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## BILL ANALYSIS



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Senate Bills 503 through 506 (as introduced 6-3-21)

Sponsor: Senator Ruth Johnson (S.B. 503)

Senator Jim Runestad (S.B. 504)

Senator Jeff Irwin (S.B. 505)

Senator Paul Wojno (S.B. 506)

Committee: Judiciary and Public Safety

Date Completed: 6-10-21

**CONTENT**

**Senate Bill 503 would amend the Estates and Protected Individuals Code to do the following:**

- **Modify and prescribe the duties and responsibilities of a guardian ad litem appointed for an individual alleged to be incapacitated.**
- **Require a guardian ad litem appointed for an individual alleged to be incapacitated or a legally incapacitated individual to file a written report containing certain specified information to the court, and require the guardian ad litem to serve it on all interested parties at least seven days before a hearing.**
- **Prohibit a court from appointing a person who was previously appointed as guardian ad litem as legal counsel for the individual if the guardian ad litem's report or recommendation to the court conflicted with the individual's wishes.**
- **Require a court to appoint legal counsel under certain circumstances and specify that the appointment or retention of legal counsel would terminate a guardian ad litem.**
- **Allow a court to appoint a special limited guardian ad litem under certain circumstances.**
- **Require a guardian to prepare an estate inventory and annual account if a conservator had not been appointed for a ward.**
- **Require a guardian to maintain a legally incapacitated individual in the individual's permanent residence if possible and consistent with the individual's well-being and preferences.**
- **Prescribe the procedure and requirements for removing a legally incapacitated individual from his or her permanent residence.**
- **Prescribe the duties of a guardian ad litem appointed for an individual alleged to need protection who was mentally competent but aged or physically infirm.**
- **Require a conservator to prepare and file an estate inventory and an annual account and account statements.**

**Senate Bill 504 would amend the Code to do the following:**

- **Prescribe requirements for the appointment of a professional guardian or professional conservator.**
- **Prohibit a court from appointing an individual as a guardian of a legally incapacitated individual or conservator of a protected individual who was not a minor, or both, unless certain specified conditions were met.**
- **Specify that a petition for an order appointing a successor guardian would be subject to the priority of appointment prescribed in the Code.**

- **Require a court to appoint a person with priority guardian of a legally incapacitated individual unless specific findings on the record indicated that the person was not suitable or was not willing to serve, and prescribe the findings under which a person would be determined suitable to serve.**
- **Require a court to appoint a person with priority to serve as conservator of a protected individual's unless specific findings on the record indicated that the person was not suitable or was not willing to serve, and prescribe the findings under which a person would be determined suitable to serve.**

**Senate Bill 505 would amend the Code to do the following:**

- **Allow a court to enter a final order on a petition for a finding of incapacity and appointment of a guardian or require the court to set a trial date for the petition under certain circumstances.**
- **Modify the information that a report from a physician or mental health professional who examined an individual alleged to be incapacitated must contain.**
- **Require a court to dismiss a proceeding to appoint a guardian if certain findings were determined by clear and convincing evidence.**
- **Allow a court to stay a guardianship proceeding for a reasonable period of time to allow the individual the opportunity to explore the alternatives to appointing a guardian.**
- **Delete a provision requiring a guardian to notify the court within 14 days of a change of an individual's residence.**
- **Delete provisions allowing a court to appoint a temporary guardian if an emergency exists and allow the court to appoint an emergency guardian under certain circumstances.**
- **Require a conservator to ensure that the individual who was the subject of a conservatorship attended a hearing concerning the individual's conservatorship if the individual wanted to attend the hearing.**

**Senate Bill 506 would amend the Code to do the following:**

- **Allow a court to appoint a temporary guardian under certain circumstances, prescribe the duties and responsibilities of a temporary guardian, and allow a temporary guardian to be removed at any time.**
- **Allow a protected individual, or a person interested in the protected individual's welfare, to petition for an order removing a conservator, appointing a successor conservator, modifying the terms of the conservatorship, or terminating the conservatorship.**
- **Subject a petition for an order appointing a successor guardian to the priority of appointment.**

The bills are tie-barred to each other.

**Senate Bill 503**

Guardian Ad Litem Duties

Section 5305 of the Code prescribes certain duties of a guardian ad litem appointed for an individual alleged to be incapacitated. The court may not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in his or her written report that he or she has complied with his or her duties described in Section 5305.

If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court must appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the State bears the expense of legal counsel.

If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court must appoint legal counsel. If the individual alleged to be incapacitated is indigent, the State bears the expense of legal counsel.

If the individual alleged to be incapacitated has legal counsel appointed, the appointment of a guardian ad litem terminates.

The bill would delete these provisions. Instead, the duties of a guardian ad litem appointed for an individual alleged to be incapacitated would include all of the following:

- Impartially gather information as provided by law.
- Seek information from the individual and, if communication were possible, communicate in a manner the individual was best able to understand; if communication were not possible or there is a barrier to communication, the guardian ad litem would have to note that in his or her report.
- Interview the individual in person at the individual's location and out of the presence of any interested person.
- Advise the individual that the guardian ad litem did not represent the individual as an attorney and that no attorney-client relationship had been created.
- Identify whether the individual wished to be present at the hearing; if the allegedly incapacitated individual did not wish to be present at the hearing, the guardian ad litem would have to identify the reasons why the individual did not wish to be present.
- Identify any barrier to attending hearings at the place where court was held or otherwise fully participating in the hearing, including the need for assistive technology, transportation, or other support; if the individual wished to attend, the guardian ad litem would have to identify whether the individual had identified a plan for how the individual would attend.
- Identify whether the individual planned to retain legal counsel or wanted appointed legal counsel; if the individual did not plan to retain legal counsel or request appointed legal counsel, the guardian ad litem would have to make a recommendation as to whether legal counsel should be appointed.
- Identify whether a disagreement or dispute related to the petition could be resolved through court-ordered mediation.

The duties of a guardian ad litem appointed for an individual alleged to be incapacitated or a legally incapacitated individual would include all of the following, as applicable:

- Explain to the individual the nature, purpose, and legal effects of a guardian's appointment.
- Explain who had filed the petition and who, if anyone, had been nominated as guardian.
- Explain to the individual the hearing procedure and the individual's rights in the hearing procedure, as identified in Section 5306a, including the right to contest the petition, in whole or in part; the right to request limits on the guardian's powers; the right to be present at the hearing (if the individual were unable to attend the hearing at the location court proceedings typically were held, the guardian ad litem would have to inform the individual of his or her right for the hearing at another location); the right to request a reasonable accommodation to allow the individual to participate as fully as possible at the

hearing, including with assistive technology or other support; the right to be represented by legal counsel of the individual's choice, and if the individual were unable to secure legal counsel of his or her choice, the right to have legal counsel appointed by the court; and the right to request an independent medical evaluation.

- Identify whether the individual objected to the particular person proposed as guardian, if any.
- If a guardian were to be appointed, identify a list of whom the individual would want to serve, in order of preference.
- If a guardian were to be appointed, identify whom the individual would not want to serve.

Additionally, a guardian ad litem appointed for an individual alleged to be incapacitated or a legally incapacitated individual would have to explain to the individual that if a guardian were appointed, the guardian could have the power to take certain actions on behalf of the individual. A guardian ad litem would have to inform the individual that a guardian could have any of the following powers and, if meaningful communication were possible, discern if the individual objected to a guardian having any of the following powers:

- Executing a do-not-resuscitate order.
- Executing a physician orders for scope of treatment form.
- Consenting to any medical treatment.
- Consenting to placement decisions, including moving the individual to a nursing facility or adult foster care home.
- Choosing whether the individual could marry or divorce.
- Handling any financial and property matters, including the sale or disposal of personal property and the maintenance of real property.

The guardian ad litem also would have to inquire as to whether there were any items of special or sentimental value that the individual would not want sold or otherwise disposed of, such as family photos, collections, personal correspondence, or pets, as well as the location of those items.

#### Written Report

Under the bill, a guardian ad litem appointed for an individual alleged to be incapacitated or a legally incapacitated individual would have to file a written report with the court and in the form, as required by the State Court Administrative Office.

If an individual who was subject to an initial petition or petition to modify contested the petition, the guardian ad litem's written report would have to include only the following:

- That the individual contested the petition.
- Whether the individual had retained legal counsel or wished for legal counsel to be appointed.
- Whether the individual had any barriers to attending court at the place where it was usually held.

If an individual who was subject to an initial petition or petition to modify did not contest the petition, the guardian ad litem's report would have to include only the following:

- The date and time, the length of time, and the location where the guardian ad litem met with the individual.
- Whether the guardian ad litem was able to meaningfully communicate with the individual and any barriers to communication.
- Who, if anyone, was present for the interview besides the individual.

- Whether the individual wished to be present at the hearing; if the individual wished to be present at the hearing but had a barrier to fully participating, the guardian ad litem would have to include in the report whether the barrier could be resolved by moving the location of the hearing or using assistive technology, or both, or other support.
- Whether the individual had identified a plan for how he or she would attend.
- Whether the individual planned to retain legal counsel or had requested appointed legal counsel; if the individual has not indicated he or she wished to be represented by legal counsel, the guardian ad litem would have to include in the report a recommendation as to whether legal counsel should be appointed to represent the individual.
- Whether the individual had any of the following: a power of attorney with or without limitations on purpose, authority, or time period; a patient advocate designation; a physician orders for scope of treatment form; and/or a benefits payee, trustee, or other fiduciary.
- Whether a disagreement or dispute related to the petition could be resolved through court-ordered mediation.
- Whether the appointment of a visitor with appropriate knowledge, training, and education such as a social worker, mental health professional, or medical professional could provide the court with the information on whether alternatives to guardianship or a limited guardianship is appropriate.
- If a guardian were appointed, who the individual would want to serve in order of preference.
- If a guardian were appointed, who the individual would not want to serve.
- An estimate of the amount of cash and property readily convertible into cash that was in the individual's estate.

If a guardian ad litem were appointed for any purpose other than an initial petition, petition to terminate, or petition to modify, the guardian ad litem would have to provide a written report to the court that included, at a minimum, the information required to be in the guardian ad litem's report as required under the bill, as applicable, and any other information required by law. A special limited guardian ad litem who was appointed would not have to provide a report unless ordered to do so by the court.

A guardian ad litem would have to file the report required above with the court and serve it on all interested persons at least seven days before the date of the hearing. The court could order the report to be filed and served fewer than seven days before the hearing only if the petition were made on an emergency basis.

The court could not consider evidence included in a report or the testimony of a guardian ad litem that was not otherwise admissible under the Michigan Rules of Evidence. If the guardian ad litem did not appear for the hearing personally, the report could not be admitted into evidence. The court could not order compensation of the guardian ad litem unless he or she stated in his or her written report that he or she complied with the bill's requirements, as applicable.

#### Legal Counsel

The bill would prohibit a court from appointing a person who was previously appointed as guardian ad litem as legal counsel for the individual if the guardian ad litem's report or recommendation to the court conflicted with the wishes of the individual.

If an individual who was subject to a petition had not already secured legal counsel, the court would have to appoint legal counsel if any of the following applied:

- The individual requested legal counsel.

- The individual objected to any part of the petition for guardianship or potential authority of a guardian.
- The guardian ad litem determined it was in the individual's best interest to have legal counsel if legal counsel had not been secured.

If the individual who was subject to the petition were indigent, the State would bear the expense of appointed legal counsel.

If an individual who was subject to a petition had legal counsel appointed or retained, the appointment of a guardian ad litem would terminate. The report of the guardian ad litem could not be admitted into evidence after the appearance or appointment of legal counsel for the individual who was subject to the petition.

An individual alleged to be incapacitated would have the right to retain legal counsel of his or her choice at any stage, regardless of findings regarding his or her capacity. Retained legal counsel would have to file a substitution of legal counsel or a motion to substitute if legal counsel had already been appointed.

### Special Limited Guardian

Under the bill, after appointment or retention of legal counsel for the individual who was subject to the petition, the court, for good cause shown, could appoint a special limited guardian ad litem to provide information on a narrowly defined issue that likely would otherwise be inadequately addressed. A special guardian ad litem would be exempt from the provisions prescribing the duties of a guardian ad litem and the reporting requirements. The court could order that a special limited guardian ad litem provide a written report. The report would have to contain the information the court considered necessary to adequately address the issue leading to the appointment of the special limited guardian ad litem. A special limited guardian ad litem could not communicate directly with the individual who was subject to the petition and instead would have to communicate through legal counsel to the individual who was subject to the petition, unless legal counsel otherwise gave consent.

### Powers & Duties of a Guardian

Under Section 5314, a guardian has certain powers and duties, to the extent granted by court order, including the custody of the person of the ward and the power to establish the ward's place of residence in or outside Michigan. The guardian must visit the ward within three months after the guardian's appointment and at least once within three months after each previous visit.

The guardian must notify the court within 14 days of a change in the ward's place of residence or a change in the guardian's place of residence. The bill would delete this provision. Additionally, under the bill, if the guardian were a professional guardian, then he or she would have to visit the ward as required under Part 3 (Guardians of Incapacitated Individuals).

Under the Code, if a conservator for the ward's estate is not appointed, the guardian also has the power to do either of the following:

- To institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform that duty.
- To receive money and tangible property deliverable to the ward and apply the money and property for the ward's support, care, and education; however, the guardian may not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is

approved by court order made on notice to at least one of the ward's next of kin, if notice is possible.

The guardian must exercise care to conserve any excess for the ward's needs.

Under the bill, if a conservator for the ward's estate were not appointed, the guardian also would have the duties under Sections 5314a and 5314b, which the bill would add.

### Estate Inventory

The bill would add Section 5314a to the Code. Under Section 5314a, if a conservator had not been appointed for the ward, within 56 days after appointment or within another time period specified by court rule, a guardian with any power over the property of the ward would have to prepare and file with the appointing court a complete inventory of the estate subject to the guardianship together with an oath or affirmation that the inventory was believed to be complete and accurate so far as information permitted. The guardian would have to file, along with the inventory, account statements that reflected the value of depository and investment accounts dated within 30 days after the inventory's date. The guardian would have to provide a copy of the inventory to the ward if the ward could be located and to interested parties as specified in the Michigan Court Rules.

The guardian would have to keep suitable records of the administration and provide those records on the request of an interested person.

The guardian would have to identify on the inventory described above any items of special personal or sentimental value, including family heirlooms, photo albums, or collections. To the extent meaningful communication permitted, the guardian would have to make an inquiry with the ward as to what items the ward identified as having special personal or sentimental value. The items would have to include items identified by a guardian ad litem under Section 5305. If the guardian were unable to locate an item identified as having special personal or sentimental value at the time of filing the inventory, the guardian would have to state that on the inventory.

The guardian would have to list on the inventory any merchandise, funeral services, cemetery services, or prepaid contracts for which the legally incapacitated individual or guardian was the contract buyer or contract beneficiary under the Prepaid Funeral and Cemetery Sales Act. If the guardianship estate included an asset described above, the guardian would have to file, with the inventory, all of the following:

- A copy of any prepaid contract under the Prepaid Funeral and Cemetery Sales Act.
- Proof that payments made under a prepaid contract were held in escrow or under a trust agreement in compliance with the Prepaid Funeral and Cemetery Sales Act.
- The most recent escrow statement issued concerning the prepaid contract.
- Proof of any assignments of life policies or annuity contracts made to purchase merchandise, funeral services, or cemetery services under the Prepaid Funeral and Cemetery Sales Act.

The inventory would have to list property with reasonable detail and the type and amount of any encumbrance.

Also, the inventory would have to be served on all interested people. Any interested person could file an objection with the court to the inventory and serve it on all interested persons. The court would have to set the matter for hearing.

## Annual Account

The bill would add Section 5314b to the Code. Under Section 5314b, if a conservator had not been appointed for the ward, the guardian would have to account to the court for administration of the ward's estate at least annually unless the court directed otherwise, on resignation or removal, and at other times as the court directed. The guardian would have to file, along with the account, account statements that reflected the value of depository and investment accounts dated within 30 days after the inventory's date and receipts, invoices, or other documentation for expenses in excess of \$1,000. The account would have to be in the form as provided by the State Court Administrative Office, or substantially similar. The account would have to detail assets including those identified in Section 5314a, debts, gross income, and expenses.

Within 56 days after termination of the ward's guardianship, a guardian with any authority over property of the formerly legally incapacitated individual would have to account to the court or to the formerly legally incapacitated individual or that formerly legally incapacitated individual's successors. Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate account of a guardian adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the guardian to the formerly legally incapacitated individual or the formerly legally incapacitated individual's successors relating to the guardianship. In connection with any account, the court could require a guardian to submit to a physical check of the estate in any manner the court specified.

In the account to the court, the guardian would have to provide information on the status of any items identified in Section 5314a. If the guardian had disposed of or sold any of the items described in Section 5314a, the guardian would have to describe on the account how the guardian fulfilled his or her duties under Section 5314a.

If the individual's estate included any merchandise, funeral services, cemetery services, or prepaid contracts for which the individual or guardian was the contract buyer or contract beneficiary under the Prepaid Funeral and Cemetery Sales Act, the guardian would have to file all of the following, with the account to the court:

- A copy of any prepaid contract under the Prepaid Funeral and Cemetery Sales Act.
- Proof that payments made under a prepaid contract were held in escrow or under a trust agreement in compliance with the Prepaid Funeral and Cemetery Sales Act.
- The most recent escrow statement issued concerning the prepaid contract.
- Proof of any assignments of life policies or annuity contracts made to purchase merchandise, funeral services, or cemetery services under the Prepaid Funeral and Cemetery Sales Act.

The guardian would have to file a copy of an account, as applicable, and account statements with the court and serve on all interested parties. Within 28 days after serving the account and account statements, an interested person could file an objection to the account with the court and serve the objection on all interested persons. If an interested person objected, the court would have to set the matter for hearing. If the ward objected to an account filed under Section 5314b, the court would have to appoint a guardian ad litem to visit the ward in the same manner as specified in Section 5305. The court would have to appoint legal counsel to represent the ward if any of the following applied:

- The ward requested legal counsel.



- The guardian ad litem believed that appointment of legal counsel was in the ward's best interest.
- The court otherwise believed it was necessary to protect the ward's interest.

After receiving an annual account, the court would have to set the matter for hearing unless no objection to the annual account had been filed within 28 days after the annual account was served on interested persons and the probate judge, probate register, or deputy probate register made written findings that all of the following applied:

- The account included sufficient documentation that the estate's assets were to the extent possible correctly titled to the guardian in its fiduciary capacity if necessary.
- The guardian had filed a copy of account statements that reflected the value of depository and investment accounts dated within 30 days after the end of the accounting period.
- The guardian had filed documentation for expenses over \$1,000.
- Fees and costs were reasonable and should be allowed.
- On the face of the filing it appeared to meet the requirements of Section 5314b.
- The guardian properly filed and served the account and required documentation on all interested persons.

#### Removal from Permanent Residence

The bill would add Section 5314c to the Code. Section 5314c would require a guardian to maintain a legally incapacitated individual in his or her permanent residence if possible and consistent with the individual's well-being and preferences. If a legally incapacitated individual were removed from his or her permanent residence temporarily for any reason, the guardian would have to make all reasonable efforts to return the individual to his or her permanent residence at the earliest opportunity consistent with the individual's wishes. Temporary removal of the legally incapacitated individual from his or her permanent residence for the purpose of receiving health care or supervision, for engaging in family or social activities, or for other reasons including the individual's well-being or convenience would not relieve the guardian of the obligations set forth in Section 5314c regarding permanent removal from the permanent residence. A guardian could not primarily consider the guardian's own convenience or benefit when making a decision to remove the individual from his or her permanent residence or selecting a new residence for the individual. As used in Section 5314c, "permanent residence" would mean either of the following:

- The location the allegedly incapacitated individual or legally incapacitated individual uses as a permanent address, in which most of the individual's possessions are maintained.
- The location the individual considers to be his or her home.

A guardian would have to explore reasonably available and affordable supports and services that could enable the legally incapacitated individual to remain in his or her permanent residence.

If a guardian proposed to move the legally incapacitated individual from his or her permanent residence, the guardian would have to attempt to consult with the individual and honor his or her preference to the greatest extent possible.

If a person petitioning for guardianship under Section 5303 or a guardian that had been appointed under Section 5306 believed that it was necessary for the well-being of the alleged incapacitated individual or legally incapacitated individual, as applicable, to move the individual permanently from his or her permanent residence, the petitioner could seek court approval to do so by filing a separate petition for authority to move the individual. The separate petition would have to include all of the following information:

- The individual's current permanent residence.
- The proposed new residence.
- The reason for the proposed move.
- Whether the move was to a more or less restrictive setting.
- The efforts made or resources explored to enable the individual to remain in his or her current permanent residence.
- Whether the guardian had engaged in meaningful communication with the individual about the proposed move.
- Whether the individual objected to or supported the proposed move.

If a petition for removal from the permanent residence had been filed, the guardian ad litem appointed for the alleged incapacitated individual or legally incapacitated individual, as applicable, would have to do all of the following, in addition to the other duties set forth in Section 5305:

- Advise the individual that a petition had been filed to move the individual from his or her permanent residence to the new residence identified in the petition.
- Explain that if the court granted the petition to move the individual, the guardian would have the authority to change the individual's permanent residence to the location specified in the petition.
- Ascertain, if possible, the wishes of the individual to remain in his or her permanent residence.
- Include a summary of the discussion in the guardian ad litem's written report.

If the alleged incapacitated individual or legally incapacitated individual did not already have legal counsel, the court would have to appoint legal counsel if the individual filed an objection to the petition for authority to move the individual from his or her permanent residence or if the guardian ad litem's report stated that the individual objected to being removed from his or her permanent residence.

If the court granted the petition for a finding of incapacity and appointment of a guardian, the court also could grant the separate petition for authority to move the legally incapacitated individual if, after due consideration and opportunity for testimony on the matter, it determined by clear and convincing evidence that moving the individual from the permanent residence to the residence identified in the petition was necessary to protect the individual's physical health, safety, or welfare and/or consistent with the individual's wishes.

If the court did not grant the separate petition to move the legally incapacitated individual at the hearing where the court appointed the guardian, the guardian could not permanently remove the legally incapacitated individual, except as otherwise provided, unless the guardian filed a subsequent separate petition and the court granted it.

If the guardian determined that failure to move the legally incapacitated individual from his or her permanent residence more promptly likely would be detrimental to the individual's physical health, safety, or welfare, the guardian could file an emergency ex parte motion before any move and explain the urgency of the circumstances that necessitated a more immediate order. The guardian would have to provide affidavits or ex parte testimony in support of the motion. The court would have to grant the motion if it determined by clear and convincing evidence that delaying the change in the permanent residence likely would result in substantial harm to the legally incapacitated individual's physical health, safety, or welfare. If the ex parte motion were granted, the court would have to hold a hearing within seven days after the order to determine whether the move would have to be made permanent unless or until further order of the court. The court would have to appoint a guardian ad litem for

the alleged incapacitated individual or legally incapacitated individual. The guardian ad litem would have to file and serve his or her report by a date and time ordered by the court that was before the hearing.

If the legally incapacitated individual were required to leave the permanent residence because it became permanently unavailable as the result of a facility closure, removal of the property from the rental market, irreparable damage to the residence, or other circumstances, the guardian would have to provide at least 14 days' prior written notice to the individual if possible under the circumstances or, if less time were available before the individual was required to move, notice at the earliest opportunity. The guardian also would have to attempt to consult with the individual and honor his or her preferences to the greatest extent possible regarding where the legally incapacitated individual would like to move. The guardian would have to provide written notice to the court within 14 days after the move explaining why the permanent residence was no longer available, whether the guardian attempted to consult with the individual about where he or she wanted to move, whether the guardian honored the individual's preferences regarding where he or she wanted to move, the address of the new residence, the type of residence, and how the new residence would meet the individual's needs. If the individual's residence became permanently unavailable, the guardian would not have to file a petition and the court would not have to appoint a guardian ad litem or legal counsel or hold a hearing.

The guardian could not move the legally incapacitated individual out Michigan without a court order. If the guardian petitioned to move the individual out of state, a guardian ad litem would have to be appointed and the court would have to schedule a hearing regardless of whether the individual filed objections or expressed dissatisfaction with the proposed move. If the individual filed objections or expressed dissatisfaction with the proposed move, the court would have to appoint legal counsel if the individual were not already represented by counsel.

In exercising the guardian's power to establish the legally incapacitated individual's place of residence, the guardian would have to do both of the following:

- Give priority to a residential setting in a location that would allow the individual to interact with people and participate in activities important to him or her and meet his or her needs in the least restrictive manner reasonably feasible.
- Select a residential setting the guardian believed the individual would select if he or she were able.

If the guardian did not know and could not reasonably determine what setting the legally incapacitated individual likely would select, or the guardian reasonably believed the decision the individual would make would unreasonably harm or endanger the welfare or personal or financial interests of the individual, the guardian would have to choose a residential setting that was consistent with the individual's best interest.

If removal from the permanent residence necessitated the sale, transfer, or disposal of real or sentimental personal property and if meaningful communication were possible, the guardian would have to consult with the legally incapacitated individual before taking any action to dispose of the property. A guardian would have to make all reasonable efforts to identify and honor the individual's wishes to preserve sentimental personal property in the overall context of the individual's estate, including items identified in the inventory under Section 5314a and annual accounts under Section 5314b, and would have to take reasonable steps to safeguard that property. The court could remove a guardian that failed to comply with these provisions.

## Procedure for Hearing & Order on Original Petition

Section 5406 specifies that after receiving a petition for a conservator's appointment or another protective order for a reason other than minority, the court must set a date for initial hearing. Unless the individual to be protected has chosen legal counsel, or is mentally competent but aged or physically infirm, the court must appoint a guardian ad litem.

Under the bill, the duties of a guardian ad litem appointed for an individual alleged to need protection who was mentally competent but aged or physically infirm would include all of the following:

- Impartially gather information as provided by law.
- Seek information from the individual and, if communication were possible, communicate in a manner the individual was best able to understand; if communication were not possible or there was a barrier to communication, the guardian ad litem would have to note that in the report.
- Interview the individual in person at the individual's location and out of the presence of any interested person.
- Advise the individual that the guardian ad litem did not represent the individual as an attorney and that no attorney-client relationship had been created.
- Identify whether the individual wished to be present at the hearing; if the individual did not wish to be present at the hearing, the guardian ad litem would have to identify the reasons why the individual did not wish to be present.
- Identify any barrier to attending hearings at the place where court was held or otherwise fully participating in the hearing, including the need for assistive technology, transportation, or other support; and if the individual alleged to need protection wished to attend, the guardian ad litem would have to identify whether the individual had identified a plan for how the individual would attend.
- Identify whether the individual planned to retain legal counsel or wanted appointed legal counsel; if the individual alleged to need protection did not plan to retain legal counsel or request appointed legal counsel, the guardian ad litem would have to make a recommendation as to whether legal counsel should be appointed.
- Identify whether a disagreement or dispute related to the petition might be resolved through court-ordered mediation.

The duties of a guardian ad litem appointed for an individual alleged to need protection or a protected individual would include all of the following, as applicable:

- Explain to the individual the nature, purpose, and legal effects of a conservator's appointment or issuance of a protective order.
- Explain who had filed the petition and who, if anyone, had been nominated as conservator, if applicable.
- Identify whether the individual objected to the particular person proposed as conservator, if any.
- If a conservator were to be appointed, identify a list of who the individual would want to serve, in order of preference.
- If a conservator were to be appointed, identify who the individual would not want to serve.
- Explain to the individual that if a conservator were appointed, the conservator could have the power to take certain actions on behalf of the individual.

A guardian ad litem would inform the individual that a conservator could have any of the powers described in Section 5407 and, if meaningful communication were possible, discern if the individual objected to a conservator having any of those powers.

A guardian ad litem appointed for an individual alleged to need protection or a protected individual also would have to explain to the individual the hearing procedure and the individual's rights in the hearing procedure, including, the following:

- The right to contest the petition, in whole or in part.
- The right to request limits on the conservator's powers.
- The right to request a reasonable accommodation to allow the individual to participate as fully as possible at the hearing, including with assistive technology or other support.
- The right to request an independent medical evaluation.
- The right to be present at the hearing; however, if the individual were unable to attend the hearing at the location court proceedings typically are held, the guardian ad litem would have to inform the individual of his or her right to have the hearing at another location.
- The right to be represented by legal counsel of the individual's choice.

If the individual were unable to secure legal counsel of his or her choice, the guardian ad litem would have to explain to the individual that he or she had the right to have legal counsel appointed by the court.

A guardian ad litem appointed for an individual alleged to need protection or a protected individual would have to file a written report with the court in the form required by the State Court Administrative Office.

If an individual who was subject to an initial petition or petition to modify contested the petition, the guardian ad litem's written report would have to include only the following:

- That the individual contested the petition.
- Whether the individual had retained legal counsel or wished for legal counsel to be appointed.
- Whether the individual had any barriers to attending court at the place where it was usually held.

If an individual who was subject to an initial petition or petition to modify did not contest the petition, the guardian ad litem's written report would have to include only the following:

- The date and time the guardian ad litem met with the individual.
- The length of time the guardian ad litem met with the individual.
- The location where the guardian ad litem met with the individual.
- Whether the guardian ad litem was able to meaningfully communicate with the individual and any barriers to communication.
- Who, if anyone, was present for the interview besides the individual.
- Whether the individual wished to be present at the hearing; and if the individual wished to be present at the hearing but had a barrier to fully participating, the guardian ad litem would have to include in the written report whether the barrier could be resolved by moving the location of the hearing or using assistive technology, or both, or other support.
- Whether the individual has identified a plan for how the individual would attend.
- Whether the individual planned to retain legal counsel or had requested appointed legal counsel; if the individual had not indicated he or she wished to be represented by legal counsel, the guardian ad litem would have to include in the written report a recommendation as to whether legal counsel should be appointed to represent the individual.
- Whether the individual had a power of attorney with or without limitations on purpose, authority, or time period; a patient advocate designation; a physician orders for scope of treatment form; and/or a benefits payee, trustee, or other fiduciary.

- Whether a disagreement or dispute related to the conservatorship petition could be resolved through court-ordered mediation.
- Whether the appointment of a visitor with appropriate knowledge, training, and education such as a social worker, mental health professional, or medical professional could provide the court with the information on whether alternatives to conservatorship or a limited conservatorship was appropriate.
- If a conservator were appointed, who the individual would want to serve in order of preference.
- If a conservator were appointed, who the individual would not want to serve.
- An estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

If a guardian ad litem were appointed for any purpose other than an initial petition, petition to terminate, or petition to modify, the guardian ad litem would have to provide a written report to the court that included, at a minimum, the information required to be in the guardian ad litem's report as required under the bill, as applicable, and any other information required by law. A special limited guardian ad litem who was appointed under the bill (described below) would not be required to provide a written report unless ordered to do so by the court.

The court could not consider evidence included in a report or the testimony of a guardian ad litem that was not otherwise admissible under the Michigan Rules of Evidence. If the guardian ad litem did not personally appear for examination, the report could not be admitted into evidence.

A guardian ad litem would have to file any report required under Section 5406 with the court and serve the report on all interested persons at least seven days before the hearing. The court could not order compensation of the guardian ad litem unless the guardian ad litem stated in his or her written report that he or she complied with this provision.

The court could not appoint a guardian ad litem as legal counsel for the individual if the guardian ad litem's report or recommendation to the court conflicted with the individual's wishes.

If an individual who was subject to a petition had not already secured legal counsel, the court would have to appoint legal counsel if any of the following applied:

- The individual who was subject to the petition requested legal counsel.
- The individual who was subject to the petition objected to any part of the petition for conservatorship or potential authority of a conservator.
- The guardian ad litem determined it was in the best interest of the individual subject to the petition to have legal counsel and, if legal counsel had not been secured, the court would have to appoint legal counsel.

If the individual who was subject to the petition were indigent, the State would bear the expense of appointed legal counsel.

If an individual who was subject to a petition had legal counsel appointed or retained, the appointment of a guardian ad litem would terminate. The report of the guardian ad litem could not be admitted into evidence after the appearance or appointment of legal counsel for the individual who was subject to the petition.

After appointment or retention of legal counsel for the individual who was subject to the petition, the court, for good cause shown, could appoint a special limited guardian ad litem to provide information on a narrowly defined issue that likely would otherwise be inadequately

addressed. A special guardian ad litem would be exempt from the provisions prescribing the duties of a guardian ad litem and the reporting requirements. The court could order that a special limited guardian ad litem provide a written report. The report would have to contain the information the court considered necessary to adequately address the issue leading to the appointment of the special limited guardian ad litem. A special limited guardian ad litem could not communicate directly with the individual who was subject to the petition and instead would have to communicate through legal counsel to the individual who was subject to the petition, unless legal counsel otherwise gave consent.

### Inventory & Records

Under Section 5417, within 56 days after appointment or within another time period specified by court rule, a conservator must prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits.

The bill would require the conservator to file, along with the inventory, account statements that reflected the value of depository and investment accounts dated within 30 days after the inventory's date.

The conservator would have to identify on the inventory any items of special personal or sentimental value, including family heirlooms, photo albums, or collections. To the extent meaningful conversation permitted, the conservator would have to make an inquiry with the protected individual as to what items the protected individual identified as having special personal or sentimental value. If the conservator were unable to locate an item identified as having special personal or sentimental value at the time of filing the inventory, he or she would have to state that on the inventory. A conservator would have to make all reasonable efforts to identify and honor the protected individual's wishes to preserve items of special personal or sentimental value in the overall context of the protected individual's estate, including items identified in the inventory and annual accounts, and would have to take reasonable steps to safeguard the property. The court could remove a conservator that failed to comply with these provisions.

The inventory would have to list any merchandise, funeral services, cemetery services, or prepaid contracts for which the protected individual or conservator was the contract buyer or contract beneficiary under the Prepaid Funeral and Cemetery Sales Act. If the conservatorship estate included assets described in this provision, the conservator would have to file all of the following with the inventory:

- A copy of any prepaid contract under the Prepaid Funeral and Cemetery Sales Act.
- Proof that payments made under a prepaid contract are held in escrow or under a trust agreement in compliance with the Prepaid Funeral and Cemetery Sales Act.
- The most recent escrow statement issued concerning the prepaid contract.
- Proof of any assignments of life policies or annuity contracts made to purchase merchandise, funeral services, or cemetery services under the Prepaid Funeral and Cemetery Sales Act would have to list property with reasonable detail and the type and amount of any encumbrance.

The inventory would have to be served on all interested parties. Any interested person could file an objection to the inventory with the court and serve the objection on all other interested persons. The court would have to set the matter for hearing.

## Account & Account Statements

Section 5418 requires a conservator to account to the court for administration of the trust at least annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs.

The bill would require the conservator to file, along with the account, account statements that reflected the value of depository and investment accounts dated within 30 days after the inventory's date and receipts, invoices, or other documentation for expenses in excess of \$1,000. The account would have to be in the form as provided by the State Court Administrative Office, or substantially similar. The account would have to detail assets including those identified in the inventory under Section 5417, debts, gross income, and expenses.

Section 5418 requires a conservator to account to the court or to the formerly protected individual or that individual's successors after termination of the protected individual's minority or disability. The bill would require the conservator to account to the court within 56 days after the termination of the individual's minority or disability.

Under the bill, if the conservator had disposed of or sold any of the items, the conservator would have to describe on the account how the conservator fulfilled the conservator's duties under Section 5417.

If the protected individual's estate included any merchandise, funeral services, cemetery services, or prepaid contracts for which the protected individual or conservator was the contract buyer or contract beneficiary under the Prepaid Funeral and Cemetery Sales Act the conservator would have to file all of the following with the account:

- A copy of any prepaid contract under the Prepaid Funeral and Cemetery Sales Act.
- Proof that payments made under a prepaid contract are held in escrow or under a trust agreement in compliance with the Prepaid Funeral and Cemetery Sales Act.
- The most recent escrow statement issued concerning the prepaid contract.
- Proof of any assignments of life policies or annuity contracts made to purchase merchandise, funeral services, or cemetery services under the Prepaid Funeral and Cemetery Sales Act.

If the protected individual objected to an account, the court would have to appoint a guardian ad litem to visit the protected individual in the same manner as specified in Section 5406. The court would have to appoint legal counsel to represent the protected individual if any of the following were met:

- The protected individual requested legal counsel.
- The guardian ad litem believed that appointment of legal counsel was in the best interest of the protected individual.
- The court otherwise believed it was necessary to protect the interest of the protected individual.

## **Senate Bill 504**

### Appointment & Removal of Guardian or Conservator

Section 5106 of the Code allows a court to appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under the Code, or as a plenary guardian or partial guardian as those terms are defined in the Mental Health Code.



The court must appoint a professional guardian or professional conservator only if it finds on the record that the appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests and that there is no other person who is competent, suitable, and willing to serve in that fiduciary capacity.

The court may not appoint a person as a professional guardian or professional conservator unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court.

Under the bill, in addition to the current requirement, a court could not appoint a person as a professional guardian or professional conservator unless the person were a financial institution or any of the following conditions were met:

- The person had obtained certification as set forth by administrative order of the Michigan Supreme Court.
- The person would serve as professional guardian or professional conservator, or both, for no more than two wards or protected individuals.
- For an individual, the individual was licensed and in good standing with the State Bar of Michigan and would serve as guardian or conservator, or both, for no more than three wards or protected individuals.

Section 5106 requires a professional guardian appointed under Section 5106 to establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within three months after the professional guardian's appointment and at least once within three months after each previous visit. The bill would delete this provision. Instead, a professional guardian appointed under Section 5106 would have to visit the ward at least once a month after each previous visit. A professional guardian that had obtained certification as set forth by administrative order of the Michigan Supreme Court could not delegate required visitation under this provision to another person unless the other person had obtained certification as set forth by administrative order of the Michigan Supreme Court.

A professional guardian or professional conservator could use support staff and other professionals, under his or her active and direct supervision, to perform office functions and client services. Support staff and professionals could be used to gather and provide necessary information to the professional guardian or professional conservator regarding a ward or protected individual and to make recommendations to the professional guardian or professional conservator based on their knowledge and expertise. The professional guardian or professional conservator could not delegate decision-making authority to support staff, professionals, or other people regarding execution of contracts or informed consent decisions, including medical, mental health, placement, or care planning decisions.

The bill would add Section 5106a to the Estates and Protected Individuals Code. Under Section 5106a, the court could not appoint an individual as a guardian of a legally incapacitated individual or conservator of a protected individual who was not a minor, or both, unless one of the following conditions were met:

- The individual had obtained certification as set forth by administrative order of the Michigan Supreme Court.
- The individual would serve as guardian or conservator, or both, for no more than two legally incapacitated individuals or protected individuals and received no compensation for providing those services.

- The individual was related to the legally incapacitated individual or protected individual by blood, adoption, or marriage, including step- or half-relations.
- The individual was licensed and in good standing with the State Bar of Michigan and would serve as guardian or conservator, or both, for no more than three legally incapacitated individuals or protected individuals.

Section 5106a would not apply to a professional guardian or professional conservator.

#### Resignation or Removal of a Guardian

Section 5310 specifies that on petition of a guardian and subject to the filing and approval of a report prepared as required by Section 5314, a court must accept the guardian's resignation and make any other order that is appropriate.

The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court. Under the bill, a petition for an order appointing a successor guardian would be subject to the priority of appointment under Section 5313.

#### Guardian Qualifications

Section 5313 allows a court to appoint a competent person as guardian of a legally incapacitated individual. Under the bill, this provision would be subject to Section 5106a.

Section 5313 also prescribes the priority in which a guardian must be appointed.

Under the bill, the court would have to appoint a person with priority guardian of a legally incapacitated individual unless specific findings on the record indicated that the person was not suitable as set forth in Section 5313 or was not willing to serve. A person would be suitable to serve on a determination of specific findings of the court, including all of the following factors:

- The preference of the individual subject to the guardianship, including who should serve and not serve as guardian.
- The person's availability to the individual subject to the guardianship.
- The person's history and relationship with the individual subject to the guardianship.
- The person's criminal history that was relevant to the care, custody, and control of the individual subject to the guardianship.
- The person's personal history, including employment, training, skills, and stability, that will facilitate fulfillment of duties.
- The person's ability to meet the requirements of Section 5410.
- The person's ability to fulfill duties regardless of interpersonal disputes between interested persons or others with an interest in the welfare of the individual subject to guardianship.

Interpersonal disputes alone could not be the basis for finding a person with priority, under Section 5313, was unsuitable.

In deciding between two people with equal priority, the court would have to weigh the factors described above with specific findings on the record. The court could appoint two people to serve as co-guardians. Unless the order of appointment and letters of guardianship stated

otherwise, co-guardians would have to act jointly; however, a co-guardian could delegate his or her authority to the other co-guardian.

### Appointment of a Conservator

Section 5409 of the Code allows a court to appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

- A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.
- An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.
- The protected individual's spouse.
- An adult child of the protected individual.
- A parent of the protected individual or a person nominated by the will of a deceased parent.
- A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.
- A person nominated by the person who is caring for or paying benefits to the protected individual.
- If none of the people listed above are suitable and willing to serve, any person who the court determines is suitable and willing to serve.

The bill would refer to "a person" instead of "an individual or corporation".

Under Section 5409, if people have equal priority, the court must select the person it considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority. The bill would delete these provisions.

The bill would require a court to appoint a person with priority to serve as conservator of a protected individual's estate unless specific findings on the record indicated the person was not suitable or was not willing to serve. A person would be suitable to serve on a determination of specific findings by the court, including all of the following factors:

- Preference of the individual subject to the conservatorship, including who should serve and not serve as conservator.
- Availability to the individual subject to the conservatorship.
- History and relationship with the individual subject to the conservatorship.
- Criminal history that was relevant to the role of a conservator.
- Personal history, including employment, training, skills, and stability that would facilitate fulfillment of duties.
- Ability to meet the requirements of Section 5410.
- Ability to fulfill duties regardless of interpersonal disputes between interested parties or others with an interest in the welfare of the individual subject to conservatorship.

Interpersonal disputes alone could not be the basis for finding a person with priority was unsuitable.

In deciding between two people with equal priority, the court would have to weigh the factors described above with specific findings on the record. The court could appoint not more than

two people to serve as co-conservators. Unless the order of appointment and letters of conservatorship stated otherwise, co-conservators would have to act jointly.

### **Senate Bill 505**

#### Court-Appointed Guardian; Hearing

Section 5303 of the Code allows an individual in his or her own behalf, or any person interested in the individual's welfare, to petition for a finding of incapacity and appointment of a guardian. The petition must contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

Before a petition is filed, the court must provide the person intending to file the petition with certain written information that sets forth alternatives to appointment of a full guardian.

On the filing of a petition, the court must set a date for an initial hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court must appoint a guardian ad litem to represent the person for the initial hearing.

Under the bill, the court could enter a final order on the petition at the initial hearing if it did not set a trial date.

At the initial hearing, the court would have to set a trial date for the petition if any of the following applied:

- The guardian ad litem reported that the allegedly incapacitated individual objected to any portion of the relief requested by the petitioner.
- The individual or his or her legal counsel requested the matter be set for trial.
- Any reason as justice required.

If the court set a trial date at the initial hearing, it would have to enter a scheduling order to the extent necessary and enter an order that provided, to the extent practicable, for the attendance of the allegedly incapacitated individual at the trial if he or she wished to attend.

An order entered under this provision could order any interested person over whom the court had jurisdiction to facilitate attendance or move the hearing site.

#### Evaluation & Report

Section 5304 of the Code allows a court to order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who must submit a report to the court at least five days before an initial hearing under Section 5303.

A report prepared under Section 5304 must contain all of the following:

- A detailed description of the individual's physical or psychological infirmities.
- An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.
- A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.
- A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.

- The signatures of all individuals who performed the evaluations upon which the report is based.

Instead, under the bill, a report prepared under Section 5304 would have to contain all of the following:

- A detailed description of the individual's cognitive and functional abilities and limitations.
- An explanation of how and to what extent the individual was able to receive, understand, participate in, and evaluate information in making decisions.
- If the report were being completed by a physician or mental health professional, a listing of all medications the individual was receiving, the dosage of each medication, and a description of the effects each medication had on the individual's behavior.
- If the report were being completed by a physician or mental health professional, a prognosis for improvement in the individual's condition, including whether it was a permanent or temporary condition, and a recommendation for the most appropriate rehabilitation plan.
- The signatures and printed names of all individuals who performed the evaluations, where they were employed, the date of examination on which the report was based, the length of time they had known the individual, and the length of time they met the individual.
- Whether the individual had the ability to assign or delegate responsibilities to ensure his or her well-being.
- Whether the individual had executed a document directing care or naming an agent to act on his or her behalf, including a power of attorney, patient advocate designation, or do-not-resuscitate order.
- If the report were being completed by a visitor, it also would have to include, at a minimum, an assessment of the existence of current formal and informal supports, the ability of supportive services and benefits to meet any unmet needs, the identification of any existing concerns regarding the individual's well-being, and the individual's ability to address those existing concerns.

If the court found that the report prepared under Section 5304 did not substantially comply with the requirements of Section 5304, the court could not consider the evaluation.

#### Court-Appointed Guardian; Findings

Section 5306 of the Code allows a court to appoint a guardian if it finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

Under the bill, the court would have to dismiss the proceeding if it could not be shown both of the following by clear and convincing evidence:

- That the individual for whom a guardian was sought was an incapacitated individual.
- That the appointment was necessary as a means of providing continuing care and supervision of the individual.

At any time during the proceedings, the court could stay the guardianship proceedings for a reasonable period of time, based on the needs of the individual, to allow the individual the opportunity to explore the alternatives to appointing a guardian. If the individual properly named a patient advocate under a patient advocate designation, an attorney-in-fact under a power of attorney, or a representative payee under a governmental benefit during the stay and provided evidence of naming the patient advocate, attorney-in-fact, or representative

payee to the court, the court could dismiss the petition with or without a hearing. These provisions would not prevent the court from ordering a temporary guardianship under Section 5312a if the temporary guardianship were limited in scope and the court explicitly found that the individual had the capacity to execute a power of attorney, patient advocate designation, or designate a representative payee.

The Code specifies that an individual for whom a guardian is sought or has been appointed under Section 5306 has certain rights, including to have the guardian notify the court within 14 days of a change in the individual's residence. The bill would delete this provision.

### Emergency Guardian

Section 5312 of the Code generally allows a court to exercise the power of a guardian or appoint a temporary guardian for an incapacitated individual if the individual does not have a guardian, an emergency exists, and no other person appears to have authority to act. If an appointed guardian is not performing his or her duties effectively and the court finds that the incapacitated individual's welfare requires immediate action, the court may appoint a temporary guardian for up to six months. Sections 5312 also prescribes the duties and responsibilities of a temporary guardian.

The bill would delete these provisions.

Instead, the bill would allow an interested person to file a petition to appoint an emergency guardian for an allegedly incapacitated individual. If a petition to appoint an emergency guardian were filed, the petitioner would have to give notice, except as otherwise provided, and the court would have to appoint a guardian ad litem. The court would have to conduct a hearing on a petition to appoint an emergency guardian as soon as possible and not later than seven days after the court received the petition. Except as otherwise provided, following the hearing, the court could appoint an emergency guardian if it found by a preponderance of the evidence that all of the following applied:

- An emergency existed that likely was to result in substantial harm to the allegedly incapacitated individual's physical health, safety, or welfare.
- No other person appeared to have authority to act in the circumstances.
- There was a basis that both the individual was an incapacitated individual and appointment of an emergency guardian was necessary as a means of providing continuing care and supervision of the individual.

On the filing of a petition to appoint an emergency guardian, the court could appoint an emergency guardian for an allegedly incapacitated individual without notice to the allegedly incapacitated individual only if the court determined from an affidavit or ex parte testimony showing, by clear and convincing evidence, that all of the following applied:

- An emergency existed that likely would result in imminent and substantial harm to the allegedly incapacitated individual's physical health, safety, or welfare.
- No other person appeared to have authority to act in the circumstances.
- There was a basis that both the individual was an incapacitated individual and appointment of an emergency guardian was necessary as a means of providing continuing care and supervision of the individual.

If the court appointed an emergency guardian, the court would have to do all of the following:

- Appoint a guardian ad litem for the allegedly incapacitated individual.

- Within 48 hours after the appointment of an emergency guardian, give notice of the appointment to the individual and any other person, as determined by the court.
- Within seven days after the appointment of an emergency guardian, hold a hearing on whether the conditions for the appointment existed.

If the court found conditions existed for the appointment of the emergency guardian at a hearing, and the individual wished to contest the appointment, it would have to set a date for a hearing and enter an order consistent with Section 5305(5).

An order appointing an emergency guardian would expire 28 days after the appointment; however, the court could extend an order appointing an emergency guardian once for an additional 28 days if it found by a preponderance of the evidence, upon an affidavit by the appointed emergency guardian or following a hearing set at the discretion of the court, that the conditions that led to the appointment of the emergency guardian still existed.

An emergency guardian could exercise only the powers specified by the court. The court could remove an emergency guardian at any time.

An appointment of an emergency guardian would not be a determination that a basis existed for an appointment of a guardian under Section 5306.

#### General Duty of a Conservator

Section 5416 of the Code specifies that in relation to powers conferred by Part 4 (Protection of Property of an Individual Under Disability or of a Minor) or implicit in the title acquired by virtue of the proceeding, a conservator must act as a fiduciary and observe the standard of care applicable to a trustee.

Under the bill, a conservator of an individual who was subject to a conservatorship for a reason other than minority would have the duty to take all steps within the scope of the conservator's authority to ensure the individual attended any hearing concerning the individual's conservatorship if the individual wished to attend the hearing.

### **Senate Bill 506**

#### Temporary Guardian

The bill would add Section 5312a to the Code. Section 5312a would allow the court to appoint a temporary guardian under Section 5301a and Section 5312a.

If an appointed guardian were not effectively performing the his or her duties and the court further found that the ward's welfare required immediate action, it could appoint, with or without notice, a temporary guardian for the ward for a specified period not to exceed six months.

A temporary guardian would be entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court would be suspended while a temporary guardian had authority. A temporary guardian could be removed at any time. A temporary guardian would have to make reports as the court required. In other respects, the provisions of the Code concerning guardians would apply to temporary guardians.

## Removing a Conservator

Under Section 5414, the court may remove a conservator for good cause, on notice and hearing, or accept a conservator's resignation. On the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed under this provision succeeds to the title and powers of the predecessor.

The bill would allow the protected individual or a person interested in the protected individual's welfare to petition for an order removing the conservator, appointing a successor conservator, modifying the terms of the conservatorship, or terminating the conservatorship. A request for this order under this provision could be made by informal letter to the court. A person who knowingly interfered with transmission of a request to the court would be subject to a finding of contempt of court. A petition for an order appointing a successor conservator would be subject to the priority of appointment under Section 5409.

## Appointing a Successor Guardian

Section 5415 of the Code allows a person interested in the welfare of an individual for whom a conservator is appointed to file a petition in the appointing court for an order to do any of the following:

- Require bond or security or additional bond or security, or reduce bond.
- Require an accounting for the administration of the trust.
- Direct distribution.
- Remove the conservator and appoint a temporary or successor conservator.
- Grant other appropriate relief.

A conservator may petition the appointing court for instructions concerning fiduciary responsibility. On notice and hearing, the court may give appropriate instructions or make an appropriate order.

Under the bill, a petition for an order appointing a successor guardian would be subject to the priority of appointment under Section 5409.

MCL 700.5305 et al. (S.B. 503)  
700.5104 et al. (S.B. 504)  
700.5303 et al. (S.B. 505)  
700.5414 et al. (S.B. 506)

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bills could have a minor, negative impact on local probate court systems. The bills set forth several new requirements and procedures for guardian and guardian ad litem assignments for incapacitated individuals and incapacitated minors, including new procedures for hearings, filings, and notice requirements. There could be some operational costs and expenses for courts associated with newly required hearings or adoption of new procedures; however, those costs likely would be absorbed by local probate courts.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.