

The House Committee on Juvenile Justice offers the following substitute to HB 291:

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.

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, licensed
 29 marriage and family therapist, or professional counselor licensed under Chapter 10A of
 30 Title 43, or, if the proposed ward is a patient in any federal medical facility in which such
 31 a 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, licensed marriage and family therapist, or professional counselor
 34 is not 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, licensed marriage and family therapist, or
 37 professional 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, licensed 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 licensed marriage and family therapist, or professional counselor is not available, a
54 physician, psychologist, or advanced practice registered nurse, licensed practical nurse,
55 registered professional nurse, physician assistant, licensed clinical social worker, licensed
56 master's social worker, licensed marriage and family therapist, or professional counselor
57 who is authorized to practice in that ~~such~~ federal facility, other than the physician,
58 psychologist, or advanced practice registered nurse, licensed practical nurse, registered
59 professional nurse, physician assistant, licensed clinical social worker, licensed master's
60 social worker, licensed marriage and family therapist, or professional counselor who
61 completed the affidavit attached to the petition pursuant to subsection (c) of Code Section
62 29-4-10.

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

69 inadmissible as evidence in any proceeding other than a proceeding under this chapter.
70 The proposed ward's legal counsel shall have the right to be present but shall not
71 participate in the evaluation.

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

- 86 (A) A self-report from the proposed ward, if possible;
- 87 (B) Questions and observations of the proposed ward to assess the functional abilities
88 of the proposed ward;
- 89 (C) A review of the records for the proposed ward, including, but not limited to,
90 medical records, medication charts, and other available records;
- 91 (D) An assessment of cultural factors and language barriers that may impact the
92 proposed ward's abilities and living environment; and
- 93 (E) All other factors the evaluator determines to be appropriate to the evaluation.

94 (4) A written report shall be filed with the court no later than seven days after the
95 evaluation, and the court shall serve a copy of the report by first-class mail upon the

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

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

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

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

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

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

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

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

115 **SECTION 4.**

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

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

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

134 **SECTION 5.**

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

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

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

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

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

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

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

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

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

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

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

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

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

190 **SECTION 6.**

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

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

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

210

SECTION 7.

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

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

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

230

SECTION 8.

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

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

246

SECTION 9.

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

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

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

265 **SECTION 10.**

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

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

278 advanced practice registered nurse, licensed practical nurse, registered professional nurse,
279 physician assistant, licensed clinical social worker, licensed master's social worker,
280 licensed marriage and family therapist, or professional counselor is not available, a
281 physician, psychologist, ~~or~~ advanced practice registered nurse, licensed practical nurse,
282 registered professional nurse, physician assistant, licensed clinical social worker, licensed
283 master's social worker, licensed marriage and family therapist, or professional counselor
284 authorized to practice in ~~that~~ such federal facility other than the physician, psychologist,
285 ~~or~~ advanced practice registered nurse, licensed practical nurse, registered professional
286 nurse, physician assistant, licensed clinical social worker, licensed master's social worker,
287 licensed marriage and family therapist, or professional counselor worker who completed
288 the affidavit attached to the petition pursuant to subsection (c) of Code Section 29-5-10.
289 (2) When evaluating the proposed ward, the physician, psychologist, ~~or~~ advanced
290 practice registered nurse, licensed practical nurse, registered professional nurse, physician
291 assistant, licensed clinical social worker, licensed master's social worker, licensed
292 marriage and family therapist, or professional counselor shall explain the purpose of the
293 evaluation to the proposed ward. The proposed ward may remain silent. Any statements
294 made by the proposed ward during the evaluation shall be privileged and shall be
295 inadmissible as evidence in any proceeding other than a proceeding under this chapter.
296 The proposed ward's legal counsel shall have the right to be present but shall not
297 participate in the evaluation.
298 (3) The evaluation shall be conducted with as little interference with the proposed ward's
299 activities as possible. The evaluation shall take place at the place and time set in the
300 notice to the proposed ward and to his or her legal counsel and the time set shall not be
301 sooner than the fifth day after the service of notice on the proposed ward. The court,
302 however, shall have the exclusive power to change the place and time of the examination
303 at any time upon reasonable notice being given to the proposed ward and to his or her
304 legal counsel. If the proposed ward fails to appear, the court may order that the proposed

305 ward be taken directly to and from a medical facility, office of a physician, psychologist,
306 ~~or advanced practice registered nurse, licensed practical nurse, registered professional~~
307 ~~nurse, physician assistant, licensed clinical social worker, licensed master's social worker,~~
308 ~~licensed marriage and family therapist, or professional counselor~~ for purposes of
309 evaluation only. The evaluation shall be conducted during the normal business hours of
310 the facility or office, and the proposed ward shall not be detained in the facility or office
311 overnight. The evaluation may include, but not be limited to:

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

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

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

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

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

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

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

340 **SECTION 11.**

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

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

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

359 **SECTION 12.**

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

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

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

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

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

383 72 hours of the time such order was issued, and a written report ~~to~~ shall be furnished to
384 the court and made available to the parties within ~~72 hours~~ such time, which evaluation
385 and report shall be governed by the provisions of subsection (d) of Code Section
386 ~~29-5-14~~ 29-5-11;

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

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

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

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

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

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

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

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

422

SECTION 13.

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

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

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

443 **SECTION 14.**

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

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

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

463 **SECTION 15.**

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

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

480 **SECTION 16.**

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

483 "29-9-16.

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

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

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

506

SECTION 17.

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