

HOUSE BILL NO. 4910

July 18, 2023, Introduced by Reps. Tsernoglou, Breen, Morse, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Mentzer, Rogers, Filler, Borton, Rheingans, Schmaltz, Fitzgerald, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Byrnes, Farhat, McKinney, Hoskins, Brabec, Liberati, O'Neal, Neeley, Edwards, Miller, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Coleman, Wilson, Grant, Glanville, Churches, Johnsen, Morgan, Aiyash, Whitsett, Hill, Meerman and Puri and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5305, 5314, 5406, 5417, and 5418 (MCL 700.5305, 700.5314, 700.5406, 700.5417, and 700.5418), section 5305 as amended by 2017 PA 155, section 5314 as amended by 2018 PA 594, section 5406 as amended by 2000 PA 464, and sections 5417 and 5418 as amended by 2000 PA 312, and by adding section 5314a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5305. (1) ~~The~~**Subject to subsection (2), the** duties of a
2 guardian ad litem appointed ~~for~~**when** an individual **is** alleged to be

1 incapacitated include all of the following:

2 ~~(a) Personally visiting the individual.~~

3 ~~(b) Explaining to the individual the nature, purpose, and~~
4 ~~legal effects of a guardian's appointment.~~

5 ~~(c) Explaining to the individual the hearing procedure and the~~
6 ~~individual's rights in the hearing procedure, including, but not~~
7 ~~limited to, all of the following:~~

8 ~~(i) The right to contest the petition.~~

9 ~~(ii) The right to request limits on the guardian's powers,~~
10 ~~including a limitation on the guardian's power to execute on behalf~~
11 ~~of the ward either of the following:~~

12 ~~(A) A do-not-resuscitate order.~~

13 ~~(B) A physician orders for scope of treatment form.~~

14 ~~(iii) The right to object to a particular person being appointed~~
15 ~~guardian.~~

16 ~~(iv) The right to be present at the hearing.~~

17 ~~(v) The right to be represented by legal counsel.~~

18 ~~(vi) The right to have legal counsel appointed for the~~
19 ~~individual if he or she is unable to afford legal counsel.~~

20 ~~(d) Informing the individual that if a guardian is appointed,~~
21 ~~the guardian may have the power to execute a do not resuscitate~~
22 ~~order on behalf of the individual and, if meaningful communication~~
23 ~~is possible, discern if the individual objects to having a do-not-~~
24 ~~resuscitate order executed on his or her behalf.~~

25 ~~(e) Informing the individual that if a guardian is appointed,~~
26 ~~the guardian may have the power to execute a physician orders for~~
27 ~~scope of treatment form on behalf of the individual and, if~~
28 ~~meaningful communication is possible, discern if the individual~~
29 ~~objects to having a physician orders for scope of treatment form~~

1 ~~executed on his or her behalf.~~

2 ~~(f) Informing the individual of the name of each person known~~
3 ~~to be seeking appointment as guardian.~~

4 ~~(g) Asking the individual and the petitioner about the amount~~
5 ~~of cash and property readily convertible into cash that is in the~~
6 ~~individual's estate.~~

7 ~~(h) Making determinations, and informing the court of those~~
8 ~~determinations, on all of the following:~~

9 ~~(i) Whether there are 1 or more appropriate alternatives to the~~
10 ~~appointment of a full guardian or whether 1 or more actions should~~
11 ~~be taken in addition to the appointment of a guardian. Before~~
12 ~~informing the court of his or her determination under this~~
13 ~~subparagraph, the guardian ad litem shall consider the~~
14 ~~appropriateness of at least each of the following as alternatives~~
15 ~~or additional actions:~~

16 ~~(A) Appointment of a limited guardian, including the specific~~
17 ~~powers and limitation on those powers the guardian ad litem~~
18 ~~believes appropriate.~~

19 ~~(B) Appointment of a conservator or another protective order~~
20 ~~under part 4 of this article. In the report informing the court of~~
21 ~~the determinations under this subdivision, the guardian ad litem~~
22 ~~shall include an estimate of the amount of cash and property~~
23 ~~readily convertible into cash that is in the individual's estate.~~

24 ~~(C) Execution of a patient advocate designation, do-not-~~
25 ~~resuscitate order, physician orders for scope of treatment form, or~~
26 ~~durable power of attorney with or without limitations on purpose,~~
27 ~~authority, or duration.~~

28 ~~(ii) Whether a disagreement or dispute related to the~~
29 ~~guardianship petition might be resolved through court ordered~~

1 mediation.

2 ~~(iii) Whether the individual wishes to be present at the~~
3 ~~hearing.~~

4 ~~(iv) Whether the individual wishes to contest the petition.~~

5 ~~(v) Whether the individual wishes limits placed on the~~
6 ~~guardian's powers.~~

7 ~~(vi) Whether the individual objects to having a do not~~
8 ~~resuscitate order executed on his or her behalf.~~

9 ~~(vii) Whether the individual objects to having a physician~~
10 ~~orders for scope of treatment form executed on his or her behalf.~~

11 ~~(viii) Whether the individual objects to a particular person~~
12 ~~being appointed guardian.~~

13 ~~(2) The court shall not order compensation of the guardian ad~~
14 ~~litem unless the guardian ad litem states on the record or in the~~
15 ~~guardian ad litem's written report that he or she has complied with~~
16 ~~subsection (1).~~

17 ~~(3) If the individual alleged to be incapacitated wishes to~~
18 ~~contest the petition, to have limits placed on the guardian's~~
19 ~~powers, or to object to a particular person being appointed~~
20 ~~guardian and if legal counsel has not been secured, the court shall~~
21 ~~appoint legal counsel to represent the individual alleged to be~~
22 ~~incapacitated. If the individual alleged to be incapacitated is~~
23 ~~indigent, this state shall bear the expense of legal counsel.~~

24 ~~(4) If the individual alleged to be incapacitated requests~~
25 ~~legal counsel or the guardian ad litem determines it is in the~~
26 ~~individual's best interest to have legal counsel, and if legal~~
27 ~~counsel has not been secured, the court shall appoint legal~~
28 ~~counsel. If the individual alleged to be incapacitated is indigent,~~
29 ~~this state shall bear the expense of legal counsel.~~

1 ~~(5) If the individual alleged to be incapacitated has legal~~
2 ~~counsel appointed under subsection (3) or (4), the appointment of a~~
3 ~~guardian ad litem terminates.~~

4 (a) Impartially gather information as provided by law.

5 (b) Seek information from the individual and, if communication
6 is possible, communicate in a manner the individual is best able to
7 understand. If communication is not possible or there is a barrier
8 to communication, the guardian ad litem must note that in the
9 report under subsection (3).

10 (c) Interview the individual in person at the individual's
11 location and out of the presence of any interested person.

12 (d) Advise the individual that the guardian ad litem does not
13 represent the individual as an attorney and that no attorney-client
14 relationship has been created.

15 (e) Identify whether the individual wishes to be present at
16 the hearing. If the allegedly incapacitated individual does not
17 wish to be present at the hearing, the guardian ad litem shall
18 identify the reasons why the individual does not wish to be
19 present.

20 (f) Identify any barrier to attending hearings at the place
21 where court is held or otherwise fully participating in the
22 hearing, including the need for assistive technology,
23 transportation, or other support. If the allegedly incapacitated
24 individual wishes to attend, the guardian ad litem must identify
25 whether the individual has identified a plan for how the individual
26 will attend.

27 (g) Identify whether the individual plans to retain legal
28 counsel or wants appointed legal counsel. If the allegedly
29 incapacitated individual does not plan to retain legal counsel or

1 request appointed legal counsel, the guardian ad litem must make a
2 recommendation as to whether legal counsel should be appointed.

3 (h) Identify whether a disagreement or dispute related to the
4 petition might be resolved through court-ordered mediation.

5 (2) The duties of a guardian ad litem appointed when an
6 individual is alleged to be incapacitated or a legally
7 incapacitated individual include all of the following, as
8 applicable:

9 (a) Explain to the individual the nature, purpose, and legal
10 effects of a guardian's appointment.

11 (b) Explain who has filed the petition and who, if anyone, has
12 been nominated as guardian.

13 (c) Explain to the individual the hearing procedure and the
14 individual's rights in the hearing procedure, as identified in
15 section 5306a, including, but not limited to, the following:

16 (i) The right to contest the petition, in whole or in part.

17 (ii) The right to request limits on the guardian's powers.

18 (iii) The right to be present at the hearing. If the individual
19 is unable to attend the hearing at the location court proceedings
20 typically are held, the guardian ad litem shall inform the
21 individual of his or her right for the hearing at another location.

22 (iv) The right to request a reasonable accommodation to allow
23 the individual to participate as fully as possible at the hearing,
24 including with assistive technology or other support.

25 (v) The right to be represented by legal counsel of the
26 individual's choice. If the individual is unable to secure legal
27 counsel of his or her choice, the right to have legal counsel
28 appointed by the court.

29 (vi) The right to request an independent medical evaluation.

1 (d) Explain to the individual that if a guardian is appointed,
2 the guardian may have the power to take certain actions on behalf
3 of the individual. A guardian ad litem must inform the individual
4 that a guardian may have any of the following powers and, if
5 meaningful communication is possible, discern if the individual
6 objects to a guardian having any of the following powers:

7 (i) Executing a do-not-resuscitate order.

8 (ii) Executing a physician orders for scope of treatment form.

9 (iii) Consenting to any medical treatment.

10 (iv) Consenting to placement decisions, including moving the
11 individual to a nursing facility or adult foster care home.

12 (v) Choosing whether the individual can marry or divorce.

13 (vi) Handling any financial and property matters, including the
14 sale or disposal of personal property and the maintenance of real
15 property.

16 (e) Identify whether the individual objects to the particular
17 person proposed as guardian, if any.

18 (f) If a guardian were to be appointed, identify a list of
19 whom the individual would want to serve, in order of preference.

20 (g) If a guardian were to be appointed, identify whom the
21 individual would not want to serve.

22 (3) Subject to subsections (4) and (5), a guardian ad litem
23 appointed for an individual alleged to be incapacitated or a
24 legally incapacitated individual shall file a written report with
25 the court and in the form required by the state court
26 administrative office.

27 (4) If an individual who is subject to an initial petition
28 under this part, petition to terminate under this part, or petition
29 to modify under this part contests the petition, the guardian ad

1 litem's written report required under subsection (3) must include
2 only the following:

3 (a) That the individual contests the petition.

4 (b) Whether the individual has retained legal counsel or
5 wishes for legal counsel to be appointed.

6 (c) Whether the individual has any barriers to attending court
7 at the place where it is usually held.

8 (d) If a guardian were appointed, who the individual would
9 want to serve in order of preference.

10 (e) If a guardian were appointed, who the individual would not
11 want to serve.

12 (f) Any other information the guardian ad litem determines
13 would be helpful to the court in ruling on the petition.

14 (5) If an individual who is subject to an initial petition
15 under this part, petition to terminate under this part, or petition
16 to modify under this part does not contest the petition, the
17 guardian ad litem's report required under subsection (3) must
18 include only the following:

19 (a) The date and time the guardian ad litem met with the
20 individual.

21 (b) The length of time the guardian ad litem met with the
22 individual.

23 (c) The location where the guardian ad litem met with the
24 individual.

25 (d) Whether the guardian ad litem was able to meaningfully
26 communicate with the individual and any barriers to communication.

27 (e) Who, if anyone, was present for the interview besides the
28 individual.

29 (f) Whether the individual wishes to be present at the

1 hearing. If the individual wishes to be present at the hearing but
2 has a barrier to fully participating, the guardian ad litem must
3 include in the written report whether the barrier can be resolved
4 by moving the location of the hearing or using assistive
5 technology, or both, or other support.

6 (g) Whether the individual has identified a plan for how the
7 individual will attend.

8 (h) Whether the individual plans to retain legal counsel or
9 has requested appointed legal counsel. If the individual has not
10 indicated he or she wishes to be represented by legal counsel, the
11 guardian ad litem shall include in the written report a
12 recommendation as to whether legal counsel should be appointed to
13 represent the individual.

14 (i) Whether the individual has any of the following:

15 (i) A power of attorney with or without limitations on purpose,
16 authority, or time period.

17 (ii) A patient advocate designation.

18 (iii) A physician orders for scope of treatment form.

19 (iv) A benefits payee, trustee, or other fiduciary.

20 (j) Whether a disagreement or dispute related to the petition
21 might be resolved through court-ordered mediation.

22 (k) Whether the appointment of a visitor with appropriate
23 knowledge, training, and education such as a social worker, mental
24 health professional, or medical professional could provide the
25 court with the information on whether alternatives to guardianship
26 or a limited guardianship is appropriate.

27 (l) If a guardian were appointed, who the individual would want
28 to serve in order of preference.

29 (m) If a guardian were appointed, who the individual would not

1 want to serve.

2 (n) An estimate of the liquid assets as that term is defined
3 in section 5314, income, real property, and a description of
4 personal property to the extent known after reasonable inquiry.

5 (o) Any other information the guardian ad litem determines
6 would be helpful to the court in ruling on the petition.

7 (6) If a guardian ad litem is appointed for any purpose other
8 than an initial petition under this part, petition to terminate
9 under this part, or petition to modify under this part, the
10 guardian ad litem must provide a written report to the court that
11 includes, at a minimum, the information described in subsection (4)
12 or (5), as applicable, and any other information required by law. A
13 special limited guardian ad litem appointed under subsection (13)
14 is not required to provide a written report unless ordered to do so
15 by the court under subsection (13).

16 (7) A guardian ad litem shall file the report required under
17 subsection (3) with the court and serve it on all interested
18 persons at least 5 days before the date of the hearing. The court
19 may order the report to be filed and served less than 5 days before
20 the hearing only if the petition is made on an emergency basis
21 under section 5312.

22 (8) The court may receive into evidence without testimony the
23 written report of the guardian ad litem required under subsection
24 (3) if the report is filed with the court and served on all
25 interested persons not less than 5 days before the hearing. The
26 guardian ad litem is required to report findings until the date of
27 the termination of the guardian ad litem. The court may issue on
28 its own initiative, or any interested person may secure, a subpoena
29 to compel the preparer of the report to testify. On request of any

1 interested person, the court shall issue a subpoena to compel the
2 preparer of the report to testify.

3 (9) The court shall not order compensation of the guardian ad
4 litem unless the guardian ad litem states in the guardian ad
5 litem's written report that the guardian ad litem complied with
6 subsections (2) to (7), as applicable.

7 (10) The court shall not appoint a person that was previously
8 appointed as guardian ad litem as legal counsel for the individual
9 if the guardian ad litem's report under subsection (3) or
10 recommendation to the court conflicts with the wishes of the
11 individual.

12 (11) If an individual who is subject to a petition under this
13 part has not already secured legal counsel, the court shall appoint
14 legal counsel if any of the following apply:

15 (a) The individual requests legal counsel.

16 (b) The individual objects to any part of the petition for
17 guardianship or potential authority of a guardian.

18 (c) The guardian ad litem determines it is in the individual's
19 best interest to have legal counsel if legal counsel has not been
20 secured. If the individual who is subject to the petition is
21 indigent, this state shall bear the expense of appointed legal
22 counsel under this subsection.

23 (12) If an individual who is subject to a petition under this
24 part has legal counsel appointed or retained, the appointment of a
25 guardian ad litem terminates. The report of the guardian ad litem
26 must not be admitted into evidence after the appearance or
27 appointment of legal counsel for the individual who is subject to
28 the petition.

29 (13) After appointment or retention of legal counsel for the

1 individual who is subject to the petition under this part, the
2 court may, for good cause shown, appoint a special limited guardian
3 ad litem to provide information on a narrowly defined issue that
4 will likely otherwise be inadequately addressed. A special guardian
5 ad litem is exempt from subsections (2) to (6). The court may order
6 that a special limited guardian ad litem appointed under this
7 subsection provide a written report. The report under this
8 subsection must contain the information the court considers
9 necessary to adequately address the issue leading to the
10 appointment of the special limited guardian ad litem. A special
11 limited guardian ad litem shall not communicate directly with the
12 individual who is subject to the petition and must instead
13 communicate through legal counsel to the individual who is subject
14 to the petition, unless legal counsel otherwise gives consent.

15 (14) An individual alleged to be incapacitated has the right
16 to retain legal counsel of his or her choice at any stage,
17 regardless of findings regarding his or her capacity. Retained
18 legal counsel shall file a substitution of legal counsel or a
19 motion to substitute if legal counsel has already been appointed.
20 Retained legal counsel is entitled to reasonable attorney fees.

21 Sec. 5314. (1) If meaningful communication is possible, a
22 legally incapacitated individual's guardian shall consult with the
23 legally incapacitated individual before making a major decision
24 affecting the legally incapacitated individual. To the extent a
25 guardian of a legally incapacitated individual is granted powers by
26 the court under section 5306, the guardian is responsible for the
27 ward's care, custody, and control, but is not liable to third
28 persons because of that responsibility for the ward's acts. In
29 particular and without qualifying the previous sentences, a

1 guardian has all of the following powers and duties, to the extent
2 granted by court order:

3 (a) ~~The Subject to section 5314a, the~~ custody of the person of
4 the ward and the power to establish the ward's place of residence
5 in or outside this state. ~~The guardian shall visit the ward within~~
6 ~~3 months after the guardian's appointment and not less than once~~
7 ~~within 3 months after each previous visit. The Subject to section~~
8 **5314a, the** guardian shall notify the court within 14 days of a
9 ~~change in the ward's place of residence or a change in the~~
10 guardian's place of residence. **All of the following apply to the**
11 **duty of the guardian to visit the ward:**

12 (i) **The guardian shall visit the ward in person within 1 month**
13 **after the guardian's appointment and not less than once within 3**
14 **months after each in-person visit. The guardian shall also visit**
15 **the ward using both audio and video technology, or if that**
16 **technology is not available, only audio means, each month in which**
17 **an in-person visit does not occur. If the ward is unable to**
18 **communicate using audio and visual or audio-only means, the**
19 **guardian shall communicate with the ward's caregivers or any other**
20 **party who is familiar with the ward's circumstances and can apprise**
21 **the guardian of the ward's needs and progress. If the guardian**
22 **determines that audio and visual visits or audio-only visits are**
23 **not possible or that the ward is unable to communicate through**
24 **audiovisual means, the records the guardian must maintain must also**
25 **identify the circumstances that required the guardian to rely on an**
26 **audio-only visit or that required the guardian to consult with**
27 **caregivers or others instead of communicating directly with the**
28 **ward. The guardian shall maintain records relating to the date,**
29 **time, duration, and significant information for each required**

1 visit. The guardian shall make the records available for the
2 court's review and for review of interested persons.

3 (ii) If the guardian is a limited guardian, the visitation
4 duties described in subparagraph (i) apply. However, the limited
5 guardian may seek approval from the court to conduct audiovisual or
6 audio-only visits less often than monthly in the months in which
7 the limited guardian is not visiting in person. The court may grant
8 the request if the court finds on the record that monthly
9 audiovisual or audio-only visits in the months in which an in-
10 person visit is not occurring are not necessary for the
11 individual's well-being and best interests and identifies on the
12 record the individual's circumstances that led to that finding.

13 (iii) If the guardian is not a professional guardian, the
14 guardian may delegate the required in-person visits under
15 subparagraph (i) to another person. The guardian shall communicate
16 with the person who conducted the in-person visit and maintain
17 records regarding the information shared by the person who
18 conducted the visit.

19 (iv) If the guardian is a professional guardian and the
20 professional guardian employs 2 or more employees who have obtained
21 certification under section 5106a, the designated decision maker
22 under section 5313(4) shall not delegate the required in-person
23 visits under subparagraph (i) to another person. The designated
24 decision maker may delegate the required audio-visual or audio-only
25 visits under subparagraph (i) to another certified employee only if
26 the designated decision maker is unavailable to conduct the audio-
27 visual or audio-only visits. If the designated decision maker
28 delegates a visit requirement to another certified employee as
29 allowed under this subparagraph, the certified employee who

1 conducts the visit must prepare and submit a written report
2 consistent with the requirements under subparagraph (i) to the
3 designated decision maker.

4 (v) If the guardian is an individual professional guardian,
5 the professional guardian shall not delegate the required in-person
6 visits under subparagraph (i) to another person.

7 (b) If entitled to custody of the ward, the duty to make
8 provision for the ward's care, comfort, and maintenance and, when
9 appropriate, arrange for the ward's training and education. The
10 guardian shall secure services to restore the ward to the best
11 possible state of mental and physical well-being so that the ward
12 can return to self-management at the earliest possible time. **The**
13 **guardian shall make a reasonable effort to identify a reasonable**
14 **number of items of personal or sentimental value, including, but**
15 **not limited to, family heirlooms, photo albums, and collections.**
16 **Within 56 days after appointment, the guardian shall serve on all**
17 **interested persons a list of the identified items. The list must be**
18 **signed by the guardian and include an attestation that states, "I**
19 **represent this list is true and correct to the best of my**
20 **knowledge, information, and belief at the time of signing. I**
21 **understand that I must handle this property, like all of the ward's**
22 **property for which I am responsible, consistent with my fiduciary**
23 **duties. This may include sale, disposal, or other actions to meet**
24 **my fiduciary duties. I am not responsible for storing any items at**
25 **my own expense."** Without regard to custodial rights of the ward's
26 person, the guardian shall take reasonable care of the ward's
27 clothing, furniture, vehicles, and other personal effects and
28 commence a protective proceeding if the ward's other property needs
29 protection. If a guardian commences a protective proceeding because

1 the guardian believes that it is in the ward's best interest to
2 sell or otherwise dispose of the ward's real property or interest
3 in real property, the court may appoint the guardian as special
4 conservator and authorize the special conservator to proceed under
5 section 5423(3). A guardian shall not otherwise sell the ward's
6 real property or interest in real property.

7 (c) The power to give the consent or approval that is
8 necessary to enable the ward to receive medical, mental health, or
9 other professional care, counsel, treatment, or service. However, a
10 guardian does not have and shall not exercise the power to give the
11 consent to or approval for inpatient hospitalization unless the
12 court expressly grants the power in its order. If the ward objects
13 or actively refuses mental health treatment, the guardian or any
14 other interested person must follow the procedures provided in
15 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
16 330.1490, to petition the court for an order to provide involuntary
17 mental health treatment. The power of a guardian to execute a do-
18 not-resuscitate order under subdivision (d), execute a nonopioid
19 directive form under subdivision (f), or execute a physician orders
20 for scope of treatment form under subdivision (g) does not affect
21 or limit the power of a guardian to consent to a physician's order
22 to withhold resuscitative measures in a hospital. As used in this
23 subdivision, "involuntary mental health treatment" means that term
24 as defined in section 400 of the mental health code, 1974 PA 258,
25 MCL 330.1400.

26 (d) The power to execute, reaffirm, and revoke a do-not-
27 resuscitate order on behalf of a ward. However, a guardian shall
28 not execute a do-not-resuscitate order unless the guardian does all
29 of the following:

1 (i) Not more than 14 days before executing the do-not-
2 resuscitate order, visits the ward and, if meaningful communication
3 is possible, consults with the ward about executing the do-not-
4 resuscitate order.

5 (ii) Consults directly with the ward's attending physician as
6 to the specific medical indications that warrant the do-not-
7 resuscitate order.

8 (e) If a guardian executes a do-not-resuscitate order under
9 subdivision (d), not less than annually after the do-not-
10 resuscitate order is first executed, the duty to do all of the
11 following:

12 (i) Visit the ward and, if meaningful communication is
13 possible, consult with the ward about reaffirming the do-not-
14 resuscitate order.

15 (ii) Consult directly with the ward's attending physician as to
16 specific medical indications that may warrant reaffirming the do-
17 not-resuscitate order.

18 (f) The power to execute, reaffirm, and revoke a nonopioid
19 directive form on behalf of a ward.

20 (g) The power to execute, reaffirm, and revoke a physician
21 orders for scope of treatment form on behalf of a ward. However, a
22 guardian shall not execute a physician orders for scope of
23 treatment form unless the guardian does all of the following:

24 (i) Not more than 14 days before executing the physician orders
25 for scope of treatment form, visits the ward and, if meaningful
26 communication is possible, consults with the ward about executing
27 the physician orders for scope of treatment form.

28 (ii) Consults directly with the ward's attending physician as
29 to the specific medical indications that warrant the physician

1 orders for scope of treatment form.

2 (h) If a guardian executes a physician orders for scope of
3 treatment form under subdivision ~~(f)~~, **(g)**, not less than annually
4 after the physician orders for scope of treatment is first
5 executed, the duty to do all of the following:

6 (i) Visit the ward and, if meaningful communication is
7 possible, consult with the ward about reaffirming the physician
8 orders for scope of treatment form.

9 (ii) Consult directly with the ward's attending physician as to
10 specific medical indications that may warrant reaffirming the
11 physician orders for scope of treatment form.

12 (i) If a conservator for the ward's estate is not appointed,
13 ~~the power to do any~~ **all** of the following:

14 (i) ~~Institute~~ **The power to institute** a proceeding to compel a
15 person under a duty to support the ward or to pay money for the
16 ward's welfare to perform that duty.

17 (ii) ~~Receive~~ **The power to receive** money and tangible property
18 deliverable to the ward and apply the money and property for the
19 ward's support, care, and education. The guardian shall not use
20 money from the ward's estate for room and board that the guardian
21 or the guardian's spouse, parent, or child have furnished the ward
22 unless a charge for the service is approved by court order made on
23 notice to at least 1 of the ward's next of kin, if notice is
24 possible. The guardian shall exercise care to conserve any excess
25 for the ward's needs.

26 **(iii) The duty to allow interested persons to review proofs of**
27 **income and disbursements at a time reasonably convenient to the**
28 **guardian and interested persons.**

29 (j) The duty to report the condition of the ward and the

1 ward's estate that is subject to the guardian's possession or
2 control, as required by the court, but not less often than
3 annually. The guardian shall also serve the report required under
4 this subdivision on the ward and interested persons as specified in
5 the Michigan court rules. A report under this subdivision must
6 contain all of the following:

7 (i) The ward's current mental, physical, and social condition.

8 (ii) Improvement or deterioration in the ward's mental,
9 physical, and social condition that occurred during the past year.

10 (iii) The ward's present living arrangement and changes in his
11 or her living arrangement that occurred during the past year.

12 (iv) Whether the guardian recommends a more suitable living
13 arrangement for the ward.

14 (v) Medical treatment, including mental health treatment,
15 received by the ward.

16 (vi) Whether the guardian has executed, reaffirmed, or revoked
17 a do-not-resuscitate order on behalf of the ward during the past
18 year.

19 (vii) Whether the guardian has executed, reaffirmed, or revoked
20 a nonopioid directive form on behalf of the ward during the past
21 year.

22 (viii) Whether the guardian has executed, reaffirmed, or revoked
23 a physician orders for scope of treatment form on behalf of the
24 ward during the past year.

25 (ix) Services received by the ward.

26 (x) A list of the guardian's visits with, and activities on
27 behalf of, the ward.

28 (xi) A recommendation as to the need for continued
29 guardianship.

1 (k) If a conservator is appointed, the duty to pay to the
2 conservator, for management as provided in this act, the amount of
3 the ward's estate received by the guardian in excess of the amount
4 the guardian expends for the ward's current support, care, and
5 education. The guardian shall account to the conservator for the
6 amount expended.

7 (2) If a conservator has not been appointed for the ward, and
8 if the ward's qualified estate is greater than 400% of the federal
9 poverty level, the guardian must file a petition for
10 conservatorship under part 4. This subsection does not prevent the
11 appointment of a conservator for the ward if the ward's qualified
12 estate is less than 400% of the federal poverty level. As used in
13 this subsection:

14 (a) "Federal poverty level" means the poverty guidelines
15 published annually in the federal register by the United States
16 Department of Health and Human Services under its authority to
17 revise the poverty line under 42 USC 9902.

18 (b) "Liquid assets" means assets that can easily be converted
19 into cash in a short amount of time. Liquid assets includes, but is
20 not limited to, cash, checking and savings accounts, money market
21 instruments, certificates of deposit, mutual funds held in a
22 taxable account, marketable securities, bonds, and the monetary
23 value of life or other insurance. A retirement account is
24 considered a liquid asset once the individual's circumstances allow
25 him or her to withdraw cash without facing any Internal Revenue
26 Service early withdrawal penalties.

27 (c) "Ward's qualified estate" means, except as otherwise
28 provided in subdivision (d), the ward's liquid assets or income, or
29 both, reported by the guardian ad litem under section 5305 or later

1 discovered by the guardian.

2 (d) Ward's qualified estate does not include liquid assets or
3 income that is subject to some oversight such as a representative
4 payee, durable power of attorney, joint ownership, trust, or other
5 protection.

6 Sec. 5314a. (1) The guardian shall maintain a legally
7 incapacitated individual in the legally incapacitated individual's
8 permanent residence if possible and consistent with the well-being
9 and preferences of the legally incapacitated individual. If a
10 legally incapacitated individual is removed from his or her
11 permanent residence temporarily for any reason, the guardian must
12 make all reasonable efforts to return the legally incapacitated
13 individual to his or her permanent residence at the earliest
14 opportunity consistent with the legally incapacitated individual's
15 wishes. Temporary removal of the legally incapacitated individual
16 from his or her permanent residence for the purpose of receiving
17 health care or supervision, for engaging in family or social
18 activities, or for other reasons including the well-being or
19 convenience of the legally incapacitated individual does not
20 relieve the guardian of the obligations set forth in this section
21 regarding permanent removal from the permanent residence. A
22 guardian shall not primarily consider the guardian's own
23 convenience or benefit when making a decision to remove the legally
24 incapacitated individual from the legally incapacitated
25 individual's permanent residence or selecting a new residence for
26 the legally incapacitated individual.

27 (2) A guardian shall explore reasonably available and
28 affordable supports and services that could enable the legally
29 incapacitated individual to remain in his or her permanent

1 residence.

2 (3) If a guardian proposes to move the legally incapacitated
3 individual from his or her permanent residence, the guardian must
4 attempt to consult with the legally incapacitated individual and
5 honor the legally incapacitated individual's preference to the
6 greatest extent possible.

7 (4) In exercising the guardian's power to establish the
8 legally incapacitated individual's place of residence, the guardian
9 shall do both of the following:

10 (a) Select a residential setting the guardian believes the
11 legally incapacitated individual would select if the legally
12 incapacitated individual were able. If the guardian does not know
13 and cannot reasonably determine what setting the legally
14 incapacitated individual would likely select, or the guardian
15 reasonably believes the decision the legally incapacitated
16 individual would make would unreasonably harm or endanger the
17 welfare or personal or financial interests of the legally
18 incapacitated individual, the guardian must choose a residential
19 setting that is consistent with the legally incapacitated
20 individual's best interest.

21 (b) Give priority to a residential setting in a location that
22 will allow the legally incapacitated individual to interact with
23 persons and participate in activities important to the legally
24 incapacitated individual and meet the legally incapacitated
25 individual's needs in the least restrictive manner reasonably
26 feasible.

27 (5) If a guardian that is not a professional guardian removes
28 a legally incapacitated individual from the legally incapacitated
29 individual's permanent residence to another location in this state,

1 the guardian must notify the court in writing within 14 days after
2 the removal. The notification required under this subsection must
3 include the address of the new permanent residence.

4 (6) A guardian shall not move the legally incapacitated
5 individual out of state without order of the court. If the guardian
6 petitions to move the legally incapacitated individual out of
7 state, a guardian ad litem must be appointed and the court shall
8 schedule a hearing regardless of whether the individual files
9 objections or expresses dissatisfaction with the proposed move. If
10 the legally incapacitated individual files objections or expresses
11 dissatisfaction with the proposed move, the court must appoint
12 legal counsel if the legally incapacitated individual is not
13 already represented by legal counsel.

14 (7) Subject to subsections (9) and (10), and except as
15 otherwise provided in subsection (14), a professional guardian
16 shall not permanently remove a legally incapacitated individual
17 from the legally incapacitated individual's permanent residence
18 unless, subject to subsection (8), the professional guardian files
19 a petition under this subsection and the court grants the petition
20 under subsection (13). A petition under this subsection must be
21 separate from the petition for a finding of incapacity and
22 appointment of guardian under section 5303. A petition under this
23 subsection must include all of the following information:

- 24 (a) The individual's current permanent residence.
25 (b) The proposed new residence.
26 (c) The reason for the proposed move.
27 (d) Whether the move is to a more or less restrictive setting.
28 (e) The efforts made or resources explored to enable the
29 individual to remain in his or her current permanent residence.

1 (f) Whether the guardian has engaged in meaningful
2 communication with the individual about the proposed move.

3 (g) Whether the individual objects to or supports the proposed
4 move.

5 (8) If the person petitioning for guardianship under section
6 5303 proposes or anticipates that a professional guardian will be
7 appointed under section 5306, the petitioner or any interested
8 person that believes that it is necessary for the well-being of the
9 alleged incapacitated individual to move the individual permanently
10 from his or her permanent residence may file a petition under
11 subsection (7) seeking authority for a professional guardian, if
12 appointed under section 5306, to permanently remove the alleged
13 incapacitated individual from his or her permanent residence.

14 (9) If a professional guardian determines that to protect the
15 health, safety, or welfare of the legally incapacitated individual,
16 it is necessary to move the legally incapacitated individual from
17 his or her permanent residence to a another residence the
18 professional guardian intends to be permanent before obtaining
19 court approval under subsection (13), the professional guardian may
20 move the legally incapacitated individual. Within 14 days after
21 moving the legally incapacitated individual as allowed under this
22 subsection, the professional guardian must file a petition under
23 subsection (7). The petition must include the circumstances that
24 the professional guardian determined were necessary to move the
25 legally incapacitated individual before filing a petition under
26 subsection (7).

27 (10) If, after a temporary stay in a health care facility or
28 at a residence the professional guardian initially intended to be
29 temporary, the professional guardian determines that it is

1 necessary to change to the permanent residence of the legally
2 incapacitated individual, the professional guardian must, within 14
3 days after making the determination, file a petition under
4 subsection (7). The petition must include the circumstances
5 underlying the professional guardian's determination.

6 (11) If a petition for removal from the permanent residence
7 has been filed under subsection (7), the court shall promptly
8 appoint a guardian ad litem and hold the hearing within 28 days
9 after the petition is filed. The guardian ad litem must, in
10 addition to the other duties set forth in section 5305, do all of
11 the following:

12 (a) Advise the individual that a petition has been filed to
13 move the individual from his or her permanent residence to the new
14 residence identified in the petition or another location the court
15 determines is appropriate.

16 (b) Explain that if the court grants the petition to move the
17 individual, the guardian will have the authority to change the
18 individual's permanent residence to the location specified in the
19 petition or to another location the court determines is
20 appropriate.

21 (c) Ascertain, if possible, the wishes of the individual to
22 remain in his or her permanent residence.

23 (d) Include a summary of the discussion in the guardian ad
24 litem's written report.

25 (12) If the alleged incapacitated individual or legally
26 incapacitated individual does not already have legal counsel, the
27 court must appoint legal counsel if the individual files an
28 objection to the petition for authority to move the individual from
29 his or her permanent residence under subsection (7) or if the

1 guardian ad litem's report under subsection (11) states that the
2 individual objects to being removed from his or her permanent
3 residence.

4 (13) The court shall not grant a petition for removal from the
5 permanent residence under subsection (7) unless the court, after
6 due consideration and opportunity for testimony on the matter,
7 determines by clear and convincing evidence that moving the legally
8 incapacitated individual from the permanent residence to the
9 residence identified in the petition is 1 or more of the following:

10 (a) Necessary to protect the individual's physical health,
11 safety, or welfare.

12 (b) Consistent with the individual's wishes.

13 (14) If the legally incapacitated individual must leave the
14 permanent residence because the residence becomes permanently
15 unavailable, the professional guardian must provide at least 14
16 days' prior written notice to the legally incapacitated individual
17 if possible under the circumstances or, if less time is available
18 before the legally incapacitated individual must move, notice at
19 the earliest opportunity. The professional guardian shall provide
20 written notice to the court and all interested persons within 14
21 days after the move under this subsection explaining why the
22 permanent residence is no longer available, whether the
23 professional guardian attempted to consult with the legally
24 incapacitated individual about where the legally incapacitated
25 individual wanted to move, whether the professional guardian
26 honored the legally incapacitated individual's preferences
27 regarding where he or she wanted to move, the address of the new
28 residence, the type of residence, and how the new residence will
29 meet the legally incapacitated individual's needs. If the legally

1 incapacitated individual's residence becomes permanently
2 unavailable, the professional guardian is not required to file a
3 petition under subsection (7) and the court is not required to
4 appoint a guardian ad litem or legal counsel or hold a hearing. For
5 purposes of this subsection, a residence becomes permanently
6 unavailable as a result of a facility closure, removal of the
7 property from the rental market, involuntary discharge or eviction
8 that cannot be appropriately resolved by the professional guardian,
9 irreparable damage to the permanent residence, or other
10 circumstances that are not initiated by the professional guardian
11 but necessitate the permanent removal of the legally incapacitated
12 individual from his or her permanent residence.

13 (15) If removal from the permanent residence necessitates the
14 sale, transfer, or disposal of real property or sentimental
15 personal property and if meaningful communication is possible, the
16 guardian must consult with the legally incapacitated individual
17 before taking any action to dispose of the property. A guardian
18 shall make all reasonable efforts to identify and honor the legally
19 incapacitated individual's wishes to preserve sentimental personal
20 property in the overall context of the legally incapacitated
21 individual's estate, including items identified in the inventory
22 under section 5314, and shall take reasonable steps to safeguard
23 that personal property. The court may remove a guardian that fails
24 to comply with this subsection.

25 (16) As used in this section, "permanent residence" means any
26 of the following:

27 (a) The location the allegedly incapacitated individual or
28 legally incapacitated individual uses as a permanent address, in
29 which most of the individual's possessions are maintained.

1 **(b) The location the allegedly incapacitated individual or**
2 **legally incapacitated individual considers to be his or her home.**

3 Sec. 5406. (1) ~~Upon~~**On** receipt of a petition for a
4 conservator's appointment or another protective order because of
5 minority, the court shall set a date for hearing. If, at any time
6 in the proceeding, the court determines that the minor's interests
7 are or may be inadequately represented, the court may appoint an
8 attorney to represent the minor, giving consideration to the
9 minor's choice if 14 years of age or older. An attorney appointed
10 by the court to represent a minor has the powers and duties of a
11 guardian ad litem.

12 (2) ~~Upon~~**On** receipt of a petition for a conservator's
13 appointment or another protective order for a reason other than
14 minority, the court shall set a date for **initial** hearing. Unless
15 the individual to be protected has chosen **legal** counsel, or is
16 mentally competent but aged or physically infirm, the court shall
17 appoint a guardian ad litem. ~~to represent the person in the~~
18 ~~proceeding.~~ If the alleged disability is mental illness, mental
19 deficiency, physical illness or disability, chronic use of drugs,
20 or chronic intoxication, the court may direct that the individual
21 alleged to need protection be examined by a physician or mental
22 health professional appointed by the court, preferably a physician
23 or mental health professional who is not connected with an
24 institution in which the individual is a patient or is detained.
25 The individual alleged to need protection has the right to secure
26 an independent evaluation at his or her own expense. The court may
27 send a visitor to interview the individual to be protected. The
28 visitor may be a guardian ad litem or a court officer or employee.

29 (3) The court may utilize, as an additional visitor, the

1 service of a public or charitable agency to evaluate the condition
2 of the individual to be protected and make appropriate
3 recommendations to the court.

4 (4) A guardian ad litem, physician, mental health
5 professional, or visitor appointed under this section who meets
6 with, examines, or evaluates an individual who is the subject of a
7 petition in a protective proceeding shall do all of the following:

8 (a) Consider whether there is an appropriate alternative to a
9 conservatorship.

10 (b) If a conservatorship is appropriate, consider the
11 desirability of limiting the scope and duration of the
12 conservator's authority.

13 (c) Report to the court based on the considerations required
14 in subdivisions (a) and (b).

15 (5) **Subject to subsection (6), the duties of a guardian ad**
16 **litem appointed under subsection (2) for an individual alleged to**
17 **need protection include all of the following:**

18 (a) **Impartially gather information as provided by law.**

19 (b) **Seek information from the individual and, if communication**
20 **is possible, communicate in a manner the individual is best able to**
21 **understand. If communication is not possible or there is a barrier**
22 **to communication, the guardian ad litem must note that in the**
23 **report.**

24 (c) **Interview the individual in person at the individual's**
25 **location and out of the presence of any interested person.**

26 (d) **Advise the individual that the guardian ad litem does not**
27 **represent the individual as an attorney and that no attorney-client**
28 **relationship has been created.**

29 (e) **Identify whether the individual wishes to be present at**

1 the hearing. If the individual alleged to need protection does not
2 wish to be present at the hearing, the guardian ad litem shall
3 identify the reasons why the individual does not wish to be
4 present.

5 (f) Identify any barrier to attending hearings at the place
6 where court is held or otherwise fully participating in the
7 hearing, including the need for assistive technology,
8 transportation, or other support. If the individual alleged to need
9 protection wishes to attend, the guardian ad litem must identify
10 whether the individual has identified a plan for how the individual
11 will attend.

12 (g) Identify whether the individual plans to retain legal
13 counsel or wants appointed legal counsel. If the individual alleged
14 to need protection does not plan to retain legal counsel or request
15 appointed legal counsel, the guardian ad litem must make a
16 recommendation as to whether legal counsel should be appointed.

17 (h) Identify whether a disagreement or dispute related to the
18 petition might be resolved through court-ordered mediation.

19 (6) The duties of a guardian ad litem appointed for an
20 individual alleged to need protection or a protected individual
21 include all of the following, as applicable:

22 (a) Explain to the individual the nature, purpose, and legal
23 effects of a conservator's appointment or issuance of a protective
24 order.

25 (b) Explain who has filed the petition and who, if anyone, has
26 been nominated as conservator, if applicable.

27 (c) Explain to the individual the hearing procedure and the
28 individual's rights in the hearing procedure, including, but not
29 limited to, the following:

1 (i) The right to contest the petition, in whole or in part.

2 (ii) The right to request limits on the conservator's powers.

3 (iii) The right to be present at the hearing. If the individual
4 is unable to attend the hearing at the location court proceedings
5 typically are held, the guardian ad litem shall inform the
6 individual of his or her right to have the hearing at another
7 location.

8 (iv) The right to request a reasonable accommodation to allow
9 the individual to participate as fully as possible at the hearing,
10 including with assistive technology or other support.

11 (v) The right to be represented by legal counsel of the
12 individual's choice. If the individual is unable to secure legal
13 counsel of his or her choice, the guardian ad litem shall explain
14 to the individual that he or she has the right to have legal
15 counsel appointed by the court.

16 (vi) The right to request an independent medical evaluation.

17 (d) Explain to the individual that if a conservator is
18 appointed, the conservator may have the power to take certain
19 actions on behalf of the individual. A guardian ad litem must
20 inform the individual that a conservator may have any of the powers
21 described in section 5407 and, if meaningful communication is
22 possible, discern if the individual objects to a conservator having
23 any of those powers.

24 (e) Identify whether the individual objects to the particular
25 person proposed as conservator, if any.

26 (f) If a conservator were to be appointed, identify a list of
27 who the individual would want to serve, in order of preference.

28 (g) If a conservator were to be appointed, identify who the
29 individual would not want to serve.

1 (7) A guardian ad litem appointed for an individual alleged to
2 need protection or a protected individual shall file a written
3 report with the court in the form required by the state court
4 administrative office.

5 (8) If an individual who is subject to an initial petition
6 under this part, petition to terminate under this part, or petition
7 to modify under this part contests the petition, the guardian ad
8 litem's written report required under subsection (7) must include
9 only the following:

10 (a) That the individual contests the petition.

11 (b) Whether the individual has retained legal counsel or
12 wishes for legal counsel to be appointed.

13 (c) Whether the individual has any barriers to attending court
14 at the place where it is usually held.

15 (9) If an individual who is subject to an initial petition
16 under this part, petition to terminate under this part, or petition
17 to modify under this part does not contest the petition, the
18 guardian ad litem's written report required under subsection (7)
19 must include only the following:

20 (a) The date and time the guardian ad litem met with the
21 individual.

22 (b) The length of time the guardian ad litem met with the
23 individual.

24 (c) The location where the guardian ad litem met with the
25 individual.

26 (d) Whether the guardian ad litem was able to meaningfully
27 communicate with the individual and any barriers to communication.

28 (e) Who, if anyone, was present for the interview besides the
29 individual.

1 (f) Whether the individual wishes to be present at the
2 hearing. If the individual wishes to be present at the hearing but
3 has a barrier to fully participating, the guardian ad litem must
4 include in the written report whether the barrier can be resolved
5 by moving the location of the hearing or using assistive
6 technology, or both, or other support.

7 (g) Whether the individual has identified a plan for how the
8 individual will attend.

9 (h) Whether the individual plans to retain legal counsel or
10 has requested appointed legal counsel. If the individual has not
11 indicated he or she wishes to be represented by legal counsel, the
12 guardian ad litem shall include in the written report a
13 recommendation as to whether legal counsel should be appointed to
14 represent the individual.

15 (i) Whether the individual has any of the following:

16 (i) A power of attorney with or without limitations on purpose,
17 authority, or time period.

18 (ii) A patient advocate designation.

19 (iii) A physician orders for scope of treatment form.

20 (iv) A benefits payee, trustee, or other fiduciary.

21 (j) Whether a disagreement or dispute related to the
22 conservatorship petition might be resolved through court-ordered
23 mediation.

24 (k) Whether the appointment of a visitor with appropriate
25 knowledge, training, and education such as a social worker, mental
26 health professional, or medical professional could provide the
27 court with the information on whether alternatives to
28 conservatorship or a limited conservatorship under section 5419(1)
29 is appropriate.

1 (l) For an initial petition under this part, if a conservator
2 were appointed, who the individual would want to serve in order of
3 preference.

4 (m) For an initial petition under this part, if a conservator
5 were appointed, who the individual would not want to serve.

6 (n) An estimate of the liquid assets as that term is defined
7 in section 5314, income, real property, and a description of
8 personal property to the extent known after reasonable inquiry.

9 (10) If a guardian ad litem is appointed for any purpose other
10 than an initial petition under this part, petition to terminate
11 under this part, or petition to modify under this part, the
12 guardian ad litem must provide a written report to the court that
13 includes, at a minimum, the information described in subsection
14 (5), (6), (8), or (9), as applicable, and any other information
15 required by law. A special limited guardian ad litem appointed
16 under subsection (16) is not required to provide a written report
17 unless ordered to do so by the court.

18 (11) The court may receive into evidence without testimony the
19 written report of the guardian ad litem required under subsection
20 (7) if the report is filed with the court and served on all
21 interested persons not less than 5 days before the hearing. The
22 guardian ad litem is required to report findings until the date of
23 the termination of the guardian ad litem. The court may issue on
24 its own initiative, or any interested person may secure, a subpoena
25 to compel the preparer of the report to testify. On request of any
26 interested person, the court must issue a subpoena to compel the
27 preparer of the report to testify.

28 (12) A guardian ad litem shall file any report required under
29 this section with the court and serve the report on all interested

1 persons at least 5 days before the hearing. The court shall not
2 order compensation of the guardian ad litem unless the guardian ad
3 litem states in the guardian ad litem's written report that the
4 guardian ad litem complied with this subsection.

5 (13) The court shall not appoint a guardian ad litem as legal
6 counsel for the individual if the guardian ad litem's report under
7 subsection (7) or recommendation to the court conflicts with the
8 wishes of the individual.

9 (14) If an individual who is subject to a petition under this
10 part has not already secured legal counsel, the court shall appoint
11 legal counsel if any of the following apply:

12 (a) The individual who is subject to the petition requests
13 legal counsel.

14 (b) The individual who is subject to the petition objects to
15 any part of the petition for conservatorship or potential authority
16 of a conservator.

17 (c) The guardian ad litem determines it is in the best
18 interest of the individual subject to the petition to have legal
19 counsel and, if legal counsel has not been secured, the court shall
20 appoint legal counsel. If the individual who is subject to the
21 petition is indigent, this state shall bear the expense of
22 appointed legal counsel.

23 (15) If an individual who is subject to a petition under this
24 part has legal counsel appointed or retained, the appointment of a
25 guardian ad litem terminates. The report of the guardian ad litem
26 under subsection (7) must not be admitted into evidence after the
27 appearance or appointment of legal counsel for the individual who
28 is subject to the petition.

29 (16) After appointment or retention of legal counsel for the

1 individual who is subject to the petition under this part, the
 2 court may, for good cause shown, appoint a special limited guardian
 3 ad litem to provide information on a narrowly defined issue that
 4 will likely otherwise be inadequately addressed. A special guardian
 5 ad litem is exempt from subsections (5) to (10). The court may
 6 order that a special limited guardian ad litem provide a written
 7 report. The report under this subsection must contain the
 8 information the court considers necessary to adequately address the
 9 issue leading to the appointment of the special limited guardian ad
 10 litem. A special limited guardian ad litem shall not communicate
 11 directly with the individual who is subject to the petition and
 12 must instead communicate through legal counsel to the individual
 13 who is subject to the petition, unless legal counsel otherwise
 14 gives consent.

15 (17) ~~(5)~~—The individual to be protected is entitled to be
 16 present at the hearing in person. If the individual wishes to be
 17 present at the hearing, all practical steps must be taken to ensure
 18 the individual's presence including, if necessary, moving the site
 19 of the hearing. The individual is entitled to be represented by
 20 **legal** counsel, to present evidence, to cross-examine witnesses,
 21 including a court-appointed physician or other qualified person and
 22 a visitor, and to trial by jury. The issue may be determined at a
 23 closed hearing or without a jury if the individual to be protected
 24 or **legal** counsel for the individual so requests.

25 (18) ~~(6)~~—Any person may request ~~for~~ permission to participate
 26 in the proceeding, and the court may grant the request, with or
 27 without hearing, ~~upon~~**on** determining that the best interest of the
 28 individual to be protected will be served by granting the request.
 29 The court may attach appropriate conditions to the permission.

1 **(19)** ~~(7)~~ After hearing, ~~upon~~**on** finding that a basis for a
2 conservator's appointment or another protective order is
3 established by clear and convincing evidence, the court shall make
4 the appointment or other appropriate protective order.

5 Sec. 5417. (1) Within 56 days after appointment or within
6 another time period specified by court rule, a conservator shall
7 prepare and file with the appointing court a complete inventory of
8 the estate subject to the conservatorship together with an oath or
9 affirmation that the inventory is believed to be complete and
10 accurate so far as information permits. **The conservator shall serve**
11 **on interested persons, along with the inventory, account statements**
12 **with account numbers redacted that reflect the value of depository**
13 **and investment accounts dated within 30 days after the inventory's**
14 **date.** The conservator shall provide a copy of the inventory to the
15 protected individual if the individual can be located and is 14
16 years of age or older and to interested persons as specified in the
17 Michigan court rules.

18 (2) The conservator must keep suitable records of the
19 administration and exhibit those records on the request of an
20 interested person.

21 **(3) The conservator must make reasonable efforts to identify**
22 **on the inventory under subsection (1) a reasonable number of items**
23 **of special personal or sentimental value, including, but not**
24 **limited to, family heirlooms, photo albums, or collections. To the**
25 **extent meaningful conversation permits, the conservator must make**
26 **an inquiry with the protected individual as to what items the**
27 **protected individual identifies as having special personal or**
28 **sentimental value. If the conservator is unable to locate an item**
29 **identified as having special personal or sentimental value at the**

1 time of filing the inventory under subsection (1), the conservator
2 must state that on the inventory. The inventory must be signed by
3 the conservator and include an attestation that states, "I
4 represent this list is true and correct to the best of my
5 knowledge, information, and belief at the time of signing. I
6 understand that I must handle this property, like all of the
7 protected individual's property, consistent with my fiduciary
8 duties. This may include sale, disposal, or other actions to meet
9 my fiduciary duties. I am not responsible for storing any items at
10 my expense.". A conservator shall make all reasonable efforts to
11 identify and honor the protected individual's wishes to preserve
12 items of special personal or sentimental value in the overall
13 context of the protected individual's estate, including items
14 identified in the inventory and annual accounts, and shall take
15 reasonable steps to safeguard the property. The court may remove a
16 conservator that fails to comply with this subsection.

17 (4) The inventory under subsection (1) must list any
18 merchandise, funeral services, cemetery services, or prepaid
19 contracts for which the protected individual or conservator is the
20 contract buyer or contract beneficiary under the prepaid funeral
21 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235. If the
22 conservatorship estate includes assets described in this
23 subsection, the conservator must file all of the following with the
24 inventory under subsection (1):

25 (a) A copy of any prepaid contract under the prepaid funeral
26 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

27 (b) Proof that payments made under a prepaid contract are held
28 in escrow or under a trust agreement in compliance with the prepaid
29 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to

1 328.235.

2 (c) The most recent escrow statement issued concerning the
3 prepaid contract.

4 (d) Proof of any assignments of life policies or annuity
5 contracts made to purchase merchandise, funeral services, or
6 cemetery services under the prepaid funeral and cemetery sales act,
7 1986 PA 255, MCL 328.211 to 328.235, under subsection (1) must list
8 property with reasonable detail and the type and amount of any
9 encumbrance.

10 (5) The inventory under subsection (1) must be served on all
11 interested persons. Any interested person may file an objection to
12 the inventory with the court and serve the objection on all other
13 interested persons. The court shall set the matter for hearing.

14 Sec. 5418. (1) A conservator shall account to the court for
15 administration of the trust not less than annually unless the court
16 directs otherwise, upon resignation or removal, and at other times
17 as the court directs. ~~On~~**The conservator shall serve on interested**
18 **persons, along with the account under this subsection, account**
19 **statements with account numbers redacted that reflect the value of**
20 **depository and investment accounts dated within 30 days after the**
21 **inventory's date and receipts, invoices, or other documentation for**
22 **expenses in excess of \$1,000.00. The account must be in the form as**
23 **provided by the state court administrative office, or substantially**
24 **similar. The account must detail assets including those identified**
25 **in the inventory under section 5417, debts, gross income, and**
26 **expenses.**

27 (2) **Within 56 days after the** termination of the protected
28 individual's minority or disability, a conservator shall account to
29 the court or to the formerly protected individual or that

1 individual's successors. Subject to appeal or vacation within the
2 time permitted, an order, after notice and hearing, allowing an
3 intermediate account of a conservator adjudicates as to liabilities
4 concerning the matters considered in connection with the accounts,
5 and an order, after notice and hearing, allowing a final account
6 adjudicates as to all previously unsettled liabilities of the
7 conservator to the protected individual or the protected
8 individual's successors relating to the conservatorship. In
9 connection with any account, the court may require a conservator to
10 submit to a physical check of the estate to be made in any manner
11 the court specifies.

12 (3) If the conservator has disposed of or sold any of the
13 items, the conservator must describe on the account under
14 subsection (1) how the conservator fulfilled the conservator's
15 duties under section 5417(3).

16 (4) If the protected individual's estate includes any
17 merchandise, funeral services, cemetery services, or prepaid
18 contracts for which the protected individual or conservator is the
19 contract buyer or contract beneficiary under the prepaid funeral
20 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, the
21 conservator must file all of the following with the account:

22 (a) A copy of any prepaid contract under the prepaid funeral
23 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

24 (b) Proof that payments made under a prepaid contract are held
25 in escrow or under a trust agreement in compliance with the prepaid
26 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
27 328.235.

28 (c) The most recent escrow statement issued concerning the
29 prepaid contract.

1 **(d) Proof of any assignments of life policies or annuity**
 2 **contracts made to purchase merchandise, funeral services, or**
 3 **cemetery services under the prepaid funeral and cemetery sales act,**
 4 **1986 PA 255, MCL 328.211 to 328.235.**

5 **(5) ~~(2)~~—**The conservator shall provide a copy of an account to
 6 the protected individual if the individual can be located and is 14
 7 years of age or older and to interested persons as specified in the
 8 Michigan court rules.

9 **(6) If the protected individual objects to an account, the**
 10 **court must appoint a guardian ad litem to visit the protected**
 11 **individual in the same manner as specified in section 5406. The**
 12 **court must appoint legal counsel to represent the protected**
 13 **individual if any of the following are met:**

14 **(a) The protected individual requests legal counsel.**

15 **(b) The guardian ad litem believes that appointment of legal**
 16 **counsel is in the best interest of the protected individual.**

17 **(c) The court otherwise believes it is necessary to protect**
 18 **the interest of the protected individual.**

19 Enacting section 1. This amendatory act takes effect 180 days
 20 after the date it is enacted into law.

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

24 (a) Senate Bill No. ____ or House Bill No. 4909 (request no.
 25 01149'23).

26 (b) Senate Bill No. ____ or House Bill No. 4911 (request no.
 27 01151'23).

28 (c) Senate Bill No. ____ or House Bill No. 4912 (request no.
 29 01152'23).