 ~~(4) Distribution of funding for direct payments and expense reimbursements for~~
30 ~~public services.~~

31 ~~b. Develop ethical standards for:~~

- 1 ~~(1) A licensed guardian or a licensed conservator; and~~
- 2 ~~(2) An unlicensed guardian or an unlicensed conservator.~~
- 3 ~~c. Develop policies and procedures for proceedings when a guardian or a~~
- 4 ~~conservator is unable to fulfill the duties of a guardian or a conservator.~~
- 5 ~~d. Keep accurate records of all financial transactions performed under this chapter~~
- 6 ~~in the manner required by the office of management and budget.~~
- 7 ~~e. Provide a report each biennium to the legislative management regarding the~~
- 8 ~~operations of the office, including the cost of public guardians and public~~
- 9 ~~conservators, and any other information requested by the legislative~~
- 10 ~~management.~~
- 11 ~~3. The office may:~~
- 12 ~~a. Recommend rules applicable to a licensed guardian or a licensed conservator.~~
- 13 ~~b. Grant licenses to a guardian or conservator and agency permits, including~~
- 14 ~~revoking or suspending an agency permit.~~
- 15 ~~c. Require insurance or bond coverage for a licensed guardian or a licensed~~
- 16 ~~conservator as a condition for licensure.~~
- 17 ~~d. Establish mandatory disclosure and reporting requirements for a licensed~~
- 18 ~~guardian or a licensed conservator, including a process to disclose information or~~
- 19 ~~submit reports to the office.~~
- 20 ~~e. Provide training for guardians and conservators.~~
- 21 ~~f. Monitor guardianship and conservatorship services.~~
- 22 ~~g. Provide annual reports to the supreme court.~~
- 23 ~~h. Distribute funding for direct payments, expense reimbursements, or other public~~
- 24 ~~services, including funding for public administrators.~~
- 25 ~~i. Establish and collect fees to support guardianship and conservatorship services~~
- 26 ~~and the duties of the office, which must be deposited in the guardianship and~~
- 27 ~~conservatorship support fund.~~
- 28 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
- 29 ~~conservators and to safeguard the rights of individuals who receive public~~
- 30 ~~services.~~

1 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
2 ~~fund.~~

3 ~~4. The office may not authorize payment for services for any public guardian or public~~
4 ~~conservator that provides services for more individuals than allowed through statute,~~
5 ~~regulation, court rule, or policy adopted by the office.~~

6 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
7 ~~conservator or act in any other representative capacity for any individual. This~~
8 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
9 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~

10 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~

11 ~~**27-27.1-03. Guardianship and conservatorship support fund - Continuing**~~
12 ~~**appropriation.**~~

13 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
14 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
15 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
16 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
17 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
18 ~~services, including guardianship and conservatorship training and monitoring.~~

19 ~~**27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**~~

20 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
21 ~~services under this chapter is confidential and may be disclosed only:~~

22 ~~a. In the administration of any program under the supervision or administration of~~
23 ~~the office.~~

24 ~~b. When authorized by a policy or procedure of the office.~~

25 ~~c. When allowed or required by rule or law.~~

26 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
27 ~~if the report is made in good faith and may be disclosed only to:~~

28 ~~a. Authorized staff and agents of the office, who may further disclose the~~
29 ~~information to a person that has a definite interest in the well-being of the~~
30 ~~individual concerned, is in a position to serve the individual's interests, and that~~

1 ~~needs to know the contents of the records to assure the well being and interests~~
2 ~~of the individual concerned.~~

3 ~~b. An individual who is the subject of the report, if the identity of the person~~
4 ~~reporting or supplying information under this chapter is protected until the~~
5 ~~information is needed for use in an administrative, legal, or disciplinary~~
6 ~~proceeding arising out of the report.~~

7 ~~c. A public official and the public official's authorized agent who requires the~~
8 ~~information in connection with the discharge of official duties.~~

9 ~~d. A court when the court determines the information is necessary for the~~
10 ~~determination of an issue before the court.~~

11 ~~e. The investigation counsel.~~

12 ~~3. The investigation counsel may disclose information uncovered during a disciplinary~~
13 ~~investigation to the attorney general or bureau of criminal investigation related to a~~
14 ~~criminal investigation when the investigation counsel suspects the subject of the~~
15 ~~investigation has committed a crime.~~

16 ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces~~
17 ~~in the disclosure of confidential information in violation of this section is guilty of a~~
18 ~~class C felony.~~

19 ~~**27-27.1-05. Guardianship and conservatorship limitations - Representation to the**~~
20 ~~**public - Exemption.**~~

21 ~~1. A person may not serve as a guardian or a conservator for three or more adult~~
22 ~~individuals at the same time unless that person is a licensed guardian or a licensed~~
23 ~~conservator or has an agency permit.~~

24 ~~2. A public guardian or a public conservator may not provide services to a minor unless~~
25 ~~authorized by a proceeding under section 30-1-28-03.3.~~

26 ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship~~
27 ~~or conservatorship services to the public.~~

28 ~~4. This section does not apply to:~~

29 ~~a. A federal or state agency.~~

30 ~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~

31 ~~c. An individual appointed as a guardian or conservator for a family member.~~

~~5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.~~

~~**27-27.1-06. Immunity.**~~

~~A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.~~

~~**27-27.1-07. Jurisdiction – Waiver of court costs – Applicability.**~~

~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a conservator license.~~

~~2. The supreme court must establish a process to appeal license denials and board orders.~~

~~3. The courts shall waive court costs and filing fees in any proceeding in which a person is receiving public services under this chapter.~~

~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval authority authorized by court rule, if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30-1.~~

~~**27-27.1-08. Guardianship and conservatorship review board – Guardianship and conservatorship counsel – Guardianship and conservatorship operations committee.**~~

~~1. The supreme court may establish a guardianship and conservatorship review board to conduct disciplinary proceedings for a guardian or conservator.~~

~~2. The supreme court may establish a guardianship and conservatorship counsel to investigate noncompliance reported under this chapter. The director of the office is the hiring authority for the investigation counsel.~~

~~3. The supreme court must create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The operations committee:~~

~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~

~~b. Is the hiring authority for the office director.~~

~~c. May adopt policies recommended by the office.~~

~~**27-27.1-09. Supreme court – Discretionary powers.**~~

~~The supreme court may:~~

- 1 ~~1. Grant immunity to a member of the board and the board's agents if a district court or~~
- 2 ~~the supreme court would have immunity in performing the same functions.~~
- 3 ~~2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~
- 4 ~~3. Authorize officials, officers, agents, and designees of the office, the board, and the~~
- 5 ~~investigation counsel to:~~
- 6 ~~a. Administer oaths.~~
- 7 ~~b. Order and otherwise provide for the inspection of books and records.~~
- 8 ~~c. Issue subpoenas for the attendance of witnesses and the production of~~
- 9 ~~designated documents, electronically stored information, or tangible things in~~
- 10 ~~accordance with the North Dakota Rules of Civil Procedure.~~
- 11 ~~d. Order the deposition of a person residing within or outside the state to be taken in~~
- 12 ~~accordance with the North Dakota Rules of Civil Procedure.~~
- 13 ~~4. Adopt rules to effectuate the powers and duties under this chapter.~~
- 14 ~~**27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**~~
- 15 ~~**authority for investigations.**~~
- 16 ~~1. The attorney general shall act as legal counsel in any particular investigation or~~
- 17 ~~proceeding under section 54-12-02. The attorney general shall appear and defend any~~
- 18 ~~officer or employee of the office and any member of the board in any action founded~~
- 19 ~~on an act or omission arising out of performance of an official duty consistent with~~
- 20 ~~section 54-12-01.3.~~
- 21 ~~2. In accordance with chapter 54-12, the attorney general and bureau of criminal~~
- 22 ~~investigation have primary authority to investigate criminal cases related to a~~
- 23 ~~guardianship or conservatorship.~~
- 24 ~~**27-27.1-11. Duty to disclose and cooperate.**~~
- 25 ~~1. A state and local governmental entity and its officers and employees, and the officials,~~
- 26 ~~officers, and employees of the courts of this state shall disclose records and~~
- 27 ~~information requested by the board or investigation counsel or any authorized~~
- 28 ~~representative of the board or investigation counsel and shall cooperate with and give~~
- 29 ~~reasonable assistance to the board or investigation counsel and any authorized~~
- 30 ~~representative of the board or counsel unless prohibited by federal regulation or law.~~

~~2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.~~

~~**27-27.1-12. Duties of witnesses - Penalty.**~~

~~1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.~~

~~2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.~~

~~3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.~~

~~**27-27.1-13. Preferred claim.**~~

~~1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.~~

~~2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.~~

~~3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.~~

SECTION 1. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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

8 **SECTION 2. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 11 1. The court may remove a conservator for good cause, upon notice and hearing, or
12 accept the resignation of a conservator. After a conservator's death, resignation, or
13 removal, the court may appoint another conservator. A conservator so appointed
14 succeeds to the title and powers of the predecessor.
- 15 2. The court may order a conservator to be listed on a registry if the court removed the
16 conservator for good cause. A conservator listed on the registry is disqualified from
17 acting as a conservator in any conservatorship proceeding. The court shall send a
18 copy of the order to the state court administrator, who shall maintain and administer
19 the registry. This subsection does not apply to a licensed conservator. For purposes of
20 this subsection, a licensed conservator includes a conservator whose license has
21 been suspended but excludes a conservator whose license is revoked.

22 **SECTION 3. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. On the death of any recipient of medical assistance who was a resident of a nursing
25 facility, intermediate care facility for individuals with intellectual disabilities, or other
26 medical institution and with respect to whom the department determined that resident
27 reasonably was not expected to be discharged from the medical institution and to
28 return home, or who was fifty-five years of age or older when the recipient received the
29 assistance, and on the death of the spouse of the deceased recipient, the total amount
30 of medical assistance paid on behalf of the recipient following the institutionalization of
31 the recipient who cannot reasonably be expected to be discharged from the medical

10 of 19

institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter ~~27-27.154~~ 68; and
- i. Claims made under subsection 4.

SECTION 4. Chapter 54-68 of the North Dakota Century Code is created and enacted as follows:

54-68-01. Definitions.

As used in this chapter:

1. "Agency permit" means temporary authorization given by the office to an employee of a professional guardianship or professional conservatorship entity which allows the permitholder to provide guardianship or conservatorship services as an agent of the entity.
2. "Identifiable information" means an individual's personal details, including the individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, and any demographic information collected about the individual.
3. "Investigation counsel" means the guardianship and conservatorship counsel.
4. "Licensed conservator" means a person licensed by the office to provide conservatorship services.

1 5. "Licensed guardian" means a person licensed by the office to provide guardianship
2 services.

3 6. "Office" means the office of guardianship and conservatorship.

4 7. "Public conservator" means a conservator under contract with the office to provide
5 conservatorship services for an individual eligible for public services.

6 8. "Public guardian" means a guardian under contract with the office to provide
7 guardianship services for an individual eligible for public services.

8 9. "Public services" means state or federally funded programs administered by the office
9 available to eligible individuals.

10 10. "Review board" means the guardianship and conservatorship review board
11 established under section 54-68-03.

12 11. "Unlicensed conservator" means a person providing conservatorship services without
13 a conservator license.

14 12. "Unlicensed guardian" means a person providing guardianship services without a
15 guardian license.

16 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
17 **Report - Audit.**

18 1. The office of guardianship and conservatorship, in its capacity of supervising and
19 directing guardianship and conservatorship, shall operate independently of any state
20 agency that provides services to individuals under guardianship or conservatorship.
21 The office shall administer programs assigned by state law.

22 2. The office shall:

23 a. Develop policies and procedures, including eligibility criteria, for:

24 (1) Receiving public services;

25 (2) A public guardian or a public conservator;

26 (3) A licensed guardian or a licensed conservator; and

27 (4) Distribution of funding for direct payments and expense reimbursements for
28 public services.

29 b. Develop ethical standards for:

30 (1) A licensed guardian or a licensed conservator; and

31 (2) An unlicensed guardian or an unlicensed conservator.

- 1 c. Develop policies and procedures for proceedings when a guardian or a
- 2 conservator is unable to fulfill the duties of a guardian or a conservator.
- 3 d. Keep accurate records of all financial transactions performed under this chapter
- 4 in the manner required by the office of management and budget.
- 5 e. Provide a report each biennium to the legislative management regarding the
- 6 operations of the office, including the cost of public guardians and public
- 7 conservators, and any other information requested by the legislative
- 8 management.
- 9 3. The office may:
- 10 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 11 b. Grant licenses to a guardian or conservator and agency permits, including
- 12 revoking or suspending an agency permit.
- 13 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 14 conservator as a condition for licensure.
- 15 d. Establish mandatory disclosure and reporting requirements for a licensed
- 16 guardian or a licensed conservator, including a process to disclose information or
- 17 submit reports to the office.
- 18 e. Provide training for guardians and conservators.
- 19 f. Monitor guardianship and conservatorship services.
- 20 g. Provide annual reports to the governor.
- 21 h. Distribute funding for direct payments, expense reimbursements, or other public
- 22 services, including funding for public administrators.
- 23 i. Establish and collect fees to support guardianship and conservatorship services
- 24 and the duties of the office, which must be deposited in the guardianship and
- 25 conservatorship support fund.
- 26 j. Seek and apply for private, federal, or other funds to help support guardians and
- 27 conservators and to safeguard the rights of individuals who receive public
- 28 services.
- 29 k. Accept private funds for deposit in the guardianship and conservatorship support
- 30 fund.

1 4. The office may not authorize payment for services for any public guardian or public
2 conservator that provides services for more individuals than allowed through statute,
3 regulation, or administrative rule.

4 5. The office, its officers, or its employees, may not act as a public guardian or a public
5 conservator or act in any other representative capacity for any individual. This
6 subsection does not prohibit an officer or employee from acting as a guardian or
7 conservator in a personal capacity apart from any duties as an officer or employee.

8 6. The office is subject to audits by the state auditor under chapter 54-10.

9 **54-68-03. Review board - Director - Administrative authority - Operations committee.**

10 1. The office shall establish a guardianship and conservatorship review board to conduct
11 disciplinary proceedings for a guardian or conservator. The guardianship and
12 conservatorship review board shall consist of:

13 a. Three members representing guardians, appointed by the guardianship
14 association of North Dakota;

15 b. One member representing family guardians, appointed by the guardianship
16 association of North Dakota;

17 c. One member representing the protection and advocacy project, appointed by the
18 committee on protection and advocacy;

19 d. Two members appointed by the state bar association of North Dakota, consisting
20 of:

21 (1) One lawyer licensed to practice law in the state; and

22 (2) One retired judge, judicial referee, or surrogate judge; and

23 e. Two members of the public, appointed by the governor.

24 2. The review board shall appoint an office director, who serves at the will of the review
25 board. Within the limits of legislative appropriations, the director shall employ the
26 necessary staff to provide office services in accordance with this chapter. The director,
27 with the advice and consent of the review board, may adopt rules for administration of
28 the office.

29 3. The office may establish a guardianship and conservatorship counsel to investigate
30 noncompliance reported under this chapter. The director of the office is the hiring
31 authority for the investigation counsel.

1 4. The office must create a guardianship and conservatorship operations committee to
2 supervise the operations of the office and investigation counsel. The guardianship and
3 conservatorship operations committee must develop and submit budgets for the office,
4 review board, and investigation counsel.

5 a. The guardianship and conservatorship operations committee shall consist of:

6 (1) Two members of the legislative assembly, one from each chamber,
7 appointed by the chairman of the legislative management;

8 (2) Two members appointed by the state bar association of North Dakota,
9 consisting of:

10 (a) One lawyer licensed to practice law in the state; and

11 (b) One retired judge, judicial referee, or surrogate judge; and

12 (3) Two members appointed by the governor.

13 b. Initially, members of the guardianship and conservatorship operations committee
14 shall serve staggered terms as follows:

15 (1) Two members shall serve a term of one year;

16 (2) Two members shall serve a term of two years; and

17 (3) Two members shall serve a term of three years.

18 c. After the expiration of initial terms, all appointments must be for a term of three
19 years. A member may not serve more than two consecutive terms of three years.

20 d. A member of the guardianship and conservatorship operations committee
21 concurrently serving as a member of the legislative assembly shall receive
22 per diem compensation in accordance with section 54-35-10.

23 **54-68-04. Guardianship and conservatorship support fund - Continuing**
24 **appropriation.**

25 There is created in the state treasury the guardianship and conservatorship support fund.
26 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
27 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
28 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
29 defray the expenses of supporting guardianship and conservatorship services, including
30 guardianship and conservatorship training and monitoring.

54-68-05. Records - Confidentiality - Disclosure - Penalty.

1. Identifiable information concerning an individual who is applying for or receiving public services under this chapter is confidential and may be disclosed only:
 - a. In the administration of any program under the supervision or administration of the office.
 - b. When authorized by a policy of the office.
 - c. When allowed or required by rule or law.
2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:
 - a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.
 - b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.
 - c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.
 - d. A court when the court determines the information is necessary for the determination of an issue before the court.
 - e. The investigation counsel.
3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.
4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-06. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.
2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.
3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.
4. This section does not apply to:
 - a. A federal or state agency.
 - b. A financial institution under section 6-08.1-01 when appointed as a conservator.
 - c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.
5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-07. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.
2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-08. Authority - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.
2. The office must establish by rule a process to appeal license denials and review board orders.
3. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:
 - a. The office or review board shall:

170519

- 1 (1) Establish confidentiality and disclosure standards for investigating a report
- 2 or complaint and subsequent disciplinary proceedings.
- 3 (2) Adopt rules to effectuate the powers and duties under this chapter.
- 4 b. The office or review board may:
- 5 (1) Interview an alleged victim, witness, or any other individual with knowledge
- 6 of the situation.
- 7 (2) Access any record or information on an applicant, provider, or recipient of
- 8 public services.
- 9 (3) Issue subpoenas for the attendance of witnesses and the production of
- 10 designated documents, electronically stored information, or tangible things
- 11 in accordance with the North Dakota Rules of Civil Procedure.
- 12 (4) Order the deposition of a person residing within or outside the state to be
- 13 taken in accordance with the North Dakota Rules of Civil Procedure.
- 14 (5) Coordinate with other agencies and departments, including the attorney
- 15 general and bureau of criminal investigation.
- 16 3. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
- 17 the applicable policies, procedures, and standards of the office, or other approval
- 18 authority authorized by rule if the guardian or the conservator serves an adult ward,
- 19 adult protected person, or incapacitated person, as defined in title 30.1.
- 20 **54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary**
- 21 **authority for investigations.**
- 22 1. The attorney general shall act as legal counsel in any particular investigation or
- 23 proceeding under section 54-12-02. The attorney general shall appear and defend any
- 24 officer or employee of the office and any member of the review board in any action
- 25 founded on an act or omission arising out of performance of an official duty.
- 26 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
- 27 investigation have primary authority to investigate criminal cases related to a
- 28 guardianship or conservatorship.
- 29 **54-68-10. Duty to disclose and cooperate.**
- 30 1. A state and local governmental entity and its officers and employees, and the officials,
- 31 officers, and employees of the courts of this state shall disclose records and

1 information requested by the review board or investigation counsel or any authorized
2 representative of the review board or investigation counsel and shall cooperate with
3 and give reasonable assistance to the review board or investigation counsel and any
4 authorized representative of the review board or counsel unless prohibited by federal
5 regulation or law.

6 2. A sheriff or police officer shall serve process and execute all lawful orders upon
7 request of the office, its authorized representative, the review board, or the
8 investigation counsel. The service of process extends to all parts of the state in any
9 investigation or disciplinary proceeding under this chapter.

10 **54-68-11. Duties of witnesses - Penalty.**

11 1. An individual is obliged to attend as a witness in any investigation or disciplinary
12 proceeding commenced under this chapter.

13 2. If an individual refuses to attend, testify, or produce any writings or things required by
14 subpoena, the office, review board, or investigation counsel that issued the subpoena
15 may petition the district court of the district in which the attendance or production is
16 required for an order compelling the individual to attend and testify or produce the
17 writings or things required by the subpoena. The court shall order the individual to
18 appear before the court at a specified time and place to show cause why the individual
19 has not attended, testified, or produced the writings or things as required. A copy of
20 the order must be served on the individual. If the court determines the subpoena was
21 regularly issued, the court shall order the individual to appear at the time and place
22 fixed in the order and testify or produce the required writings or things.

23 3. An individual who fails to obey an order under this section is guilty of a class A
24 misdemeanor.

25 **54-68-12. Preferred claim.**

26 1. The office has a preferred claim against the estate of an individual or an individual's
27 spouse for recovery of funds expended under this chapter for the care of that
28 individual or the individual's spouse. All funds recovered under this chapter must be
29 deposited in the general fund.

30 2. A claim may not be required to be paid and interest may not begin to accrue during the
31 lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. APPROPRIATION - ~~JUDICIAL BRANCH~~ OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial branch~~office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,096,400
Public guardian and conservator fees - indigents	7,100,000
Guardianship contracts - developmentally disabled	5,500,000
Total general fund	\$15,246,400
<u>Office of guardianship and conservatorship</u>	<u>\$1,200,000</u>
<u>Establishment costs - indigents</u>	<u>1,550,000</u>
<u>Establishment costs - developmentally disabled</u>	<u>1,096,400</u>
<u>Public guardian and conservator fees - indigents</u>	<u>7,100,000</u>
<u>Guardianship contracts - developmentally disabled</u>	<u>5,500,000</u>
<u>Total general fund</u>	<u>\$16,446,400</u>
<u>Full-time equivalent positions</u>	<u>4.00</u>

**REPORT OF STANDING COMMITTEE
REENGROSSED SB 2029**

Human Services Committee (Rep. M. Ruby, Chairman) recommends **AMENDMENTS** ([25.0224.04006](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 2 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). Reengrossed SB 2029 was placed on the Sixth order on the calendar.

25.0224.04006
Title.

Prepared by the Legislative Council
staff for Representative Frelich
April 2, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 of the North Dakota Century Code, relating to the task force on guardianship
7 monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to
8 provide a continuing appropriation.

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

10 ~~— **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
11 ~~follows:~~

12 ~~— **27-27.1-01. Definitions.**~~

13 ~~— As used in this chapter:~~

14 ~~— 1. "Agency permit" means temporary authorization given by the office to an employee of~~
15 ~~a professional guardianship or professional conservatorship entity which allows the~~
16 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
17 ~~entity.~~

18 ~~— 2. "Board" means the guardianship and conservatorship review board.~~

19 ~~— 3. "Identifiable information" means an individual's personal details, including the~~
20 ~~individual's name, address, telephone number, facsimile number, social security~~

- 1 ~~number, electronic mail address, program identification number, or any other unique~~
2 ~~identifying number, characteristic, or code, and any demographic information collected~~
3 ~~about the individual.~~
- 4 ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~
- 5 ~~5. "Licensed conservator" means a person licensed by the office to provide~~
6 ~~conservatorship services.~~
- 7 ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
8 ~~services.~~
- 9 ~~7. "Office" means the office of guardianship and conservatorship.~~
- 10 ~~8. "Public conservator" means a conservator under contract with the office to provide~~
11 ~~conservatorship services for an individual eligible for public services.~~
- 12 ~~9. "Public guardian" means a guardian under contract with the office to provide~~
13 ~~guardianship services for an individual eligible for public services.~~
- 14 ~~10. "Public services" means state or federally funded programs administered by the office~~
15 ~~available to eligible individuals.~~
- 16 ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
17 ~~a conservator license.~~
- 18 ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
19 ~~guardian license.~~
- 20 ~~**27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**~~
21 ~~**duties - Report - Audit.**~~
- 22 ~~1. The office of guardianship and conservatorship is created as a division under the~~
23 ~~supreme court to administer the programs assigned by state law or the supreme court.~~
- 24 ~~2. The office shall:~~
- 25 ~~a. Develop policies and procedures, including eligibility criteria, for:~~
- 26 ~~(1) Receiving public services;~~
- 27 ~~(2) A public guardian or a public conservator;~~
- 28 ~~(3) A licensed guardian or a licensed conservator; and~~
- 29 ~~(4) Distribution of funding for direct payments and expense reimbursements for~~
30 ~~public services.~~
- 31 ~~b. Develop ethical standards for:~~

- 1 ~~(1) A licensed guardian or a licensed conservator; and~~
- 2 ~~(2) An unlicensed guardian or an unlicensed conservator;~~
- 3 ~~c. Develop policies and procedures for proceedings when a guardian or a~~
- 4 ~~conservator is unable to fulfill the duties of a guardian or a conservator;~~
- 5 ~~d. Keep accurate records of all financial transactions performed under this chapter~~
- 6 ~~in the manner required by the office of management and budget;~~
- 7 ~~e. Provide a report each biennium to the legislative management regarding the~~
- 8 ~~operations of the office, including the cost of public guardians and public~~
- 9 ~~conservators, and any other information requested by the legislative~~
- 10 ~~management;~~
- 11 ~~3. The office may:~~
- 12 ~~a. Recommend rules applicable to a licensed guardian or a licensed conservator;~~
- 13 ~~b. Grant licenses to a guardian or conservator and agency permits, including~~
- 14 ~~revoking or suspending an agency permit;~~
- 15 ~~c. Require insurance or bond coverage for a licensed guardian or a licensed~~
- 16 ~~conservator as a condition for licensure;~~
- 17 ~~d. Establish mandatory disclosure and reporting requirements for a licensed~~
- 18 ~~guardian or a licensed conservator, including a process to disclose information or~~
- 19 ~~submit reports to the office;~~
- 20 ~~e. Provide training for guardians and conservators;~~
- 21 ~~f. Monitor guardianship and conservatorship services;~~
- 22 ~~g. Provide annual reports to the supreme court;~~
- 23 ~~h. Distribute funding for direct payments, expense reimbursements, or other public~~
- 24 ~~services, including funding for public administrators;~~
- 25 ~~i. Establish and collect fees to support guardianship and conservatorship services~~
- 26 ~~and the duties of the office, which must be deposited in the guardianship and~~
- 27 ~~conservatorship support fund;~~
- 28 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
- 29 ~~conservators and to safeguard the rights of individuals who receive public~~
- 30 ~~services;~~

- 1 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
2 ~~fund.~~
- 3 ~~4. The office may not authorize payment for services for any public guardian or public~~
4 ~~conservator that provides services for more individuals than allowed through statute,~~
5 ~~regulation, court rule, or policy adopted by the office.~~
- 6 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
7 ~~conservator or act in any other representative capacity for any individual. This~~
8 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
9 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~
- 10 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~
- 11 ~~**27-27.1-03. Guardianship and conservatorship support fund – Continuing**~~
12 ~~**appropriation.**~~
- 13 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
14 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
15 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
16 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
17 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
18 ~~services, including guardianship and conservatorship training and monitoring.~~
- 19 ~~**27-27.1-04. Records – Confidentiality – Disclosure – Penalty.**~~
- 20 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
21 ~~services under this chapter is confidential and may be disclosed only:~~
- 22 ~~a. In the administration of any program under the supervision or administration of~~
23 ~~the office.~~
- 24 ~~b. When authorized by a policy or procedure of the office.~~
- 25 ~~c. When allowed or required by rule or law.~~
- 26 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
27 ~~if the report is made in good faith and may be disclosed only to:~~
- 28 ~~a. Authorized staff and agents of the office, who may further disclose the~~
29 ~~information to a person that has a definite interest in the well-being of the~~
30 ~~individual concerned, is in a position to serve the individual's interests, and that~~

- 1 ~~needs to know the contents of the records to assure the well-being and interests-~~
2 ~~of the individual concerned.~~
- 3 ~~b. An individual who is the subject of the report, if the identity of the person-~~
4 ~~reporting or supplying information under this chapter is protected until the-~~
5 ~~information is needed for use in an administrative, legal, or disciplinary-~~
6 ~~proceeding arising out of the report.~~
- 7 ~~c. A public official and the public official's authorized agent who requires the-~~
8 ~~information in connection with the discharge of official duties.~~
- 9 ~~d. A court when the court determines the information is necessary for the-~~
10 ~~determination of an issue before the court.~~
- 11 ~~e. The investigation counsel.~~
- 12 ~~3. The investigation counsel may disclose information uncovered during a disciplinary-~~
13 ~~investigation to the attorney general or bureau of criminal investigation related to a-~~
14 ~~criminal investigation when the investigation counsel suspects the subject of the-~~
15 ~~investigation has committed a crime.~~
- 16 ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces-~~
17 ~~in the disclosure of confidential information in violation of this section is guilty of a-~~
18 ~~class C felony.~~
- 19 ~~**27-27.1-05. Guardianship and conservatorship limitations - Representation to the-**~~
20 ~~**public - Exemption.**~~
- 21 ~~1. A person may not serve as a guardian or a conservator for three or more adult-~~
22 ~~individuals at the same time unless that person is a licensed guardian or a licensed-~~
23 ~~conservator or has an agency permit.~~
- 24 ~~2. A public guardian or a public conservator may not provide services to a minor unless-~~
25 ~~authorized by a proceeding under section 30-1-28-03.3.~~
- 26 ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship-~~
27 ~~or conservatorship services to the public.~~
- 28 ~~4. This section does not apply to:~~
- 29 ~~a. A federal or state agency.~~
- 30 ~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~
- 31 ~~c. An individual appointed as a guardian or conservator for a family member.~~

- 1 ~~5. A person who violates this section after August 1, 2026, is guilty of a class B-~~
- 2 ~~misdemeanor.~~
- 3 ~~**27-27.1-06. Immunity.**~~
- 4 ~~A person who in good faith provides information or testimony regarding a guardian's or~~
- 5 ~~conservator's misconduct or lack of professionalism is not subject to civil liability.~~
- 6 ~~**27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**~~
- 7 ~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a~~
- 8 ~~conservator license.~~
- 9 ~~2. The supreme court must establish a process to appeal license denials and board~~
- 10 ~~orders.~~
- 11 ~~3. The courts shall waive court costs and filing fees in any proceeding in which a person~~
- 12 ~~is receiving public services under this chapter.~~
- 13 ~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow~~
- 14 ~~the applicable policies, procedures, and standards of the office, or other approval~~
- 15 ~~authority authorized by court rule, if the guardian or the conservator serves an adult~~
- 16 ~~ward, adult protected person, or incapacitated person, as defined in title 30-1.~~
- 17 ~~**27-27.1-08. Guardianship and conservatorship review board - Guardianship and**~~
- 18 ~~**conservatorship counsel - Guardianship and conservatorship operations committee.**~~
- 19 ~~1. The supreme court may establish a guardianship and conservatorship review board to~~
- 20 ~~conduct disciplinary proceedings for a guardian or conservator.~~
- 21 ~~2. The supreme court may establish a guardianship and conservatorship counsel to~~
- 22 ~~investigate noncompliance reported under this chapter. The director of the office is the~~
- 23 ~~hiring authority for the investigation counsel.~~
- 24 ~~3. The supreme court must create a guardianship and conservatorship operations~~
- 25 ~~committee to supervise the operations of the office and investigation counsel. The~~
- 26 ~~operations committee:~~
- 27 ~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~
- 28 ~~b. Is the hiring authority for the office director.~~
- 29 ~~c. May adopt policies recommended by the office.~~
- 30 ~~**27-27.1-09. Supreme court - Discretionary powers.**~~
- 31 ~~The supreme court may:~~

- 1 ~~1. Grant immunity to a member of the board and the board's agents if a district court or~~
- 2 ~~the supreme court would have immunity in performing the same functions.~~
- 3 ~~2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~
- 4 ~~3. Authorize officials, officers, agents, and designees of the office, the board, and the~~
- 5 ~~investigation counsel to:~~
- 6 ~~a. Administer oaths.~~
- 7 ~~b. Order and otherwise provide for the inspection of books and records.~~
- 8 ~~c. Issue subpoenas for the attendance of witnesses and the production of~~
- 9 ~~designated documents, electronically stored information, or tangible things in~~
- 10 ~~accordance with the North Dakota Rules of Civil Procedure.~~
- 11 ~~d. Order the deposition of a person residing within or outside the state to be taken in~~
- 12 ~~accordance with the North Dakota Rules of Civil Procedure.~~
- 13 ~~4. Adopt rules to effectuate the powers and duties under this chapter.~~
- 14 ~~**27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**~~
- 15 ~~**authority for investigations.**~~
- 16 ~~1. The attorney general shall act as legal counsel in any particular investigation or~~
- 17 ~~proceeding under section 54-12-02. The attorney general shall appear and defend any~~
- 18 ~~officer or employee of the office and any member of the board in any action founded~~
- 19 ~~on an act or omission arising out of performance of an official duty consistent with~~
- 20 ~~section 54-12-01.3.~~
- 21 ~~2. In accordance with chapter 54-12, the attorney general and bureau of criminal~~
- 22 ~~investigation have primary authority to investigate criminal cases related to a~~
- 23 ~~guardianship or conservatorship.~~
- 24 ~~**27-27.1-11. Duty to disclose and cooperate.**~~
- 25 ~~1. A state and local governmental entity and its officers and employees, and the officials,~~
- 26 ~~officers, and employees of the courts of this state shall disclose records and~~
- 27 ~~information requested by the board or investigation counsel or any authorized~~
- 28 ~~representative of the board or investigation counsel and shall cooperate with and give~~
- 29 ~~reasonable assistance to the board or investigation counsel and any authorized~~
- 30 ~~representative of the board or counsel unless prohibited by federal regulation or law.~~

- 1 ~~2. The service of process extends to all parts of the state in any investigation or~~
2 ~~disciplinary proceeding under this chapter. A sheriff or police officer shall serve~~
3 ~~process and execute all lawful orders upon request of the office, its authorized~~
4 ~~representative, the board, or the investigation counsel.~~
- 5 ~~**27-27.1-12. Duties of witnesses -- Penalty.**~~
- 6 ~~1. An individual is obliged to attend as a witness in any investigation or disciplinary~~
7 ~~proceeding commenced under this chapter.~~
- 8 ~~2. If an individual refuses to attend, testify, or produce any writings or things required by~~
9 ~~subpoena, the office, board, or investigation counsel that issued the subpoena may~~
10 ~~petition the district court of the district in which the attendance or production is~~
11 ~~required for an order compelling the individual to attend and testify or produce the~~
12 ~~writings or things required by the subpoena. The court shall order the individual to~~
13 ~~appear before the court at a specified time and place to show cause why the individual~~
14 ~~has not attended, testified, or produced the writings or things as required. A copy of~~
15 ~~the order must be served on the individual. If the court determines the subpoena was~~
16 ~~regularly issued, the court shall order the individual to appear at the time and place~~
17 ~~fixed in the order and testify or produce the required writings or things.~~
- 18 ~~3. An individual who fails to obey an order under this section is guilty of a class A~~
19 ~~misdemeanor.~~
- 20 ~~**27-27.1-13. Preferred claim.**~~
- 21 ~~1. The office has a preferred claim against the estate of an individual or an individual's~~
22 ~~spouse for recovery of funds expended under this chapter for the care of that~~
23 ~~individual or the individual's spouse. All funds recovered under this chapter must be~~
24 ~~deposited in the general fund.~~
- 25 ~~2. A claim may not be required to be paid and interest may not begin to accrue during the~~
26 ~~lifetime of the decedent's surviving spouse, if any.~~
- 27 ~~3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim~~
28 ~~under this chapter.~~

29 **SECTION 1.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
30 created and enacted as follows:

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

8 **SECTION 2. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 11 1. The court may remove a conservator for good cause, upon notice and hearing, or
12 accept the resignation of a conservator. After a conservator's death, resignation, or
13 removal, the court may appoint another conservator. A conservator so appointed
14 succeeds to the title and powers of the predecessor.
- 15 2. The court may order a conservator to be listed on a registry if the court removed the
16 conservator for good cause. A conservator listed on the registry is disqualified from
17 acting as a conservator in any conservatorship proceeding. The court shall send a
18 copy of the order to the state court administrator, who shall maintain and administer
19 the registry. This subsection does not apply to a licensed conservator. For purposes of
20 this subsection, a licensed conservator includes a conservator whose license has
21 been suspended but excludes a conservator whose license is revoked.

22 **SECTION 3. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. On the death of any recipient of medical assistance who was a resident of a nursing
25 facility, intermediate care facility for individuals with intellectual disabilities, or other
26 medical institution and with respect to whom the department determined that resident
27 reasonably was not expected to be discharged from the medical institution and to
28 return home, or who was fifty-five years of age or older when the recipient received the
29 assistance, and on the death of the spouse of the deceased recipient, the total amount
30 of medical assistance paid on behalf of the recipient following the institutionalization of
31 the recipient who cannot reasonably be expected to be discharged from the medical

1 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
2 allowed as a preferred claim against the decedent's estate after payment, in the
3 following order, of:

- 4 a. Recipient liability expense applicable to the month of death for nursing home or
5 basic care services;
- 6 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 7 c. Expenses of the last illness, other than those incurred by medical assistance;
- 8 d. Expenses of administering the estate, including attorney's fees approved by the
9 court;
- 10 e. Claims made under chapter 50-01;
- 11 f. Claims made under chapter 50-24.5;
- 12 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 13 h. Claims made under chapter 27-27.154-68; and
- 14 i. Claims made under subsection 4.

15 **SECTION 4.** Chapter 54-68 of the North Dakota Century Code is created and enacted as
16 follows:

17 **54-68-01. Definitions.**

18 As used in this chapter:

- 19 1. "Agency permit" means temporary authorization given by the office to an employee of
20 a professional guardianship or professional conservatorship entity which allows the
21 permitholder to provide guardianship or conservatorship services as an agent of the
22 entity.
- 23 2. "Board" means the guardianship and conservatorship review board.
- 24 3. "Identifiable information" means an individual's personal details, including the
25 individual's name, address, telephone number, facsimile number, social security
26 number, electronic mail address, program identification number, or any other unique
27 identifying number, characteristic, or code, and any demographic information collected
28 about the individual.
- 29 4. "Investigation counsel" means the guardianship and conservatorship counsel.
- 30 5. "Licensed conservator" means a person licensed by the office to provide
31 conservatorship services.

1 6. "Licensed guardian" means a person licensed by the office to provide guardianship
2 services.

3 7. "Office" means the office of guardianship and conservatorship.

4 8. "Public conservator" means a conservator under contract with the office to provide
5 conservatorship services for an individual eligible for public services.

6 9. "Public guardian" means a guardian under contract with the office to provide
7 guardianship services for an individual eligible for public services.

8 10. "Public services" means state or federally funded programs administered by the office
9 available to eligible individuals.

10 11. "Review board" means the guardianship and conservatorship review board
11 established under section 54-68-03.

12 12. "Unlicensed conservator" means a person providing conservatorship services without
13 a conservator license.

14 13. "Unlicensed guardian" means a person providing guardianship services without a
15 guardian license.

16 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
17 **Report - Audit.**

18 1. The office of guardianship and conservatorship, in its capacity of supervising and
19 directing guardianship and conservatorship, shall operate independently of any state
20 agency that provides services to individuals under guardianship or conservatorship.
21 The office shall administer programs assigned by state law.

22 2. The office shall:

23 a. Develop policies and procedures, including eligibility criteria, for:

24 (1) Receiving public services;

25 (2) A public guardian or a public conservator;

26 (3) A licensed guardian or a licensed conservator; and

27 (4) Distribution of funding for direct payments and expense reimbursements for
28 public services.

29 b. Develop ethical standards for:

30 (1) A licensed guardian or a licensed conservator; and

31 (2) An unlicensed guardian or an unlicensed conservator.

- 1 c. Develop policies and procedures for proceedings when a guardian or a
- 2 conservator is unable to fulfill the duties of a guardian or a conservator.
- 3 d. Keep accurate records of all financial transactions performed under this chapter
- 4 in the manner required by the office of management and budget.
- 5 e. Provide a report each biennium to the legislative management regarding the
- 6 operations of the office, including the cost of public guardians and public
- 7 conservators, and any other information requested by the legislative
- 8 management.
- 9 3. The office may:
- 10 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 11 b. Grant licenses to a guardian or conservator and agency permits, including
- 12 revoking or suspending an agency permit.
- 13 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 14 conservator as a condition for licensure.
- 15 d. Establish mandatory disclosure and reporting requirements for a licensed
- 16 guardian or a licensed conservator, including a process to disclose information or
- 17 submit reports to the office.
- 18 e. Provide training for guardians and conservators.
- 19 f. Monitor guardianship and conservatorship services.
- 20 g. Provide annual reports to the governor.
- 21 h. Distribute funding for direct payments, expense reimbursements, or other public
- 22 services, including funding for public administrators.
- 23 i. Establish and collect fees to support guardianship and conservatorship services
- 24 and the duties of the office, which must be deposited in the guardianship and
- 25 conservatorship support fund.
- 26 j. Seek and apply for private, federal, or other funds to help support guardians and
- 27 conservators and to safeguard the rights of individuals who receive public
- 28 services.
- 29 k. Accept private funds for deposit in the guardianship and conservatorship support
- 30 fund.

1 4. The office may not authorize payment for services for any public guardian or public
2 conservator that provides services for more individuals than allowed through statute,
3 regulation, or administrative rule.

4 5. The office, its officers, or its employees, may not act as a public guardian or a public
5 conservator or act in any other representative capacity for any individual. This
6 subsection does not prohibit an officer or employee from acting as a guardian or
7 conservator in a personal capacity apart from any duties as an officer or employee.

8 6. The office is subject to audits by the state auditor under chapter 54-10.

9 **54-68-03. Review board - Director - Administrative authority - Operations committee.**

10 1. The office shall establish a guardianship and conservatorship review board to conduct
11 disciplinary proceedings for a guardian or conservator. The guardianship and
12 conservatorship review board shall consist of:

13 a. Three members representing guardians, appointed by the guardianship
14 association of North Dakota;

15 b. One member representing family guardians, appointed by the guardianship
16 association of North Dakota;

17 c. One member representing the protection and advocacy project, appointed by the
18 committee on protection and advocacy;

19 d. Two members appointed by the state bar association of North Dakota, consisting
20 of:

21 (1) One lawyer licensed to practice law in the state; and

22 (2) One retired judge, judicial referee, or surrogate judge; and

23 e. Two members of the public, appointed by the governor.

24 2. The review board shall appoint an office director, who serves at the will of the board.
25 Within the limits of legislative appropriations, the director shall employ the necessary
26 staff to provide office services in accordance with this chapter. The director, with the
27 advice and consent of the review board, may adopt rules for administration of the
28 office.

29 3. The office may establish a guardianship and conservatorship counsel to investigate
30 noncompliance reported under this chapter. The director of the office is the hiring
31 authority for the investigation counsel.

1 4. The office must create a guardianship and conservatorship operations committee to
2 supervise the operations of the office and investigation counsel. The guardianship and
3 conservatorship operations committee must develop and submit budgets for the office,
4 board, and investigation counsel.

5 a. The guardianship and conservatorship operations committee shall consist of:

6 (1) Two members of the legislative assembly, one from each chamber,
7 appointed by the chairman of the legislative management;

8 (2) Two members appointed by the state bar association of North Dakota,
9 consisting of:

10 (a) One lawyer licensed to practice law in the state; and

11 (b) One retired judge, judicial referee, or surrogate judge; and

12 (3) Two members appointed by the governor.

13 b. Initially, members of the guardianship and conservatorship operations committee
14 shall serve staggered terms as follows:

15 (1) Two members shall serve a term of one year;

16 (2) Two members shall serve a term of two years; and

17 (3) Two members shall serve a term of three years.

18 c. After the expiration of initial terms, all appointments must be for a term of three
19 years. A member may not serve more than two consecutive terms of three years.

20 d. A member of the guardianship and conservatorship operations committee
21 concurrently serving as a member of the legislative assembly shall receive
22 per diem compensation in accordance with section 54-35-10.

23 **54-68-04. Guardianship and conservatorship support fund - Continuing**
24 **appropriation.**

25 There is created in the state treasury the guardianship and conservatorship support fund.
26 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
27 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
28 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
29 defray the expenses of supporting guardianship and conservatorship services, including
30 guardianship and conservatorship training and monitoring.

54-68-05. Records - Confidentiality - Disclosure - Penalty.

1. Identifiable information concerning an individual who is applying for or receiving public services under this chapter is confidential and may be disclosed only:

a. In the administration of any program under the supervision or administration of the office.

b. When authorized by a policy of the office.

c. When allowed or required by rule or law.

2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:

a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.

b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.

c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.

d. A court when the court determines the information is necessary for the determination of an issue before the court.

e. The investigation counsel.

3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-06. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.
2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.
3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.
4. This section does not apply to:
 - a. A federal or state agency.
 - b. A financial institution under section 6-08.1-01 when appointed as a conservator.
 - c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.
5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-07. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.
2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-08. Authority - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.
2. The office must establish by rule a process to appeal license denials and board orders.
3. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:
 - a. The office or review board shall:

- 1 (1) Establish confidentiality and disclosure standards for investigating a report
- 2 or complaint and subsequent disciplinary proceedings.
- 3 (2) Adopt rules to effectuate the powers and duties under this chapter.
- 4 b. The office or review board may:
- 5 (1) Interview an alleged victim, witness, or any other individual with knowledge
- 6 of the situation.
- 7 (2) Access any record or information on an applicant, provider, or recipient of
- 8 public services.
- 9 (3) Issue subpoenas for the attendance of witnesses and the production of
- 10 designated documents, electronically stored information, or tangible things
- 11 in accordance with the North Dakota Rules of Civil Procedure.
- 12 (4) Order the deposition of a person residing within or outside the state to be
- 13 taken in accordance with the North Dakota Rules of Civil Procedure.
- 14 (5) Coordinate with other agencies and departments, including the attorney
- 15 general and bureau of criminal investigation.
- 16 3. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
- 17 the applicable policies, procedures, and standards of the office, or other approval
- 18 authority authorized by rule if the guardian or the conservator serves an adult ward,
- 19 adult protected person, or incapacitated person, as defined in title 30.1.
- 20 **54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary**
- 21 **authority for investigations.**
- 22 1. The attorney general shall act as legal counsel in any particular investigation or
- 23 proceeding under section 54-12-02. The attorney general shall appear and defend any
- 24 officer or employee of the office and any member of the review board in any action
- 25 founded on an act or omission arising out of performance of an official duty.
- 26 2. In accordance with chapter 54-12, the attorney general and bureau of criminal
- 27 investigation have primary authority to investigate criminal cases related to a
- 28 guardianship or conservatorship.
- 29 **54-68-10. Duty to disclose and cooperate.**
- 30 1. A state and local governmental entity and its officers and employees, and the officials,
- 31 officers, and employees of the courts of this state shall disclose records and

1 information requested by the board or investigation counsel or any authorized
2 representative of the board or investigation counsel and shall cooperate with and give
3 reasonable assistance to the board or investigation counsel and any authorized
4 representative of the board or counsel unless prohibited by federal regulation or law.

5 2. A sheriff or police officer shall serve process and execute all lawful orders upon
6 request of the office, its authorized representative, the review board, or the
7 investigation counsel. The service of process extends to all parts of the state in any
8 investigation or disciplinary proceeding under this chapter.

9 **54-68-11. Duties of witnesses - Penalty.**

10 1. An individual is obliged to attend as a witness in any investigation or disciplinary
11 proceeding commenced under this chapter.

12 2. If an individual refuses to attend, testify, or produce any writings or things required by
13 subpoena, the office, review board, or investigation counsel that issued the subpoena
14 may petition the district court of the district in which the attendance or production is
15 required for an order compelling the individual to attend and testify or produce the
16 writings or things required by the subpoena. The court shall order the individual to
17 appear before the court at a specified time and place to show cause why the individual
18 has not attended, testified, or produced the writings or things as required. A copy of
19 the order must be served on the individual. If the court determines the subpoena was
20 regularly issued, the court shall order the individual to appear at the time and place
21 fixed in the order and testify or produce the required writings or things.

22 3. An individual who fails to obey an order under this section is guilty of a class A
23 misdemeanor.

24 **54-68-12. Preferred claim.**

25 1. The office has a preferred claim against the estate of an individual or an individual's
26 spouse for recovery of funds expended under this chapter for the care of that
27 individual or the individual's spouse. All funds recovered under this chapter must be
28 deposited in the general fund.

29 2. A claim may not be required to be paid and interest may not begin to accrue during the
30 lifetime of the decedent's surviving spouse, if any.

1 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
2 under this chapter.

3 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

4 **SECTION 6. APPROPRIATION - ~~JUDICIAL BRANCH~~ - OFFICE OF GUARDIANSHIP**
5 **AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION.** The
6 funds provided in this section, or so much of the funds as may be necessary, are appropriated
7 out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the
8 ~~judicial branch~~office of guardianship and conservatorship for the purpose of defraying the
9 expenses of the office of guardianship and conservatorship, for the biennium beginning July 1,
10 2025, and ending June 30, 2027, as follows:

11	Establishment costs - indigents	\$1,550,000
12	Establishment costs - developmentally disabled	1,096,400
13	Public guardian and conservator fees - indigents	7,100,000
14	Guardianship contracts - developmentally disabled	5,500,000
15	Total general fund	\$15,246,400
16	<u>Office of guardianship and conservatorship</u>	<u>\$1,200,000</u>
17	<u>Establishment costs - indigents</u>	<u>1,550,000</u>
18	<u>Establishment costs - developmentally disabled</u>	<u>1,096,400</u>
19	<u>Public guardian and conservator fees - indigents</u>	<u>7,100,000</u>
20	<u>Guardianship contracts - developmentally disabled</u>	<u>5,500,000</u>
21	<u>Total general fund</u>	<u>\$16,446,400</u>
22	<u>Full-time equivalent positions</u>	<u>4.00</u>

25.0224.04007
Title.

Prepared by the Legislative Council
staff for Representative Frelich
April 2, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to create and enact chapter 27-27.1 and a new subsection to section
2 30.1-28-07 of the North Dakota Century Code, relating to an office of guardianship and
3 conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and
4 subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of
5 a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the
6 North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a
7 penalty; to provide for a report; to provide an appropriation; and to provide a continuing
8 appropriation; and to provide an expiration date.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 **SECTION 1.** Chapter 27-27.1 of the North Dakota Century Code is created and enacted as
11 follows:

12 **27-27.1-01. Definitions.**

13 As used in this chapter:

- 14 1. "Agency permit" means temporary authorization given by the office to an employee of
15 a professional guardianship or professional conservatorship entity which allows the
16 permitholder to provide guardianship or conservatorship services as an agent of the
17 entity.
- 18 2. "Board" means the guardianship and conservatorship review board.
- 19 3. "Identifiable information" means an individual's personal details, including the
20 individual's name, address, telephone number, facsimile number, social security

- 1 number, electronic mail address, program identification number, or any other unique
2 identifying number, characteristic, or code, and any demographic information collected
3 about the individual.
- 4 4. "Investigation counsel" means the guardianship and conservatorship counsel.
5 5. "Licensed conservator" means a person licensed by the office to provide
6 conservatorship services.
- 7 6. "Licensed guardian" means a person licensed by the office to provide guardianship
8 services.
- 9 7. "Office" means the office of guardianship and conservatorship.
- 10 8. "Public conservator" means a conservator under contract with the office to provide
11 conservatorship services for an individual eligible for public services.
- 12 9. "Public guardian" means a guardian under contract with the office to provide
13 guardianship services for an individual eligible for public services.
- 14 10. "Public services" means state or federally funded programs administered by the office
15 available to eligible individuals.
- 16 11. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.
- 18 12. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
21 **duties - Report - Audit.**

- 22 1. The office of guardianship and conservatorship is created as a division under the
23 supreme court to administer the programs assigned by state law or the supreme court.
- 24 2. The office shall:
- 25 a. Develop policies and procedures, including eligibility criteria, for:
26 (1) Receiving public services;
27 (2) A public guardian or a public conservator;
28 (3) A licensed guardian or a licensed conservator; and
29 (4) Distribution of funding for direct payments and expense reimbursements for
30 public services.
- 31 b. Develop ethical standards for:

- 1 (1) A licensed guardian or a licensed conservator; and
- 2 (2) An unlicensed guardian or an unlicensed conservator.
- 3 c. Develop policies and procedures for proceedings when a guardian or a
- 4 conservator is unable to fulfill the duties of a guardian or a conservator.
- 5 d. Keep accurate records of all financial transactions performed under this chapter
- 6 in the manner required by the office of management and budget.
- 7 e. Provide a report each biennium to the legislative management regarding the
- 8 operations of the office, including the cost of public guardians and public
- 9 conservators, and any other information requested by the legislative
- 10 management.
- 11 3. The office may:
- 12 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 13 b. Grant licenses to a guardian or conservator and agency permits, including
- 14 revoking or suspending an agency permit.
- 15 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 16 conservator as a condition for licensure.
- 17 d. Establish mandatory disclosure and reporting requirements for a licensed
- 18 guardian or a licensed conservator, including a process to disclose information or
- 19 submit reports to the office.
- 20 e. Provide training for guardians and conservators.
- 21 f. Monitor guardianship and conservatorship services.
- 22 g. Provide annual reports to the supreme court.
- 23 h. Distribute funding for direct payments, expense reimbursements, or other public
- 24 services, including funding for public administrators.
- 25 i. Establish and collect fees to support guardianship and conservatorship services
- 26 and the duties of the office, which must be deposited in the guardianship and
- 27 conservatorship support fund.
- 28 j. Seek and apply for private, federal, or other funds to help support guardians and
- 29 conservators and to safeguard the rights of individuals who receive public
- 30 services.

1 k. Accept private funds for deposit in the guardianship and conservatorship support
2 fund.

3 4. The office may not authorize payment for services for any public guardian or public
4 conservator that provides services for more individuals than allowed through statute,
5 regulation, court rule, or policy adopted by the office.

6 5. The office, its officers, or its employees, may not act as a public guardian or a public
7 conservator or act in any other representative capacity for any individual. This
8 subsection does not prohibit an officer or employee from acting as a guardian or
9 conservator in a personal capacity apart from any duties as an officer or employee.

10 6. The office is subject to audits by the state auditor under chapter 54-10.

11 **27-27.1-03. Guardianship and conservatorship support fund - Continuing**
12 **appropriation.**

13 There is created in the state treasury the guardianship and conservatorship support fund.
14 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
15 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
16 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial
17 branch to defray the expenses of the office for supporting guardianship and conservatorship
18 services, including guardianship and conservatorship training and monitoring.

19 **27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**

20 1. Identifiable information concerning an individual who is applying for or receiving public
21 services under this chapter is confidential and may be disclosed only:

22 a. In the administration of any program under the supervision or administration of
23 the office.

24 b. When authorized by a policy or procedure of the office.

25 c. When allowed or required by rule or law.

26 2. A report concerning an applicant, provider, or recipient of public services is confidential
27 if the report is made in good faith and may be disclosed only to:

28 a. Authorized staff and agents of the office, who may further disclose the
29 information to a person that has a definite interest in the well-being of the
30 individual concerned, is in a position to serve the individual's interests, and that

- 1 needs to know the contents of the records to assure the well-being and interests
2 of the individual concerned.
- 3 b. An individual who is the subject of the report, if the identity of the person
4 reporting or supplying information under this chapter is protected until the
5 information is needed for use in an administrative, legal, or disciplinary
6 proceeding arising out of the report.
- 7 c. A public official and the public official's authorized agent who requires the
8 information in connection with the discharge of official duties.
- 9 d. A court when the court determines the information is necessary for the
10 determination of an issue before the court.
- 11 e. The investigation counsel.
- 12 3. The investigation counsel may disclose information uncovered during a disciplinary
13 investigation to the attorney general or bureau of criminal investigation related to a
14 criminal investigation when the investigation counsel suspects the subject of the
15 investigation has committed a crime.
- 16 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
17 in the disclosure of confidential information in violation of this section is guilty of a
18 class C felony.
- 19 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**
20 **public - Exemption.**
- 21 1. A person may not serve as a guardian or a conservator for three or more adult
22 individuals at the same time unless that person is a licensed guardian or a licensed
23 conservator or has an agency permit. This subsection does not apply to an individual
24 appointed as a guardian or conservator for a family member.
- 25 2. A public guardian or a public conservator may not provide services to a minor unless
26 authorized by a proceeding under section 30.1-28-03.3.
- 27 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
28 or conservatorship services to the public.
- 29 4. This section does not apply to:
- 30 a. A federal or state agency.
- 31 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

1 c. An individual appointed as a guardian or conservator for a family memberHuman
2 service zones, including human service zone directors and human service zone
3 team members, as defined in section 50-01.1-01.

4 5. A person who violates this section after August 1, 2026, is guilty of a class B
5 misdemeanor.

6 **27-27.1-06. Immunity.**

7 A person who in good faith provides information or testimony regarding a guardian's or
8 conservator's misconduct or lack of professionalism is not subject to civil liability.

9 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 10 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
11 conservator license.
- 12 2. The supreme court must establish a process to appeal license denials and board
13 orders.
- 14 3. The courts shall waive court costs and filing fees in any proceeding in which a person
15 is receiving public services under this chapter.
- 16 4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow
17 the applicable policies, procedures, and standards of the office, or other approval
18 authority authorized by court rule, if the guardian or the conservator serves an adult
19 ward, adult protected person, or incapacitated person, as defined in title 30.1.

20 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
21 **conservatorship counsel - Guardianship and conservatorship operations committee.**

- 22 1. The supreme court mayshall establish a guardianship and conservatorship review
23 board to conduct disciplinary proceedings for a guardian or conservator. The
24 guardianship and conservatorship review board shall consist of:
- 25 a. Three members representing guardians, appointed by the guardianship
26 association of North Dakota;
- 27 b. One member representing family guardians, appointed by the guardianship
28 association of North Dakota;
- 29 c. One member representing the protection and advocacy project, appointed by the
30 committee on protection and advocacy;

- 1 d. Two members appointed by the state bar association of North Dakota, consisting
2 of:
3 (1) One lawyer licensed to practice law in the state; and
4 (2) One retired judge, retired judicial referee, or surrogate judge; and
5 e. Two members of the public, appointed by the supreme court.
6 2. The supreme court may establish a guardianship and conservatorship counsel to
7 investigate noncompliance reported under this chapter. The director of the office is the
8 hiring authority for the investigation counsel.
9 3. The supreme court must create a guardianship and conservatorship operations
10 committee to supervise the operations of the office and investigation counsel.
11 a. The guardianship and conservatorship operations committee shall consist of:
12 (1) Two members of the legislative assembly, one from each chamber,
13 appointed by the chairman of the legislative management;
14 (2) Two members appointed by the state bar association of North Dakota,
15 consisting of:
16 (a) One lawyer licensed to practice law in the state; and
17 (b) One retired judge, retired judicial referee, or surrogate judge;
18 (3) Two members appointed by the chief justice of the supreme court; and
19 (4) The state court administrator, or the state court administrator's designee,
20 who serves as an ex officio member.
21 b. Initially, members of the guardianship and conservatorship operations committee
22 shall serve staggered terms as follows:
23 (1) Two members shall serve a term of one year;
24 (2) Two members shall serve a term of two years; and
25 (3) Two members shall serve a term of three years.
26 c. After the expiration of initial terms, all appointments must be for a term of three
27 years. A member may not serve more than two consecutive terms of three years.
28 d. A member of the guardianship and conservatorship operations committee
29 concurrently serving as a member of the legislative assembly shall receive
30 per diem compensation in accordance with section 54-35-10.
31 e. The guardianship and conservatorship operations committee:

a. (1) Must develop and submit budgets for the office, board, and investigation counsel.

b. (2) Is the hiring authority for the office director.

c. (3) May adopt policies recommended by the office.

27-27.1-09. Supreme court - Discretionary powers.

The supreme court may:

1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.

2. Establish confidentiality and disclosure standards for disciplinary proceedings.

3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:

a. Administer oaths.

b. Order and otherwise provide for the inspection of books and records.

c. Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.

d. Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.

4. Adopt rules to effectuate the powers and duties under this chapter.

27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the board in any action founded on an act or omission arising out of performance of an official duty consistent with section 54-12-01.3.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

27-27.1-11. Duty to disclose and cooperate.

1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give reasonable assistance to the board or investigation counsel and any authorized representative of the board or counsel unless prohibited by federal regulation or law.
2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.

27-27.1-12. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.
2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.
3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

27-27.1-13. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 2. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 3. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 4. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other

1 medical institution and with respect to whom the department determined that resident
2 reasonably was not expected to be discharged from the medical institution and to
3 return home, or who was fifty-five years of age or older when the recipient received the
4 assistance, and on the death of the spouse of the deceased recipient, the total amount
5 of medical assistance paid on behalf of the recipient following the institutionalization of
6 the recipient who cannot reasonably be expected to be discharged from the medical
7 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
8 allowed as a preferred claim against the decedent's estate after payment, in the
9 following order, of:

- 10 a. Recipient liability expense applicable to the month of death for nursing home or
11 basic care services;
- 12 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 13 c. Expenses of the last illness, other than those incurred by medical assistance;
- 14 d. Expenses of administering the estate, including attorney's fees approved by the
15 court;
- 16 e. Claims made under chapter 50-01;
- 17 f. Claims made under chapter 50-24.5;
- 18 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
- 19 h. Claims made under chapter 27-27.1; and
- 20 i. Claims made under subsection 4.

21 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

22 **SECTION 6. APPROPRIATION - JUDICIAL BRANCH - OFFICE OF GUARDIANSHIP**

23 **AND CONSERVATORSHIP.** The funds provided in this section, or so much of the funds as may
24 be necessary, are appropriated out of any moneys in the general fund in the state treasury, not
25 otherwise appropriated, to the judicial branch for the purpose of defraying the expenses of the
26 office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending
27 June 30, 2027, as follows:

28 Establishment costs - indigents	\$1,550,000
29 Establishment costs - developmentally disabled	1,096,400
30 Public guardian and conservator fees - indigents	7,100,000

Sixty-ninth
Legislative Assembly

1	Guardianship contracts - developmentally disabled	<u>5,500,000</u>
2	Total general fund	\$15,246,400

3 **SECTION 7. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that
4 date is ineffective.

2025 HOUSE APPROPRIATIONS

SB 2029

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2029
4/7/2025

A BILL for an Act to create and enact a new subsection to section 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of guardianship and conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

11:19 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Monson, Murphy, Nathe, O'Brien, Pyle, Richter, Sanford, Stemen, Swiontek, Wagner

Members absent: Vice Chairman Kempenich, Representatives: Mitskog, J. Nelson

Discussion Topics:

- Bureau of Criminal Investigations Full-Time Employees
- Office of Conservatorship

11:19 a.m. Representative M. Ruby introduced the bill.

11:28 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2029
4/17/2025

A BILL for an Act to create and enact a new subsection to section 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of guardianship and conservatorship and the removal of a guardian; to amend and reenact section 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the removal of a conservator and the recovery of medical assistance expenses; to repeal chapter 27-27 of the North Dakota Century Code, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

8:31 a.m. Chairman Vigesaa called the meeting to order.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, Pyle, Richter, Sanford, Stemen, Swiontek, Wagner

Member absent: Representative O'Brien

Discussion Topics:

- Committee Action

8:33 a.m. Representative Hanson introduced Amendment LC #25.0224.04008, #45044.

8:39 a.m. Representative Hanson moved to adopt amendment LC #25.0224.04005.

8:39 a.m. Representative Stemen seconded the motion.

8:39 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y

Representative Jon O. Nelson	Y
Representative Emily O'Brien	AB
Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y
Representative Steve Swiontek	Y
Representative Scott Wagner	Y

8:39 a.m. Motion passed 22-0-1.

8:40 a.m. Representative Hanson moved Do Pass as Amended.

8:40 a.m. Representative Stemen seconded the motion.

8:41 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	AB
Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y
Representative Steve Swiontek	Y
Representative Scott Wagner	Y

8:41 a.m. Motion passed 22-0-1.

8:41 a.m. Representative Frelich will carry the bill.

8:42 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

VC 4/17/25
1 of 21

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

In place of amendment (25.0224.04006) adopted by the House, Reengrossed Senate Bill No. 2029 is amended by amendment (25.0224.04008) as follows:

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 and section 54-68-02.1 of the North Dakota Century Code, relating to the task
7 force on guardianship monitoring and transition requirements; to provide a penalty; to provide
8 for a report; to provide an appropriation; ~~and~~ to provide a continuing appropriation; to provide for
9 a transfer; and to provide an effective date.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
12 ~~follows:~~
13 ~~27-27.1-01. Definitions.~~
14 ~~As used in this chapter:~~
15 ~~1. "Agency permit" means temporary authorization given by the office to an employee of~~
16 ~~a professional guardianship or professional conservatorship entity which allows the~~
17 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
18 ~~entity.~~
19 ~~2. "Board" means the guardianship and conservatorship review board.~~

1 ~~3. "Identifiable information" means an individual's personal details, including the~~
2 ~~individual's name, address, telephone number, facsimile number, social security~~
3 ~~number, electronic mail address, program identification number, or any other unique~~
4 ~~identifying number, characteristic, or code, and any demographic information collected~~
5 ~~about the individual.~~

6 ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~

7 ~~5. "Licensed conservator" means a person licensed by the office to provide~~
8 ~~conservatorship services.~~

9 ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
10 ~~services.~~

11 ~~7. "Office" means the office of guardianship and conservatorship.~~

12 ~~8. "Public conservator" means a conservator under contract with the office to provide~~
13 ~~conservatorship services for an individual eligible for public services.~~

14 ~~9. "Public guardian" means a guardian under contract with the office to provide~~
15 ~~guardianship services for an individual eligible for public services.~~

16 ~~10. "Public services" means state or federally funded programs administered by the office~~
17 ~~available to eligible individuals.~~

18 ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
19 ~~a conservator license.~~

20 ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
21 ~~guardian license.~~

22 ~~**27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**~~
23 ~~**duties - Report - Audit.**~~

24 ~~1. The office of guardianship and conservatorship is created as a division under the~~
25 ~~supreme court to administer the programs assigned by state law or the supreme court.~~

26 ~~2. The office shall:~~

27 ~~a. Develop policies and procedures, including eligibility criteria, for:~~

28 ~~(1) Receiving public services;~~

29 ~~(2) A public guardian or a public conservator;~~

30 ~~(3) A licensed guardian or a licensed conservator; and~~

- 1 ~~(4) Distribution of funding for direct payments and expense reimbursements for~~
- 2 ~~public services.~~
- 3 ~~b. Develop ethical standards for:~~
- 4 ~~(1) A licensed guardian or a licensed conservator; and~~
- 5 ~~(2) An unlicensed guardian or an unlicensed conservator.~~
- 6 ~~c. Develop policies and procedures for proceedings when a guardian or a~~
- 7 ~~conservator is unable to fulfill the duties of a guardian or a conservator.~~
- 8 ~~d. Keep accurate records of all financial transactions performed under this chapter~~
- 9 ~~in the manner required by the office of management and budget.~~
- 10 ~~e. Provide a report each biennium to the legislative management regarding the~~
- 11 ~~operations of the office, including the cost of public guardians and public~~
- 12 ~~conservators, and any other information requested by the legislative~~
- 13 ~~management.~~
- 14 ~~3. The office may:~~
- 15 ~~a. Recommend rules applicable to a licensed guardian or a licensed conservator.~~
- 16 ~~b. Grant licenses to a guardian or conservator and agency permits, including~~
- 17 ~~revoking or suspending an agency permit.~~
- 18 ~~c. Require insurance or bond coverage for a licensed guardian or a licensed~~
- 19 ~~conservator as a condition for licensure.~~
- 20 ~~d. Establish mandatory disclosure and reporting requirements for a licensed~~
- 21 ~~guardian or a licensed conservator, including a process to disclose information or~~
- 22 ~~submit reports to the office.~~
- 23 ~~e. Provide training for guardians and conservators.~~
- 24 ~~f. Monitor guardianship and conservatorship services.~~
- 25 ~~g. Provide annual reports to the supreme court.~~
- 26 ~~h. Distribute funding for direct payments, expense reimbursements, or other public~~
- 27 ~~services, including funding for public administrators.~~
- 28 ~~i. Establish and collect fees to support guardianship and conservatorship services~~
- 29 ~~and the duties of the office, which must be deposited in the guardianship and~~
- 30 ~~conservatorship support fund.~~

- 1 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
2 ~~conservators and to safeguard the rights of individuals who receive public~~
3 ~~services.~~
- 4 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
5 ~~fund.~~
- 6 ~~4. The office may not authorize payment for services for any public guardian or public~~
7 ~~conservator that provides services for more individuals than allowed through statute,~~
8 ~~regulation, court rule, or policy adopted by the office.~~
- 9 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
10 ~~conservator or act in any other representative capacity for any individual. This~~
11 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
12 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~
- 13 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~
- 14 ~~**27-27.1-03. Guardianship and conservatorship support fund – Continuing**~~
15 ~~**appropriation.**~~
- 16 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
17 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
18 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
19 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
20 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
21 ~~services, including guardianship and conservatorship training and monitoring.~~
- 22 ~~**27-27.1-04. Records – Confidentiality – Disclosure – Penalty.**~~
- 23 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
24 ~~services under this chapter is confidential and may be disclosed only:~~
- 25 ~~a. In the administration of any program under the supervision or administration of~~
26 ~~the office.~~
- 27 ~~b. When authorized by a policy or procedure of the office.~~
- 28 ~~c. When allowed or required by rule or law.~~
- 29 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
30 ~~if the report is made in good faith and may be disclosed only to:~~

1 ~~a. Authorized staff and agents of the office, who may further disclose the~~
2 ~~information to a person that has a definite interest in the well-being of the~~
3 ~~individual concerned, is in a position to serve the individual's interests, and that~~
4 ~~needs to know the contents of the records to assure the well-being and interests~~
5 ~~of the individual concerned.~~

6 ~~b. An individual who is the subject of the report, if the identity of the person~~
7 ~~reporting or supplying information under this chapter is protected until the~~
8 ~~information is needed for use in an administrative, legal, or disciplinary~~
9 ~~proceeding arising out of the report.~~

10 ~~c. A public official and the public official's authorized agent who requires the~~
11 ~~information in connection with the discharge of official duties.~~

12 ~~d. A court when the court determines the information is necessary for the~~
13 ~~determination of an issue before the court.~~

14 ~~e. The investigation counsel.~~

15 ~~3. The investigation counsel may disclose information uncovered during a disciplinary~~
16 ~~investigation to the attorney general or bureau of criminal investigation related to a~~
17 ~~criminal investigation when the investigation counsel suspects the subject of the~~
18 ~~investigation has committed a crime.~~

19 ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces~~
20 ~~in the disclosure of confidential information in violation of this section is guilty of a~~
21 ~~class C felony.~~

22 ~~**27-27.1-05. Guardianship and conservatorship limitations – Representation to the**~~
23 ~~**public – Exemption.**~~

24 ~~1. A person may not serve as a guardian or a conservator for three or more adult~~
25 ~~individuals at the same time unless that person is a licensed guardian or a licensed~~
26 ~~conservator or has an agency permit.~~

27 ~~2. A public guardian or a public conservator may not provide services to a minor unless~~
28 ~~authorized by a proceeding under section 30.1-28-03.3.~~

29 ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship~~
30 ~~or conservatorship services to the public.~~

31 ~~4. This section does not apply to:~~

1 ~~a. A federal or state agency.~~

2 ~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~

3 ~~c. An individual appointed as a guardian or conservator for a family member.~~

4 ~~5. A person who violates this section after August 1, 2026, is guilty of a class B~~
5 ~~misdemeanor.~~

6 ~~**27-27.1-06. Immunity.**~~

7 ~~A person who in good faith provides information or testimony regarding a guardian's or~~
8 ~~conservator's misconduct or lack of professionalism is not subject to civil liability.~~

9 ~~**27-27.1-07. Jurisdiction – Waiver of court costs – Applicability.**~~

10 ~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a~~
11 ~~conservator license.~~

12 ~~2. The supreme court must establish a process to appeal license denials and board~~
13 ~~orders.~~

14 ~~3. The courts shall waive court costs and filing fees in any proceeding in which a person~~
15 ~~is receiving public services under this chapter.~~

16 ~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow~~
17 ~~the applicable policies, procedures, and standards of the office, or other approval~~
18 ~~authority authorized by court rule, if the guardian or the conservator serves an adult~~
19 ~~ward, adult protected person, or incapacitated person, as defined in title 30.1.~~

20 ~~**27-27.1-08. Guardianship and conservatorship review board – Guardianship and**~~
21 ~~**conservatorship counsel – Guardianship and conservatorship operations committee.**~~

22 ~~1. The supreme court may establish a guardianship and conservatorship review board to~~
23 ~~conduct disciplinary proceedings for a guardian or conservator.~~

24 ~~2. The supreme court may establish a guardianship and conservatorship counsel to~~
25 ~~investigate noncompliance reported under this chapter. The director of the office is the~~
26 ~~hiring authority for the investigation counsel.~~

27 ~~3. The supreme court must create a guardianship and conservatorship operations~~
28 ~~committee to supervise the operations of the office and investigation counsel. The~~
29 ~~operations committee:~~

30 ~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~

31 ~~b. Is the hiring authority for the office director.~~

~~c. May adopt policies recommended by the office.~~

~~**27-27.1-09. Supreme court – Discretionary powers.**~~

~~The supreme court may:~~

~~1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.~~

~~2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~

~~3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:~~

~~a. Administer oaths.~~

~~b. Order and otherwise provide for the inspection of books and records.~~

~~c. Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.~~

~~d. Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.~~

~~4. Adopt rules to effectuate the powers and duties under this chapter.~~

~~**27-27.1-10. Attorney general – Counsel – Bureau of criminal investigation – Primary authority for investigations.**~~

~~1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the board in any action founded on an act or omission arising out of performance of an official duty consistent with section 54-12-01.3.~~

~~2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.~~

~~**27-27.1-11. Duty to disclose and cooperate.**~~

~~1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give~~

1 reasonable assistance to the board or investigation counsel and any authorized
2 representative of the board or counsel unless prohibited by federal regulation or law.

3 ~~2.~~ The service of process extends to all parts of the state in any investigation or
4 disciplinary proceeding under this chapter. A sheriff or police officer shall serve
5 process and execute all lawful orders upon request of the office, its authorized
6 representative, the board, or the investigation counsel.

7 ~~**27-27.1-12. Duties of witnesses – Penalty.**~~

8 ~~1.~~ An individual is obliged to attend as a witness in any investigation or disciplinary
9 proceeding commenced under this chapter.

10 ~~2.~~ If an individual refuses to attend, testify, or produce any writings or things required by
11 subpoena, the office, board, or investigation counsel that issued the subpoena may
12 petition the district court of the district in which the attendance or production is
13 required for an order compelling the individual to attend and testify or produce the
14 writings or things required by the subpoena. The court shall order the individual to
15 appear before the court at a specified time and place to show cause why the individual
16 has not attended, testified, or produced the writings or things as required. A copy of
17 the order must be served on the individual. If the court determines the subpoena was
18 regularly issued, the court shall order the individual to appear at the time and place
19 fixed in the order and testify or produce the required writings or things.

20 ~~3.~~ An individual who fails to obey an order under this section is guilty of a class A
21 misdemeanor.

22 ~~**27-27.1-13. Preferred claim.**~~

23 ~~1.~~ The office has a preferred claim against the estate of an individual or an individual's
24 spouse for recovery of funds expended under this chapter for the care of that
25 individual or the individual's spouse. All funds recovered under this chapter must be
26 deposited in the general fund.

27 ~~2.~~ A claim may not be required to be paid and interest may not begin to accrue during the
28 lifetime of the decedent's surviving spouse, if any.

29 ~~3.~~ A statute of limitation or similar statute or the doctrine of laches may not bar a claim
30 under this chapter.

SECTION 1. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount

1 of medical assistance paid on behalf of the recipient following the institutionalization of
2 the recipient who cannot reasonably be expected to be discharged from the medical
3 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
4 allowed as a preferred claim against the decedent's estate after payment, in the
5 following order, of:

- 6 a. Recipient liability expense applicable to the month of death for nursing home or
7 basic care services;
- 8 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 9 c. Expenses of the last illness, other than those incurred by medical assistance;
- 10 d. Expenses of administering the estate, including attorney's fees approved by the
11 court;
- 12 e. Claims made under chapter 50-01;
- 13 f. Claims made under chapter 50-24.5;
- 14 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 15 h. Claims made under chapter ~~27-27.1~~54-68; and
- 16 i. Claims made under subsection 4.

17 **SECTION 4.** Chapter 54-68 of the North Dakota Century Code is created and enacted as
18 follows:

19 **54-68-01. Definitions.**

20 As used in this chapter:

- 21 1. "Agency permit" means temporary authorization given by the office to an employee of
22 a professional guardianship or professional conservatorship entity which allows the
23 permitholder to provide guardianship or conservatorship services as an agent of the
24 entity.
- 25 2. "Identifiable information" means an individual's personal details, including the
26 individual's name, address, telephone number, facsimile number, social security
27 number, electronic mail address, program identification number, or any other unique
28 identifying number, characteristic, or code, and any demographic information collected
29 about the individual.
- 30 3. "Investigation counsel" means the guardianship and conservatorship counsel.

1 4. "Licensed conservator" means a person licensed by the office to provide
2 conservatorship services.

3 5. "Licensed guardian" means a person licensed by the office to provide guardianship
4 services.

5 6. "Office" means the office of guardianship and conservatorship.

6 7. "Public conservator" means a conservator under contract with the office to provide
7 conservatorship services for an individual eligible for public services.

8 8. "Public guardian" means a guardian under contract with the office to provide
9 guardianship services for an individual eligible for public services.

10 9. "Public services" means state or federally funded programs administered by the office
11 available to eligible individuals.

12 10. "Review board" means the guardianship and conservatorship review board
13 established under section 54-68-03.

14 11. "Unlicensed conservator" means a person providing conservatorship services without
15 a conservator license.

16 12. "Unlicensed guardian" means a person providing guardianship services without a
17 guardian license.

18 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
19 **Report - Audit.**

20 1. The office, in its capacity of supervising and directing guardianship and
21 conservatorship, shall operate independently of any state agency that provides
22 services to individuals under guardianship or conservatorship. The office shall
23 administer programs assigned by state law. The office may adopt rules to administer
24 and enforce this chapter.

25 2. The office shall:

26 a. Develop policies and procedures, including eligibility criteria, for:

27 (1) Receiving public services;

28 (2) A public guardian or a public conservator;

29 (3) A licensed guardian or a licensed conservator; and

30 (4) Distribution of funding for direct payments and expense reimbursements for
31 public services.

b. Develop ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

c. Develop policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

d. Keep accurate records of all financial transactions performed under this chapter in the manner required by the office of management and budget.

e. Provide a report each biennium to the legislative management regarding the operations of the office, including the cost of public guardians and public conservators, and any other information requested by the legislative management.

3. The office may:

a. Recommend rules applicable to a licensed guardian or a licensed conservator.

b. Grant licenses to a guardian or conservator and agency permits, including revoking or suspending an agency permit.

c. Require insurance or bond coverage for a licensed guardian or a licensed conservator as a condition for licensure.

d. Establish mandatory disclosure and reporting requirements for a licensed guardian or a licensed conservator, including a process to disclose information or submit reports to the office.

e. Provide training for guardians and conservators.

f. Monitor guardianship and conservatorship services.

g. Provide annual reports to the governor.

h. Distribute funding for direct payments, expense reimbursements, or other public services, including funding for public administrators.

i. Establish and collect fees to support guardianship and conservatorship services and the duties of the office, which must be deposited in the guardianship and conservatorship support fund.

j. Seek and apply for private, federal, or other funds to help support guardians and conservators and to safeguard the rights of individuals who receive public services.

k. Accept private funds for deposit in the guardianship and conservatorship support fund.

4. The office may not authorize payment for services for any public guardian or public conservator that provides services for more individuals than allowed through statute, regulation, or administrative rule.

5. The office, its officers, or its employees, may not act as a public guardian or a public conservator or act in any other representative capacity for any individual. This subsection does not prohibit an officer or employee from acting as a guardian or conservator in a personal capacity apart from any duties as an officer or employee.

6. The office is subject to audits by the state auditor under chapter 54-10.

54-68-02.1. Transition - Requirements.

1. By March 31, 2026, the office shall:

a. Establish the guardianship and conservatorship review board.

b. Appoint an executive director and employ the necessary staff to provide office services within the limits of legislative appropriations.

c. Develop by rule initial policies, procedures, and eligibility criteria for:

(1) Receiving public services;

(2) A public guardian or a public conservator;

(3) A licensed guardian or a licensed conservator; and

(4) Distribution of funding for direct payments and expense reimbursements for public services.

d. Develop by rule ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

e. Develop by rule policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

f. Set by rule daily rates for fees and a reimbursement mechanism protocol.

g. Establish initial fees to support guardianship and conservatorship services and the duties of the office.

2. The office may adopt rules necessary to facilitate the creation of the office and assume the administration of guardianship programs.

54-68-03. Review board - Director - Administrative authority - Operations committee.

1. The office shall establish a guardianship and conservatorship review board to conduct disciplinary proceedings for a guardian or conservator. The guardianship and conservatorship review board shall consist of:

a. Three members representing guardians, appointed by the guardianship association of North Dakota;

b. One member representing family guardians, appointed by the guardianship association of North Dakota;

c. One member representing the protection and advocacy project, appointed by the committee on protection and advocacy;

d. Two members appointed by the state bar association of North Dakota, consisting of:

(1) One lawyer licensed to practice law in the state; and

(2) One retired judge, judicial referee, or surrogate judge; and

e. Two members of the public, appointed by the governor.

2. The review board shall appoint an office director, who serves at the will of the review board. Within the limits of legislative appropriations, the director shall employ the necessary staff to provide office services in accordance with this chapter. The director, with the advice and consent of the review board, may adopt rules for administration of the office.

3. The office may establish a guardianship and conservatorship counsel to investigate noncompliance under this chapter reported after April 1, 2026. The director of the office is the hiring authority for the investigation counsel.

4. The office shall create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The guardianship and conservatorship operations committee shall develop and submit budgets for the office, review board, and investigation counsel.

a. The guardianship and conservatorship operations committee shall consist of:

(1) Two members of the legislative assembly, one from each chamber, appointed by the chairman of the legislative management;

(2) Two members appointed by the state bar association of North Dakota,
consisting of:

(a) One lawyer licensed to practice law in the state; and

(b) One retired judge, judicial referee, or surrogate judge; and

(3) Two members appointed by the governor.

b. Initially, members of the guardianship and conservatorship operations committee
shall serve staggered terms as follows:

(1) Two members shall serve a term of one year;

(2) Two members shall serve a term of two years; and

(3) Two members shall serve a term of three years.

c. After the expiration of initial terms, all appointments must be for a term of three
years. A member may not serve more than two consecutive terms of three years.

d. A member of the guardianship and conservatorship operations committee
concurrently serving as a member of the legislative assembly shall receive
per diem compensation in accordance with section 54-35-10.

**54-68-04. Guardianship and conservatorship support fund - Continuing
appropriation.**

There is created in the state treasury the guardianship and conservatorship support fund.
The fund consists of all moneys transferred to the fund by the legislative assembly, interest
upon moneys in the fund, fee collections, donations, grants, and other contributions received for
deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
defray the expenses of supporting guardianship and conservatorship services, including
guardianship and conservatorship training and monitoring.

54-68-05. Records - Confidentiality - Disclosure - Penalty.

1. Identifiable information concerning an individual who is applying for or receiving public
services under this chapter is confidential and may be disclosed only:

a. In the administration of any program under the supervision or administration of
the office.

b. When authorized by a policy of the office.

c. When allowed or required by rule or law.

2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:

a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.

b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.

c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.

d. A court when the court determines the information is necessary for the determination of an issue before the court.

e. The investigation counsel.

3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-06. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.

4. This section does not apply to:

a. A federal or state agency.

b. A financial institution under section 6-08.1-01 when appointed as a conservator.

c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.

5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-07. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.

2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-08. Authority - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.

2. The office shall establish by rule a process to appeal license denials and review board orders.

3. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:

a. The office or review board shall:

(1) Establish confidentiality and disclosure standards for investigating a report or complaint and subsequent disciplinary proceedings.

(2) Adopt rules to effectuate the powers and duties under this chapter.

b. The office or review board may:

(1) Interview an alleged victim, witness, or any other individual with knowledge of the situation.

(2) Access any record or information on an applicant, provider, or recipient of public services.

(3) Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.

(4) Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.

(5) Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.

3. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval authority authorized by rule if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.

54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the review board in any action founded on an act or omission arising out of performance of an official duty.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

54-68-10. Duty to disclose and cooperate.

1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the review board or investigation counsel or any authorized representative of the review board or investigation counsel and shall cooperate with and give reasonable assistance to the review board or investigation counsel and any authorized representative of the review board or counsel unless prohibited by federal regulation or law.

2. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the review board, or the

1 investigation counsel. The service of process extends to all parts of the state in any
2 investigation or disciplinary proceeding under this chapter.

3 **54-68-11. Duties of witnesses - Penalty.**

4 1. An individual is obliged to attend as a witness in any investigation or disciplinary
5 proceeding commenced under this chapter.

6 2. If an individual refuses to attend, testify, or produce any writings or things required by
7 subpoena, the office, review board, or investigation counsel that issued the subpoena
8 may petition the district court of the district in which the attendance or production is
9 required for an order compelling the individual to attend and testify or produce the
10 writings or things required by the subpoena. The court shall order the individual to
11 appear before the court at a specified time and place to show cause why the individual
12 has not attended, testified, or produced the writings or things as required. A copy of
13 the order must be served on the individual. If the court determines the subpoena was
14 regularly issued, the court shall order the individual to appear at the time and place
15 fixed in the order and testify or produce the required writings or things.

16 3. An individual who fails to obey an order under this section is guilty of a class A
17 misdemeanor.

18 **54-68-12. Preferred claim.**

19 1. The office has a preferred claim against the estate of an individual or an individual's
20 spouse for recovery of funds expended under this chapter for the care of that
21 individual or the individual's spouse. All funds recovered under this chapter must be
22 deposited in the general fund.

23 2. A claim may not be required to be paid and interest may not begin to accrue during the
24 lifetime of the decedent's surviving spouse, if any.

25 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
26 under this chapter.

27 **SECTION 5. REPEAL.** Chapter 27-27 of the North Dakota Century Code is repealed.

28 **SECTION 6. REPEAL.** Section 54-68-02.1 of the North Dakota Century Code, as created in
29 Section 4 of this Act, is repealed.

30 **SECTION 7. APPROPRIATION - ~~JUDICIAL BRANCH~~ - OFFICE OF GUARDIANSHIP**
31 **AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION.** The

funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial branch~~ office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs – indigents	\$1,550,000
Establishment costs – developmentally disabled	1,096,400
Public guardian and conservator fees – indigents	7,100,000
Guardianship contracts – developmentally disabled	5,500,000
Total general fund	\$15,246,400
<u>Office of guardianship and conservatorship</u>	<u>\$1,200,000</u>
<u>Total general fund</u>	<u>\$1,200,000</u>
<u>Full-time equivalent positions</u>	<u>4.00</u>

SECTION 8. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority and full-time equivalent positions authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 9. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority for guardianship related services and grants from the department of health and human services in House Bill No. 1012 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 10. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill No. 1015 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 11. EFFECTIVE DATE.

- Sections 54-68-06, 54-68-08, and 54-68-09, as created in Section 4 of this Act, become effective on April 1, 2026.
- Sections 6, 8, 9, and 10 of this Act become effective on April 1, 2026.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2029 - Guardianship and Conservatorship - House Action**

	Base Budget	Senate Version	House Changes	House Version
Guardianship and conservatorship		\$15,246,400	(\$14,046,400)	\$1,200,000
Total all funds	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000
Less estimated income	0	0	0	0
General fund	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000
FTE	0.00	0.00	4.00	4.00

Department 184 - Guardianship and Conservatorship - Detail of House Changes

	Adds Funding for New FTE Positions ¹	Removes Funding for Guardianship Grants ²	Total House Changes
Guardianship and conservatorship	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Total all funds	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Less estimated income	0	0	0
General fund	\$1,200,000	(\$15,246,400)	(\$14,046,400)
FTE	4.00	0.00	4.00

¹ Funding of \$1.2 million from the general fund is added by the House for operations and salary costs relating to 4 new FTE positions for the newly created Office of Guardianship and Conservatorship, including an executive director, court monitor, account analyst, and administrative assistant. The Senate included 4 new FTE positions and related funding for guardianship and conservatorship in the judicial branch budget.

² Funding of \$15,246,400 for grants currently administered by the Office of Management and Budget and the Department of Health and Human Services is removed from the newly created Office of Guardianship and Conservatorship by the House.

Senate Bill No. 2029 - Other Changes - House Action

This amendment establishes a new Office of Guardianship and Conservatorship outside of the judicial branch and provides for the transfer of any remaining guardianship and conservatorship funding and FTE positions from the judicial branch, Office of Management and Budget, and Department of Health and Human Services to the newly created Office of Guardianship and Conservatorship on April 1, 2026.

**REPORT OF STANDING COMMITTEE
REENGROSSED AND AMENDED SB 2029**

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **AMENDMENTS** ([25.0224.04008](#)) and when so amended, recommends **DO PASS** (22 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). Reengrossed SB 2029, as amended, was placed on the Sixth order on the calendar.

25.0224.04008
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for Representative Hanson
April 16, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

In place of amendment (25.0224.04006) adopted by the House, Reengrossed Senate Bill No. 2029 is amended by amendment (25.0224.04008) as follows:

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 and section 54-68-02.1 of the North Dakota Century Code, relating to the task
7 force on guardianship monitoring and transition requirements; to provide a penalty; to provide
8 for a report; to provide an appropriation; ~~and~~ to provide a continuing appropriation; to provide for
9 a transfer; and to provide an effective date.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~—SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
12 ~~follows:~~
13 ~~—27-27.1-01. Definitions.~~
14 ~~—As used in this chapter:~~
15 ~~—1. "Agency permit" means temporary authorization given by the office to an employee of~~
16 ~~a professional guardianship or professional conservatorship entity which allows the~~
17 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
18 ~~entity.~~
19 ~~—2. "Board" means the guardianship and conservatorship review board.~~

1 — ~~3. "Identifiable information" means an individual's personal details, including the~~
2 ~~individual's name, address, telephone number, facsimile number, social security~~
3 ~~number, electronic mail address, program identification number, or any other unique~~
4 ~~identifying number, characteristic, or code, and any demographic information collected~~
5 ~~about the individual.~~

6 — ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~

7 — ~~5. "Licensed conservator" means a person licensed by the office to provide~~
8 ~~conservatorship services.~~

9 — ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
10 ~~services.~~

11 — ~~7. "Office" means the office of guardianship and conservatorship.~~

12 — ~~8. "Public conservator" means a conservator under contract with the office to provide~~
13 ~~conservatorship services for an individual eligible for public services.~~

14 — ~~9. "Public guardian" means a guardian under contract with the office to provide~~
15 ~~guardianship services for an individual eligible for public services.~~

16 — ~~10. "Public services" means state or federally funded programs administered by the office~~
17 ~~available to eligible individuals.~~

18 — ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
19 ~~a conservator license.~~

20 — ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
21 ~~guardian license.~~

22 — ~~**27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**~~
23 ~~**duties - Report - Audit.**~~

24 — ~~1. The office of guardianship and conservatorship is created as a division under the~~
25 ~~supreme court to administer the programs assigned by state law or the supreme court.~~

26 — ~~2. The office shall:~~

27 — ~~a. Develop policies and procedures, including eligibility criteria, for:~~

28 — ~~(1) Receiving public services;~~

29 — ~~(2) A public guardian or a public conservator;~~

30 — ~~(3) A licensed guardian or a licensed conservator; and~~

- 1 ~~———— (4) Distribution of funding for direct payments and expense reimbursements for~~
2 ~~public services.~~
- 3 ~~———— b. Develop ethical standards for:~~
- 4 ~~———— (1) A licensed guardian or a licensed conservator; and~~
- 5 ~~———— (2) An unlicensed guardian or an unlicensed conservator.~~
- 6 ~~———— c. Develop policies and procedures for proceedings when a guardian or a~~
7 ~~conservator is unable to fulfill the duties of a guardian or a conservator.~~
- 8 ~~———— d. Keep accurate records of all financial transactions performed under this chapter~~
9 ~~in the manner required by the office of management and budget.~~
- 10 ~~———— e. Provide a report each biennium to the legislative management regarding the~~
11 ~~operations of the office, including the cost of public guardians and public~~
12 ~~conservators, and any other information requested by the legislative~~
13 ~~management.~~
- 14 ~~———— 3. The office may:~~
- 15 ~~———— a. Recommend rules applicable to a licensed guardian or a licensed conservator.~~
- 16 ~~———— b. Grant licenses to a guardian or conservator and agency permits, including~~
17 ~~revoking or suspending an agency permit.~~
- 18 ~~———— c. Require insurance or bond coverage for a licensed guardian or a licensed~~
19 ~~conservator as a condition for licensure.~~
- 20 ~~———— d. Establish mandatory disclosure and reporting requirements for a licensed~~
21 ~~guardian or a licensed conservator, including a process to disclose information or~~
22 ~~submit reports to the office.~~
- 23 ~~———— e. Provide training for guardians and conservators.~~
- 24 ~~———— f. Monitor guardianship and conservatorship services.~~
- 25 ~~———— g. Provide annual reports to the supreme court.~~
- 26 ~~———— h. Distribute funding for direct payments, expense reimbursements, or other public~~
27 ~~services, including funding for public administrators.~~
- 28 ~~———— i. Establish and collect fees to support guardianship and conservatorship services~~
29 ~~and the duties of the office, which must be deposited in the guardianship and~~
30 ~~conservatorship support fund.~~

1 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
2 ~~conservators and to safeguard the rights of individuals who receive public~~
3 ~~services.~~

4 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
5 ~~fund.~~

6 ~~4. The office may not authorize payment for services for any public guardian or public~~
7 ~~conservator that provides services for more individuals than allowed through statute,~~
8 ~~regulation, court rule, or policy adopted by the office.~~

9 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
10 ~~conservator or act in any other representative capacity for any individual. This~~
11 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
12 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~

13 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~

14 ~~**27-27.1-03. Guardianship and conservatorship support fund - Continuing**~~
15 ~~**appropriation.**~~

16 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
17 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
18 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
19 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
20 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
21 ~~services, including guardianship and conservatorship training and monitoring.~~

22 ~~**27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**~~

23 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
24 ~~services under this chapter is confidential and may be disclosed only:~~

25 ~~a. In the administration of any program under the supervision or administration of~~
26 ~~the office.~~

27 ~~b. When authorized by a policy or procedure of the office.~~

28 ~~c. When allowed or required by rule or law.~~

29 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
30 ~~if the report is made in good faith and may be disclosed only to:~~

- 1 ~~a. Authorized staff and agents of the office, who may further disclose the~~
2 ~~information to a person that has a definite interest in the well-being of the~~
3 ~~individual concerned, is in a position to serve the individual's interests, and that~~
4 ~~needs to know the contents of the records to assure the well-being and interests~~
5 ~~of the individual concerned.~~
- 6 ~~b. An individual who is the subject of the report, if the identity of the person~~
7 ~~reporting or supplying information under this chapter is protected until the~~
8 ~~information is needed for use in an administrative, legal, or disciplinary~~
9 ~~proceeding arising out of the report.~~
- 10 ~~c. A public official and the public official's authorized agent who requires the~~
11 ~~information in connection with the discharge of official duties.~~
- 12 ~~d. A court when the court determines the information is necessary for the~~
13 ~~determination of an issue before the court.~~
- 14 ~~e. The investigation counsel.~~
- 15 ~~3. The investigation counsel may disclose information uncovered during a disciplinary~~
16 ~~investigation to the attorney general or bureau of criminal investigation related to a~~
17 ~~criminal investigation when the investigation counsel suspects the subject of the~~
18 ~~investigation has committed a crime.~~
- 19 ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces~~
20 ~~in the disclosure of confidential information in violation of this section is guilty of a~~
21 ~~class C felony.~~
- 22 ~~**27-27.1-05. Guardianship and conservatorship limitations - Representation to the**~~
23 ~~**public - Exemption.**~~
- 24 ~~1. A person may not serve as a guardian or a conservator for three or more adult~~
25 ~~individuals at the same time unless that person is a licensed guardian or a licensed~~
26 ~~conservator or has an agency permit.~~
- 27 ~~2. A public guardian or a public conservator may not provide services to a minor unless~~
28 ~~authorized by a proceeding under section 30.1-28-03.3.~~
- 29 ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship~~
30 ~~or conservatorship services to the public.~~
- 31 ~~4. This section does not apply to:~~

~~a. A federal or state agency.~~

~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~

~~c. An individual appointed as a guardian or conservator for a family member.~~

~~5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.~~

~~**27-27.1-06. Immunity.**~~

~~A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.~~

~~**27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**~~

~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a conservator license.~~

~~2. The supreme court must establish a process to appeal license denials and board orders.~~

~~3. The courts shall waive court costs and filing fees in any proceeding in which a person is receiving public services under this chapter.~~

~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval authority authorized by court rule, if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.~~

~~**27-27.1-08. Guardianship and conservatorship review board - Guardianship and conservatorship counsel - Guardianship and conservatorship operations committee.**~~

~~1. The supreme court may establish a guardianship and conservatorship review board to conduct disciplinary proceedings for a guardian or conservator.~~

~~2. The supreme court may establish a guardianship and conservatorship counsel to investigate noncompliance reported under this chapter. The director of the office is the hiring authority for the investigation counsel.~~

~~3. The supreme court must create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The operations committee:~~

~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~

~~b. Is the hiring authority for the office director.~~

1 ~~_____ c. May adopt policies recommended by the office.~~

2 ~~**27-27.1-09. Supreme court - Discretionary powers.**~~

3 ~~_____ The supreme court may:~~

4 ~~_____ 1. Grant immunity to a member of the board and the board's agents if a district court or~~
5 ~~the supreme court would have immunity in performing the same functions.~~

6 ~~_____ 2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~

7 ~~_____ 3. Authorize officials, officers, agents, and designees of the office, the board, and the~~
8 ~~investigation counsel to:~~

9 ~~_____ a. Administer oaths.~~

10 ~~_____ b. Order and otherwise provide for the inspection of books and records.~~

11 ~~_____ c. Issue subpoenas for the attendance of witnesses and the production of~~
12 ~~designated documents, electronically stored information, or tangible things in~~
13 ~~accordance with the North Dakota Rules of Civil Procedure.~~

14 ~~_____ d. Order the deposition of a person residing within or outside the state to be taken in~~
15 ~~accordance with the North Dakota Rules of Civil Procedure.~~

16 ~~_____ 4. Adopt rules to effectuate the powers and duties under this chapter.~~

17 ~~**27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**~~
18 ~~**authority for investigations.**~~

19 ~~_____ 1. The attorney general shall act as legal counsel in any particular investigation or~~
20 ~~proceeding under section 54-12-02. The attorney general shall appear and defend any~~
21 ~~officer or employee of the office and any member of the board in any action founded~~
22 ~~on an act or omission arising out of performance of an official duty consistent with~~
23 ~~section 54-12-01.3.~~

24 ~~_____ 2. In accordance with chapter 54-12, the attorney general and bureau of criminal~~
25 ~~investigation have primary authority to investigate criminal cases related to a~~
26 ~~guardianship or conservatorship.~~

27 ~~**27-27.1-11. Duty to disclose and cooperate.**~~

28 ~~_____ 1. A state and local governmental entity and its officers and employees, and the officials,~~
29 ~~officers, and employees of the courts of this state shall disclose records and~~
30 ~~information requested by the board or investigation counsel or any authorized~~
31 ~~representative of the board or investigation counsel and shall cooperate with and give~~

~~reasonable assistance to the board or investigation counsel and any authorized representative of the board or counsel unless prohibited by federal regulation or law.~~

~~2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.~~

~~**27-27.1-12. Duties of witnesses - Penalty.**~~

~~1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.~~

~~2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.~~

~~3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.~~

~~**27-27.1-13. Preferred claim.**~~

~~1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.~~

~~2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.~~

~~3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.~~

SECTION 1. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter ~~27-27.1~~54-68; and
- i. Claims made under subsection 4.

SECTION 4. Chapter 54-68 of the North Dakota Century Code is created and enacted as follows:

54-68-01. Definitions.

As used in this chapter:

1. "Agency permit" means temporary authorization given by the office to an employee of a professional guardianship or professional conservatorship entity which allows the permitholder to provide guardianship or conservatorship services as an agent of the entity.
2. "Identifiable information" means an individual's personal details, including the individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, and any demographic information collected about the individual.
3. "Investigation counsel" means the guardianship and conservatorship counsel.

1 4. "Licensed conservator" means a person licensed by the office to provide
2 conservatorship services.

3 5. "Licensed guardian" means a person licensed by the office to provide guardianship
4 services.

5 6. "Office" means the office of guardianship and conservatorship.

6 7. "Public conservator" means a conservator under contract with the office to provide
7 conservatorship services for an individual eligible for public services.

8 8. "Public guardian" means a guardian under contract with the office to provide
9 guardianship services for an individual eligible for public services.

10 9. "Public services" means state or federally funded programs administered by the office
11 available to eligible individuals.

12 10. "Review board" means the guardianship and conservatorship review board
13 established under section 54-68-03.

14 11. "Unlicensed conservator" means a person providing conservatorship services without
15 a conservator license.

16 12. "Unlicensed guardian" means a person providing guardianship services without a
17 guardian license.

18 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
19 **Report - Audit.**

20 1. The office, in its capacity of supervising and directing guardianship and
21 conservatorship, shall operate independently of any state agency that provides
22 services to individuals under guardianship or conservatorship. The office shall
23 administer programs assigned by state law. The office may adopt rules to administer
24 and enforce this chapter.

25 2. The office shall:

26 a. Develop policies and procedures, including eligibility criteria, for:

27 (1) Receiving public services;

28 (2) A public guardian or a public conservator;

29 (3) A licensed guardian or a licensed conservator; and

30 (4) Distribution of funding for direct payments and expense reimbursements for
31 public services.

b. Develop ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

c. Develop policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

d. Keep accurate records of all financial transactions performed under this chapter in the manner required by the office of management and budget.

e. Provide a report each biennium to the legislative management regarding the operations of the office, including the cost of public guardians and public conservators, and any other information requested by the legislative management.

3. The office may:

a. Recommend rules applicable to a licensed guardian or a licensed conservator.

b. Grant licenses to a guardian or conservator and agency permits, including revoking or suspending an agency permit.

c. Require insurance or bond coverage for a licensed guardian or a licensed conservator as a condition for licensure.

d. Establish mandatory disclosure and reporting requirements for a licensed guardian or a licensed conservator, including a process to disclose information or submit reports to the office.

e. Provide training for guardians and conservators.

f. Monitor guardianship and conservatorship services.

g. Provide annual reports to the governor.

h. Distribute funding for direct payments, expense reimbursements, or other public services, including funding for public administrators.

i. Establish and collect fees to support guardianship and conservatorship services and the duties of the office, which must be deposited in the guardianship and conservatorship support fund.

j. Seek and apply for private, federal, or other funds to help support guardians and conservators and to safeguard the rights of individuals who receive public services.

k. Accept private funds for deposit in the guardianship and conservatorship support fund.

4. The office may not authorize payment for services for any public guardian or public conservator that provides services for more individuals than allowed through statute, regulation, or administrative rule.

5. The office, its officers, or its employees, may not act as a public guardian or a public conservator or act in any other representative capacity for any individual. This subsection does not prohibit an officer or employee from acting as a guardian or conservator in a personal capacity apart from any duties as an officer or employee.

6. The office is subject to audits by the state auditor under chapter 54-10.

54-68-02.1. Transition - Requirements.

1. By March 31, 2026, the office shall:

a. Establish the guardianship and conservatorship review board.

b. Appoint an executive director and employ the necessary staff to provide office services within the limits of legislative appropriations.

c. Develop by rule initial policies, procedures, and eligibility criteria for:

(1) Receiving public services;

(2) A public guardian or a public conservator;

(3) A licensed guardian or a licensed conservator; and

(4) Distribution of funding for direct payments and expense reimbursements for public services.

d. Develop by rule ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

e. Develop by rule policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

f. Set by rule daily rates for fees and a reimbursement mechanism protocol.

g. Establish initial fees to support guardianship and conservatorship services and the duties of the office.

2. The office may adopt rules necessary to facilitate the creation of the office and assume the administration of guardianship programs.

54-68-03. Review board - Director - Administrative authority - Operations committee.

1. The office shall establish a guardianship and conservatorship review board to conduct disciplinary proceedings for a guardian or conservator. The guardianship and conservatorship review board shall consist of:

a. Three members representing guardians, appointed by the guardianship association of North Dakota;

b. One member representing family guardians, appointed by the guardianship association of North Dakota;

c. One member representing the protection and advocacy project, appointed by the committee on protection and advocacy;

d. Two members appointed by the state bar association of North Dakota, consisting of:

(1) One lawyer licensed to practice law in the state; and

(2) One retired judge, judicial referee, or surrogate judge; and

e. Two members of the public, appointed by the governor.

2. The review board shall appoint an office director, who serves at the will of the review board. Within the limits of legislative appropriations, the director shall employ the necessary staff to provide office services in accordance with this chapter. The director, with the advice and consent of the review board, may adopt rules for administration of the office.

3. The office may establish a guardianship and conservatorship counsel to investigate noncompliance under this chapter reported after April 1, 2026. The director of the office is the hiring authority for the investigation counsel.

4. The office shall create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The guardianship and conservatorship operations committee shall develop and submit budgets for the office, review board, and investigation counsel.

a. The guardianship and conservatorship operations committee shall consist of:

(1) Two members of the legislative assembly, one from each chamber, appointed by the chairman of the legislative management;

(2) Two members appointed by the state bar association of North Dakota,
consisting of:

(a) One lawyer licensed to practice law in the state; and

(b) One retired judge, judicial referee, or surrogate judge; and

(3) Two members appointed by the governor.

b. Initially, members of the guardianship and conservatorship operations committee
shall serve staggered terms as follows:

(1) Two members shall serve a term of one year;

(2) Two members shall serve a term of two years; and

(3) Two members shall serve a term of three years.

c. After the expiration of initial terms, all appointments must be for a term of three
years. A member may not serve more than two consecutive terms of three years.

d. A member of the guardianship and conservatorship operations committee
concurrently serving as a member of the legislative assembly shall receive
per diem compensation in accordance with section 54-35-10.

**54-68-04. Guardianship and conservatorship support fund - Continuing
appropriation.**

There is created in the state treasury the guardianship and conservatorship support fund.
The fund consists of all moneys transferred to the fund by the legislative assembly, interest
upon moneys in the fund, fee collections, donations, grants, and other contributions received for
deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
defray the expenses of supporting guardianship and conservatorship services, including
guardianship and conservatorship training and monitoring.

54-68-05. Records - Confidentiality - Disclosure - Penalty.

1. Identifiable information concerning an individual who is applying for or receiving public
services under this chapter is confidential and may be disclosed only:

a. In the administration of any program under the supervision or administration of
the office.

b. When authorized by a policy of the office.

c. When allowed or required by rule or law.

2. A report concerning an applicant, provider, or recipient of public services is confidential if the report is made in good faith and may be disclosed only to:

a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.

b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.

c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.

d. A court when the court determines the information is necessary for the determination of an issue before the court.

e. The investigation counsel.

3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-06. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

1 3. A person must be a licensed guardian or a licensed conservator to offer guardianship
2 or conservatorship services to the public.

3 4. This section does not apply to:

4 a. A federal or state agency.

5 b. A financial institution under section 6-08.1-01 when appointed as a conservator.

6 c. Human service zones, including human service zone directors or human service
7 zone team members, as defined in section 50-01.1-01.

8 5. A person who violates this section after August 1, 2026, is guilty of a class B
9 misdemeanor.

10 **54-68-07. Immunity.**

11 1. A person who in good faith provides information or testimony regarding a guardian's or
12 conservator's misconduct or lack of professionalism is not subject to civil liability.

13 2. An employee of the office, a member of the review board, or an agent of the review
14 board acting in good faith is not subject to civil liability.

15 **54-68-08. Authority - Applicability.**

16 1. The office may revoke or suspend a guardian or a conservator license.

17 2. The office shall establish by rule a process to appeal license denials and review board
18 orders.

19 3. Upon receipt of any report or complaint, the office shall assess the need for an
20 investigation of the report or complaint. For the purpose of investigating a report or
21 complaint:

22 a. The office or review board shall:

23 (1) Establish confidentiality and disclosure standards for investigating a report
24 or complaint and subsequent disciplinary proceedings.

25 (2) Adopt rules to effectuate the powers and duties under this chapter.

26 b. The office or review board may:

27 (1) Interview an alleged victim, witness, or any other individual with knowledge
28 of the situation.

29 (2) Access any record or information on an applicant, provider, or recipient of
30 public services.

(3) Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.

(4) Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.

(5) Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.

3. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval authority authorized by rule if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.

54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the review board in any action founded on an act or omission arising out of performance of an official duty.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

54-68-10. Duty to disclose and cooperate.

1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the review board or investigation counsel or any authorized representative of the review board or investigation counsel and shall cooperate with and give reasonable assistance to the review board or investigation counsel and any authorized representative of the review board or counsel unless prohibited by federal regulation or law.

2. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the review board, or the

investigation counsel. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter.

54-68-11. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.

2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, review board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.

3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

54-68-12. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. REPEAL. Section 54-68-02.1 of the North Dakota Century Code, as created in Section 4 of this Act, is repealed.

SECTION 7. APPROPRIATION - ~~JUDICIAL BRANCH~~ - OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION. The

funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial branch~~office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs -- indigents	\$1,550,000
Establishment costs -- developmentally disabled	1,096,400
Public guardian and conservator fees -- indigents	7,100,000
Guardianship contracts -- developmentally disabled	5,500,000
Total general fund	\$15,246,400
<u>Office of guardianship and conservatorship</u>	<u>\$1,200,000</u>
<u>Total general fund</u>	<u>\$1,200,000</u>
<u>Full-time equivalent positions</u>	<u>4.00</u>

SECTION 8. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority and full-time equivalent positions authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002 to the office of guardianship and conservatorship for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 9. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority for guardianship related services and grants from the department of health and human services in House Bill No. 1012 to the office of guardianship and conservatorship for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 10. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill No. 1015 to the office of guardianship and conservatorship for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 11. EFFECTIVE DATE.

1. Sections 54-68-06, 54-68-08, and 54-68-09, as created in Section 4 of this Act, become effective on April 1, 2026.
2. Sections 6, 8, 9, and 10 of this Act become effective on April 1, 2026.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2029 - Guardianship and Conservatorship - House Action**

	Base Budget	Senate Version	House Changes	House Version
Guardianship and conservatorship		\$15,246,400	(\$14,046,400)	\$1,200,000
Total all funds	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000
Less estimated income	0	0	0	0
General fund	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000
FTE	0.00	0.00	4.00	4.00

Department 184 - Guardianship and Conservatorship - Detail of House Changes

	Adds Funding for New FTE Positions ¹	Removes Funding for Guardianship Grants ²	Total House Changes
Guardianship and conservatorship	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Total all funds	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Less estimated income	0	0	0
General fund	\$1,200,000	(\$15,246,400)	(\$14,046,400)
FTE	4.00	0.00	4.00

¹ Funding of \$1.2 million from the general fund is added by the House for operations and salary costs relating to 4 new FTE positions for the newly created Office of Guardianship and Conservatorship, including an executive director, court monitor, account analyst, and administrative assistant. The Senate included 4 new FTE positions and related funding for guardianship and conservatorship in the judicial branch budget.

² Funding of \$15,246,400 for grants currently administered by the Office of Management and Budget and the Department of Health and Human Services is removed from the newly created Office of Guardianship and Conservatorship by the House.

Senate Bill No. 2029 - Other Changes - House Action

This amendment establishes a new Office of Guardianship and Conservatorship outside of the judicial branch and provides for the transfer of any remaining guardianship and conservatorship funding and FTE positions from the judicial branch, Office of Management and Budget, and Department of Health and Human Services to the newly created Office of Guardianship and Conservatorship on April 1, 2026.

2025 CONFERENCE COMMITTEE

SB 2029

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2029
4/24/2025
Conference Committee

Relating to an office of guardianship and conservatorship and the removal of a guardian, relating to the removal of a conservator and the recovery of medical assistance expenses, relating to the task force on guardianship monitoring; to provide a penalty; to provide for a report; to provide an appropriation; and to provide a continuing appropriation.

4:00 p.m. Chairman Paulson opened the meeting.

Members present:

Chairman Paulson, Senators: Myrdal and Braunberger and Representatives: Frelich, Hendrix, and Hanson.

Discussion Topics:

- Office structure and oversight
- Timeline for rule development
- Flexibility in legal representation

4:01 p.m. Chairman Paulson introduced amendment LC# 25.0224.04010 provided by Representative Frelich and submitted testimony #45180 and #45187.

4:10 p.m. Committee discussed updated timelines, staffing transitions, and budget contingencies for the new office.

4:20 p.m. Senator Myrdal moved amendment LC# 25.0224.04010 in place of House amendments LC# 25.0224.04008.

4:20 p.m. Representative Frelich seconded.

4:23 p.m. Roll Call Vote - Motion Passed 6-0-0.

4:23 p.m. Senator Paulson will carry the bill.

4:23 p.m. Representative Frelich will carry the bill.

4:25 p.m. Chairman Paulson adjourned.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT**

VC 4/24/25
1 of 23

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

In place of amendment (25.0224.04008) adopted by the House, Reengrossed Senate Bill No. 2029 is amended by amendment (25.0224.04010) as follows:

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 and section 54-68-02.1 of the North Dakota Century Code, relating to the task
7 force on guardianship monitoring and transition requirements; to provide a penalty; to provide
8 for a report; to provide an appropriation; ~~and~~ to provide a continuing appropriation; to provide for
9 a transfer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
12 ~~follows:~~

13 ~~27-27.1-01. Definitions.~~

14 ~~As used in this chapter:~~

15 ~~1. "Agency permit" means temporary authorization given by the office to an employee of~~
16 ~~a professional guardianship or professional conservatorship entity which allows the~~
17 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
18 ~~entity.~~

19 ~~2. "Board" means the guardianship and conservatorship review board.~~

1 — ~~3. "Identifiable information" means an individual's personal details, including the~~
2 ~~individual's name, address, telephone number, facsimile number, social security~~
3 ~~number, electronic mail address, program identification number, or any other unique~~
4 ~~identifying number, characteristic, or code, and any demographic information collected~~
5 ~~about the individual.~~

6 — ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~

7 — ~~5. "Licensed conservator" means a person licensed by the office to provide~~
8 ~~conservatorship services.~~

9 — ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
10 ~~services.~~

11 — ~~7. "Office" means the office of guardianship and conservatorship.~~

12 — ~~8. "Public conservator" means a conservator under contract with the office to provide~~
13 ~~conservatorship services for an individual eligible for public services.~~

14 — ~~9. "Public guardian" means a guardian under contract with the office to provide~~
15 ~~guardianship services for an individual eligible for public services.~~

16 — ~~10. "Public services" means state or federally funded programs administered by the office~~
17 ~~available to eligible individuals.~~

18 — ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
19 ~~a conservator license.~~

20 — ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
21 ~~guardian license.~~

22 — ~~**27-27.1-02. Office of guardianship and conservatorship – Purpose – Powers and**~~
23 ~~**duties – Report – Audit.**~~

24 — ~~1. The office of guardianship and conservatorship is created as a division under the~~
25 ~~supreme court to administer the programs assigned by state law or the supreme court.~~

26 — ~~2. The office shall:~~

27 — ~~a. Develop policies and procedures, including eligibility criteria, for:~~

28 — ~~(1) Receiving public services;~~

29 — ~~(2) A public guardian or a public conservator;~~

30 — ~~(3) A licensed guardian or a licensed conservator; and~~

- 1 ~~(4) Distribution of funding for direct payments and expense reimbursements for~~
2 ~~public services.~~
- 3 ~~b. Develop ethical standards for:~~
 - 4 ~~(1) A licensed guardian or a licensed conservator; and~~
 - 5 ~~(2) An unlicensed guardian or an unlicensed conservator.~~
- 6 ~~c. Develop policies and procedures for proceedings when a guardian or a~~
7 ~~conservator is unable to fulfill the duties of a guardian or a conservator.~~
- 8 ~~d. Keep accurate records of all financial transactions performed under this chapter~~
9 ~~in the manner required by the office of management and budget.~~
- 10 ~~e. Provide a report each biennium to the legislative management regarding the~~
11 ~~operations of the office, including the cost of public guardians and public~~
12 ~~conservators, and any other information requested by the legislative~~
13 ~~management.~~
- 14 ~~3. The office may:~~
 - 15 ~~a. Recommend rules applicable to a licensed guardian or a licensed conservator.~~
 - 16 ~~b. Grant licenses to a guardian or conservator and agency permits, including~~
17 ~~revoking or suspending an agency permit.~~
 - 18 ~~c. Require insurance or bond coverage for a licensed guardian or a licensed~~
19 ~~conservator as a condition for licensure.~~
 - 20 ~~d. Establish mandatory disclosure and reporting requirements for a licensed~~
21 ~~guardian or a licensed conservator, including a process to disclose information or~~
22 ~~submit reports to the office.~~
 - 23 ~~e. Provide training for guardians and conservators.~~
 - 24 ~~f. Monitor guardianship and conservatorship services.~~
 - 25 ~~g. Provide annual reports to the supreme court.~~
 - 26 ~~h. Distribute funding for direct payments, expense reimbursements, or other public~~
27 ~~services, including funding for public administrators.~~
 - 28 ~~i. Establish and collect fees to support guardianship and conservatorship services~~
29 ~~and the duties of the office, which must be deposited in the guardianship and~~
30 ~~conservatorship support fund.~~

1 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
2 ~~conservators and to safeguard the rights of individuals who receive public~~
3 ~~services.~~

4 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
5 ~~fund.~~

6 ~~4. The office may not authorize payment for services for any public guardian or public~~
7 ~~conservator that provides services for more individuals than allowed through statute,~~
8 ~~regulation, court rule, or policy adopted by the office.~~

9 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
10 ~~conservator or act in any other representative capacity for any individual. This~~
11 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
12 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~

13 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~

14 ~~**27-27.1-03. Guardianship and conservatorship support fund – Continuing**~~
15 ~~**appropriation.**~~

16 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
17 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
18 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
19 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
20 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
21 ~~services, including guardianship and conservatorship training and monitoring.~~

22 ~~**27-27.1-04. Records – Confidentiality – Disclosure – Penalty.**~~

23 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
24 ~~services under this chapter is confidential and may be disclosed only:~~

25 ~~a. In the administration of any program under the supervision or administration of~~
26 ~~the office.~~

27 ~~b. When authorized by a policy or procedure of the office.~~

28 ~~c. When allowed or required by rule or law.~~

29 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
30 ~~if the report is made in good faith and may be disclosed only to:~~

- ~~a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.~~
- ~~b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.~~
- ~~c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.~~
- ~~d. A court when the court determines the information is necessary for the determination of an issue before the court.~~
- ~~e. The investigation counsel.~~
- ~~3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.~~
- ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.~~
- ~~**27-27.1-05. Guardianship and conservatorship limitations – Representation to the public – Exemption.**~~
 - ~~1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit.~~
 - ~~2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.~~
 - ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.~~
 - ~~4. This section does not apply to:~~

- 1 ~~a. A federal or state agency.~~
- 2 ~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~
- 3 ~~c. An individual appointed as a guardian or conservator for a family member.~~
- 4 ~~5. A person who violates this section after August 1, 2026, is guilty of a class B~~
- 5 ~~misdemeanor.~~
- 6 ~~**27-27.1-06. Immunity.**~~
- 7 ~~A person who in good faith provides information or testimony regarding a guardian's or~~
- 8 ~~conservator's misconduct or lack of professionalism is not subject to civil liability.~~
- 9 ~~**27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**~~
- 10 ~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a~~
- 11 ~~conservator license.~~
- 12 ~~2. The supreme court must establish a process to appeal license denials and board~~
- 13 ~~orders.~~
- 14 ~~3. The courts shall waive court costs and filing fees in any proceeding in which a person~~
- 15 ~~is receiving public services under this chapter.~~
- 16 ~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow~~
- 17 ~~the applicable policies, procedures, and standards of the office, or other approval~~
- 18 ~~authority authorized by court rule, if the guardian or the conservator serves an adult~~
- 19 ~~ward, adult protected person, or incapacitated person, as defined in title 30.1.~~
- 20 ~~**27-27.1-08. Guardianship and conservatorship review board - Guardianship and**~~
- 21 ~~**conservatorship counsel - Guardianship and conservatorship operations committee.**~~
- 22 ~~1. The supreme court may establish a guardianship and conservatorship review board to~~
- 23 ~~conduct disciplinary proceedings for a guardian or conservator.~~
- 24 ~~2. The supreme court may establish a guardianship and conservatorship counsel to~~
- 25 ~~investigate noncompliance reported under this chapter. The director of the office is the~~
- 26 ~~hiring authority for the investigation counsel.~~
- 27 ~~3. The supreme court must create a guardianship and conservatorship operations~~
- 28 ~~committee to supervise the operations of the office and investigation counsel. The~~
- 29 ~~operations committee:~~
- 30 ~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~
- 31 ~~b. Is the hiring authority for the office director.~~

~~c. May adopt policies recommended by the office.~~

~~**27-27.1-09. Supreme court – Discretionary powers.**~~

~~The supreme court may:~~

~~1. Grant immunity to a member of the board and the board's agents if a district court or the supreme court would have immunity in performing the same functions.~~

~~2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~

~~3. Authorize officials, officers, agents, and designees of the office, the board, and the investigation counsel to:~~

~~a. Administer oaths.~~

~~b. Order and otherwise provide for the inspection of books and records.~~

~~c. Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.~~

~~d. Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.~~

~~4. Adopt rules to effectuate the powers and duties under this chapter.~~

~~**27-27.1-10. Attorney general – Counsel – Bureau of criminal investigation – Primary authority for investigations.**~~

~~1. The attorney general shall act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the board in any action founded on an act or omission arising out of performance of an official duty consistent with section 54-12-01.3.~~

~~2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.~~

~~**27-27.1-11. Duty to disclose and cooperate.**~~

~~1. A state and local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the board or investigation counsel or any authorized representative of the board or investigation counsel and shall cooperate with and give~~

1 ~~reasonable assistance to the board or investigation counsel and any authorized~~
2 ~~representative of the board or counsel unless prohibited by federal regulation or law.~~

3 ~~2. The service of process extends to all parts of the state in any investigation or~~
4 ~~disciplinary proceeding under this chapter. A sheriff or police officer shall serve~~
5 ~~process and execute all lawful orders upon request of the office, its authorized~~
6 ~~representative, the board, or the investigation counsel.~~

7 ~~**27-27.1-12. Duties of witnesses -- Penalty.**~~

8 ~~1. An individual is obliged to attend as a witness in any investigation or disciplinary~~
9 ~~proceeding commenced under this chapter.~~

10 ~~2. If an individual refuses to attend, testify, or produce any writings or things required by~~
11 ~~subpoena, the office, board, or investigation counsel that issued the subpoena may~~
12 ~~petition the district court of the district in which the attendance or production is~~
13 ~~required for an order compelling the individual to attend and testify or produce the~~
14 ~~writings or things required by the subpoena. The court shall order the individual to~~
15 ~~appear before the court at a specified time and place to show cause why the individual~~
16 ~~has not attended, testified, or produced the writings or things as required. A copy of~~
17 ~~the order must be served on the individual. If the court determines the subpoena was~~
18 ~~regularly issued, the court shall order the individual to appear at the time and place~~
19 ~~fixed in the order and testify or produce the required writings or things.~~

20 ~~3. An individual who fails to obey an order under this section is guilty of a class A~~
21 ~~misdemeanor.~~

22 ~~**27-27.1-13. Preferred claim.**~~

23 ~~1. The office has a preferred claim against the estate of an individual or an individual's~~
24 ~~spouse for recovery of funds expended under this chapter for the care of that~~
25 ~~individual or the individual's spouse. All funds recovered under this chapter must be~~
26 ~~deposited in the general fund.~~

27 ~~2. A claim may not be required to be paid and interest may not begin to accrue during the~~
28 ~~lifetime of the decedent's surviving spouse, if any.~~

29 ~~3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim~~
30 ~~under this chapter.~~

SECTION 1. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount

1 of medical assistance paid on behalf of the recipient following the institutionalization of
2 the recipient who cannot reasonably be expected to be discharged from the medical
3 institution, or following the recipient's fifty-fifth birthday, as the case may be, must be
4 allowed as a preferred claim against the decedent's estate after payment, in the
5 following order, of:

- 6 a. Recipient liability expense applicable to the month of death for nursing home or
7 basic care services;
- 8 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 9 c. Expenses of the last illness, other than those incurred by medical assistance;
- 10 d. Expenses of administering the estate, including attorney's fees approved by the
11 court;
- 12 e. Claims made under chapter 50-01;
- 13 f. Claims made under chapter 50-24.5;
- 14 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- 15 h. Claims made under chapter ~~27-27.1~~54-68; and
- 16 i. Claims made under subsection 4.

17 **SECTION 4.** Chapter 54-68 of the North Dakota Century Code is created and enacted as
18 follows:

19 **54-68-01. Definitions.**

20 As used in this chapter:

- 21 1. "Agency permit" means temporary authorization given by the office to an employee of
22 a professional guardianship or professional conservatorship entity which allows the
23 permitholder to provide guardianship or conservatorship services as an agent of the
24 entity.
- 25 2. "Identifiable information" means an individual's personal details, including the
26 individual's name, address, telephone number, facsimile number, social security
27 number, electronic mail address, program identification number, employer
28 identification number, or any other unique identifying number, characteristic, or code
29 and any demographic information collected about the individual.
- 30 3. "Investigation counsel" means the guardianship and conservatorship counsel.

1 4. "Licensed conservator" means a person licensed by the office to provide
2 conservatorship services.

3 5. "Licensed guardian" means a person licensed by the office to provide guardianship
4 services.

5 6. "Office" means the office of guardianship and conservatorship.

6 7. "Operations committee" means the guardianship and conservatorship operations
7 committee established under section 54-68-03.

8 8. "Public conservator" means a conservator under contract with the office to provide
9 conservatorship services for an individual eligible for public services.

10 9. "Public guardian" means a guardian under contract with the office to provide
11 guardianship services for an individual eligible for public services.

12 10. "Public services" means state or federally funded programs administered by the office
13 available to eligible individuals.

14 11. "Review board" means the guardianship and conservatorship review board
15 established under section 54-68-05.

16 12. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.

18 13. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
21 **Report - Audit.**

22 1. The office of guardianship and conservatorship is established, consisting of the
23 operations committee, office staff, and review board.

24 2. The office, in its capacity of supervising and directing guardianship and
25 conservatorship, shall operate independently of any state agency that provides
26 services to individuals under guardianship or conservatorship. The office shall
27 administer programs assigned by state law. The office may adopt rules to administer
28 and enforce this chapter.

29 3. The office shall:

30 a. Develop policies and procedures, including eligibility criteria for:

31 (1) Receiving public services;

- 1 (2) A public guardian or a public conservator;
- 2 (3) A licensed guardian or a licensed conservator; and
- 3 (4) Distribution of funding for direct payments and expense reimbursements for
- 4 public services.
- 5 b. Develop ethical standards for:
- 6 (1) A licensed guardian or a licensed conservator; and
- 7 (2) An unlicensed guardian or an unlicensed conservator.
- 8 c. Monitor guardianship and conservatorship services.
- 9 d. Develop policies and procedures for proceedings if a guardian or a conservator is
- 10 unable to fulfill the duties of a guardian or a conservator.
- 11 e. Keep accurate records of all financial transactions performed under this chapter
- 12 in the manner required by the office of management and budget.
- 13 f. Provide a report each biennium to the legislative management regarding the
- 14 operations of the office, including the cost of public guardians and public
- 15 conservators, and any other information requested by the legislative
- 16 management.
- 17 4. The office may:
- 18 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 19 b. Grant licenses to a guardian or conservator and agency permits, including
- 20 revoking or suspending an agency permit.
- 21 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 22 conservator as a condition for licensure.
- 23 d. Establish mandatory disclosure and reporting requirements for a licensed
- 24 guardian or a licensed conservator, including a process to disclose information or
- 25 submit reports to the office.
- 26 e. Provide training for guardians and conservators.
- 27 f. Provide annual reports to the governor.
- 28 g. Distribute funding for direct payments, expense reimbursements, or other public
- 29 services, including funding for public administrators.

- 1 h. Establish and collect fees to support guardianship and conservatorship services
2 and the duties of the office, which must be deposited in the guardianship and
3 conservatorship support fund.
- 4 i. Seek and apply for private, federal, or other funds to help support guardians and
5 conservators and to safeguard the rights of individuals who receive public
6 services.
- 7 j. Accept private funds for deposit in the guardianship and conservatorship support
8 fund.
- 9 5. The office may not authorize payment for services for any public guardian or public
10 conservator that provides services for more individuals than allowed through statute,
11 regulation, or administrative rule.
- 12 6. The office, its officers, or its employees may not act as a public guardian or a public
13 conservator or act in any other representative capacity for any individual. This
14 subsection does not prohibit an officer or employee from acting as a guardian or
15 conservator in a personal capacity apart from any duties as an officer or employee.
- 16 7. The office is subject to audits by the state auditor under chapter 54-10.
- 17 8. The director of the office of management and budget shall allocate office space in the
18 state capitol for the office of guardianship and conservatorship, or, if office space in the
19 capitol is unavailable, shall negotiate for, contract for, and obtain office space for the
20 office in the city of Bismarck or in the Bismarck area. The office of guardianship and
21 conservatorship's office space may not be located in the office space of the
22 department of health and human services or the judicial branch and must provide
23 sufficient privacy and security for the office to conduct its business. The director of the
24 office of management and budget shall charge the office of guardianship and
25 conservatorship an amount equal to the fair value of the office space and related
26 services the office of management and budget renders to the office of guardianship
27 and conservatorship.
- 28 **54-68-02.1. Transition - Requirements.**
- 29 1. By August 1, 2025, each appointing authority shall make the initial appointments to the
30 operations committee in accordance with section 54-68-03.

2. By August 31, 2025, the operations committee shall appoint an executive director and investigation counsel.

3. By January 1, 2026, each appointing authority shall make the initial appointments to the review board in accordance with section 54-68-05.

4. By March 31, 2026, the office shall:

a. Develop by rule initial policies, procedures, and eligibility criteria for:

(1) Receiving public services;

(2) A public guardian or a public conservator;

(3) A licensed guardian or a licensed conservator; and

(4) Distribution of funding for direct payments and expense reimbursements for public services.

b. Develop by rule ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

c. Develop by rule policies and procedures for proceedings if a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

d. Set by rule daily rates for fees and a reimbursement mechanism protocol.

e. Establish initial fees to support guardianship and conservatorship services and the duties of the office.

5. The office may adopt rules necessary to facilitate the creation of the office and assume the administration of guardianship programs.

54-68-03. Operations committee.

1. A guardianship and conservatorship operations committee is created to oversee the operation of the office. The operations committee shall:

a. Appoint an office director and investigation counsel who serve at the will of the operations committee.

b. Oversee and provide consent to the office for the adoption of administrative rules.

c. Oversee the administration of programs and personnel under the office.

d. Provide input and approval of the office budget.

2. The operations committee shall consist of:

- 1 a. Two members of the legislative assembly, one from each chamber, appointed by
- 2 the chairman of the legislative management;
- 3 b. Two members appointed by the chief justice of the supreme court;
- 4 c. Two members appointed by the governor; and
- 5 d. One member appointed by the state bar association of North Dakota.
- 6 3. Initially, members of the operations committee shall serve staggered terms as follows:
- 7 a. Two members shall serve a term of one year;
- 8 b. Two members shall serve a term of two years; and
- 9 c. Three members shall serve a term of three years.
- 10 4. After the expiration of initial terms, all appointments must be for a term of three years.
- 11 A member may not serve more than two consecutive terms of three years.
- 12 5. A member of the operations committee serves at the will of the appointing authority,
- 13 and may be removed for good cause. A vacancy must be filled in the same manner as
- 14 the original appointment for the unexpired portion of the term.
- 15 6. A member of the operations committee is entitled to:
- 16 a. Per diem compensation in accordance with section 54-35-10; and
- 17 b. Payment for mileage and travel expenses incurred in the conduct of committee
- 18 business as provided under sections 44-08-04 and 54-06-09.
- 19 **54-68-04. Director - Investigation counsel - Powers and duties.**
- 20 1. The powers and duties of the director of the office of guardianship and
- 21 conservatorship include:
- 22 a. Within the limits of legislative appropriations, to employ the necessary staff to
- 23 provide services in accordance with this chapter.
- 24 b. To contract with guardians to administer services.
- 25 c. To grant guardian and conservator licenses.
- 26 d. To develop, maintain, and revise a comprehensive master plan for guardianship
- 27 and conservatorship in this state, including the needs and resources.
- 28 e. To recommend rules to the operations committee regarding the administration of
- 29 the office.
- 30 f. To develop and submit budgets for the office.

g. To present an annual report to the operations committee on the status of the office.

2. The powers and duties of the investigation counsel of the office of guardianship and conservatorship include:

a. To oversee the complaint process.

b. To recommend rules to the operations committee regarding operation of the complaint and appeals process.

c. To investigate noncompliance under this chapter reported after April 1, 2026, by conducting interviews, accessing records, issuing subpoenas, and ordering depositions.

d. To issue formal disciplinary complaints.

e. To attend disciplinary hearings.

54-68-05. Review board.

1. A guardianship and conservatorship review board is created to conduct disciplinary proceedings and issue sanctions for a guardian or conservator. The guardianship and conservatorship review board shall consist of:

a. One member representing guardians, appointed by the guardianship association of North Dakota;

b. One member representing family guardians, appointed by the chief justice of the supreme court;

c. One member representing the protection and advocacy project, appointed by the committee on protection and advocacy;

d. Two members appointed by the state bar association of North Dakota, consisting of:

(1) One lawyer licensed to practice law in the state who is not an active judge or employee of a judge; and

(2) One retired judge, judicial referee, or surrogate judge; and

e. Two members of the public, appointed by the governor.

2. Initially, members of the review board shall serve staggered terms as follows:

a. Two members shall serve a term of one year;

b. Two members shall serve a term of two years; and

1 c. Three members shall serve a term of three years.

2 3. After the expiration of initial terms, all appointments must be for a term of three years.

3 A member may not serve more than two consecutive terms of three years.

4 4. A member of the review board serves at the will of the appointing authority, and may
5 be removed for good cause. A vacancy must be filled in the same manner as the
6 original appointment for the unexpired portion of the term.

7 5. A member of the review board may not receive compensation for their service but is
8 entitled to payment for mileage and travel expenses incurred in the conduct of
9 committee business as provided under sections 44-08-04 and 54-06-09.

10 6. Office staff, under the oversight of the operations committee, shall develop by rule
11 complaint protocols, hearing procedures, ethics rules, disciplinary measures, and
12 sanctions. Office staff, under the oversight of the operations committee, may develop
13 other rules necessary for the review board.

14 7. Review board meetings are closed meetings under chapter 44-04.

15 **54-68-06. Guardianship and conservatorship support fund - Continuing**
16 **appropriation.**

17 There is created in the state treasury the guardianship and conservatorship support fund.
18 The fund consists of all moneys transferred to the fund by the legislative assembly, interest
19 upon moneys in the fund, fee collections, donations, grants, and other contributions received for
20 deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to
21 defray the expenses of supporting guardianship and conservatorship services, including
22 guardianship and conservatorship training and monitoring.

23 **54-68-07. Records - Confidentiality - Disclosure - Penalty.**

24 1. For purposes of this chapter, confidential records as defined under section 44-04-17.1
25 include:

- 26 a. Identifiable information that may reasonably be used to identify a guardian,
27 conservator, complainant, or an individual applying for or receiving services; and
28 b. A report concerning an applicant, provider, or recipient of public services.

29 2. Confidential information may be disclosed only:

- 30 a. In the administration of a program under the supervision or administration of the
31 office; or

b. When authorized or required by administrative rule, court rule, or law.

3. The office may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-08. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.

4. This section does not apply to:

a. A federal or state agency.

b. A financial institution under section 6-08.1-01 when appointed as a conservator.

c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.

5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-09. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.

2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-10. Authority - Appeals - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.
2. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:
 - a. The office or operations committee shall:
 - (1) Establish confidentiality and disclosure standards for investigating a report or complaint and subsequent disciplinary proceedings.
 - (2) Adopt rules to effectuate the powers and duties under this chapter.
 - b. Office staff may:
 - (1) Interview an alleged victim, witness, or any other individual with knowledge of the situation.
 - (2) Access any record or information on an applicant, provider, or recipient of public services.
 - (3) Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.
 - (4) Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.
 - (5) Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.
3. Appeals under this chapter must be conducted in accordance with chapter 28-32.
4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the rules of the office if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.

54-68-11. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general may act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any officer or employee of the office and any member of the review board in any action founded on an act or omission arising out of performance of an official duty.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

54-68-12. Duty to disclose and cooperate.

1. A state or local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the review board or investigation counsel or any authorized representative of the review board or investigation counsel and shall cooperate with and give reasonable assistance to the review board or investigation counsel and any authorized representative of the review board or counsel unless prohibited by federal regulation or law.

2. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the review board, or the investigation counsel. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter.

54-68-13. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.

2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, review board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.

3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

54-68-14. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

54-68-15. Supreme court power.

A court of this state may refer cases to the office. The court may adopt court rules as necessary to facilitate case management with the district courts, the office, and the review board.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. REPEAL. Section 54-68-02.1 of the North Dakota Century Code, as created in Section 4 of this Act, is repealed.

SECTION 7. APPROPRIATION - ~~JUDICIAL BRANCH~~ - OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION. The

funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial branch~~ office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,096,400
Public guardian and conservator fees - indigents	7,100,000
Guardianship contracts - developmentally disabled	5,500,000
Total general fund	\$15,246,400
Office of guardianship and conservatorship	\$1,200,000
Total general fund	\$1,200,000
Full-time equivalent positions	4.00

SECTION 8. TRANSFER. The office of management and budget shall transfer the full-time equivalent attorney position authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027. The remaining full-time equivalent positions authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002 shall transfer as caseload permits but no later than April 1, 2026.

SECTION 9. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 10. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority for guardianship related services and grants from the department of health and human services in House Bill No. 1012 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 11. TRANSFER. The office of management and budget shall transfer any unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill No. 1015 to the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 12. ATTORNEY GENERAL - EMERGENCY COMMISSION REQUEST. During the 2025-26 interim, the attorney general may submit a request to the emergency commission in accordance with chapter 54-16 to request authorization and related funding for one full-time equivalent position for the bureau of criminal investigation related to guardianship and conservatorship case investigations. Prior to submitting a request, the office of guardianship and conservatorship must be operational and the attorney general must identify an increase in workload related to guardianship and conservatorship case investigations which necessitates the addition of one full-time equivalent position.

SECTION 13. EFFECTIVE DATE.

1. Sections 54-68-08, 54-68-10, and 54-68-11, as created in Section 4 of this Act, become effective on April 1, 2026.
2. Sections 6, 9, 10 and 11 of this Act become effective on April 1, 2026.

23 of 23

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2029 - Guardianship and Conservatorship - Conference Committee Action**

	Base Budget	Senate Version	Conference Committee Changes	Conference Committee Version	House Version	Comparison to House
Guardianship and conservatorship		\$15,246,400	(\$14,046,400)	\$1,200,000	\$1,200,000	
Total all funds	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000	\$1,200,000	\$0
Less estimated income	0	0	0	0	0	0
General fund	\$0	\$15,246,400	(\$14,046,400)	\$1,200,000	\$1,200,000	\$0
FTE	0.00	0.00	4.00	4.00	4.00	0.00

Department 184 - Guardianship and Conservatorship - Detail of Conference Committee Changes

	Adds Funding for New FTE Positions ¹	Removes Funding for Guardianship Grants ²	Total Conference Committee Changes
Guardianship and conservatorship	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Total all funds	\$1,200,000	(\$15,246,400)	(\$14,046,400)
Less estimated income	0	0	0
General fund	\$1,200,000	(\$15,246,400)	(\$14,046,400)
FTE	4.00	0.00	4.00

¹ Funding of \$1.2 million from the general fund is added by the House for operations and salary costs relating to 4 new FTE positions for the newly created Office of Guardianship and Conservatorship, including an executive director, court monitor, account analyst, and administrative assistant. The Senate included 4 new FTE positions and related funding for guardianship and conservatorship in the judicial branch budget.

² Funding of \$15,246,400 for grants currently administered by the Office of Management and Budget and the Department of Health and Human Services is removed from the newly created Office of Guardianship and Conservatorship by the House.

Senate Bill No. 2029 - Other Changes - Conference Committee Action

This amendment establishes a new Office of Guardianship and Conservatorship outside of the judicial branch and provides for the transfer of any remaining guardianship and conservatorship funding and FTE positions from the judicial branch, Office of Management and Budget, and Department of Health and Human Services to the newly created Office of Guardianship and Conservatorship on April 1, 2026.

SB 2029 042425 1624 PM Roll Call Vote

Final Recommendation

SB 2029

Date Submitted: April 24, 2025, 4:24 p.m.

Recommendation: In Place Of

Amendment LC #: 25.0224.04010

Engrossed LC #: N/A

Description:

Motioned By: Myrdal, Janne

Seconded By: Frelich, Kathy

House Carrier: Frelich, Kathy

Senate Carrier: Paulson, Bob

Emergency Clause: None

Vote Results: 6 - 0 - 0

Sen. Paulson, Bob	Yea
Sen. Myrdal, Janne	Yea
Sen. Braunberger, Ryan	Yea
Rep. Frelich, Kathy	Yea
Rep. Hendrix, Jared	Yea
Rep. Hanson, Karla Rose	Yea

**REPORT OF CONFERENCE COMMITTEE
REENGROSSED SB 2029**

Your conference committee (Sens. Paulson, Myrdal, Braunberger and Reps. Frelich, Hendrix, Hanson) recommends that in place of amendment [25.0224.04008](#) adopted by the House, Reengrossed SB 2029 is amended by amendment [25.0224.04010](#).

Reengrossed SB 2029 was placed on the Seventh order of business on the calendar.

25.0224.04010
Title.

Prepared by the Legislative Council
staff for Representative Frelich
April 24, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2029

Introduced by

Legislative Management

(Government Finance Committee)

In place of amendment (25.0224.04008) adopted by the House, Reengrossed Senate Bill No. 2029 is amended by amendment (25.0224.04010) as follows:

1 A BILL for an Act to create and enact ~~chapter 27-27.1 and~~ a new subsection to section
2 30.1-28-07 and chapter 54-68 of the North Dakota Century Code, relating to an office of
3 guardianship and conservatorship and the removal of a guardian; to amend and reenact section
4 30.1-29-15 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating
5 to the removal of a conservator and the recovery of medical assistance expenses; to repeal
6 chapter 27-27 and section 54-68-02.1 of the North Dakota Century Code, relating to the task
7 force on guardianship monitoring and transition requirements; to provide a penalty; to provide
8 for a report; to provide an appropriation; ~~and~~ to provide a continuing appropriation; to provide for
9 a transfer; and to provide an effective date.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~—SECTION 1. Chapter 27-27.1 of the North Dakota Century Code is created and enacted as~~
12 ~~follows:~~
13 ~~—27-27.1-01. Definitions.~~
14 ~~—As used in this chapter:~~
15 ~~—1. "Agency permit" means temporary authorization given by the office to an employee of~~
16 ~~a professional guardianship or professional conservatorship entity which allows the~~
17 ~~permitholder to provide guardianship or conservatorship services as an agent of the~~
18 ~~entity.~~
19 ~~—2. "Board" means the guardianship and conservatorship review board.~~

1 ~~3. "Identifiable information" means an individual's personal details, including the~~
2 ~~individual's name, address, telephone number, facsimile number, social security~~
3 ~~number, electronic mail address, program identification number, or any other unique~~
4 ~~identifying number, characteristic, or code, and any demographic information collected~~
5 ~~about the individual.~~

6 ~~4. "Investigation counsel" means the guardianship and conservatorship counsel.~~

7 ~~5. "Licensed conservator" means a person licensed by the office to provide~~
8 ~~conservatorship services.~~

9 ~~6. "Licensed guardian" means a person licensed by the office to provide guardianship~~
10 ~~services.~~

11 ~~7. "Office" means the office of guardianship and conservatorship.~~

12 ~~8. "Public conservator" means a conservator under contract with the office to provide~~
13 ~~conservatorship services for an individual eligible for public services.~~

14 ~~9. "Public guardian" means a guardian under contract with the office to provide~~
15 ~~guardianship services for an individual eligible for public services.~~

16 ~~10. "Public services" means state or federally funded programs administered by the office~~
17 ~~available to eligible individuals.~~

18 ~~11. "Unlicensed conservator" means a person providing conservatorship services without~~
19 ~~a conservator license.~~

20 ~~12. "Unlicensed guardian" means a person providing guardianship services without a~~
21 ~~guardian license.~~

22 ~~**27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**~~
23 ~~**duties - Report - Audit.**~~

24 ~~1. The office of guardianship and conservatorship is created as a division under the~~
25 ~~supreme court to administer the programs assigned by state law or the supreme court.~~

26 ~~2. The office shall:~~

27 ~~a. Develop policies and procedures, including eligibility criteria, for:~~

28 ~~(1) Receiving public services;~~

29 ~~(2) A public guardian or a public conservator;~~

30 ~~(3) A licensed guardian or a licensed conservator; and~~

- 1 ~~———— (4) Distribution of funding for direct payments and expense reimbursements for~~
2 ~~public services.~~
- 3 ~~———— b. Develop ethical standards for:~~
- 4 ~~———— (1) A licensed guardian or a licensed conservator; and~~
- 5 ~~———— (2) An unlicensed guardian or an unlicensed conservator.~~
- 6 ~~———— c. Develop policies and procedures for proceedings when a guardian or a~~
7 ~~conservator is unable to fulfill the duties of a guardian or a conservator.~~
- 8 ~~———— d. Keep accurate records of all financial transactions performed under this chapter~~
9 ~~in the manner required by the office of management and budget.~~
- 10 ~~———— e. Provide a report each biennium to the legislative management regarding the~~
11 ~~operations of the office, including the cost of public guardians and public~~
12 ~~conservators, and any other information requested by the legislative~~
13 ~~management.~~
- 14 ~~———— 3. The office may:~~
- 15 ~~———— a. Recommend rules applicable to a licensed guardian or a licensed conservator.~~
- 16 ~~———— b. Grant licenses to a guardian or conservator and agency permits, including~~
17 ~~revoking or suspending an agency permit.~~
- 18 ~~———— c. Require insurance or bond coverage for a licensed guardian or a licensed~~
19 ~~conservator as a condition for licensure.~~
- 20 ~~———— d. Establish mandatory disclosure and reporting requirements for a licensed~~
21 ~~guardian or a licensed conservator, including a process to disclose information or~~
22 ~~submit reports to the office.~~
- 23 ~~———— e. Provide training for guardians and conservators.~~
- 24 ~~———— f. Monitor guardianship and conservatorship services.~~
- 25 ~~———— g. Provide annual reports to the supreme court.~~
- 26 ~~———— h. Distribute funding for direct payments, expense reimbursements, or other public~~
27 ~~services, including funding for public administrators.~~
- 28 ~~———— i. Establish and collect fees to support guardianship and conservatorship services~~
29 ~~and the duties of the office, which must be deposited in the guardianship and~~
30 ~~conservatorship support fund.~~

1 ~~j. Seek and apply for private, federal, or other funds to help support guardians and~~
2 ~~conservators and to safeguard the rights of individuals who receive public~~
3 ~~services.~~

4 ~~k. Accept private funds for deposit in the guardianship and conservatorship support~~
5 ~~fund.~~

6 ~~4. The office may not authorize payment for services for any public guardian or public~~
7 ~~conservator that provides services for more individuals than allowed through statute,~~
8 ~~regulation, court rule, or policy adopted by the office.~~

9 ~~5. The office, its officers, or its employees, may not act as a public guardian or a public~~
10 ~~conservator or act in any other representative capacity for any individual. This~~
11 ~~subsection does not prohibit an officer or employee from acting as a guardian or~~
12 ~~conservator in a personal capacity apart from any duties as an officer or employee.~~

13 ~~6. The office is subject to audits by the state auditor under chapter 54-10.~~

14 ~~**27-27.1-03. Guardianship and conservatorship support fund - Continuing**~~
15 ~~**appropriation.**~~

16 ~~There is created in the state treasury the guardianship and conservatorship support fund.~~
17 ~~The fund consists of all moneys transferred to the fund by the legislative assembly, interest~~
18 ~~upon moneys in the fund, fee collections, donations, grants, and other contributions received for~~
19 ~~deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the judicial~~
20 ~~branch to defray the expenses of the office for supporting guardianship and conservatorship~~
21 ~~services, including guardianship and conservatorship training and monitoring.~~

22 ~~**27-27.1-04. Records - Confidentiality - Disclosure - Penalty.**~~

23 ~~1. Identifiable information concerning an individual who is applying for or receiving public~~
24 ~~services under this chapter is confidential and may be disclosed only:~~

25 ~~a. In the administration of any program under the supervision or administration of~~
26 ~~the office.~~

27 ~~b. When authorized by a policy or procedure of the office.~~

28 ~~c. When allowed or required by rule or law.~~

29 ~~2. A report concerning an applicant, provider, or recipient of public services is confidential~~
30 ~~if the report is made in good faith and may be disclosed only to:~~

- ~~a. Authorized staff and agents of the office, who may further disclose the information to a person that has a definite interest in the well-being of the individual concerned, is in a position to serve the individual's interests, and that needs to know the contents of the records to assure the well-being and interests of the individual concerned.~~
- ~~b. An individual who is the subject of the report, if the identity of the person reporting or supplying information under this chapter is protected until the information is needed for use in an administrative, legal, or disciplinary proceeding arising out of the report.~~
- ~~c. A public official and the public official's authorized agent who requires the information in connection with the discharge of official duties.~~
- ~~d. A court when the court determines the information is necessary for the determination of an issue before the court.~~
- ~~e. The investigation counsel.~~
- ~~3. The investigation counsel may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.~~
- ~~4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.~~
- ~~**27-27.1-05. Guardianship and conservatorship limitations - Representation to the public - Exemption.**~~
- ~~1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit.~~
- ~~2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.~~
- ~~3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.~~
- ~~4. This section does not apply to:~~

~~a. A federal or state agency.~~

~~b. A financial institution under section 6-08.1-01 when appointed as a conservator.~~

~~c. An individual appointed as a guardian or conservator for a family member.~~

~~5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.~~

~~**27-27.1-06. Immunity.**~~

~~A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.~~

~~**27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**~~

~~1. The supreme court has original jurisdiction to revoke or suspend a guardian or a conservator license.~~

~~2. The supreme court must establish a process to appeal license denials and board orders.~~

~~3. The courts shall waive court costs and filing fees in any proceeding in which a person is receiving public services under this chapter.~~

~~4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the applicable policies, procedures, and standards of the office, or other approval authority authorized by court rule, if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.~~

~~**27-27.1-08. Guardianship and conservatorship review board - Guardianship and conservatorship counsel - Guardianship and conservatorship operations committee.**~~

~~1. The supreme court may establish a guardianship and conservatorship review board to conduct disciplinary proceedings for a guardian or conservator.~~

~~2. The supreme court may establish a guardianship and conservatorship counsel to investigate noncompliance reported under this chapter. The director of the office is the hiring authority for the investigation counsel.~~

~~3. The supreme court must create a guardianship and conservatorship operations committee to supervise the operations of the office and investigation counsel. The operations committee:~~

~~a. Must develop and submit budgets for the office, board, and investigation counsel.~~

~~b. Is the hiring authority for the office director.~~

1 ~~_____ c. May adopt policies recommended by the office.~~

2 ~~**27-27.1-09. Supreme court - Discretionary powers.**~~

3 ~~_____ The supreme court may:~~

4 ~~_____ 1. Grant immunity to a member of the board and the board's agents if a district court or~~
5 ~~the supreme court would have immunity in performing the same functions.~~

6 ~~_____ 2. Establish confidentiality and disclosure standards for disciplinary proceedings.~~

7 ~~_____ 3. Authorize officials, officers, agents, and designees of the office, the board, and the~~
8 ~~investigation counsel to:~~

9 ~~_____ a. Administer oaths.~~

10 ~~_____ b. Order and otherwise provide for the inspection of books and records.~~

11 ~~_____ c. Issue subpoenas for the attendance of witnesses and the production of~~
12 ~~designated documents, electronically stored information, or tangible things in~~
13 ~~accordance with the North Dakota Rules of Civil Procedure.~~

14 ~~_____ d. Order the deposition of a person residing within or outside the state to be taken in~~
15 ~~accordance with the North Dakota Rules of Civil Procedure.~~

16 ~~_____ 4. Adopt rules to effectuate the powers and duties under this chapter.~~

17 ~~**27-27.1-10. Attorney general - Counsel - Bureau of criminal investigation - Primary**~~
18 ~~**authority for investigations.**~~

19 ~~_____ 1. The attorney general shall act as legal counsel in any particular investigation or~~
20 ~~proceeding under section 54-12-02. The attorney general shall appear and defend any~~
21 ~~officer or employee of the office and any member of the board in any action founded~~
22 ~~on an act or omission arising out of performance of an official duty consistent with~~
23 ~~section 54-12-01.3.~~

24 ~~_____ 2. In accordance with chapter 54-12, the attorney general and bureau of criminal~~
25 ~~investigation have primary authority to investigate criminal cases related to a~~
26 ~~guardianship or conservatorship.~~

27 ~~**27-27.1-11. Duty to disclose and cooperate.**~~

28 ~~_____ 1. A state and local governmental entity and its officers and employees, and the officials,~~
29 ~~officers, and employees of the courts of this state shall disclose records and~~
30 ~~information requested by the board or investigation counsel or any authorized~~
31 ~~representative of the board or investigation counsel and shall cooperate with and give~~

~~reasonable assistance to the board or investigation counsel and any authorized representative of the board or counsel unless prohibited by federal regulation or law.~~

~~2. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the board, or the investigation counsel.~~

~~**27-27.1-12. Duties of witnesses - Penalty.**~~

~~1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.~~

~~2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.~~

~~3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.~~

~~**27-27.1-13. Preferred claim.**~~

~~1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.~~

~~2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.~~

~~3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.~~

SECTION 1. A new subsection to section 30.1-28-07 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. AMENDMENT. Section 30.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-15. (5-415) Death, resignation, or removal of conservator.

1. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.
2. The court may order a conservator to be listed on a registry if the court removed the conservator for good cause. A conservator listed on the registry is disqualified from acting as a conservator in any conservatorship 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 conservator. For purposes of this subsection, a licensed conservator includes a conservator whose license has been suspended but excludes a conservator whose license is revoked.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount

of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:

- a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
- b. Funeral expenses not in excess of three thousand five hundred dollars;
- c. Expenses of the last illness, other than those incurred by medical assistance;
- d. Expenses of administering the estate, including attorney's fees approved by the court;
- e. Claims made under chapter 50-01;
- f. Claims made under chapter 50-24.5;
- g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- h. Claims made under chapter ~~27-27.1~~54-68; and
- i. Claims made under subsection 4.

SECTION 4. Chapter 54-68 of the North Dakota Century Code is created and enacted as follows:

54-68-01. Definitions.

As used in this chapter:

1. "Agency permit" means temporary authorization given by the office to an employee of a professional guardianship or professional conservatorship entity which allows the permitholder to provide guardianship or conservatorship services as an agent of the entity.
2. "Identifiable information" means an individual's personal details, including the individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, employer identification number, or any other unique identifying number, characteristic, or code and any demographic information collected about the individual.
3. "Investigation counsel" means the guardianship and conservatorship counsel.

1 4. "Licensed conservator" means a person licensed by the office to provide
2 conservatorship services.

3 5. "Licensed guardian" means a person licensed by the office to provide guardianship
4 services.

5 6. "Office" means the office of guardianship and conservatorship.

6 7. "Operations committee" means the guardianship and conservatorship operations
7 committee established under section 54-68-03

8 8. "Public conservator" means a conservator under contract with the office to provide
9 conservatorship services for an individual eligible for public services.

10 9. "Public guardian" means a guardian under contract with the office to provide
11 guardianship services for an individual eligible for public services.

12 10. "Public services" means state or federally funded programs administered by the office
13 available to eligible individuals.

14 11. "Review board" means the guardianship and conservatorship review board
15 established under section 54-68-06.

16 12. "Unlicensed conservator" means a person providing conservatorship services without
17 a conservator license.

18 13. "Unlicensed guardian" means a person providing guardianship services without a
19 guardian license.

20 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
21 **Report - Audit.**

22 1. The office of guardianship and conservatorship is established, consisting of the
23 operations committee, office staff, and review board.

24 2. The office, in its capacity of supervising and directing guardianship and
25 conservatorship, shall operate independently of any state agency that provides
26 services to individuals under guardianship or conservatorship. The office shall
27 administer programs assigned by state law. The office may adopt rules to administer
28 and enforce this chapter.

29 3. The office shall:

30 a. Develop policies and procedures, including eligibility criteria for:

31 (1) Receiving public services;

- 1 (2) A public guardian or a public conservator;
- 2 (3) A licensed guardian or a licensed conservator; and
- 3 (4) Distribution of funding for direct payments and expense reimbursements for
- 4 public services.
- 5 b. Develop ethical standards for:
- 6 (1) A licensed guardian or a licensed conservator; and
- 7 (2) An unlicensed guardian or an unlicensed conservator.
- 8 c. Monitor guardianship and conservatorship services.
- 9 d. Develop policies and procedures for proceedings when a guardian or a
- 10 conservator is unable to fulfill the duties of a guardian or a conservator.
- 11 e. Keep accurate records of all financial transactions performed under this chapter
- 12 in the manner required by the office of management and budget.
- 13 f. Provide a report each biennium to the legislative management regarding the
- 14 operations of the office, including the cost of public guardians and public
- 15 conservators, and any other information requested by the legislative
- 16 management.
- 17 4. The office may:
- 18 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 19 b. Grant licenses to a guardian or conservator and agency permits, including
- 20 revoking or suspending an agency permit.
- 21 c. Require insurance or bond coverage for a licensed guardian or a licensed
- 22 conservator as a condition for licensure.
- 23 d. Establish mandatory disclosure and reporting requirements for a licensed
- 24 guardian or a licensed conservator, including a process to disclose information or
- 25 submit reports to the office.
- 26 e. Provide training for guardians and conservators.
- 27 f. Provide annual reports to the governor.
- 28 g. Distribute funding for direct payments, expense reimbursements, or other public
- 29 services, including funding for public administrators.

h. Establish and collect fees to support guardianship and conservatorship services and the duties of the office, which must be deposited in the guardianship and conservatorship support fund.

i. Seek and apply for private, federal, or other funds to help support guardians and conservators and to safeguard the rights of individuals who receive public services.

j. Accept private funds for deposit in the guardianship and conservatorship support fund.

5. The office may not authorize payment for services for any public guardian or public conservator that provides services for more individuals than allowed through statute, regulation, or administrative rule.

6. The office, its officers, or its employees may not act as a public guardian or a public conservator or act in any other representative capacity for any individual. This subsection does not prohibit an officer or employee from acting as a guardian or conservator in a personal capacity apart from any duties as an officer or employee.

7. The office is subject to audits by the state auditor under chapter 54-10.

8. The director of the office of management and budget shall allocate office space in the state capitol for the office of guardianship and conservatorship, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the office in the city of Bismarck or in the Bismarck area. The office of guardianship and conservatorship's office space may not be located in the office space of the department of health and human services or the judicial branch and must provide sufficient privacy and security for the office to conduct its business. The director of the office of management and budget shall charge the office of guardianship and conservatorship an amount equal to the fair value of the office space and related services the office of management and budget renders to the office of guardianship and conservatorship.

54-68-02.1. Transition - Requirements.

1. By August 1, 2025, each appointing authority shall make the initial appointments to the operations committee in accordance with section 54-68-03.

2. By August 31, 2025, the operations committee shall appoint an executive director and investigation counsel.

3. By January 1, 2026, each appointing authority shall make the initial appointments to the review board in accordance with section 54-68-04.

4. By March 31, 2026, the office shall:

a. Develop by rule initial policies, procedures, and eligibility criteria for:

(1) Receiving public services;

(2) A public guardian or a public conservator;

(3) A licensed guardian or a licensed conservator; and

(4) Distribution of funding for direct payments and expense reimbursements for public services.

b. Develop by rule ethical standards for:

(1) A licensed guardian or a licensed conservator; and

(2) An unlicensed guardian or an unlicensed conservator.

c. Develop by rule policies and procedures for proceedings when a guardian or a conservator is unable to fulfill the duties of a guardian or a conservator.

d. Set by rule daily rates for fees and a reimbursement mechanism protocol.

e. Establish initial fees to support guardianship and conservatorship services and the duties of the office.

5. The office may adopt rules necessary to facilitate the creation of the office and assume the administration of guardianship programs.

54-68-03. Operations committee.

1. A guardianship and conservatorship operations committee is created to oversee the operation of the office. The operations committee shall:

a. Appoint an office director and investigation counsel who serve at the will of the operations committee.

b. Oversee and provide consent to the office for the adoption of administrative rules.

c. Oversee the administration of programs and personnel under the office.

d. Provide input and approval of the office budget.

2. The operations committee shall consist of:

- 1 a. Two members of the legislative assembly, one from each chamber, appointed by
- 2 the chairman of the legislative management;
- 3 b. Two members appointed by the chief justice of the supreme court;
- 4 c. Two members appointed by the governor; and
- 5 d. One member appointed by the state bar association of North Dakota.
- 6 3. Initially, members of the operations committee shall serve staggered terms as follows:
- 7 a. Two members shall serve a term of one year;
- 8 b. Two members shall serve a term of two years; and
- 9 c. Three members shall serve a term of three years.
- 10 4. After the expiration of initial terms, all appointments must be for a term of three years.
- 11 A member may not serve more than two consecutive terms of three years.
- 12 5. A member of the operations committee serves at the will of the appointing authority,
- 13 and may be removed for good cause. A vacancy must be filled in the same manner as
- 14 the original appointment for the unexpired portion of the term.
- 15 6. A member of the operations committee is entitled to:
- 16 a. Per diem compensation in accordance with section 54-35-10; and
- 17 b. Payment for mileage and travel expenses incurred in the conduct of committee
- 18 business as provided under sections 44-08-04 and 54-06-09.
- 19 **54-68-04. Director - Investigation counsel - Powers and duties.**
- 20 1. The powers and duties of the director of the office of guardianship and
- 21 conservatorship include:
- 22 a. Within the limits of legislative appropriations, to employ the necessary staff to
- 23 provide services in accordance with this chapter.
- 24 b. To contract with guardians to administer services.
- 25 c. To grant guardian and conservator licenses.
- 26 d. To develop, maintain, and revise a comprehensive master plan for guardianship
- 27 and conservatorship in this state, including the needs and resources.
- 28 e. To recommend rules to the operations committee regarding the administration of
- 29 the office.
- 30 f. To develop and submit budgets for the office.

g. To present an annual report to the operations committee on the status of the office.

2. The powers and duties of the investigation counsel of the office of guardianship and conservatorship include:

a. To oversee the complaint process.

b. To recommend rules to the operations committee regarding operation of the complaint and appeals process.

c. To investigate noncompliance under this chapter reported after April 1, 2026, by conducting interviews, accessing records, issuing subpoenas, and ordering depositions.

d. To issue formal disciplinary complaints.

e. To attend disciplinary hearings.

54-68-05. Review board.

1. A guardianship and conservatorship review board is created to conduct disciplinary proceedings and issue sanctions for a guardian or conservator. The guardianship and conservatorship review board shall consist of:

a. One member representing guardians, appointed by the guardianship association of North Dakota;

b. One member representing family guardians, appointed by the chief justice of the supreme court;

c. One member representing the protection and advocacy project, appointed by the committee on protection and advocacy;

d. Two members appointed by the state bar association of North Dakota, consisting of:

(1) One lawyer licensed to practice law in the state who is not an active judge or employee of a judge; and

(2) One retired judge, judicial referee, or surrogate judge; and

e. Two members of the public, appointed by the governor.

2. Initially, members of the guardianship and conservatorship review board shall serve staggered terms as follows:

a. Two members shall serve a term of one year;

b. Two members shall serve a term of two years; and

c. Three members shall serve a term of three years.

3. After the expiration of initial terms, all appointments must be for a term of three years.

A member may not serve more than two consecutive terms of three years.

4. A member of the review board serves at the will of the appointing authority, and may be removed for good cause. A vacancy must be filled in the same manner as the original appointment for the unexpired portion of the term.

5. A member of the review board may not receive compensation for their service but is entitled to payment for mileage and travel expenses incurred in the conduct of committee business as provided under sections 44-08-04 and 54-06-09.

6. Office staff, under the oversight of the operations committee, shall develop by rule complaint protocols, hearing procedures, ethics rules, disciplinary measures, and sanctions. Office staff, under the oversight of the operations committee, may develop other rules necessary for the review board.

7. Review board meetings are not open records and are closed meetings under chapter 44-04.

54-68-06. Guardianship and conservatorship support fund - Continuing appropriation.

There is created in the state treasury the guardianship and conservatorship support fund. The fund consists of all moneys transferred to the fund by the legislative assembly, interest upon moneys in the fund, fee collections, donations, grants, and other contributions received for deposit in the fund. All moneys in the fund are appropriated on a continuing basis to the office to defray the expenses of supporting guardianship and conservatorship services, including guardianship and conservatorship training and monitoring.

54-68-07. Records - Confidentiality - Disclosure - Penalty.

1. For purposes of this chapter, confidential records as defined under section 44-04-17.1 include:

a. Identifiable information that may reasonably be used to identify a guardian, conservator, complainant, or an individual applying for or receiving services; and

b. A report concerning an applicant, provider, or recipient of public services.

2. Confidential information may be disclosed only:

a. In the administration of a program under the supervision or administration of the office; or

b. When authorized or required by administrative rule, court rule, or law.

3. The office may disclose information uncovered during a disciplinary investigation to the attorney general or bureau of criminal investigation related to a criminal investigation when the investigation counsel suspects the subject of the investigation has committed a crime.

4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces in the disclosure of confidential information in violation of this section is guilty of a class C felony.

54-68-08. Guardianship and conservatorship limitations - Representation to the public - Exemption.

1. A person may not serve as a guardian or a conservator for three or more adult individuals at the same time unless that person is a licensed guardian or a licensed conservator or has an agency permit. This subsection does not apply to an individual appointed as a guardian or conservator for a family member.

2. A public guardian or a public conservator may not provide services to a minor unless authorized by a proceeding under section 30.1-28-03.3.

3. A person must be a licensed guardian or a licensed conservator to offer guardianship or conservatorship services to the public.

4. This section does not apply to:

a. A federal or state agency.

b. A financial institution under section 6-08.1-01 when appointed as a conservator.

c. Human service zones, including human service zone directors or human service zone team members, as defined in section 50-01.1-01.

5. A person who violates this section after August 1, 2026, is guilty of a class B misdemeanor.

54-68-09. Immunity.

1. A person who in good faith provides information or testimony regarding a guardian's or conservator's misconduct or lack of professionalism is not subject to civil liability.

2. An employee of the office, a member of the review board, or an agent of the review board acting in good faith is not subject to civil liability.

54-68-10. Authority - Appeals - Applicability.

1. The office may revoke or suspend a guardian or a conservator license.

2. Upon receipt of any report or complaint, the office shall assess the need for an investigation of the report or complaint. For the purpose of investigating a report or complaint:

a. The office or operations committee shall:

(1) Establish confidentiality and disclosure standards for investigating a report or complaint and subsequent disciplinary proceedings.

(2) Adopt rules to effectuate the powers and duties under this chapter.

b. Office staff may:

(1) Interview an alleged victim, witness, or any other individual with knowledge of the situation.

(2) Access any record or information on an applicant, provider, or recipient of public services.

(3) Issue subpoenas for the attendance of witnesses and the production of designated documents, electronically stored information, or tangible things in accordance with the North Dakota Rules of Civil Procedure.

(4) Order the deposition of a person residing within or outside the state to be taken in accordance with the North Dakota Rules of Civil Procedure.

(5) Coordinate with other agencies and departments, including the attorney general and bureau of criminal investigation.

3. Appeals under this chapter must be conducted in accordance with chapter 28-32.

4. A guardian or conservator subject to the jurisdiction of a court of this state shall follow the rules the office if the guardian or the conservator serves an adult ward, adult protected person, or incapacitated person, as defined in title 30.1.

54-68-11. Attorney general - Counsel - Bureau of criminal investigation - Primary authority for investigations.

1. The attorney general may act as legal counsel in any particular investigation or proceeding under section 54-12-02. The attorney general shall appear and defend any

officer or employee of the office and any member of the review board in any action founded on an act or omission arising out of performance of an official duty.

2. In accordance with chapter 54-12, the attorney general and bureau of criminal investigation have primary authority to investigate criminal cases related to a guardianship or conservatorship.

54-68-12. Duty to disclose and cooperate.

1. A state or local governmental entity and its officers and employees, and the officials, officers, and employees of the courts of this state shall disclose records and information requested by the review board or investigation counsel or any authorized representative of the review board or investigation counsel and shall cooperate with and give reasonable assistance to the review board or investigation counsel and any authorized representative of the review board or counsel unless prohibited by federal regulation or law.

2. A sheriff or police officer shall serve process and execute all lawful orders upon request of the office, its authorized representative, the review board, or the investigation counsel. The service of process extends to all parts of the state in any investigation or disciplinary proceeding under this chapter.

54-68-13. Duties of witnesses - Penalty.

1. An individual is obliged to attend as a witness in any investigation or disciplinary proceeding commenced under this chapter.

2. If an individual refuses to attend, testify, or produce any writings or things required by subpoena, the office, review board, or investigation counsel that issued the subpoena may petition the district court of the district in which the attendance or production is required for an order compelling the individual to attend and testify or produce the writings or things required by the subpoena. The court shall order the individual to appear before the court at a specified time and place to show cause why the individual has not attended, testified, or produced the writings or things as required. A copy of the order must be served on the individual. If the court determines the subpoena was regularly issued, the court shall order the individual to appear at the time and place fixed in the order and testify or produce the required writings or things.

3. An individual who fails to obey an order under this section is guilty of a class A misdemeanor.

54-68-14. Preferred claim.

1. The office has a preferred claim against the estate of an individual or an individual's spouse for recovery of funds expended under this chapter for the care of that individual or the individual's spouse. All funds recovered under this chapter must be deposited in the general fund.

2. A claim may not be required to be paid and interest may not begin to accrue during the lifetime of the decedent's surviving spouse, if any.

3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim under this chapter.

54-68-15. Supreme court power.

A court of this state may refer cases to the office. The court may adopt court rules as necessary to facilitate case management with the district courts, the office, and the review board.

SECTION 5. REPEAL. Chapter 27-27 of the North Dakota Century Code is repealed.

SECTION 6. REPEAL. Section 54-68-02.1 of the North Dakota Century Code, as created in Section 4 of this Act, is repealed.

SECTION 7. APPROPRIATION - ~~JUDICIAL BRANCH~~ - OFFICE OF GUARDIANSHIP AND CONSERVATORSHIP - FULL-TIME EQUIVALENT POSITION AUTHORIZATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the ~~judicial branch~~office of guardianship and conservatorship for the purpose of defraying the expenses of the office of guardianship and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027, as follows:

Establishment costs - indigents	\$1,550,000
Establishment costs - developmentally disabled	1,096,400
Public guardian and conservator fees - indigents	7,100,000
Guardianship contracts - developmentally disabled	5,500,000
Total general fund	\$15,246,400
<u>Office of guardianship and conservatorship</u>	<u>\$1,200,000</u>

1 Total general fund \$1,200,000

2 Full-time equivalent positions 4.00

3 **SECTION 8. TRANSFER.** The office of management and budget shall transfer the full-time
4 equivalent attorney position authorized for the office of guardianship and conservatorship line
5 item in Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium
6 beginning July 1, 2025, and ending June 30, 2027. The remaining full-time equivalent positions
7 authorized for the office of guardianship and conservatorship line item in Senate Bill No. 2002
8 shall transfer as caseload permits but no later than April 1, 2026.

9 **SECTION 9. TRANSFER.** The office of management and budget shall transfer any unspent
10 appropriation authority authorized for the office of guardianship and conservatorship line item in
11 Senate Bill No. 2002 to the office of guardianship and conservatorship, for the biennium
12 beginning July 1, 2025, and ending June 30, 2027.

13 **SECTION 10. TRANSFER.** The office of management and budget shall transfer any
14 unspent appropriation authority for guardianship related services and grants from the
15 department of health and human services in House Bill No. 1012 to the office of guardianship
16 and conservatorship, for the biennium beginning July 1, 2025, and ending June 30, 2027.

17 **SECTION 11. TRANSFER.** The office of management and budget shall transfer any
18 unspent appropriation authority from the guardianship grants line item in Section 1 of House Bill
19 No. 1015 to the office of guardianship and conservatorship, for the biennium beginning July 1,
20 2025, and ending June 30, 2027.

21 **SECTION 12. ATTORNEY GENERAL - EMERGENCY COMMISSION REQUEST.** During
22 the 2025-26 interim, the attorney general may submit a request to the emergency commission
23 in accordance with chapter 54-16 to request authorization and related funding for one full-time
24 equivalent position for the bureau of criminal investigation related to guardianship and
25 conservatorship case investigations. Prior to submitting a request, the office of guardianship
26 and conservatorship must be operational and the attorney general must identify an increase in
27 workload related to guardianship and conservatorship case investigations which necessitates
28 the addition of one full-time equivalent position.

29 **SECTION 13. EFFECTIVE DATE.**

- 30 1. Sections 54-68-08, 54-68-10, and 54-68-11, as created in Section 4 of this Act,
31 become effective on April 1, 2026.

- 1 2. Sections 6, 9, 10 and 11 of this Act become effective on April 1, 2026.

Legend

* New FTE

** Current Court FTE Transferred July 1, 2025

*** Current Court FTE Transferred April 1, 2026

Office of Guardianship and ConservatorshipOperations
Committee

Appoint

Officers

Hire

Staff

Operations CommitteeLegislative Assembly
Member

Court Appointee

Governor
AppointeeLegislative Assembly
Member

Court Appointee

Governor
Appointee

SBAND Appointee

Office Staff

*Director

**Investigation
Counsel

*Admin. Assistant

*Monitor

*Accountant

***Monitor

Review Board

GAND Appointee

Court Appointee
(family guardian)

P&A Appointee

SBAND Appointee (Lawyer)

SBAND Appointee
(Retired Judge/ Retired Referee or
Surrogate Judge)Public Member
(Governor Appointee)Public Member
(Governor Appointee)

SB 2029 (25.0224.04010)

Office of Guardianship and Conservatorship Powers & Duties

Operations Committee

- Appoint director and investigation counsel
- Approve budgets
- Oversee and provide consent to the office for the adoption of administrative rules
- Supervise programs and personnel of the office

Review Board

- Conduct disciplinary proceedings
- Issue sanctions

Director:

- Assist in developing rules
- Employ staff
- Contract with public guardians
- Grant and revoke licenses
- Propose the office budget
- Develop office master plan
- Present annual report to operations committee
- Develop and submit budget

Office Staff

Generally:

- Develop policies, procedures, eligibility, licensing criteria by rule
- Develop ethical standards by rule
- Distribution of funding
- Financial and general reporting
- Monitor and provide training for guardians and conservators

Counsel:

- Screen and investigate complaints
- Conduct interviews
- Access records
- Issue subpoenas
- Order depositions
- Issue formal disciplinary complaints
- Attend disciplinary proceedings