

House Bill 291

By: Representatives Scoggins of the 14th, Smith of the 18th, and Oliver of the 82nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward,
2 so as to add to the list of providers who are authorized to participate in the processes for
3 appointment of a guardian for an adult, the modification and termination of such
4 guardianship, and the appointment of emergency guardian; to add to the list of providers who
5 are authorized to participate in the processes for appointment of a conservator for an adult,
6 the modification and termination of such conservatorship, and the appointment of emergency
7 conservator; to provide for limitations on the powers and duties of certain emergency
8 conservators; to revise and provide for definitions; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
13 amended by revising paragraph (10) and adding a new paragraph to Code Section 29-1-1,
14 relating to definitions, to read as follows:

15 "(10) 'Licensed clinical social worker' means a social worker who is licensed as such in
16 accordance with the provisions of Chapter 10A of Title 43.

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17 (10.1) 'Licensed master's social worker' means a social worker who is licensed as such
 18 in accordance with the provisions of Chapter 10A of Title 43."

19 **SECTION 2.**

20 Said title is further amended in Code Section 29-4-10, relating to petition for appointment
 21 of guardian and requirements for petition, by revising paragraph (1) of subsection (c) as
 22 follows:

23 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported
 24 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43;
 25 a psychologist licensed to practice under Chapter 39 of Title 43; an advanced practice
 26 registered nurse, licensed practical nurse, or registered professional nurse licensed to
 27 practice under Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of
 28 Title 43; or a licensed clinical social worker, licensed master's social worker, marriage
 29 and family therapist, or professional counselor licensed under Chapter 10A of Title 43,
 30 or, if the proposed ward is a patient in any federal medical facility in which such a
 31 physician, psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse,
 32 registered professional nurse, physician assistant, licensed clinical social worker, licensed
 33 master's social worker, marriage and family therapist, or professional counselor is not
 34 available, a physician, psychologist, ~~or~~ advanced practice registered nurse, licensed
 35 practical nurse, registered professional nurse, physician assistant, licensed clinical social
 36 worker, licensed master's social worker, marriage and family therapist, or professional
 37 counselor who is authorized to practice in that such federal facility."

38 **SECTION 3.**

39 Said title is further amended in Code Section 29-4-11, relating to prerequisite judicial finding
 40 of probable cause, notice, petition, evaluations, and reporting requirements for appointment
 41 for guardians for adults, by revising subsection (d) as follows:

42 "(d)(1) If the petition is not dismissed ~~under~~ pursuant to subsection (b) of this Code
43 section, the court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician
44 licensed to practice medicine under Chapter 34 of Title 43; a psychologist licensed to
45 practice under Chapter 39 of Title 43; an advanced practice registered nurse, licensed
46 practical nurse, or registered professional nurse licensed to practice under Chapter 26 of
47 Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical
48 social worker, licensed master's social worker, marriage and family therapist, or
49 professional counselor licensed under Chapter 10A of Title 43, or, if the proposed ward
50 is a patient in any federal medical facility in which such a physician, psychologist, or
51 advanced practice registered nurse, licensed practical nurse, registered professional nurse,
52 physician assistant, licensed clinical social worker, licensed master's social worker,
53 marriage and family therapist, or professional counselor is not available, a physician,
54 psychologist, or advanced practice registered nurse, licensed practical nurse, registered
55 professional nurse, physician assistant, licensed clinical social worker, licensed master's
56 social worker, marriage and family therapist, or professional counselor who is authorized
57 to practice in ~~that~~ such federal facility, other than the physician, psychologist, ~~or~~
58 advanced practice registered nurse, licensed practical nurse, registered professional nurse,
59 physician assistant, licensed clinical social worker, licensed master's social worker,
60 marriage and family therapist, or professional counselor who completed the affidavit
61 attached to the petition pursuant to subsection (c) of Code Section 29-4-10.

62 (2) When evaluating the proposed ward, the physician, psychologist, ~~or advanced~~
63 practice registered nurse, licensed practical nurse, registered professional nurse, physician
64 assistant, licensed clinical social worker, licensed master's social worker, marriage and
65 family therapist, or professional counselor shall explain the purpose of the evaluation to
66 the proposed ward. The proposed ward may remain silent. Any statements made by the
67 proposed ward during the evaluation shall be privileged and shall be inadmissible as
68 evidence in any proceeding other than a proceeding under this chapter. The proposed

69 ward's legal counsel shall have the right to be present but shall not participate in the
70 evaluation.

71 (3) The evaluation shall be conducted with as little interference with the proposed ward's
72 activities as possible. The evaluation shall take place at the place and time set in the
73 notice to the proposed ward and ~~the~~ his or her legal counsel and the time set shall not be
74 sooner than the fifth day after the service of notice on the proposed ward. The court,
75 however, shall have the exclusive power to change the place and time of the examination
76 at any time upon reasonable notice being given to the proposed ward and to his or her
77 legal counsel. If the proposed ward fails to appear, the court may order that the proposed
78 ward be taken directly to and from a medical facility or the office of the physician,
79 psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse, registered
80 professional nurse, physician assistant, licensed clinical social worker, licensed master's
81 social worker, marriage and family therapist, or professional counselor for purposes of
82 evaluation only. The evaluation shall be conducted during the normal business hours of
83 the facility or office and the proposed ward shall not be detained in the facility or office
84 overnight. The evaluation may include, but not be limited to:

- 85 (A) A self-report from the proposed ward, if possible;
- 86 (B) Questions and observations of the proposed ward to assess the functional abilities
87 of the proposed ward;
- 88 (C) A review of the records for the proposed ward, including, but not limited to,
89 medical records, medication charts, and other available records;
- 90 (D) An assessment of cultural factors and language barriers that may impact the
91 proposed ward's abilities and living environment; and
- 92 (E) All other factors the evaluator determines to be appropriate to the evaluation.
- 93 (4) A written report shall be filed with the court no later than seven days after the
94 evaluation, and the court shall serve a copy of the report by first-class mail upon the

95 proposed ward and the proposed ward's legal counsel and, ~~if any, the guardian ad litem~~
 96 if appointed.

97 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~
 98 ~~clinical social worker~~ evaluator and shall:

99 (A) State the circumstances and duration of the evaluation, including a summary of
 100 questions or tests utilized, and the elements of the evaluation;

101 (B) List all persons and other sources of information consulted in evaluating the
 102 proposed ward;

103 (C) Describe the proposed ward's mental and physical state and condition, including
 104 all observed facts considered by the ~~physician or psychologist or licensed clinical social~~
 105 ~~worker~~ evaluator;

106 (D) Describe the overall social condition of the proposed ward, including support, care,
 107 education, and well-being; and

108 (E) Describe the needs of the proposed ward and their foreseeable duration.

109 (6) The proposed ward's legal counsel may file a written response to the evaluation,
 110 provided the response is filed no later than the date of the commencement of the hearing
 111 on the petition for guardianship. The response may include, but is not limited to,
 112 independent evaluations, affidavits of individuals with personal knowledge of the
 113 proposed ward, and a statement of applicable law."

114 **SECTION 4.**

115 Said title is further amended in Code Section 29-4-14, relating to petition for appointment
 116 of emergency guardian of an adult and requirements of petition, by revising paragraph (1)
 117 of subsection (d) as follows:

118 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported
 119 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43;
 120 a psychologist licensed to practice under Chapter 39 of Title 43; an advanced practice

121 registered nurse, licensed practical nurse, or registered professional nurse licensed to
 122 practice under Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of
 123 Title 43; or a licensed clinical social worker, licensed master's social worker, marriage
 124 and family therapist, or professional counselor licensed under Chapter 10A of Title 43;
 125 or, if the proposed ward is a patient in any federal medical facility in which such a
 126 physician, psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse,
 127 registered professional nurse, physician assistant, licensed clinical social worker, licensed
 128 master's social worker, marriage and family therapist, or professional counselor is not
 129 available, a physician, psychologist, ~~or~~ advanced practice registered nurse, licensed
 130 practical nurse, registered professional nurse, physician assistant, licensed clinical social
 131 worker, licensed master's social worker, marriage and family therapist, or professional
 132 counselor authorized to practice in ~~that~~ such federal facility."

133 **SECTION 5.**

134 Said title is further amended in Code Section 29-4-15, relating to prerequisite findings prior
 135 to appointment of emergency guardian, evaluation, notice, and hearing, by revising
 136 subsection (c) as follows:

137 "(c) If the court determines that there is probable cause to believe that the proposed ward
 138 is in need of an emergency guardian, the court shall:

139 (1) Immediately appoint legal counsel to represent the proposed ward at the emergency
 140 hearing, which counsel may be the same counsel who is appointed to represent the
 141 proposed ward in the hearing on the petition for guardianship or conservatorship, if any
 142 such petition has been filed, and shall inform counsel of the appointment;

143 (2) Order an emergency hearing to be conducted not sooner than three days nor later than
 144 five days after the filing of the petition;

145 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be
 146 a physician licensed to practice medicine under Chapter 34 of Title 43; a psychologist

147 licensed to practice under Chapter 39 of Title 43; an advanced practice registered nurse,
148 licensed practical nurse, or registered professional nurse licensed to practice under
149 Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a
150 licensed clinical social worker, licensed master's social worker, marriage and family
151 therapist, or professional counselor licensed under Chapter 10A of Title 43, other than
152 the physician, psychologist, or advanced practice registered nurse, licensed practical
153 nurse, registered professional nurse, physician assistant, licensed clinical social worker,
154 licensed master's social worker, marriage and family therapist, or professional counselor
155 who completed the affidavit attached to the petition pursuant to paragraph (1) of
156 subsection (d) of Code Section 29-4-10. The evaluation shall be conducted within 72
157 hours of the time the order was issued and a written report shall be furnished to the court
158 and made available to the parties within this time frame, which evaluation and report
159 shall be governed by the provisions of subsection (d) of Code Section 29-4-11;

160 (4) Immediately notify the proposed ward of the proceedings by service of all pleadings
161 on the proposed ward, which notice shall:

162 (A) Be served personally on the proposed ward by an officer of the court and shall not
163 be served by mail;

164 (B) Inform the proposed ward that a petition has been filed to have an emergency
165 guardian appointed for the proposed ward, that the proposed ward has the right to attend
166 any hearing that is held, and that, if an emergency guardian is appointed, the proposed
167 ward may lose important rights to control the management of the proposed ward's
168 person;

169 (C) Inform the proposed ward of the place and time at which the proposed ward shall
170 submit to the evaluation provided for by paragraph (3) of this subsection;

171 (D) Inform the proposed ward of the appointment of legal counsel; and

172 (E) Inform the proposed ward of the date and time of the hearing on the emergency
173 guardianship; and

174 (5) Appoint an emergency guardian to serve until the emergency hearing, with or without
175 prior notice to the proposed ward, if the threatened risk is so immediate and the potential
176 harm so irreparable that any delay is unreasonable and the existence of the threatened risk
177 and potential for irreparable harm is certified by the affidavit of a physician licensed to
178 practice medicine under Chapter 34 of Title 43; a psychologist licensed to practice under
179 Chapter 39 of Title 43; an advanced practice registered nurse, licensed practical nurse,
180 or registered professional nurse licensed to practice under Chapter 26 of Title 43; a
181 physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical social
182 worker, licensed master's social worker, marriage and family therapist, or professional
183 counselor licensed under Chapter 10A of Title 43. Appointment of an emergency
184 guardian under this paragraph is not a final determination of the proposed ward's need for
185 a nonemergency guardian. Any emergency guardian appointed under this paragraph shall
186 have only those powers and duties specifically enumerated in the letters of emergency
187 guardianship, and the powers and duties shall not exceed those absolutely necessary to
188 respond to the immediate threatened risk to the ward."

189 **SECTION 6.**

190 Said title is further amended in Code Section 29-4-41, relating to modification of
191 guardianship, by revising subsection (b) as follows:

192 "(b) If the petition for modification alleges a significant change in the capacity of the ward,
193 it must be supported either by the affidavits of two persons who have knowledge of the
194 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine
195 under Chapter 34 of Title 43; a psychologist licensed to practice under Chapter 39 of Title
196 43; an advanced practice registered nurse, licensed practical nurse, or registered
197 professional nurse licensed to practice under Chapter 26 of Title 43; a physician assistant
198 licensed under Chapter 34 of Title 43; or a licensed clinical social worker, licensed master's
199 social worker, marriage and family therapist, or professional counselor licensed under

200 Chapter 10A of Title 43, setting forth the supporting facts and determinations. If, after
201 reviewing the petition and the affidavits, the court determines that there is no probable
202 cause to believe that there has been a significant change in the capacity of the ward, the
203 court shall dismiss the petition. If the petition is not dismissed, the court shall order that
204 an evaluation be conducted, in accordance with the provisions of subsection (d) of Code
205 Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no
206 probable cause to believe that there has been a significant change in the capacity of the
207 ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall
208 schedule a hearing, with notice as the court deems appropriate."

209

SECTION 7.

210 Said title is further amended in Code Section 29-4-42, relating to termination of
211 guardianship, required evidence, burden of proof, and return of property, by revising
212 subsection (b) as follows:

213 "(b) A petition for termination must be supported either by the affidavits of two persons
214 who have knowledge of the ward, one of whom may be the petitioner, or of a physician
215 licensed to practice medicine under Chapter 34 of Title 43; a psychologist licensed to
216 practice under Chapter 39 of Title 43; an advanced practice registered nurse, licensed
217 practical nurse, or registered professional nurse licensed to practice under Chapter 26 of
218 Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical
219 social worker, licensed master's social worker, marriage and family therapist, or
220 professional counselor licensed under Chapter 10A of Title 43, setting forth the supporting
221 facts and determinations. If, after reviewing the petition and the affidavits, the court
222 determines that there is no probable cause to believe that the guardianship should be
223 terminated, the court shall dismiss the petition. If the petition is not dismissed, the court
224 shall order that an evaluation be conducted, in accordance with the provisions of
225 subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court

226 finds that there is no probable cause to believe that the guardianship should be terminated,
227 the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule
228 a hearing, with such notice as the court deems appropriate."

229 **SECTION 8.**

230 Said title is further amended in Code Section 29-4-70, relating to right of ward to appeal,
231 procedure, and appointment of emergency guardian, by revising subsection (d) as follows:

232 "(d) Pending any appeal, the superior court or a probate court that is described in
233 paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such
234 powers and duties as are described in Code Section 29-4-16; provided, however, that an
235 emergency guardian may be appointed only upon the filing of an affidavit of a physician
236 licensed to practice medicine under Chapter 34 of Title 43; a psychologist licensed to
237 practice under Chapter 39 of Title 43; an advanced practice registered nurse, licensed
238 practical nurse, or registered professional nurse licensed to practice under Chapter 26 of
239 Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical
240 social worker, licensed master's social worker, marriage and family therapist, or
241 professional counselor licensed under Chapter 10A of Title 43 setting forth the existence
242 of the emergency circumstances described in subsection (d) of Code Section 29-4-14 and
243 after a hearing at which other evidence may be presented. The appointment of an
244 emergency guardian is not appealable."

245 **SECTION 9.**

246 Said title is further amended in Code Section 29-5-10, relating to petition for appointment
247 of conservator and requirements of petition, by revising paragraph (1) of subsection (c) as
248 follows:

249 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported
250 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43;

251 a psychologist licensed to practice under Chapter 39 of Title 43; an advanced practice
 252 registered nurse, licensed practical nurse, or registered professional nurse licensed to
 253 practice under Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of
 254 Title 43; or a licensed clinical social worker, licensed master's social worker, marriage
 255 and family therapist, or professional counselor licensed under Chapter 10A of Title 43
 256 or, if the proposed ward is a patient in any federal medical facility in which such a
 257 physician, psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse,
 258 registered professional nurse, physician assistant, licensed clinical social worker, licensed
 259 master's social worker, marriage and family therapist, or professional counselor is not
 260 available, a physician, psychologist, ~~or~~ advanced practice registered nurse, licensed
 261 practical nurse, registered professional nurse, physician assistant, licensed clinical social
 262 worker, licensed master's social worker, marriage and family therapist, or professional
 263 counselor authorized to practice in ~~that~~ such federal facility."

264

SECTION 10.

265 Said title is further amended in Code Section 29-5-11, relating to prerequisite finding prior
 266 to appointment of conservator, notice, evaluation, and written report, by revising
 267 subsection (d) as follows:

268 "(d)(1) If the petition is not dismissed pursuant to subsection (b) of this Code section, the
 269 court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician licensed
 270 to practice medicine under Chapter 34 of Title 43; a psychologist licensed to practice
 271 under Chapter 39 of Title 43; an advanced practice registered nurse, licensed practical
 272 nurse, or registered professional nurse licensed to practice under Chapter 26 of Title 43;
 273 a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical social
 274 worker, licensed master's social worker, marriage and family therapist, or professional
 275 counselor licensed under Chapter 10A of Title 43 or, if the proposed ward is a patient in
 276 any federal medical facility in which such a physician, psychologist, ~~or~~ advanced practice

277 registered nurse, licensed practical nurse, registered professional nurse, physician
278 assistant, licensed clinical social worker, licensed master's social worker, marriage and
279 family therapist, or professional counselor is not available, a physician, psychologist, or
280 advanced practice registered nurse, licensed practical nurse, registered professional nurse,
281 physician assistant, licensed clinical social worker, licensed master's social worker,
282 marriage and family therapist, or professional counselor authorized to practice in that
283 such federal facility other than the physician, psychologist, or advanced practice
284 registered nurse, licensed practical nurse, registered professional nurse, physician
285 assistant, licensed clinical social worker, licensed master's social worker, marriage and
286 family therapist, or professional counselor worker who completed the affidavit attached
287 to the petition pursuant to subsection (c) of Code Section 29-5-10.

288 (2) When evaluating the proposed ward, the physician, psychologist, or advanced
289 practice registered nurse, licensed practical nurse, registered professional nurse, physician
290 assistant, licensed clinical social worker, licensed master's social worker, marriage and
291 family therapist, or professional counselor shall explain the purpose of the evaluation to
292 the proposed ward. The proposed ward may remain silent. Any statements made by the
293 proposed ward during the evaluation shall be privileged and shall be inadmissible as
294 evidence in any proceeding other than a proceeding under this chapter. The proposed
295 ward's legal counsel shall have the right to be present but shall not participate in the
296 evaluation.

297 (3) The evaluation shall be conducted with as little interference with the proposed ward's
298 activities as possible. The evaluation shall take place at the place and time set in the
299 notice to the proposed ward and to his or her legal counsel and the time set shall not be
300 sooner than the fifth day after the service of notice on the proposed ward. The court,
301 however, shall have the exclusive power to change the place and time of the examination
302 at any time upon reasonable notice being given to the proposed ward and to his or her
303 legal counsel. If the proposed ward fails to appear, the court may order that the proposed

304 ward be taken directly to and from a medical facility, office of a physician, psychologist,
 305 ~~or advanced practice registered nurse, licensed practical nurse, registered professional~~
 306 ~~nurse, physician assistant, licensed clinical social worker, licensed master's social worker,~~
 307 ~~marriage and family therapist, or professional counselor~~ for purposes of evaluation only.

308 The evaluation shall be conducted during the normal business hours of the facility or
 309 office, and the proposed ward shall not be detained in the facility or office overnight. The
 310 evaluation may include, but not be limited to:

- 311 (A) A self-report from the proposed ward, if possible;
- 312 (B) Questions and observations of the proposed ward to assess the functional abilities
 313 of the proposed ward;
- 314 (C) A review of the records for the proposed ward, including, but not limited to,
 315 medical records, medication charts, and other available records;
- 316 (D) An assessment of cultural factors and language barriers that may impact the
 317 proposed ward's abilities and living environment; and
- 318 (E) All other factors the evaluator determines to be appropriate to the evaluation.

319 (4) A written report shall be filed with the court no later than seven days after the
 320 evaluation, and the court shall serve a copy of the report by first-class mail upon the
 321 proposed ward and the proposed ward's legal counsel and guardian ad litem, if appointed.

322 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~
 323 ~~clinical social worker~~ evaluator and shall:

- 324 (A) State the circumstances and duration of the evaluation, including a summary of
 325 questions or tests utilized, and the elements of the evaluation;
- 326 (B) List all persons and other sources of information consulted in evaluating the
 327 proposed ward;
- 328 (C) Describe the proposed ward's mental and physical state and condition, including
 329 all observed facts considered by the ~~physician, psychologist, or licensed clinical social~~
 330 ~~worker~~ evaluator;

331 (D) Describe the overall social condition of the proposed ward, including support, care,
332 education, and well-being; and

333 (E) Describe the needs of the proposed ward and their foreseeable duration.

334 (6) The proposed ward's legal counsel may file a written response to the evaluation,
335 provided the response is filed no later than the date of the commencement of the hearing
336 on the petition for conservatorship. The response may include, but is not limited to,
337 independent evaluations, affidavits of individuals with personal knowledge of the
338 proposed ward, and a statement of applicable law."

339 **SECTION 11.**

340 Said title is further amended in Code Section 29-5-14, relating to appointment of emergency
341 conservator and requirements of petition, by revising paragraph (1) of subsection (d) as
342 follows:

343 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported
344 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43;;
345 a psychologist licensed to practice under Chapter 39 of Title 43;; an advanced practice
346 registered nurse, licensed practical nurse, or registered professional nurse licensed to
347 practice under Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of
348 Title 43; or a licensed clinical social worker, licensed master's social worker, marriage
349 and family therapist, or professional counselor licensed under Chapter 10A of Title 43
350 or, if the proposed ward is a patient in any federal medical facility in which such a
351 physician, psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse,
352 registered professional nurse, physician assistant, licensed clinical social worker, licensed
353 master's social worker, marriage and family therapist, or professional counselor is not
354 available, a physician, psychologist, ~~or~~ advanced practice registered nurse, licensed
355 practical nurse, registered professional nurse, physician assistant, licensed clinical social

356 worker, licensed master's social worker, marriage and family therapist, or professional
 357 counselor authorized to practice in ~~that~~ such federal facility."

358 **SECTION 12.**

359 Said title is further amended in Code Section 29-5-15, relating to review of petition,
 360 dismissal, and requirements of court upon finding need for emergency conservator, by
 361 revising subsection (c) as follows:

362 "(c) If the court determines that there is probable cause to believe that the proposed ward
 363 is in need of an emergency conservator, the court shall:

364 (1) Immediately appoint legal counsel to represent the proposed ward at the emergency
 365 hearing, which counsel may be the same counsel who is appointed to represent the
 366 proposed ward in the hearing on the petition for guardianship or conservatorship, if any
 367 such petition has been filed, and shall inform counsel of the appointment;

368 (2) Order an emergency hearing to be conducted not sooner than three days nor later than
 369 five days after the filing of the petition;

370 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be
 371 a physician licensed to practice medicine under Chapter 34 of Title 43; a psychologist
 372 licensed to practice under Chapter 39 of Title 43; an advanced practice registered nurse,
 373 licensed practical nurse, or registered professional nurse licensed to practice under
 374 Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a
 375 licensed clinical social worker, licensed master's social worker, marriage and family
 376 therapist, or professional counselor licensed under Chapter 10A of Title 43, other than
 377 the physician, psychologist, or advanced practice registered nurse, licensed practical
 378 nurse, registered professional nurse, physician assistant, licensed clinical social worker,
 379 licensed master's social worker, marriage and family therapist, or professional counselor
 380 who completed the affidavit attached to the petition pursuant to paragraph (1) of
 381 subsection (d) of Code Section 29-5-10, ~~to~~. Such evaluation shall be conducted within

382 72 hours of the time such order was issued, and a written report ~~to~~ shall be furnished to
383 the court and made available to the parties within ~~72 hours~~ such time, which evaluation
384 and report shall be governed by the provisions of subsection (d) of Code Section
385 ~~29-5-14~~ 29-5-11;

386 (4) Immediately notify the proposed ward of the proceedings by service of all pleadings
387 on the proposed ward, which notice shall:

388 (A) Be served personally on the proposed ward by an officer of the court and shall not
389 be served by mail;

390 (B) Inform the proposed ward that a petition has been filed to have an emergency
391 conservator appointed for the proposed ward, that the proposed ward has the right to
392 attend any hearing that is held, and that, if an emergency conservator is appointed, the
393 proposed ward may lose important rights to control the management of the proposed
394 ward's property;

395 (C) Inform the proposed ward of the place and time at which the proposed ward shall
396 submit to the evaluation provided for by paragraph (3) of this subsection;

397 (D) Inform the proposed ward of the appointment of legal counsel; and

398 (E) Inform the proposed ward of the date and time of the hearing on the emergency
399 conservatorship; and

400 (5) Appoint an emergency conservator to serve until the emergency hearing, with or
401 without prior notice to the proposed ward, if the threatened risk is so immediate and the
402 potential harm so irreparable that any delay is unreasonable and the existence of the
403 threatened risk and potential for irreparable harm is certified by the affidavit of a
404 physician licensed to practice medicine under Chapter 34 of Title 43; a psychologist
405 licensed to practice under Chapter 39 of Title 43; an advanced practice registered nurse,
406 licensed practical nurse, or registered professional nurse licensed to practice under
407 Chapter 26 of Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a
408 licensed clinical social worker, licensed master's social worker, marriage and family

409 therapist, or professional counselor licensed under Chapter 10A of Title 43; provided,
410 however, that, pending the emergency hearing, the court shall order that no withdrawals
411 may be made from any account on the authority of the proposed ward's signature without
412 the court's prior approval and that the emergency conservator shall not expend any funds
413 of the proposed ward without prior court approval. Appointment of an emergency
414 conservator under this paragraph is not a final determination of the proposed ward's need
415 for a nonemergency conservator. Any emergency conservator appointed under this
416 paragraph shall have only those powers and duties specifically enumerated in the letters
417 of emergency conservatorship; such powers and duties shall not exceed those absolutely
418 necessary to respond to the immediate threatened risk to the ward; and such powers and
419 duties shall be subject to the limitations provided in this paragraph regarding the
420 expenditures of funds of the ward."

421 **SECTION 13.**

422 Said title is further amended in Code Section 29-5-71, relating to modification of
423 conservatorship, contents of petition for modification, and burden of proof, by revising
424 subsection (b) as follows:

425 "(b) If the petition for modification alleges a significant change in the capacity of the ward,
426 it must be supported either by the affidavits of two persons who have knowledge of the
427 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine
428 under Chapter 34 of Title 43; a psychologist licensed to practice under Chapter 39 of
429 Title 43; an advanced practice registered nurse, licensed practical nurse, or registered
430 professional nurse licensed to practice under Chapter 26 of Title 43; a physician assistant
431 licensed under Chapter 34 of Title 43; or a licensed clinical social worker, licensed master's
432 social worker, marriage and family therapist, or professional counselor licensed under
433 Chapter 10A of Title 43, setting forth the supporting facts and determinations. If, after
434 reviewing the petition and the affidavits, the court determines that there is no probable

435 cause to believe that there has been a significant change in the capacity of the ward, the
436 court shall dismiss the petition. If the petition is not dismissed, the court shall order that
437 an evaluation be conducted, in accordance with the provisions of subsection (d) of Code
438 Section 29-5-11. If, after reviewing the evaluation report, the court finds that there is no
439 probable cause to believe that there has been a significant change in the capacity of the
440 ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall
441 schedule a hearing, with such notice as the court deems appropriate."

442 **SECTION 14.**

443 Said title is further amended in Code Section 29-5-72, relating to termination of
444 conservatorship, required evidence to support, burden of proof, and death of ward, by
445 revising subsection (b) as follows:

446 "(b) A petition for termination must be supported either by the affidavits of two persons
447 who have knowledge of the ward, one of whom may be the petitioner, or of a physician
448 licensed to practice medicine under Chapter 34 of Title 43; a psychologist licensed to
449 practice under Chapter 39 of Title 43; an advanced practice registered nurse, licensed
450 practical nurse, or registered professional nurse licensed to practice under Chapter 26 of
451 Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical
452 social worker, licensed master's social worker, marriage and family therapist, or
453 professional counselor licensed under Chapter 10A of Title 43, setting forth the supporting
454 facts and determinations. If, after reviewing the petition and the affidavits, the court
455 determines that there is no probable cause to believe that the conservatorship should be
456 terminated, the court shall dismiss the petition. If the petition is not dismissed, the court
457 shall order that an evaluation be conducted in accordance with the provisions of
458 subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court
459 finds that there is no probable cause to believe that the conservatorship should be

460 terminated, the court shall dismiss the petition. If the petition is not dismissed, the court
461 shall schedule a hearing with such notice as the court deems appropriate."

462 **SECTION 15.**

463 Said title is further amended in Code Section 29-5-110, relating to proceedings for appeal,
464 appointment of guardians ad litem, bond and security prior to removal, liability of surety of
465 predecessor conservator, and jurisdiction, by revising subsection (d) as follows:

466 "(d) Pending any appeal, the superior court or a probate court that is described in
467 paragraph (2) of Code Section 15-9-120 may appoint an emergency conservator with
468 powers and duties as are described in Code Section 29-5-16; provided, however, that such
469 emergency conservator may be appointed only upon the filing of an affidavit of a physician
470 licensed to practice medicine under Chapter 34 of Title 43; a psychologist licensed to
471 practice under Chapter 39 of Title 43; an advanced practice registered nurse, licensed
472 practical nurse, or registered professional nurse licensed to practice under Chapter 26 of
473 Title 43; a physician assistant licensed under Chapter 34 of Title 43; or a licensed clinical
474 social worker, licensed master's social worker, marriage and family therapist, or
475 professional counselor licensed under Chapter 10A of Title 43 setting forth the existence
476 of the emergency circumstances described in subsection (d) of Code Section 29-5-14 and
477 after a hearing at which other evidence may be presented. The appointment of an
478 emergency conservator is not appealable."

479 **SECTION 16.**

480 Said title is further amended by revising Code Section 29-9-16, relating to compensation to
481 physicians, psychologists, or licensed clinical social workers, as follows:

482 "29-9-16.

483 (a) For the evaluation or examination required by subsection (d) of Code Section 29-4-11,
484 subsection (c) of Code Section 29-4-15, subsection (b) of Code Section 29-4-42,

485 subsection (d) of Code Section 29-5-11, subsection (c) of Code Section 29-5-15, or
486 subsection (b) of Code Section 29-5-71, the evaluating physician, psychologist, or
487 advanced practice registered nurse, licensed practical nurse, registered professional nurse,
488 physician assistant, licensed clinical social worker, licensed master's social worker,
489 marriage and family therapist, or professional counselor shall receive a reasonable fee
490 commensurate with the task performed, plus actual expenses.

491 (b) In the event the attendance of the evaluating physician, psychologist, or advanced
492 practice registered nurse, licensed practical nurse, registered professional nurse, physician
493 assistant, licensed clinical social worker, licensed master's social worker, marriage and
494 family therapist, or professional counselor shall be required by the court for a hearing under
495 subsection (d) of Code Section 29-4-12, subsection (a) of Code Section 29-4-16,
496 subsection (b) of Code Section 29-4-42, subsection (d) of Code Section 29-5-12,
497 subsection (a) of Code Section 29-5-16, or subsection (b) of Code Section 29-5-71, other
498 than pursuant to a subpoena requested by a party to the proceeding, the evaluating
499 physician, psychologist, or advanced practice registered nurse, licensed practical nurse,
500 registered professional nurse, physician assistant, licensed clinical social worker, licensed
501 master's social worker, marriage and family therapist, or professional counselor shall
502 receive a reasonable fee commensurate with the task performed, plus actual expenses.
503 (c) All fees and expenses payable under subsection (a) or (b) of this Code section shall be
504 assessed by the court and paid in accordance with the provisions of Code Section 29-9-3."

505 **SECTION 17.**

506 All laws and parts of laws in conflict with this Act are repealed.