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Senate Bill 526 (as introduced 6-9-21)  
Sponsor: Senator Ruth Johnson  
Committee: Judiciary and Public Safety

Date Completed: 6-10-21

### **CONTENT**

**The bill would amend the Estates and Protected Individuals Code to do the following:**

- **Prohibit a court from appointing a person as a professional guardian unless he or she filed a bond, as currently required in the Code, and would serve as professional guardian to not more than 200 legally incapacitated individuals.**
- **Modify a provision prescribing how often a professional guardian must visit a ward.**
- **Require, instead of allow, a court to order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court.**
- **Require, instead of allow, a person alleged to be incapacitated to be present at a hearing to determine incapacity.**
- **Require a guardian to notify a ward's heirs of the ward's death within 24 hours after the ward died, and require the guardian to notify the heirs about the ward's funeral arrangements within 24 hours if the guardian knew or became aware of the arrangements.**
- **Require a guardian to notify the interested people as specified in the Michigan Court Rules if a ward had been admitted to a hospital for acute care for three or more days or within 24 hours after being informed by hospital staff that the ward was not expected to recover from the condition or conditions for which the ward had been hospitalized.**
- **Require an annual account to the court for administration of a trust to include a report listing separately each check, electronic payment, or any other expenditure issued or made by the conservator along with the date, amount, payee, and purpose.**

#### Professional Guardians & Conservators

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 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 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 bond requirement, a court could not appoint a person as a professional guardian unless the he or she would serve as professional guardian for not more than 200 legally incapacitated individuals.

Section 5106 requires an appointed professional guardian 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. Instead, under the bill, a professional guardian appointed under Section 5106 would have to visit the ward within three months after the professional guardian was appointed and at least once within three months after each previous visit.

### Evaluation & Report

Under Section 5304, if necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who must submit a report in writing to the court at least five days before a hearing on the issue of incapacity. The bill would *require* the court to order that the individual be examined.

Section 5304 also specifies that the individual alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing on his or her condition. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure his or her presence, including moving the hearing site. The bill would *require* the individual to be present at the hearing, and to see or hear all evidence bearing on his or her condition. All practical steps would have to be taken to ensure his or her presence, including moving the hearing site.

### Duties of a Guardian Ad Litem

Section 5305 prescribes the duties of a guardian ad litem appointed for an individual alleged to be incapacitated.

These duties include making a determination and informing the court of that determination on whether the individual wishes to be present at the hearing. The bill would delete this provision.

### Termination of a Guardian's Authority & Responsibility

Section 5308 specifies that a guardian's authority and responsibility for a legally incapacitated individual terminates on the death of the guardian or ward, on the determination of incapacity of the guardian, or on removal or resignation. Testamentary appointment of a guardian under an unprobated will or a will informally probated terminates if the will later is denied probate in a formal testacy proceeding.

Under the bill, within 24 hours after a ward's death, the guardian would have to notify the ward's heirs of the ward's death. After the ward's death, if the guardian knew or became aware of the decedent's funeral arrangements, the guardian would have to notify the decedent's heirs about the funeral arrangements within 24 hours after the guardian knew or became aware of the arrangements. A notice could be written or oral.

## Powers & Duties of a Guardian

Section 5314 specifies that if meaningful communication is possible, a legally incapacitated individual's guardian must consult with the individual before making a major decision affecting the individual. To the extent a guardian of a legally incapacitated individual is granted powers by a court under Section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons because of that responsibility for the ward's acts. Section 5314 also prescribes specific powers and duties of a guardian, to the extent granted by court order.

Under the bill, a guardian also would have a duty to notify the interested people as specified in the Michigan Court Rules if the ward had been admitted to a hospital for acute care for three or more days or within 24 hours after being informed by hospital staff that the ward was not expected to recover from the condition or conditions for which the ward had been hospitalized. A notice could be written or oral.

## Third Person Dealings

Under Section 5418, a conservator must account to the court for administration of the trust at least annually unless the court directs otherwise, on resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator must account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator 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 conservator to the protected individual or the protected individual's successors relating to the conservatorship.

The bill would require an account to the court required under Section 5418 to include a report listing separately each check, electronic payment, or any other expenditure issued or made by the conservator along with the date, amount, payee, and purpose.

MCL 700.5106 et al.

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

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.