

House Bill 36

By: Representatives Leverett of the 123rd, Scoggins of the 14th, Kelley of the 16th, Oliver of the 84th, Powell of the 33rd, and others

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 revise 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 revise 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) of Code Section 29-1-1, relating to definitions, as
14 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 **SECTION 2.**

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

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

34 **SECTION 3.**

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

38 "(d)(1) If the petition is not dismissed ~~under~~ pursuant to subsection (b) of this Code
 39 section, the court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician
 40 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
 41 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of
 42 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health

43 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or
44 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical
45 social worker, or, if the proposed ward is a patient in any federal medical facility in which
46 such a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse
47 specialist in psychiatric/mental health, marriage and family therapist, professional
48 counselor, or licensed clinical social worker is not available, a physician, psychologist,
49 or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental
50 health, marriage and family therapist, professional counselor, or licensed clinical social
51 worker who is authorized to practice in that such federal facility, other than the physician,
52 psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in
53 psychiatric/mental health, marriage and family therapist, professional counselor, or
54 licensed clinical social worker who completed the affidavit attached to the petition
55 pursuant to subsection (c) of Code Section 29-4-10.

56 (2) When evaluating the proposed ward, the physician, psychologist, or physician
57 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
58 marriage and family therapist, professional counselor, or licensed clinical social worker
59 shall explain the purpose of the evaluation to the proposed ward. The proposed ward may
60 remain silent. Any statements made by the proposed ward during the evaluation shall be
61 privileged and shall be inadmissible as evidence in any proceeding other than a
62 proceeding under this chapter. The proposed ward's legal counsel shall have the right to
63 be present but shall not participate in the evaluation.

64 (3) The evaluation shall be conducted with as little interference with the proposed ward's
65 activities as possible. The evaluation shall take place at the place and time set in the
66 notice to the proposed ward and ~~the~~ his or her legal counsel and the time set shall not be
67 sooner than the fifth day after the service of notice on the proposed ward. The court,
68 however, shall have the exclusive power to change the place and time of the examination
69 at any time upon reasonable notice being given to the proposed ward and to his or her

70 legal counsel. If the proposed ward fails to appear, the court may order that the proposed
71 ward be taken directly to and from a medical facility or the office of the physician,
72 psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in
73 psychiatric/mental health, marriage and family therapist, professional counselor, or
74 licensed clinical social worker for purposes of evaluation only. The evaluation shall be
75 conducted during the normal business hours of the facility or office and the proposed
76 ward shall not be detained in the facility or office overnight. The evaluation may include,
77 but not be limited to:

- 78 (A) A self-report from the proposed ward, if possible;
- 79 (B) Questions and observations of the proposed ward to assess the functional abilities
80 of the proposed ward;
- 81 (C) A review of the records for the proposed ward, including, but not limited to,
82 medical records, medication charts, and other available records;
- 83 (D) An assessment of cultural factors and language barriers that may impact the
84 proposed ward's abilities and living environment; and
- 85 (E) All other factors the evaluator determines to be appropriate to the evaluation.
- 86 (4) A written report shall be filed with the court no later than seven days after the
87 evaluation, and the court shall serve a copy of the report by first-class mail upon the
88 proposed ward and the proposed ward's legal counsel and, ~~if any, the~~ guardian ad litem
89 if appointed.
- 90 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~
91 ~~clinical social worker~~ evaluator and shall:
- 92 (A) State the circumstances and duration of the evaluation, including a summary of
93 questions or tests utilized, and the elements of the evaluation;
- 94 (B) List all persons and other sources of information consulted in evaluating the
95 proposed ward;

- 96 (C) Describe the proposed ward's mental and physical state and condition, including
 97 all observed facts considered by the ~~physician or psychologist or licensed clinical social~~
 98 ~~worker~~ evaluator;
- 99 (D) Describe the overall social condition of the proposed ward, including support, care,
 100 education, and well-being; and
- 101 (E) Describe the needs of the proposed ward and their foreseeable duration.
- 102 (6) The proposed ward's legal counsel may file a written response to the evaluation,
 103 provided the response is filed no later than the date of the commencement of the hearing
 104 on the petition for guardianship. The response may include, but is not limited to,
 105 independent evaluations, affidavits of individuals with personal knowledge of the
 106 proposed ward, and a statement of applicable law."

107 SECTION 4.

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

111 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported
 112 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,
 113 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant
 114 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
 115 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
 116 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
 117 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal
 118 medical facility in which such a physician, psychologist, ~~or~~ physician assistant, nurse
 119 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family
 120 therapist, professional counselor, or licensed clinical social worker is not available, a
 121 physician, psychologist, ~~or~~ physician assistant, nurse practitioner, clinical nurse specialist

122 in psychiatric/mental health, marriage and family therapist, professional counselor, or
123 licensed clinical social worker authorized to practice in that such federal facility."

124 **SECTION 5.**

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

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

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

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

136 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be
137 a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist
138 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under
139 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
140 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
141 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
142 or a licensed clinical social worker, other than the physician, psychologist, or physician
143 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
144 marriage and family therapist, professional counselor, or licensed clinical social worker
145 who completed the affidavit attached to the petition pursuant to paragraph (1) of
146 subsection (d) of Code Section 29-4-10. The evaluation shall be conducted within 72
147 hours of the time the order was issued and a written report shall be furnished to the court

148 and made available to the parties within this time frame, which evaluation and report
149 shall be governed by the provisions of subsection (d) of Code Section 29-4-11;

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

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

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

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

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

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

164 (5) Appoint an emergency guardian to serve until the emergency hearing, with or without
165 prior notice to the proposed ward, if the threatened risk is so immediate and the potential
166 harm so irreparable that any delay is unreasonable and the existence of the threatened risk
167 and potential for irreparable harm is certified by the affidavit of a physician licensed to
168 practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under
169 Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a
170 nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or
171 registered under Chapter 26 of Title 43, a marriage and family therapist or professional
172 counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker.
173 Appointment of an emergency guardian under this paragraph is not a final determination
174 of the proposed ward's need for a nonemergency guardian. Any emergency guardian

175 appointed under this paragraph shall have only those powers and duties specifically
176 enumerated in the letters of emergency guardianship, and the powers and duties shall not
177 exceed those absolutely necessary to respond to the immediate threatened risk to the
178 ward."

179 **SECTION 6.**

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

182 "(b) If the petition for modification alleges a significant change in the capacity of the ward,
183 it must be supported either by the affidavits of two persons who have knowledge of the
184 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine
185 under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title
186 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or
187 clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter
188 26 of Title 43, a marriage and family therapist or professional counselor licensed under
189 Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting
190 facts and determinations. If, after reviewing the petition and the affidavits, the court
191 determines that there is no probable cause to believe that there has been a significant
192 change in the capacity of the ward, the court shall dismiss the petition. If the petition is not
193 dismissed, the court shall order that an evaluation be conducted, in accordance with the
194 provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation
195 report, the court finds that there is no probable cause to believe that there has been a
196 significant change in the capacity of the ward, the court shall dismiss the petition. If the
197 petition is not dismissed, the court shall schedule a hearing, with notice as the court deems
198 appropriate."

199

SECTION 7.

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

203 "(b) A petition for termination must be supported either by the affidavits of two persons
204 who have knowledge of the ward, one of whom may be the petitioner, or of a physician
205 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
206 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of
207 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health
208 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or
209 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social
210 worker, setting forth the supporting facts and determinations. If, after reviewing the
211 petition and the affidavits, the court determines that there is no probable cause to believe
212 that the guardianship should be terminated, the court shall dismiss the petition. If the
213 petition is not dismissed, the court shall order that an evaluation be conducted, in
214 accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after
215 reviewing the evaluation report, the court finds that there is no probable cause to believe
216 that the guardianship should be terminated, the court shall dismiss the petition. If the
217 petition is not dismissed, the court shall schedule a hearing, with such notice as the court
218 deems appropriate."

219

SECTION 8.

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

222 "(d) Pending any appeal, the superior court or a probate court that is described in
223 paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such
224 powers and duties as are described in Code Section 29-4-16; provided, however, that an

225 emergency guardian may be appointed only upon the filing of an affidavit of a physician
226 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
227 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of
228 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health
229 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or
230 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social
231 worker, setting forth the existence of the emergency circumstances described in subsection
232 (d) of Code Section 29-4-14 and after a hearing at which other evidence may be presented.
233 The appointment of an emergency guardian is not appealable."

234 **SECTION 9.**

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

238 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported
239 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,
240 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant
241 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
242 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
243 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
244 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal
245 medical facility in which such a physician, psychologist, ~~or physician assistant, nurse~~
246 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family
247 therapist, professional counselor, or licensed clinical social worker is not available, a
248 physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist~~
249 in psychiatric/mental health, marriage and family therapist, professional counselor, or
250 licensed clinical social worker authorized to practice in ~~that~~ such federal facility."

251 **SECTION 10.**

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

255 "(d)(1) If the petition is not dismissed pursuant to subsection (b) of this Code section, the
256 court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician licensed
257 to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice
258 under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43,
259 a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or
260 registered under Chapter 26 of Title 43, a marriage and family therapist or professional
261 counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, or,
262 if the proposed ward is a patient in any federal medical facility in which such a physician,
263 psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in~~
264 psychiatric/mental health, marriage and family therapist, professional counselor, or
265 licensed clinical social worker is not available, a physician, psychologist, ~~or physician~~
266 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
267 marriage and family therapist, professional counselor, or licensed clinical social worker
268 authorized to practice in ~~that~~ such federal facility other than the physician, psychologist,
269 ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental~~
270 health, marriage and family therapist, professional counselor, or licensed clinical social
271 worker who completed the affidavit attached to the petition pursuant to subsection (c) of
272 Code Section 29-5-10.

273 (2) When evaluating the proposed ward, the physician, psychologist, ~~or physician~~
274 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
275 marriage and family therapist, professional counselor, or licensed clinical social worker
276 shall explain the purpose of the evaluation to the proposed ward. The proposed ward may
277 remain silent. Any statements made by the proposed ward during the evaluation shall be

278 privileged and shall be inadmissible as evidence in any proceeding other than a
279 proceeding under this chapter. The proposed ward's legal counsel shall have the right to
280 be present but shall not participate in the evaluation.

281 (3) The evaluation shall be conducted with as little interference with the proposed ward's
282 activities as possible. The evaluation shall take place at the place and time set in the
283 notice to the proposed ward and to his or her legal counsel and the time set shall not be
284 sooner than the fifth day after the service of notice on the proposed ward. The court,
285 however, shall have the exclusive power to change the place and time of the examination
286 at any time upon reasonable notice being given to the proposed ward and to his or her
287 legal counsel. If the proposed ward fails to appear, the court may order that the proposed
288 ward be taken directly to and from a medical facility, office of a physician, psychologist,
289 or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental
290 health, marriage and family therapist, professional counselor, or licensed clinical social
291 worker for purposes of evaluation only. The evaluation shall be conducted during the
292 normal business hours of the facility or office, and the proposed ward shall not be
293 detained in the facility or office overnight. The evaluation may include, but not be
294 limited to:

- 295 (A) A self-report from the proposed ward, if possible;
- 296 (B) Questions and observations of the proposed ward to assess the functional abilities
297 of the proposed ward;
- 298 (C) A review of the records for the proposed ward, including, but not limited to,
299 medical records, medication charts, and other available records;
- 300 (D) An assessment of cultural factors and language barriers that may impact the
301 proposed ward's abilities and living environment; and
- 302 (E) All other factors the evaluator determines to be appropriate to the evaluation.

- 303 (4) A written report shall be filed with the court no later than seven days after the
 304 evaluation, and the court shall serve a copy of the report by first-class mail upon the
 305 proposed ward and the proposed ward's legal counsel and guardian ad litem, if appointed.
 306 (5) The report shall be signed under oath by the ~~physician, psychologist, or licensed~~
 307 ~~clinical social worker~~ evaluator and shall:
- 308 (A) State the circumstances and duration of the evaluation, including a summary of
 - 309 questions or tests utilized, and the elements of the evaluation;
 - 310 (B) List all persons and other sources of information consulted in evaluating the
 - 311 proposed ward;
 - 312 (C) Describe the proposed ward's mental and physical state and condition, including
 - 313 all observed facts considered by the ~~physician, psychologist, or licensed clinical social~~
 - 314 ~~worker~~ evaluator;
 - 315 (D) Describe the overall social condition of the proposed ward, including support, care,
 - 316 education, and well-being; and
 - 317 (E) Describe the needs of the proposed ward and their foreseeable duration.
- 318 (6) The proposed ward's legal counsel may file a written response to the evaluation,
 319 provided the response is filed no later than the date of the commencement of the hearing
 320 on the petition for conservatorship. The response may include, but is not limited to,
 321 independent evaluations, affidavits of individuals with personal knowledge of the
 322 proposed ward, and a statement of applicable law."

323 **SECTION 11.**

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

327 "(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported
 328 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,

329 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant
 330 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
 331 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
 332 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
 333 or a licensed clinical social worker, or, if the proposed ward is a patient in any federal
 334 medical facility in which such a physician, psychologist, ~~or physician assistant, nurse~~
 335 ~~practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family~~
 336 ~~therapist, professional counselor, or~~ licensed clinical social worker is not available, a
 337 physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist~~
 338 ~~in psychiatric/mental health, marriage and family therapist, professional counselor, or~~
 339 licensed clinical social worker authorized to practice in ~~that~~ such federal facility."

340

SECTION 12.

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

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

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

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

352 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be
 353 a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist
 354 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under

355 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
356 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
357 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
358 or a licensed clinical social worker, other than the physician, psychologist, or physician
359 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
360 marriage and family therapist, professional counselor, or licensed clinical social worker
361 who completed the affidavit attached to the petition pursuant to paragraph (1) of
362 subsection (d) of Code Section 29-5-10, to. Such evaluation shall be conducted within
363 72 hours of the time such order was issued, and a written report to shall be furnished to
364 the court and made available to the parties within ~~72 hours~~ such time, which evaluation
365 and report shall be governed by the provisions of subsection (d) of Code Section
366 ~~29-5-14~~ 29-5-11;

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

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

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

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

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

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

381 (5) Appoint an emergency conservator to serve until the emergency hearing, with or
382 without prior notice to the proposed ward, if the threatened risk is so immediate and the
383 potential harm so irreparable that any delay is unreasonable and the existence of the
384 threatened risk and potential for irreparable harm is certified by the affidavit of a
385 physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist
386 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under
387 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
388 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
389 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
390 or a licensed clinical social worker; provided, however, that, pending the emergency
391 hearing, the court shall order that no withdrawals may be made from any account on the
392 authority of the proposed ward's signature without the court's prior approval and that the
393 emergency conservator shall not expend any funds of the proposed ward without prior
394 court approval. Appointment of an emergency conservator under this paragraph is not
395 a final determination of the proposed ward's need for a nonemergency conservator. Any
396 emergency conservator appointed under this paragraph shall have only those powers and
397 duties specifically enumerated in the letters of emergency conservatorship; such powers
398 and duties shall not exceed those absolutely necessary to respond to the immediate
399 threatened risk to the ward; and such powers and duties shall be subject to the limitations
400 provided in this paragraph regarding the expenditures of funds of the ward."

401 **SECTION 13.**

402 Said title is further amended in Code Section 29-5-23, relating to authority of conservator
403 and cooperation with guardian or other interested parties, by revising paragraph (13) of
404 subsection (a) and paragraph (5) of subsection (c) as follows:

405 "(13) Compromise any contested or doubtful claim for or against the ward if the
406 proposed gross settlement ~~as defined in Code Section 29-3-3~~ is in the amount

407 of \$25,000.00 or less, provided that, for purposes of this paragraph, the term 'gross
 408 settlement' means the present value of all amounts paid or to be paid in settlement of the
 409 claim, including cash, medical expenses, expenses of litigation, attorney's fees, and any
 410 amounts allocated to a structured settlement or other similar financial arrangement; and"
 411 "(5) To compromise a contested or doubtful claim for or against the ward if the proposed
 412 gross settlement as defined in Code Section 29-3-3 is more than \$25,000.00, provided
 413 that, for purposes of this paragraph, the term 'gross settlement' means the present value
 414 of all amounts paid or to be paid in settlement of the claim, including cash, medical
 415 expenses, expenses of litigation, attorney's fees, and any amounts allocated to a structured
 416 settlement or other similar financial arrangement;"

417

SECTION 14.

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

421 "(b) If the petition for modification alleges a significant change in the capacity of the ward,
 422 it must be supported either by the affidavits of two persons who have knowledge of the
 423 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine
 424 under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title
 425 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or
 426 clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter
 427 26 of Title 43, a marriage and family therapist or professional counselor licensed under
 428 Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting
 429 facts and determinations. If, after reviewing the petition and the affidavits, the court
 430 determines that there is no probable cause to believe that there has been a significant
 431 change in the capacity of the ward, the court shall dismiss the petition. If the petition is not
 432 dismissed, the court shall order that an evaluation be conducted, in accordance with the

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

438 **SECTION 15.**

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

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

458

SECTION 16.

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

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

474

SECTION 17.

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

477 "29-9-16.

478 (a) For the evaluation or examination required by subsection (d) of Code Section 29-4-11,
479 subsection (c) of Code Section 29-4-15, subsection (b) of Code Section 29-4-42,
480 subsection (d) of Code Section 29-5-11, subsection (c) of Code Section 29-5-15, or
481 subsection (b) of Code Section 29-5-71, the evaluating physician, psychologist, ~~or~~
482 physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,

483 marriage and family therapist, professional counselor, or licensed clinical social worker
484 shall receive a reasonable fee commensurate with the task performed, plus actual expenses.

485 (b) In the event the attendance of the evaluating physician, psychologist, or physician
486 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage
487 and family therapist, professional counselor, or licensed clinical social worker shall be
488 required by the court for a hearing under subsection (d) of Code Section 29-4-12,
489 subsection (a) of Code Section 29-4-16, subsection (b) of Code Section 29-4-42, subsection
490 (d) of Code Section 29-5-12, subsection (a) of Code Section 29-5-16, or subsection (b) of
491 Code Section 29-5-71, other than pursuant to a subpoena requested by a party to the
492 proceeding, the evaluating physician, psychologist, or physician assistant, nurse
493 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family
494 therapist, professional counselor, or licensed clinical social worker shall receive a
495 reasonable fee commensurate with the task performed, plus actual expenses.

496 (c) All fees and expenses payable under subsection (a) or (b) of this Code section shall be
497 assessed by the court and paid in accordance with the provisions of Code Section 29-9-3."

498 **SECTION 18.**

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