

House Bill 36 (AS PASSED HOUSE AND SENATE)

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."

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 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, 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, 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 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, 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, 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, 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, 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 privileged and shall be inadmissible as evidence in any proceeding other than a proceeding under this chapter.

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

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

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

84 (B) Questions and observations of the proposed ward to assess the functional abilities
85 of the proposed ward;

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

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

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

91 (4) A written report shall be filed with the court no later than seven days after the
92 evaluation, and the court shall serve a copy of the report by first-class mail upon the
93 proposed ward and the proposed ward's legal counsel and, ~~if any, the~~ guardian ad litem
94 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

121 exclude the public from the hearing and the record shall reflect the court's action. The
122 proposed ward or the proposed ward's legal counsel may waive the appearance of the
123 proposed ward at the hearing.

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

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

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

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

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

146 (5)(7) Upon determination of the need for a guardianship, the court shall determine the
147 powers, if any, which are to be retained by the proposed ward, in accordance with the

provisions of Code Section 29-4-21 and whether any additional powers are to be granted to the guardian, pursuant to the provisions of subsection (b) of Code Section 29-4-23.

~~(6)~~(8) If the court determines that a guardianship is necessary and the proposed ward is present, the proposed ward may suggest any individual as guardian. The court shall select as guardian the individual who will 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 such hearing, the judge shall appoint an individual to hear the case and exercise all the jurisdiction of the court in the case. Any individual 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 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 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

174 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
175 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a
176 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical
177 social worker, or, if the proposed ward is a patient in any federal medical facility in which
178 such a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse
179 specialist in psychiatric/mental health, professional counselor, or licensed clinical social
180 worker is not available, a physician, psychologist, or physician assistant, nurse
181 practitioner, clinical nurse specialist in psychiatric/mental health, professional counselor,
182 or licensed clinical social worker authorized to practice in that such federal facility."

183 SECTION 7.

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

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

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

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

195 (3) Order an evaluation of the proposed ward by ~~a physician~~ an evaluator who shall be
196 a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist
197 licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under
198 Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
199 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a

200 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical
201 social worker, other than the physician, psychologist, or physician assistant, nurse
202 practitioner, clinical nurse specialist in psychiatric/mental health, professional counselor,
203 or licensed clinical social worker who completed the affidavit attached to the petition
204 pursuant to paragraph (1) of subsection (d) of Code Section 29-4-10. The evaluation
205 shall be conducted within 72 hours of the time the order was issued and a written report
206 shall be furnished to the court and made available to the parties within this time frame,
207 which evaluation and report shall be governed by the provisions of subsection (d) of Code
208 Section 29-4-11;

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

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

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

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

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

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

223 (5) Appoint an emergency guardian to serve until the emergency hearing, with or without
224 prior notice to the proposed ward, if the threatened risk is so immediate and the potential
225 harm so irreparable that any delay is unreasonable and the existence of the threatened risk
226 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 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 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 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 notice as the court deems appropriate."

SECTION 10.

Said title is further amended in Code Section 29-4-42, relating to termination of guardianship, required evidence, burden of proof, and return of property, 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 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 guardianship 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 accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that the guardianship should be terminated, 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 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 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

330 a hearing at which other evidence may be presented. The appointment of an emergency
331 guardian is not appealable."

332 **SECTION 12.**

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

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

339 **SECTION 13.**

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

343 "(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported
344 by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,
345 a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant
346 licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in
347 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a
348 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical
349 social worker, or, if the proposed ward is a patient in any federal medical facility in which
350 such a physician, psychologist, or physician assistant, nurse practitioner, clinical nurse
351 specialist in psychiatric/mental health, professional counselor, or licensed clinical social
352 worker is not available, a physician, psychologist, or physician assistant, nurse
353 practitioner, clinical nurse specialist in psychiatric/mental health, professional counselor,
354 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 registered under Chapter 26 of Title 43, a 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, 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, professional counselor,~~ or licensed clinical social worker 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, professional counselor,~~ or licensed clinical social worker who completed the affidavit attached to the petition pursuant to subsection (c) of Code Section 29-5-10.

(2) When evaluating the proposed ward, the physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, 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 privileged and shall be inadmissible as evidence in any proceeding other than a proceeding under this chapter.

381 The proposed ward's legal counsel shall have the right to be present but shall not
382 participate in the evaluation.

383 (3) The evaluation shall be conducted with as little interference with the proposed ward's
384 activities as possible. The evaluation shall take place at the place and time set in the
385 notice to the proposed ward and to his or her legal counsel and the time set shall not be
386 sooner than the fifth day after the service of notice on the proposed ward. The court,
387 however, shall have the exclusive power to change the place and time of the examination
388 at any time upon reasonable notice being given to the proposed ward and to his or her
389 legal counsel. If the proposed ward fails to appear, the court may order that the proposed
390 ward be taken directly to and from a medical facility, office of a physician, psychologist,
391 or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental
392 health, professional counselor, or licensed clinical social worker for purposes of
393 evaluation only. The evaluation shall be conducted during the normal business hours of
394 the facility or office, and the proposed ward shall not be detained in the facility or office
395 overnight. The evaluation may include, but not be limited to:

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

397 (B) Questions and observations of the proposed ward to assess the functional abilities
398 of the proposed ward;

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

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

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

404 (4) A written report shall be filed with the court no later than seven days after the
405 evaluation, and the court shall serve a copy of the report by first-class mail upon the
406 proposed ward and the proposed ward's legal counsel and 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, 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 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, 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, 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

512 psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a
513 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical
514 social worker, other than the physician, psychologist, or physician assistant, nurse
515 practitioner, clinical nurse specialist in psychiatric/mental health, professional counselor,
516 or licensed clinical social worker who completed the affidavit attached to the petition
517 pursuant to paragraph (1) of subsection (d) of Code Section 29-5-10; ~~to.~~ Such evaluation
518 shall be conducted within 72 hours of the time such order was issued, and a written report
519 ~~to~~ shall be furnished to the court and made available to the parties within ~~72 hours~~ such
520 time, which evaluation and report shall be governed by the provisions of subsection (d)
521 of Code Section ~~29-5-14~~ 29-5-11;

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

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

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

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

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

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

536 (5) Appoint an emergency conservator to serve until the emergency hearing, with or
537 without prior notice to the proposed ward, if the threatened risk is so immediate and the
538 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 professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker; provided, however, that, pending the emergency hearing, the court shall order that no withdrawals may be made from any account on the authority of the proposed ward's signature without the court's prior approval and that the emergency conservator shall not expend any funds of the proposed ward without prior court approval. Appointment of an emergency conservator under this paragraph is not a final determination of the proposed ward's need for a nonemergency conservator. Any emergency conservator appointed under this paragraph shall have only those powers and duties specifically enumerated in the letters of emergency conservatorship; such powers and duties shall not exceed those absolutely necessary to respond to the immediate threatened risk to the ward; and such powers and duties shall be subject to the limitations provided in this paragraph regarding the expenditures of funds of the ward."

SECTION 18.

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

"29-5-16.

(a) The court shall conduct the emergency conservatorship 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 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 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 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 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 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 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 the conservatorship should be terminated, 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 22.

Said title is further amended in Code Section 29-5-110, relating to proceedings for appeal, appointment of guardians ad litem, bond and security prior to removal, liability of surety of predecessor conservator, and jurisdiction, 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 conservator with powers and duties as are described in Code Section 29-5-16; provided, however, that such emergency conservator 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 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 29-5-14 and after a hearing at which other evidence may be presented. The appointment of an emergency conservator is not appealable."

SECTION 23.

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

"29-9-16.

(a) For the evaluation or examination required by subsection (d) of Code Section 29-4-11, subsection (c) of Code Section 29-4-15, subsection (b) of Code Section 29-4-42, subsection (d) of Code Section 29-5-11, subsection (c) of Code Section 29-5-15, or subsection (b) of Code Section 29-5-71, the evaluating physician, psychologist, ~~or physician assistant, nurse practitioner, clinical nurse specialist in psychiatric/mental health, professional counselor, or~~ licensed clinical social worker shall receive a reasonable fee commensurate with the task performed, plus actual expenses.

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

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

SECTION 24.

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