

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4911**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL
700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416),
sections 5303, 5304, and 5306a as amended by 2024 PA 1, section
5306 as amended by 2019 PA 170, and section 5312 as amended by 2000
PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5303. (1) An individual in the individual's own behalf,
2 or any person interested in the individual's welfare, may petition
3 for a finding of incapacity and appointment of a guardian or
4 designation of a standby guardian. The petition must contain
5 specific facts about the individual's condition and specific



1 examples of the individual's recent conduct that demonstrate the
2 need for a guardian's appointment.

3 (2) Before a petition is filed under this section, the court
4 shall provide the person intending to file the petition with
5 written information that sets forth alternatives to appointment of
6 a full guardian, including, but not limited to, a limited guardian,
7 conservator, patient advocate designation, do-not-resuscitate
8 order, physician orders for scope of treatment form, or durable
9 power of attorney with or without limitations on purpose,
10 authority, or time period, and an explanation of each alternative.

11 (3) On the filing of a petition under subsection (1), the
12 court shall set a date for **initial** hearing. ~~on the issue of~~
13 ~~incapacity.~~ Unless the allegedly incapacitated individual has legal
14 counsel of the individual's own choice, the court shall appoint a
15 guardian ad litem ~~to represent the individual in the proceeding.~~
16 **for the initial hearing. The court may enter a final order on the**
17 **petition at the initial hearing if the court does not set a trial**
18 **date under subsection (4).**

19 (4) At the initial hearing under subsection (3), the court
20 shall set a trial date at least 7 days after the initial hearing
21 for the petition under subsection (1) if any of the following
22 apply:

23 (a) The guardian ad litem requests that the proceeding be set
24 for trial.

25 (b) The allegedly incapacitated individual or the individual's
26 legal counsel requests the matter be set for trial.

27 (c) The court determines that the trial date should be set for
28 any other reason as justice requires.

29 (5) If the court sets a trial date at the initial hearing



under subsection (4), the court shall do both of the following:

(a) Enter a scheduling order to the extent necessary.

(b) Enter an order that provides, to the extent practicable, for the attendance of the allegedly incapacitated individual at the trial if the allegedly incapacitated individual wishes to attend. An order entered under this subdivision may order any interested person over whom the court has jurisdiction to facilitate attendance or move the hearing site under section 5304.

Sec. 5304. (1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303. A report prepared as provided in this subsection must not be made a part of the proceeding's public record, but must be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at the individual's own expense or, if indigent, at the expense of ~~the~~**this** state. **An independent evaluation performed at the expense of this state must be performed by a physician or mental health professional.** Compensation for an independent evaluation at public expense must be in an amount that, based on time and expense, the court approves as reasonable.

(3) A report prepared under this section must contain all of the following:

(a) A detailed description of the individual's ~~physical or~~



~~psychological infirmities.~~**cognitive and functional abilities and limitations.**

(b) ~~An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.~~**the individual is able to receive, understand, participate in, and evaluate information in making decisions.**

(c) ~~A~~**If the report is being completed by a physician or mental health professional, a listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has on the individual's behavior.**

(d) ~~A~~**If the report is being completed by a physician or mental health professional, a prognosis for improvement in the individual's condition, including whether it is a permanent or temporary condition, and a recommendation for the most appropriate rehabilitation plan.**

(e) The signatures **and printed names** of all individuals who performed the evaluations, ~~on which the report is based.~~**where they are employed, the date of examination on which the report is based, the length of time they have known the individual, and the length of time they met with the individual.**

(f) **Whether the individual has the capacity to assign or delegate responsibilities to ensure the individual's well-being.**

(g) **Whether the individual has executed a document directing care or naming an agent to act on the individual's behalf, including, but not limited to, a power of attorney, patient advocate designation, or do-not-resuscitate order.**

(h) **If the report is being completed by a visitor, at a**



1 minimum, an assessment of the existence of current formal and
2 informal supports, the ability of supportive services and benefits
3 to meet any unmet needs, the identification of any existing
4 concerns regarding the individual's well-being, and the
5 individual's ability to address those existing concerns.

6 (4) If the court finds that the report prepared under this
7 section does not substantially comply with the requirements of this
8 section, the court shall not consider the evaluation.

9 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled
10 to be present at the hearing to appoint a guardian or designate a
11 standby guardian in person, and to see or hear all evidence bearing
12 on the individual's condition. If the individual wishes to be
13 present at the hearing, all practical steps must be taken to ensure
14 the individual's presence, including, if necessary, moving the
15 hearing site.

16 (6) ~~(5)~~—The individual **alleged to be incapacitated** is entitled
17 to be represented by legal counsel, to present evidence, to cross-
18 examine witnesses, including the court-appointed physician or
19 mental health professional and the visitor, and to trial by jury.

20 (7) ~~(6)~~—The issue of incapacity may be determined at a closed
21 hearing without a jury if requested by the individual alleged to be
22 incapacitated or that individual's legal counsel.

23 Sec. 5306. (1) The court may appoint a guardian if the court
24 finds by clear and convincing evidence both that the individual for
25 whom a guardian is sought is an incapacitated individual and that
26 the appointment is necessary as a means of providing continuing
27 care and supervision of the incapacitated individual, with each
28 finding supported separately on the record. ~~Alternately, the court~~
29 ~~may dismiss the proceeding or enter another appropriate order.~~



1 (2) The court shall dismiss the proceeding under subsection
2 (1) if the court cannot be shown both of the following by clear and
3 convincing evidence:

4 (a) That the individual for whom a guardian is sought is an
5 incapacitated individual.

6 (b) That the appointment is necessary as a means of providing
7 continuing care and supervision of the individual.

8 (3) At any time during the proceedings under subsection (1),
9 the court may stay the guardianship proceedings for a reasonable
10 period of time, based on the needs of the individual, to allow the
11 individual the opportunity to explore the alternatives to
12 appointment of a guardian. If the individual properly names a
13 patient advocate under a patient advocate designation, an attorney
14 in fact under a power of attorney, or a representative payee under
15 a governmental benefit during the stay under this subsection and
16 provides evidence of naming the patient advocate, attorney in fact,
17 or representative payee to the court, the court may dismiss the
18 petition with or without a hearing. This subsection does not
19 prevent the court from ordering a temporary guardianship under
20 section 5312a if the temporary guardianship is limited in scope and
21 the court explicitly finds that the individual has the capacity to
22 execute a power of attorney or patient advocate designation, or to
23 designate a representative payee.

24 (4) ~~(2)~~—The court shall grant a guardian only those powers and
25 only for that period of time as is necessary to provide for the
26 demonstrated need of the incapacitated individual. The court shall
27 design the guardianship to encourage the development of maximum
28 self-reliance and independence in the individual. If the court is
29 aware that an individual has executed a patient advocate



1 designation under section 5506, the court shall not grant a
2 guardian any of the same powers that are held by the patient
3 advocate. A court order establishing a guardianship shall specify
4 any limitations on the guardian's powers and any time limits on the
5 guardianship.

6 (5) ~~(3)~~—If the court finds by clear and convincing evidence
7 that an individual is incapacitated and lacks the capacity to do
8 some, but not all, of the tasks necessary to care for ~~himself or~~
9 ~~herself,~~ **the individual**, the court may appoint a limited guardian
10 to provide guardianship services to the individual, but the court
11 shall not appoint a full guardian.

12 (6) ~~(4)~~—If the court finds by clear and convincing evidence
13 that the individual is incapacitated and is totally without
14 capacity to care for ~~himself or herself,~~ **the individual**, the court
15 shall specify that finding of fact in an order and may appoint a
16 full guardian.

17 (7) ~~(5)~~—If an individual executed a patient advocate
18 designation under section 5506 before the time the court determines
19 that he or she became a legally incapacitated individual, a
20 guardian does not have and shall not exercise the power or duty of
21 making medical or mental health treatment decisions that the
22 patient advocate is designated to make. If, however, a petition for
23 guardianship or for modification under section 5310 alleges and the
24 court finds that the patient advocate designation was not executed
25 in compliance with section 5506, that the patient advocate is not
26 complying with the terms of the designation or with the applicable
27 provisions of sections 5506 to 5515, or that the patient advocate
28 is not acting consistent with the ward's best interests, the court
29 may modify the guardianship's terms to grant those powers to the



1 guardian.

2 (8) ~~(6)~~ If the court finds by clear and convincing evidence
 3 that the individual is incapacitated, that the person that has the
 4 care and custody of the incapacitated individual denied another
 5 person access to the incapacitated individual, and that the
 6 incapacitated individual desires contact with the other person or
 7 that contact with the other person is in the incapacitated
 8 individual's best interest, the court may appoint a limited
 9 guardian to supervise access with the other person.

10 Sec. 5306a. (1) An individual for whom a guardian is sought or
 11 has been appointed under section 5306 has all of the following
 12 rights:

13 (a) To object to the appointment of a successor guardian by
 14 will or other writing, as provided in section 5301.

15 (b) To have the guardianship proceeding commenced and
 16 conducted in the place where the individual resides or is present
 17 or, if the individual is admitted to an institution by a court, in
 18 the county in which the court is located, as provided in section
 19 5302.

20 (c) To petition on the individual's own behalf for the
 21 appointment of a guardian or designation of a standby guardian, as
 22 provided in section 5303.

23 (d) To have legal counsel of the individual's own choice
 24 represent ~~him or her~~ **the individual** on ~~the~~ **either of the following:**

25 (i) **The** petition to appoint a guardian or designate a standby
 26 guardian, as provided in sections 5303, 5304, and 5305.

27 (ii) **If applicable, a professional guardian's petition to**
 28 **permanently remove the individual from the individual's permanent**
 29 **residence, as provided in section 5314a.**



1 (e) If the individual is not represented by legal counsel, to
2 the appointment of a guardian ad litem, ~~to represent the individual~~
3 ~~on the petition to appoint a guardian or designate a standby~~
4 ~~guardian,~~ as provided in section 5303.

5 (f) To an independent evaluation of the individual's capacity
6 by a physician or mental health professional, at public expense if
7 the individual is indigent, as provided in section 5304.

8 (g) To be present at the hearing on the petition to appoint a
9 guardian or designate a standby guardian and to have all practical
10 steps taken to ensure this, including, if necessary, moving the
11 hearing site, as provided by section 5304.

12 (h) To see or hear all the evidence presented in the hearing
13 on the petition to appoint a guardian or designate a standby
14 guardian, as provided in section 5304.

15 (i) To present evidence and cross-examine witnesses in the
16 hearing on the petition to appoint a guardian or designate a
17 standby guardian, as provided in section 5304.

18 (j) To a trial by jury on the petition to appoint a guardian
19 or designate a standby guardian, as provided in section 5304.

20 (k) To a closed hearing on the petition to appoint a guardian,
21 as provided in section 5304.

22 (l) If a guardian ad litem is appointed, to be personally
23 visited by the guardian ad litem, as provided in section 5305.

24 (m) If a guardian ad litem is appointed, to an explanation by
25 the guardian ad litem of the nature, purpose, and legal effects of
26 a guardian's appointment, as provided in section 5305.

27 (n) If a guardian ad litem is appointed, to an explanation by
28 the guardian ad litem of the individual's rights in the hearing
29 procedure, as provided in section 5305.



1 (o) If a guardian ad litem is appointed, to be informed by the
2 guardian ad litem of the right to contest the petition, to request
3 limits on the guardian's powers, to object to a particular person
4 being appointed guardian or designated as standby guardian, to be
5 present at the hearing, to be represented by legal counsel, and to
6 have legal counsel appointed if the individual is unable to afford
7 legal counsel, as provided in section 5305.

8 (p) To be informed of the name of each person known to be
9 seeking appointment as guardian or designation as standby guardian,
10 including, if a guardian ad litem is appointed, to be informed of
11 the names by the guardian ad litem as provided in section 5305.

12 (q) To require that proof of incapacity and the need for a
13 guardian be proven by clear and convincing evidence, as provided in
14 section 5306.

15 (r) To the limitation of the powers and period of time of a
16 guardianship to only the amount and time that is necessary, as
17 provided in section 5306.

18 (s) To a guardianship designed to encourage the development of
19 maximum self-reliance and independence as provided in section 5306.

20 (t) To prevent the grant of powers to a guardian if those
21 powers are already held by a valid patient advocate, as provided in
22 section 5306.

23 (u) To periodic review of the guardianship by the court,
24 including the right to a hearing and the appointment of an attorney
25 if issues arise upon the review of the guardianship, as provided in
26 section 5309.

27 (v) To, at any time, seek modification or termination of the
28 guardianship by informal letter to the judge, as provided in
29 section 5310.



1 (w) To a hearing ~~within~~**not later than** 28 days of requesting a
2 review, modification, or termination of the guardianship, as
3 provided in section 5310.

4 (x) To the same rights on a petition for modification or
5 termination of the guardianship including the appointment of a
6 visitor as apply to a petition for appointment of a guardian, as
7 provided in section 5310.

8 (y) To personal notice of a petition for appointment or
9 removal of a guardian or the designation or change in designation
10 of a standby guardian, as provided in section 5311.

11 (z) To written notice of the nature, purpose, and legal
12 effects of the appointment of a guardian, as provided in section
13 5311.

14 (aa) To choose the person who will serve as guardian and the
15 person designated as standby guardian, if the chosen person is
16 suitable and willing to serve, as provided in sections 5313 and
17 5301c, as applicable.

18 (bb) To consult with the guardian about major decisions
19 affecting the individual, if meaningful conversation is possible,
20 as provided in section 5314.

21 (cc) To quarterly visits by the guardian, as provided in
22 section 5314.

23 ~~(dd) To have the guardian notify the court within 14 days of a~~
24 ~~change in the individual's residence, as provided in section 5314.~~
25 **If the guardian is not a professional guardian, to have the**
26 **guardian notify the court not later than 14 days after a change in**
27 **the individual's permanent residence, as provided in section 5314a.**

28 (ee) If the guardian is a professional guardian, to have the
29 court consider a separate petition, as provided in section 5314a,



1 if a professional guardian seeks to move the individual to a new
2 permanent residence.

3 (ff) ~~(ee)~~—To have the guardian secure services to restore the
4 individual to the best possible state of mental and physical well-
5 being so that the individual can return to self-management at the
6 earliest possible time, as provided in section 5314.

7 (gg) ~~(ff)~~—To have the guardian take reasonable care of the
8 individual's clothing, furniture, vehicles, and other personal
9 effects, as provided in section 5314.

10 (2) A guardian ad litem shall inform the ward in writing of
11 the ward's rights enumerated in this section. The state court
12 administrative office and the health and aging services
13 administration created under Executive Reorganization Order No.
14 2021-2, MCL 400.562, shall promulgate a form to be used to give the
15 written notice under this section, which must include space for the
16 court to include information on how to contact the court or other
17 relevant personnel with respect to the rights enumerated in this
18 section.

19 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~
20 ~~emergency exists, and no other person appears to have authority to~~
21 ~~act in the circumstances, the court shall provide notice to the~~
22 ~~individual alleged to be incapacitated and shall hold a hearing.~~
23 ~~Upon a showing that the individual is an incapacitated individual,~~
24 ~~the court may exercise the power of a guardian, or appoint a~~
25 ~~temporary guardian with only the powers and for the period of time~~
26 ~~as ordered by the court. A hearing with notice as provided in~~
27 ~~section 5311 shall be held within 28 days after the court has acted~~
28 ~~under this subsection.~~

29 ~~(2) If an appointed guardian is not effectively performing the~~



~~guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally incapacitated individual for a specified period not to exceed 6 months.~~

~~(3) A temporary guardian is entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make reports as the court requires. In other respects, the provisions of this act concerning guardians apply to temporary guardians.~~

(1) An interested person may file a petition to appoint an emergency guardian for an allegedly incapacitated individual under this subsection. If a petition is filed under this subsection, the petitioner shall give notice, except as otherwise provided in subsection (2), as provided by section 5311, and the court shall appoint a guardian ad litem under section 5305. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. Except as otherwise provided in subsection (2), following the hearing under this subsection, the court may appoint an emergency guardian if the court finds by a preponderance of the evidence that all of the following apply:

(a) An emergency exists that is likely to result in substantial harm to the allegedly incapacitated individual's physical health, safety, or welfare.

(b) No other person appears to have authority to act in the circumstances.



1 (c) There is a basis that both the individual is an
2 incapacitated individual and appointment of an emergency guardian
3 is necessary as a means of providing continuing care and
4 supervision of the individual.

5 (2) On the filing of a petition to appoint an emergency
6 guardian under subsection (1), the court may appoint an emergency
7 guardian for an allegedly incapacitated individual without notice
8 to the allegedly incapacitated individual only if all of the
9 following conditions are met:

10 (a) The petitioner complies with the Michigan court rule that
11 controls temporary restraining orders.

12 (b) The affidavit included with the petition clearly shows
13 that all of the following apply:

14 (i) An emergency exists that is likely to result in imminent
15 and substantial harm to the allegedly incapacitated individual's
16 physical health, safety, or welfare.

17 (ii) No other person appears to have the authority to act under
18 the circumstances.

19 (iii) The individual is an incapacitated individual and
20 appointment of an emergency guardian is necessary as a means of
21 providing continuing care and supervision of the individual.

22 (c) The order complies with the Michigan court rule that
23 controls temporary restraining orders.

24 (3) If the court appoints an emergency guardian under
25 subsection (2), the court shall do all of the following:

26 (a) Appoint a guardian ad litem for the allegedly
27 incapacitated individual under section 5305.

28 (b) Not later than 48 hours after the appointment of an
29 emergency guardian under this subsection, order the petitioner to



1 give notice by personal service of the appointment to the allegedly
2 incapacitated individual and service as required by court rule to
3 all interested persons.

4 (c) Not later than 7 days after the appointment of an
5 emergency guardian under this subsection, hold a hearing on whether
6 the conditions for the appointment of the emergency guardian exist.

7 (4) If the court finds conditions exist for the appointment of
8 the emergency guardian at a hearing under this section, and the
9 individual wishes to contest the appointment, the court must set a
10 date for a hearing and enter an order consistent with section 5306.

11 (5) An order appointing an emergency guardian under this
12 section expires 28 days after the appointment. However, the court
13 may extend an order appointing an emergency guardian under this
14 section once for an additional 28 days if the court finds by a
15 preponderance of the evidence, upon an affidavit by the appointed
16 emergency guardian or following a hearing set at the discretion of
17 the court, that the conditions that led to the appointment of the
18 emergency guardian still exist.

19 (6) An emergency guardian may exercise only the powers
20 specified by the court.

21 (7) The court may remove an emergency guardian at any time.

22 (8) An appointment of an emergency guardian under this section
23 is not a determination that a basis exists for an appointment of a
24 guardian under section 5306(1).

25 Sec. 5416. (1) In relation to powers conferred by this part or
26 implicit in the title acquired by virtue of the proceeding, a
27 conservator shall act as a fiduciary and observe the standard of
28 care applicable to a trustee.

29 (2) A conservator for an individual who is subject to a



1 conservatorship for a reason other than minority has the duty to
2 take all steps within the scope of the conservator's authority to
3 ensure the individual attends any hearing concerning the
4 individual's conservatorship if the individual wishes to attend the
5 hearing in a manner as provided in section 5406.

6 Enacting section 1. This amendatory act takes effect 365 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act does not take effect
9 unless all of the following bills of the 102nd Legislature are
10 enacted into law:

11 (a) House Bill No. 4909.

12 (b) House Bill No. 4910.

13 (c) House Bill No. 4912.

