

The Senate Committee on Judiciary offered the following substitute to HB 36:

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."

SECTION 2.

Said title is further amended in Code Section 29-4-1, relating to prerequisite findings prior to appointment of guardian for adult and extent of guardianship, by adding a new paragraph to subsection (e) to read as follows:

"(3) An adult shall not be presumed to be in need of a guardian solely because of a finding that the adult has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1."

SECTION 3.

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

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

SECTION 4.

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

"(d)(1) If the petition is not dismissed ~~under~~ pursuant to subsection (b) of this Code section, the court shall appoint an ~~evaluating physician~~ evaluator who shall be a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, or, if the proposed ward is a patient in any federal medical facility in which such a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker is not available, a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker who is authorized to practice in that such federal facility, other than the physician, psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker who completed the affidavit attached to the petition pursuant to subsection (c) of Code Section 29-4-10.

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

68 privileged and shall be inadmissible as evidence in any proceeding other than a
69 proceeding under this chapter. The proposed ward's legal counsel shall have the right to
70 be present but shall not participate in the 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 physician assistant, nurse practitioner, clinical nurse specialist in
80 psychiatric/mental health, marriage and family therapist, professional counselor, or
81 licensed clinical social worker for purposes of evaluation only. The evaluation shall be
82 conducted during the normal business hours of the facility or office and the proposed
83 ward shall not be detained in the facility or office overnight. The evaluation may include,
84 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

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

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

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

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

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

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

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

(6) The proposed ward's legal counsel may file a written response to the evaluation,
provided the response is filed no later than the date of the commencement of the hearing
on the petition for guardianship. The response may include, but is not limited to,
independent evaluations, affidavits of individuals with personal knowledge of the
proposed ward, and a statement of applicable law. In the response, the proposed ward's
legal counsel may also challenge the sufficiency and weight of the results and
conclusions of the evaluation and written report and the qualifications, experience, or
abilities of the person performing the evaluation."

SECTION 5.

Said title is further amended in Code Section 29-4-12, relating to judicial review of pleadings
and evaluation report, findings, and hearing, by revising subsection (d) as follows:

"(d)(1) The hearing shall be held in a courtroom or, for good cause shown, at such other place as the court may choose. At the request of the proposed ward or the proposed ward's legal counsel and for good cause shown, the court may exercise its discretion to exclude the public from the hearing and the record shall reflect the court's action. The proposed ward or the proposed ward's legal counsel may waive the appearance of the proposed ward at the hearing.

(2) The hearing shall be recorded by either a certified court reporter or a sound-recording device. The recording shall be retained for not less than 45 days from the date of the entry of the order described in Code Section 29-4-13.

(3) The court shall apply the rules of evidence applicable in civil cases.

(4) At the hearing, the proposed ward may also challenge, by appropriate evidence and argument, the sufficiency and weight of the results and conclusions of the evaluation and written report and the qualifications, experience, or abilities of the person performing the evaluation. The proposed ward shall have the right to present such evidence and argument regardless of whether the proposed ward's legal counsel raised such matters in a written response submitted by the proposed ward's legal counsel pursuant to paragraph (6) of subsection (d) of Code Section 29-4-11.

(5) The court shall utilize the criteria in Code Section 29-4-1 to determine whether there is clear and convincing evidence of the need for a guardianship in light of the evidence taken at the hearing. In addition, the court may consider the evaluation report and any response filed or argument and evidence presented by the proposed ward. The burden of proof shall be upon the petitioner.

(6) If the court finds that the proposed ward has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1, the court shall not find that there is a need for a guardianship unless the evidence shows by clear and convincing evidence that, due to such developmental disability or disabilities and other factors that may be

146 present, the proposed ward lacks sufficient capacity to make or communicate significant
147 responsible decisions concerning his or her health or safety.

148 ~~(5)~~(7) Upon determination of the need for a guardianship, the court shall determine the
149 powers, if any, which are to be retained by the proposed ward, in accordance with the
150 provisions of Code Section 29-4-21 and whether any additional powers are to be granted
151 to the guardian, pursuant to the provisions of subsection (b) of Code Section 29-4-23.

152 ~~(6)~~(8) If the court determines that a guardianship is necessary and the proposed ward is
153 present, the proposed ward may suggest any individual as guardian. The court shall
154 select as guardian the individual who will serve the best interest of the ward.

155 ~~(7)~~(9) In any procedure under this chapter in which the judge of the court is unable to
156 hear a case within the time required for such hearing, the judge shall appoint an
157 individual to hear the case and exercise all the jurisdiction of the court in the case. Any
158 individual appointed shall be a member of the State Bar of Georgia who is qualified to
159 serve as the probate judge in that county and who is, in the opinion of the appointing
160 judge, qualified for the duties by training and experience. The appointment may be made
161 on a case-by-case basis or by making a standing appointment of one or more individuals.
162 Any individual who receives a standing appointment shall serve at the pleasure of the
163 judge who makes the appointment or the judge's successor in office. The compensation
164 of an individual appointed shall be as agreed upon by the judge who makes the
165 appointment and the individual appointed, with the approval of the governing authority
166 of the county for which the individual is appointed, and shall be paid from county funds.
167 All fees collected for the service of the appointed individual shall be paid into the general
168 funds of the county."

SECTION 6.

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

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

SECTION 7.

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

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

(1) Immediately appoint legal counsel to represent the proposed ward at the emergency hearing, which counsel may be the same counsel who is appointed to represent the

proposed ward in the hearing on the petition for guardianship or conservatorship, if any such petition has been filed, and shall inform counsel of the appointment;

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

(3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, other than the physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or~~ licensed clinical social worker who completed the affidavit attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section 29-4-10. The evaluation shall be conducted within 72 hours of the time the order was issued and a written report shall be furnished to the court and made available to the parties within this time frame, which evaluation and report shall be governed by the provisions of subsection (d) of Code Section 29-4-11;

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

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

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

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

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

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

(5) Appoint an emergency guardian to serve until the emergency hearing, with or without prior notice to the proposed ward, if the threatened risk is so immediate and the potential harm so irreparable that any delay is unreasonable and the existence of the threatened risk and potential for irreparable harm is certified by the affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker. Appointment of an emergency guardian under this paragraph is not a final determination of the proposed ward's need for a nonemergency guardian. Any emergency guardian appointed under this paragraph shall have only those powers and duties specifically enumerated in the letters of emergency guardianship, and the powers and duties shall not exceed those absolutely necessary to respond to the immediate threatened risk to the ward."

SECTION 8.

Said title is further amended by revising Code Section 29-4-16, relating to conduct of emergency guardianship hearing and limitations on emergency guardianship, as follows:

"29-4-16.

(a) The court shall conduct the emergency guardianship hearing, at the time and date set forth in its order, to determine whether there is clear and convincing evidence of the need

for an emergency guardianship in light of the evidence taken at the hearing. In addition to the evidence at the hearing, the court may consider the evaluation report and any response filed by the proposed ward. The proposed ward may also challenge, by appropriate evidence and argument, the sufficiency and weight of the results and conclusions of the evaluation and written report and the qualifications, experience, or abilities of the person performing the evaluation. The burden of proof shall be upon the petitioner. Upon the consent of the petitioner and the proposed ward, the court may grant a continuance of the case for a period not to exceed 30 days.

(b) If the court at the emergency hearing finds that an emergency guardianship is necessary, the court shall order the emergency guardianship; provided, however, that:

(1) Any emergency guardian shall have only those powers and duties specifically enumerated in the letters of emergency guardianship and the powers and duties shall not exceed those absolutely necessary to respond to the immediate threatened risk to the ward;

(2) The court may order the emergency guardian to make any report the court requires;

(3) If the court finds that the proposed ward has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1, the court shall not find that there is a need for an emergency guardianship unless the evidence shows by clear and convincing evidence that, due to such developmental disability or disabilities and other factors that may be present, the proposed ward lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety and there is an immediate and substantial risk of death or serious physical injury, illness, or disease unless an emergency guardian is appointed; and

~~(3)~~(4) The emergency guardianship shall terminate on the earliest of:

(A) The court's removal of the emergency guardian, with or without cause;

(B) The effective date of the appointment of a guardian;

(C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for appointment of a guardian;

(D) The date specified for the termination in the order appointing the emergency guardian;

(E) Sixty days from the date of appointment of the emergency guardian, provided that the court had jurisdiction to issue such order under paragraph (1) of Code Section 29-11-12; or

(F) Ninety days from the date of appointment of the emergency guardian, provided that the court had jurisdiction to issue such order under paragraph (2) or (3) of Code Section 29-11-12."

SECTION 9.

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

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

299 report, the court finds that there is no probable cause to believe that there has been a
300 significant change in the capacity of the ward, the court shall dismiss the petition. If the
301 petition is not dismissed, the court shall schedule a hearing, with notice as the court deems
302 appropriate."

303 **SECTION 10.**

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

307 "(b) A petition for termination must be supported either by the affidavits of two persons
308 who have knowledge of the ward, one of whom may be the petitioner, or of a physician
309 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
310 practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of
311 Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health
312 licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or
313 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social
314 worker, setting forth the supporting facts and determinations. If, after reviewing the
315 petition and the affidavits, the court determines that there is no probable cause to believe
316 that the guardianship should be terminated, the court shall dismiss the petition. If the
317 petition is not dismissed, the court shall order that an evaluation be conducted, in
318 accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after
319 reviewing the evaluation report, the court finds that there is no probable cause to believe
320 that the guardianship should be terminated, the court shall dismiss the petition. If the
321 petition is not dismissed, the court shall schedule a hearing, with such notice as the court
322 deems appropriate."

SECTION 11.

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

"(d) Pending any appeal, the superior court or a probate court that is described in paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such powers and duties as are described in Code Section 29-4-16; provided, however, that an emergency guardian may be appointed only upon the filing of an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the existence of the emergency circumstances described in subsection (d) of Code Section 29-4-14 and after a hearing at which other evidence may be presented. The appointment of an emergency guardian is not appealable."

SECTION 12.

Said title is further amended in Code Section 29-5-1, relating to conservator for adults, best interest of the adult, no presumption of need for conservator, and objective of conservatorship, by adding a new paragraph to subsection (e) to read as follows:

"(3) An adult shall not be presumed to be in need of a conservator solely because of a finding that the adult has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1."

SECTION 13.

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

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

SECTION 14.

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

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

371 registered under Chapter 26 of Title 43, a marriage and family therapist or professional
372 counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, or,
373 if the proposed ward is a patient in any federal medical facility in which such a physician,
374 psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in~~
375 psychiatric/mental health, marriage and family therapist, professional counselor, or
376 licensed clinical social worker is not available, a physician, psychologist, ~~or physician~~
377 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
378 marriage and family therapist, professional counselor, or licensed clinical social worker
379 authorized to practice in ~~that~~ such federal facility other than the physician, psychologist,
380 ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental~~
381 health, marriage and family therapist, professional counselor, or licensed clinical social
382 worker who completed the affidavit attached to the petition pursuant to subsection (c) of
383 Code Section 29-5-10.

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

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

398 legal counsel. If the proposed ward fails to appear, the court may order that the proposed
399 ward be taken directly to and from a medical facility, office of a physician, psychologist,
400 ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental~~
401 ~~health, marriage and family therapist, professional counselor, or~~ licensed clinical social
402 worker for purposes of evaluation only. The evaluation shall be conducted during the
403 normal business hours of the facility or office, and the proposed ward shall not be
404 detained in the facility or office overnight. The evaluation may include, but not be
405 limited to:

406 (A) A self-report from the proposed ward, if possible;

407 (B) Questions and observations of the proposed ward to assess the functional abilities
408 of the proposed ward;

409 (C) A review of the records for the proposed ward, including, but not limited to,
410 medical records, medication charts, and other available records;

411 (D) An assessment of cultural factors and language barriers that may impact the
412 proposed ward's abilities and living environment; and

413 (E) All other factors the evaluator determines to be appropriate to the evaluation.

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

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

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

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

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

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

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

(6) The proposed ward's legal counsel may file a written response to the evaluation, provided the response is filed no later than the date of the commencement of the hearing on the petition for conservatorship. The response may include, but is not limited to, independent evaluations, affidavits of individuals with personal knowledge of the proposed ward, and a statement of applicable law. In the response, the proposed ward's legal counsel may also challenge the sufficiency and weight of the results and conclusions of the evaluation and written report and the qualifications, experience, or abilities of the person performing the evaluation."

SECTION 15.

Said title is further amended in Code Section 29-5-12, relating to judicial review and proceedings, by revising subsection (d) as follows:

(d)(1) The hearing shall be held in a courtroom or, for good cause shown, at any other place as the court may set. At the request of the proposed ward or the proposed ward's legal counsel and for good cause shown, the court may exercise its discretion to exclude the public from the hearing and the record shall reflect the court's action. The proposed ward or the proposed ward's legal counsel may waive the appearance of the proposed ward at the hearing.

(2) The hearing shall be recorded by either a certified court reporter or a sound-recording device. The recording shall be retained for not less than 45 days from the date of the entry of the order described in Code Section 29-5-138.

(3) The court shall apply the rules of evidence applicable in civil cases.

(4) At the hearing, the proposed ward may also challenge, by appropriate evidence and argument, the sufficiency and weight of the results and conclusions of the evaluation and written report and the qualifications, experience, or abilities of the person performing the evaluation. The proposed ward shall have the right to present such evidence and argument regardless of whether the proposed ward's legal counsel raised such matters in a written response submitted by the proposed ward's legal counsel pursuant to paragraph (6) of subsection (d) of Code Section 29-5-11.

(5) The court shall utilize the criteria in Code Section 29-5-1 to determine whether there is clear and convincing evidence of the need for a conservatorship in light of the evidence taken at the hearing. In addition to the evidence at the hearing, the court may consider the evaluation report and any response filed by the proposed ward. The burden of proof shall be upon the petitioner.

(6) If the court finds that the proposed ward has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1, the court shall not find that there is a need for a conservatorship unless the evidence shows by clear and convincing evidence that, due to such developmental disability or disabilities and other factors that may be present, the proposed ward lacks sufficient capacity to make or communicate significant responsible decisions concerning the management of his or her property.

~~(5)~~(7) Upon determination of the need for a conservatorship, the court shall determine the powers, if any, which are to be retained by the proposed ward, in accordance with the provisions of Code Section 29-5-21 and whether any additional powers shall be granted to the conservator pursuant to the provisions of subsections (b) and (c) of Code Section 29-5-23.

~~(6)~~(8) If the court determines that a conservatorship is necessary and the proposed ward is present, the proposed ward may suggest any person as conservator. The court shall select as conservator the person who shall serve the best interest of the ward.

(7)(9) In any procedure under this chapter in which the judge of the court is unable to hear a case within the time required for a hearing on the petition for conservatorship, the judge shall appoint an individual to serve to hear the case and exercise all the jurisdiction of the court in the case. Any individual so appointed shall be a member of the State Bar of Georgia who is qualified to serve as the probate judge in that county and who is, in the opinion of the appointing judge, qualified for the duties by training and experience. The appointment may be made on a case-by-case basis or by making a standing appointment of one or more individuals. Any individual who receives a standing appointment shall serve at the pleasure of the judge who makes the appointment or the judge's successor in office. The compensation of an individual so appointed shall be as agreed upon by the judge who makes the appointment and the individual appointed, with the approval of the governing authority of the county for which the individual is appointed, and shall be paid from county funds. All fees collected for the service of the appointed individual shall be paid into the general funds of the county."

SECTION 16.

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

"(d)(1) The petition shall be sworn to by two or more petitioners or shall be supported by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, or, if the proposed ward is a patient in any federal medical facility in which such a physician, psychologist, or physician assistant, nurse

practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker is not available, a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker authorized to practice in that such federal facility."

SECTION 17.

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

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

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

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

(3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, other than the physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family therapist, professional counselor, or licensed clinical social worker~~

who completed the affidavit attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section 29-5-10, ~~to~~. Such evaluation shall be conducted within 72 hours ~~of the time such order was issued,~~ and a written report ~~to~~ shall be furnished to the court and made available to the parties within ~~72 hours~~ such time, which evaluation and report shall be governed by the provisions of subsection (d) of Code Section ~~29-5-14~~ 29-5-11;

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

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

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

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

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

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

(5) Appoint an emergency conservator to serve until the emergency hearing, with or without prior notice to the proposed ward, if the threatened risk is so immediate and the potential harm so irreparable that any delay is unreasonable and the existence of the threatened risk and potential for irreparable harm is certified by the affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in

555 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage
556 and family therapist or professional counselor licensed under Chapter 10A of Title 43,
557 or a licensed clinical social worker; provided, however, that, pending the emergency
558 hearing, the court shall order that no withdrawals may be made from any account on the
559 authority of the proposed ward's signature without the court's prior approval and that the
560 emergency conservator shall not expend any funds of the proposed ward without prior
561 court approval. Appointment of an emergency conservator under this paragraph is not
562 a final determination of the proposed ward's need for a nonemergency conservator. Any
563 emergency conservator appointed under this paragraph shall have only those powers and
564 duties specifically enumerated in the letters of emergency conservatorship; such powers
565 and duties shall not exceed those absolutely necessary to respond to the immediate
566 threatened risk to the ward; and such powers and duties shall be subject to the limitations
567 provided in this paragraph regarding the expenditures of funds of the ward."

568 SECTION 18.

569 Said title is further amended by revising Code Section 29-5-16, relating to emergency
570 conservatorship hearing and limitations on powers of emergency conservator, as follows:

571 "29-5-16.

572 (a) The court shall conduct the emergency conservatorship hearing at the time and date set
573 forth in its order to determine whether there is clear and convincing evidence of the need
574 for an emergency conservatorship in light of the evidence taken at the hearing. In addition
575 to the evidence at the hearing, the court may consider the evaluation report and any
576 response filed by the proposed ward. The proposed ward may also challenge, by
577 appropriate evidence and argument, the sufficiency and weight of the results and
578 conclusions of the evaluation and written report and the qualifications, experience, or
579 abilities of the person performing the evaluation. The burden of proof shall be upon the

petitioner. Upon the consent of the petitioner and the proposed ward, the court may grant a continuance of the case for a period not to exceed 30 days.

(b) If the court at the emergency hearing finds that an emergency conservatorship is necessary, the court shall order the emergency conservatorship; provided, however, that:

(1) Any emergency conservator shall have only those powers and duties specifically enumerated in the letters of emergency conservatorship and the powers and duties shall not exceed those absolutely necessary to respond to the immediate threatened risk to the ward;

(2) The court may order the emergency conservator to make any report the court requires;

(3) If the court finds that the proposed ward has one or more developmental disabilities as defined in paragraph (8) of Code Section 37-1-1, the court shall not find that there is a need for an emergency conservatorship unless the evidence shows by clear and convincing evidence that, due to such developmental disability or disabilities and other factors that may be present, the proposed ward lacks sufficient capacity to make or communicate significant responsible decisions concerning the management of his or her property and there is an immediate and substantial risk of irreparable waste or dissipation of the proposed ward's property unless an emergency conservator is appointed; and

~~(3)~~(4) The emergency conservatorship shall terminate on the earliest of:

(A) The court's removal of the emergency conservator, with or without cause;

(B) The effective date of the appointment of a conservator;

(C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for appointment of a conservator;

(D) The date specified for the termination in the order appointing the emergency conservator; or

(E) Sixty days from the date of appointment of the emergency conservator."

SECTION 19.

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

"(13) Compromise any contested or doubtful claim for or against the ward if the proposed gross settlement ~~as defined in Code Section 29-3-3~~ is in the amount of \$25,000.00 or less, provided that, for purposes of this paragraph, the term 'gross settlement' means the present value of all amounts paid or to be paid in settlement of the claim, including cash, medical expenses, expenses of litigation, attorney's fees, and any amounts allocated to a structured settlement or other similar financial arrangement; and"

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

SECTION 20.

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

"(b) If the petition for modification alleges a significant change in the capacity of the ward, it must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26

of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with such notice as the court deems appropriate."

SECTION 21.

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

"(b) A petition for termination must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a marriage and family therapist or professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that the conservatorship should be terminated, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted in

658 accordance with the provisions of subsection (d) of Code Section 29-5-11. If, after
659 reviewing the evaluation report, the court finds that there is no probable cause to believe
660 that the conservatorship should be terminated, the court shall dismiss the petition. If the
661 petition is not dismissed, the court shall schedule a hearing with such notice as the court
662 deems appropriate."

663 SECTION 22.

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

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

679 SECTION 23.

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

682 "29-9-16.

683 (a) For the evaluation or examination required by subsection (d) of Code Section 29-4-11,
684 subsection (c) of Code Section 29-4-15, subsection (b) of Code Section 29-4-42,
685 subsection (d) of Code Section 29-5-11, subsection (c) of Code Section 29-5-15, or
686 subsection (b) of Code Section 29-5-71, the evaluating physician, psychologist, ~~or~~
687 physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health,
688 marriage and family therapist, professional counselor, or licensed clinical social worker
689 shall receive a reasonable fee commensurate with the task performed, plus actual expenses.
690 (b) In the event the attendance of the evaluating physician, psychologist, ~~or physician~~
691 assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, marriage
692 and family therapist, professional counselor, or licensed clinical social worker shall be
693 required by the court for a hearing under subsection (d) of Code Section 29-4-12,
694 subsection (a) of Code Section 29-4-16, subsection (b) of Code Section 29-4-42, subsection
695 (d) of Code Section 29-5-12, subsection (a) of Code Section 29-5-16, or subsection (b) of
696 Code Section 29-5-71, other than pursuant to a subpoena requested by a party to the
697 proceeding, the evaluating physician, psychologist, ~~or physician assistant, nurse~~
698 practitioner, clinical nurse specialist in psychiatric/mental health, marriage and family
699 therapist, professional counselor, or licensed clinical social worker shall receive a
700 reasonable fee commensurate with the task performed, plus actual expenses.
701 (c) All fees and expenses payable under subsection (a) or (b) of this Code section shall be
702 assessed by the court and paid in accordance with the provisions of Code Section 29-9-3."

703 **SECTION 24.**

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