

# HOUSE BILL NO. 4849

May 18, 2021, Introduced by Reps. Bolden and Filler and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL 700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416), section 5303 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, and section 5312 as amended by 2000 PA 54.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 5303. (1) An individual in his or her own behalf, or any

1 person interested in the individual's welfare, may petition for a  
2 finding of incapacity and appointment of a guardian. The petition  
3 must contain specific facts about the individual's condition and  
4 specific examples of the individual's recent conduct that  
5 demonstrate the need for a guardian's appointment.

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

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

22 (4) **At the initial hearing under subsection (3), the court**  
23 **shall set a trial date for the petition under subsection (1) if any**  
24 **of the following apply:**

25 (a) **The guardian ad litem reports that the allegedly**  
26 **incapacitated individual objects to any portion of the relief**  
27 **requested by the petitioner.**

28 (b) **The allegedly incapacitated individual or his or her legal**  
29 **counsel requests the matter be set for trial.**

1 (c) Any reason as justice requires.

2 (5) If the court sets a trial date at the initial hearing  
3 under subsection (4), the court shall do both of the following:

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

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

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

23 (2) The alleged incapacitated individual has the right to  
24 secure an independent evaluation, at his or her own expense or, if  
25 indigent, at the expense of ~~the~~**-this** state. Compensation for an  
26 independent evaluation at public expense ~~shall-must~~ be in an amount  
27 that, based ~~upon~~**-on** time and expense, the court approves as  
28 reasonable.

29 (3) A report prepared under this section ~~shall-must~~ contain

1 all of the following:

2 (a) A detailed description of the individual's ~~physical or~~  
3 ~~psychological infirmities.~~ **cognitive and functional abilities and**  
4 **limitations.**

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

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

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

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

25 (f) **Whether the individual has the ability to assign or**  
26 **delegate responsibilities to ensure his or her well-being.**

27 (g) **Whether the individual has executed a document directing**  
28 **care or naming an agent to act on his or her behalf, including, but**  
29 **not limited to, a power of attorney, patient advocate designation,**

1 or do-not-resuscitate order.

2 (h) If the report is being completed by a visitor, it must  
3 also include, at a minimum, an assessment of the existence of  
4 current formal and informal supports, the ability of supportive  
5 services and benefits to meet any unmet needs, the identification  
6 of any existing concerns regarding the individual's well-being, and  
7 the individual's ability to address those existing concerns.

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

11 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled  
12 to be present at the hearing in person, and to see or hear all  
13 evidence bearing ~~upon~~**on** the individual's condition. If the  
14 individual wishes to be present at the hearing, all practical steps  
15 ~~shall~~**must** be taken to ensure his or her presence, including, if  
16 necessary, moving the hearing site.

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

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

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

1 ~~may dismiss the proceeding or enter another appropriate order.~~

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

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

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

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

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

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

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

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

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

1 guardian.

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

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

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

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

20 (c) To petition on his or her own behalf for the appointment  
21 of a guardian, as provided in section 5303.

22 (d) To have legal counsel of his or her own choice represent  
23 him or her on the petition to appoint a guardian, as provided in  
24 sections 5303, 5304, and 5305.

25 (e) If he or she is not represented by legal counsel, to the  
26 appointment of a guardian ad litem to represent the individual on  
27 the petition to appoint a guardian, as provided in section 5303.

28 (f) To an independent evaluation of his or her capacity by a  
29 physician or mental health professional, at public expense if he or



1 she is indigent, as provided in section 5304.

2 (g) To be present at the hearing on the petition to appoint a  
3 guardian and to have all practical steps taken to ensure this,  
4 including, if necessary, moving the hearing site, as provided by  
5 section 5304.

6 (h) To see or hear all the evidence presented in the hearing  
7 on the petition to appoint a guardian, as provided in section 5304.

8 (i) To present evidence and cross-examine witnesses in the  
9 hearing on the petition to appoint a guardian, as provided in  
10 section 5304.

11 (j) To a trial by jury on the petition to appoint a guardian,  
12 as provided in section 5304.

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

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

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

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

23 (o) If a guardian ad litem is appointed, to be informed by the  
24 guardian ad litem of the right to contest the petition, to request  
25 limits on the guardian's powers, to object to a particular person  
26 being appointed guardian, to be present at the hearing, to be  
27 represented by legal counsel, and to have legal counsel appointed  
28 if the individual is unable to afford legal counsel, as provided in  
29 section 5305.

1 (p) To be informed of the name of each person known to be  
2 seeking appointment as guardian, including, if a guardian ad litem  
3 is appointed, to be informed of the names by the guardian ad litem  
4 as provided in section 5305.

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

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

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

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

16 (u) To periodic review of the guardianship by the court,  
17 including the right to a hearing and the appointment of an attorney  
18 if issues arise upon the review of the guardianship, as provided in  
19 section 5309.

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

23 (w) To a hearing within 28 days of requesting a review,  
24 modification, or termination of the guardianship, as provided in  
25 section 5310.

26 (x) To the same rights on a petition for modification or  
27 termination of the guardianship including the appointment of a  
28 visitor as apply to a petition for appointment of a guardian, as  
29 provided in section 5310.

1 (y) To personal notice of a petition for appointment or  
2 removal of a guardian, as provided in section 5311.

3 (z) To written notice of the nature, purpose, and legal  
4 effects of the appointment of a guardian, as provided in section  
5 5311.

6 (aa) To choose the person who will serve as guardian, if the  
7 chosen person is suitable and willing to serve, as provided in  
8 section 5313.

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

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

14 ~~(dd) To have the guardian notify the court within 14 days of a~~  
15 ~~change in the individual's residence, as provided in section 5314.~~

16 **(dd)** ~~(ee)~~ To have the guardian secure services to restore the  
17 individual to the best possible state of mental and physical well-  
18 being so that the individual can return to self-management at the  
19 earliest possible time, as provided in section 5314.

20 **(ee)** ~~(ff)~~ To have the guardian take reasonable care of the  
21 individual's clothing, furniture, vehicles, and other personal  
22 effects, as provided in section 5314.

23 (2) A guardian ad litem shall inform the ward in writing of  
24 his or her rights enumerated in this section. The state court  
25 administrative office and the ~~office of services to the aging~~  
26 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~  
27 ~~MCL 400.585,~~ **aging and adult services agency created under**  
28 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall  
29 promulgate a form to be used to give the written notice under this

1 section, which ~~shall~~**must** include space for the court to include  
2 information on how to contact the court or other relevant personnel  
3 with respect to the rights enumerated in this section.

4 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~  
5 ~~emergency exists, and no other person appears to have authority to~~  
6 ~~act in the circumstances, the court shall provide notice to the~~  
7 ~~individual alleged to be incapacitated and shall hold a hearing.~~  
8 ~~Upon a showing that the individual is an incapacitated individual,~~  
9 ~~the court may exercise the power of a guardian, or appoint a~~  
10 ~~temporary guardian with only the powers and for the period of time~~  
11 ~~as ordered by the court. A hearing with notice as provided in~~  
12 ~~section 5311 shall be held within 28 days after the court has acted~~  
13 ~~under this subsection.~~

14 ~~(2) If an appointed guardian is not effectively performing the~~  
15 ~~guardian's duties and the court further finds that the legally~~  
16 ~~incapacitated individual's welfare requires immediate action, the~~  
17 ~~court may appoint, with or without notice, a temporary guardian for~~  
18 ~~the legally incapacitated individual for a specified period not to~~  
19 ~~exceed 6 months.~~

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

27 **(1) An interested person may file a petition to appoint an**  
28 **emergency guardian for an allegedly incapacitated individual under**  
29 **this subsection. If a petition is filed under this subsection, the**

1 petitioner shall give notice, except as otherwise provided in  
2 subsection (2), as provided by section 5311, and the court shall  
3 appoint a guardian ad litem under section 5305. The court shall  
4 conduct a hearing on a petition under this subsection as soon as  
5 possible and not later than 7 days after the court receives the  
6 petition. Except as otherwise provided in subsection (2), following  
7 the hearing under this subsection, the court may appoint an  
8 emergency guardian if the court finds by a preponderance of the  
9 evidence that all of the following apply:

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

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

15 (c) There is a basis that both the individual is an  
16 incapacitated individual and appointment of an emergency guardian  
17 is necessary as a means of providing continuing care and  
18 supervision of the individual.

19 (2) On the filing of a petition to appoint an emergency  
20 guardian under subsection (1), the court may appoint an emergency  
21 guardian for an allegedly incapacitated individual without notice  
22 to the allegedly incapacitated individual only if the court  
23 determines from an affidavit or ex parte testimony showing, by  
24 clear and convincing evidence, that all of the following apply:

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

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

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

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

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

9           (b) Within 48 hours after the appointment of an emergency  
10 guardian under this subsection, give notice of the appointment to  
11 the allegedly incapacitated individual and any other person, as  
12 determined by the court.

13           (c) Within 7 days after the appointment of an emergency  
14 guardian under this subsection, hold a hearing on whether the  
15 conditions for the appointment of the emergency guardian exist.

16           (4) If the court finds conditions exist for the appointment of  
17 the emergency guardian at a hearing under this section, and the  
18 individual wishes to contest the appointment, the court must set a  
19 date for a hearing and enter an order consistent with section  
20 5305(5).

21           (5) An order appointing an emergency guardian under this  
22 section expires 28 days after the appointment. However, the court  
23 may extend an order appointing an emergency guardian under this  
24 section once for an additional 28 days if the court finds by a  
25 preponderance of the evidence, upon an affidavit by the appointed  
26 emergency guardian or following a hearing set at the discretion of  
27 the court, that the conditions that led to the appointment of the  
28 emergency guardian still exist.

29           (6) An emergency guardian may only exercise the powers

1 specified by the court.

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

3 (8) An appointment of an emergency guardian under this section  
4 is not a determination that a basis exists for an appointment of a  
5 guardian under section 5306(1).

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

10 (2) A conservator for an individual that is subject to a  
11 conservatorship for a reason other than minority has the duty to  
12 take all steps within the scope of the conservator's authority to  
13 ensure the individual attends any hearing concerning the  
14 individual's conservatorship if the individual wishes to attend the  
15 hearing in a manner as provided in section 5406.

16 Enacting section 1. This amendatory act does not take effect  
17 unless all of the following bills of the 101st Legislature are  
18 enacted into law:

19 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4847 (request no.  
20 02580'21).

21 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4848 (request no.  
22 02581'21).

23 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4850 (request no.  
24 02583'21).