

SENATE BILL NO. 526

June 09, 2021, Introduced by Senators JOHNSON, MACDONALD, WOJNO and RUNESTAD
and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5106, 5304, 5305, 5308, 5314, and 5418 (MCL
700.5106, 700.5304, 700.5305, 700.5308, 700.5314, and 700.5418),
section 5106 as amended by 2017 PA 136, section 5305 as amended by
2017 PA 155, section 5308 as amended by 2005 PA 204, section 5314
as amended by 2018 PA 594, and section 5418 as amended by 2000 PA
312.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5106. (1) Subject to subsections (2) and (3), the court
2 may appoint or approve a professional guardian or professional

1 conservator, as appropriate, as a guardian or conservator under
2 this act, or as a plenary guardian or partial guardian as those
3 terms are defined in section 600 of the mental health code, 1974 PA
4 258, MCL 330.1600.

5 (2) The court shall only appoint a professional guardian or
6 professional conservator as authorized under subsection (1) if the
7 court finds on the record all of the following:

8 (a) The appointment of the professional guardian or
9 professional conservator is in the ward's, developmentally disabled
10 individual's, incapacitated individual's, or protected individual's
11 best interests.

12 (b) There is no other person that is competent, suitable, and
13 willing to serve in that fiduciary capacity in accordance with
14 section 5212, 5313, or 5409.

15 (3) The court shall not appoint a professional guardian or
16 professional conservator as authorized under subsection (1) unless
17 ~~the~~ **both of the following conditions are met, as applicable:**

18 (a) **The professional guardian or professional conservator**
19 **files a bond in an amount and with the conditions as determined by**
20 **the court. For a professional conservator, the sureties and**
21 **liabilities of the bond are subject to sections 5410 and 5411.**

22 (b) **For a professional guardian, the professional guardian**
23 **will serve as professional guardian for not more than 200 legally**
24 **incapacitated individuals.**

25 (4) A professional guardian or professional conservator
26 appointed under this section shall not receive as a result of that
27 appointment a benefit beyond compensation specifically authorized
28 for that type of fiduciary by this act or the mental health code,
29 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not

1 prevent a person from providing compensation or other benefits,
2 from a source other than the estate of the ward, developmentally
3 disabled individual, incapacitated individual, or protected
4 individual, to a professional guardian or professional conservator
5 appointed or approved under this section. If a professional
6 guardian or professional conservator appointed or approved under
7 this section receives or is to receive compensation or other
8 benefits as a result of that appointment from a person other than
9 this state, a political subdivision of this state, or a trust
10 created under section 5407(2), the professional guardian or
11 professional conservator shall file with the appointing or
12 approving court a written statement of the compensation or other
13 benefit received or to be received, including the source of the
14 compensation or other benefit, in a form and in a manner prescribed
15 by the Michigan court rules. The professional guardian or
16 professional conservator shall serve a copy of the form described
17 in this subsection to the ward, developmentally disabled
18 individual, incapacitated individual, or protected individual and
19 to interested persons.

20 (5) A professional guardian appointed under this section shall
21 ~~establish and maintain a schedule of visitation so that an~~
22 ~~individual associated with the professional guardian who is~~
23 ~~responsible for the ward's care visits~~ **visit** the ward within 3
24 months after the professional guardian's appointment and not less
25 than once within 3 months after each previous visit.

26 (6) A professional guardian appointed under this section shall
27 ensure that there are a sufficient number of employees assigned to
28 the care of wards for the purpose of performing the necessary
29 duties associated with ensuring that proper and appropriate care is

1 provided.

2 (7) For the purposes of the statutory authorization required
3 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL
4 487.11105, to act as a fiduciary in this state, if the court
5 appoints a for-profit or nonprofit, nonbanking corporation
6 organized under the laws of this state to serve in a fiduciary
7 capacity that is listed in subsection (1), the nonbanking
8 corporation is authorized to act in that fiduciary capacity. The
9 authorization under this subsection confers the fiduciary capacity
10 only to the extent necessary in the particular matter of each
11 appointment and is not a general grant of fiduciary authority. A
12 nonbanking corporation is not authorized to act in any other
13 fiduciary capacity.

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

26 (2) The alleged incapacitated individual has the right to
27 secure an independent evaluation, at his or her own expense or, if
28 indigent, at the expense of the state. Compensation for an
29 independent evaluation at public expense ~~shall~~ **must** be in an amount

1 that, based ~~upon-on~~ time and expense, the court approves as
2 reasonable.

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

5 (a) A detailed description of the individual's physical or
6 psychological infirmities.

7 (b) An explanation of how and to what extent each infirmity
8 interferes with the individual's ability to receive or evaluate
9 information in making decisions.

10 (c) A listing of all medications the individual is receiving,
11 the dosage of each medication, and a description of the effects
12 each medication has ~~upon-on~~ the individual's behavior.

13 (d) A prognosis for improvement in the individual's condition
14 and a recommendation for the most appropriate rehabilitation plan.

15 (e) The signatures of all individuals who performed the
16 evaluations ~~upon-on~~ which the report is based.

17 (4) The individual alleged to be incapacitated ~~is entitled to~~
18 **must** be present at the hearing in person, and to see or hear all
19 evidence bearing ~~upon-on~~ the individual's condition. ~~If the~~
20 ~~individual wishes to be present at the hearing, all~~ **All** practical
21 steps ~~shall-must~~ be taken to ensure his or her presence, including,
22 if necessary, moving the hearing site.

23 (5) The individual is entitled to be represented by legal
24 counsel, to present evidence, to cross-examine witnesses, including
25 the court-appointed physician or mental health professional and the
26 visitor, and to trial by jury.

27 (6) The issue of incapacity may be determined at a closed
28 hearing without a jury if requested by the individual alleged to be
29 incapacitated or that individual's legal counsel.

1 Sec. 5305. (1) The duties of a guardian ad litem appointed for
2 an individual alleged to be incapacitated include all of the
3 following:

4 (a) Personally visiting the individual.

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

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

10 (i) The right to contest the petition.

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

14 (A) A do-not-resuscitate order.

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

16 (iii) The right to object to a particular person being appointed
17 guardian.

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

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

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

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

27 (e) Informing the individual that if a guardian is appointed,
28 the guardian may have the power to execute a physician orders for
29 scope of treatment form on behalf of the individual and, if

1 meaningful communication is possible, discern if the individual
2 objects to having a physician orders for scope of treatment form
3 executed on his or her behalf.

4 (f) Informing the individual of the name of each person known
5 to be seeking appointment as guardian.

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

9 (h) Making determinations, and informing the court of those
10 determinations, on all of the following:

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

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

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

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

1 (ii) Whether a disagreement or dispute related to the
2 guardianship petition might be resolved through court ordered
3 mediation.

4 ~~(iii) Whether the individual wishes to be present at the~~
5 ~~hearing.~~

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

7 (iv) ~~(v)~~ Whether the individual wishes limits placed on the
8 guardian's powers.

9 (v) ~~(vi)~~ Whether the individual objects to having a do-not-
10 resuscitate order executed on his or her behalf.

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

13 (vii) ~~(viii)~~ Whether the individual objects to a particular
14 person being appointed guardian.

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

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

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

1 counsel. If the individual alleged to be incapacitated is indigent,
2 this state shall bear the expense of legal counsel.

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

6 Sec. 5308. **(1) ~~The~~ Except as otherwise provided in subsection**
7 **(2), a** guardian's authority and responsibility for a legally
8 incapacitated individual terminates ~~upon~~**on** the death of the
9 guardian or ward, ~~upon~~**on** the determination of incapacity of the
10 guardian, or ~~upon~~**on** removal or resignation as provided in section
11 5310. Testamentary appointment of a guardian under an unprobated
12 will or a will informally probated under article III terminates if
13 the will is later denied probate in a formal testacy proceeding.

14 **(2) Within 24 hours after the death of a ward, the guardian**
15 **shall notify the ward's heirs of the ward's death. After the death**
16 **of a ward, if the guardian knows or becomes aware of the funeral**
17 **arrangements of the decedent, the guardian shall notify the**
18 **decedent's heirs about the funeral arrangements within 24 hours**
19 **after the guardian knows or becomes aware of the funeral**
20 **arrangements. A notice under this subsection may be written or**
21 **oral.**

22 Sec. 5314. If meaningful communication is possible, a legally
23 incapacitated individual's guardian shall consult with the legally
24 incapacitated individual before making a major decision affecting
25 the legally incapacitated individual. To the extent a guardian of a
26 legally incapacitated individual is granted powers by the court
27 under section 5306, the guardian is responsible for the ward's
28 care, custody, and control, but is not liable to third persons
29 because of that responsibility for the ward's acts. In particular

1 and without qualifying the previous sentences, a guardian has all
2 of the following powers and duties, to the extent granted by court
3 order:

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

11 (b) If entitled to custody of the ward, the duty to make
12 provision for the ward's care, comfort, and maintenance and, when
13 appropriate, arrange for the ward's training and education. The
14 guardian shall secure services to restore the ward to the best
15 possible state of mental and physical well-being so that the ward
16 can return to self-management at the earliest possible time.
17 Without regard to custodial rights of the ward's person, the
18 guardian shall take reasonable care of the ward's clothing,
19 furniture, vehicles, and other personal effects and commence a
20 protective proceeding if the ward's other property needs
21 protection. If a guardian commences a protective proceeding because
22 the guardian believes that it is in the ward's best interest to
23 sell or otherwise dispose of the ward's real property or interest
24 in real property, the court may appoint the guardian as special
25 conservator and authorize the special conservator to proceed under
26 section 5423(3). A guardian shall not otherwise sell the ward's
27 real property or interest in real property.

28 (c) The power to give the consent or approval that is
29 necessary to enable the ward to receive medical, mental health, or

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

18 (d) The power to execute, reaffirm, and revoke a do-not-
19 resuscitate order on behalf of a ward. However, a guardian shall
20 not execute a do-not-resuscitate order unless the guardian does all
21 of the following:

22 (i) Not more than 14 days before executing the do-not-
23 resuscitate order, visits the ward and, if meaningful communication
24 is possible, consults with the ward about executing the do-not-
25 resuscitate order.

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

29 (e) If a guardian executes a do-not-resuscitate order under

1 subdivision (d), not less than annually after the do-not-
2 resuscitate order is first executed, the duty to do all of the
3 following:

4 (i) Visit the ward and, if meaningful communication is
5 possible, consult with the ward about reaffirming the do-not-
6 resuscitate order.

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

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

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

16 (i) Not more than 14 days before executing the physician orders
17 for scope of treatment form, visits the ward and, if meaningful
18 communication is possible, consults with the ward about executing
19 the physician orders for scope of treatment form.

20 (ii) Consults directly with the ward's attending physician as
21 to the specific medical indications that warrant the physician
22 orders for scope of treatment form.

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

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

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

4 (i) If a conservator for the ward's estate is not appointed,
5 the power to do any of the following:

6 (i) Institute a proceeding to compel a person under a duty to
7 support the ward or to pay money for the ward's welfare to perform
8 that duty.

9 (ii) Receive money and tangible property deliverable to the
10 ward and apply the money and property for the ward's support, care,
11 and education. The guardian shall not use money from the ward's
12 estate for room and board that the guardian or the guardian's
13 spouse, parent, or child have furnished the ward unless a charge
14 for the service is approved by court order made on notice to at
15 least 1 of the ward's next of kin, if notice is possible. The
16 guardian shall exercise care to conserve any excess for the ward's
17 needs.

18 (j) The duty to report the condition of the ward and the
19 ward's estate that is subject to the guardian's possession or
20 control, as required by the court, but not less often than
21 annually. The guardian shall also serve the report required under
22 this subdivision on the ward and interested persons as specified in
23 the Michigan court rules. A report under this subdivision must
24 contain all of the following:

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

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

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

1 (iv) Whether the guardian recommends a more suitable living
2 arrangement for the ward.

3 (v) Medical treatment, including mental health treatment,
4 received by the ward.

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

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

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

14 (ix) Services received by the ward.

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

17 (xi) A recommendation as to the need for continued
18 guardianship.

19 (k) If a conservator is appointed, the duty to pay to the
20 conservator, for management as provided in this act, the amount of
21 the ward's estate received by the guardian in excess of the amount
22 the guardian expends for the ward's current support, care, and
23 education. The guardian shall account to the conservator for the
24 amount expended.

25 **(l) The duty to notify the interested persons as specified in**
26 **the Michigan court rules if the ward has been admitted to a**
27 **hospital for acute care for 3 or more days or within 24 hours after**
28 **being informed by hospital staff that the ward is not expected to**
29 **recover from the condition or conditions for which the ward has**

1 **been hospitalized. A notice under this subdivision may be written**
2 **or oral. As used in this subdivision, "hospital" means that term as**
3 **defined in section 20106 of the public health code, 1978 PA 368,**
4 **MCL 333.20106.**

5 Sec. 5418. (1) A conservator shall account to the court for
6 administration of the trust not less than annually unless the court
7 directs otherwise, ~~upon~~**on** resignation or removal, and at other
8 times as the court directs. On termination of the protected
9 individual's minority or disability, a conservator shall account to
10 the court or to the formerly protected individual or that
11 individual's successors. Subject to appeal or vacation within the
12 time permitted, an order, after notice and hearing, allowing an
13 intermediate account of a conservator adjudicates as to liabilities
14 concerning the matters considered in connection with the accounts,
15 and an order, after notice and hearing, allowing a final account
16 adjudicates as to all previously unsettled liabilities of the
17 conservator to the protected individual or the protected
18 individual's successors relating to the conservatorship. **An account**
19 **to the court required under this subsection must include, but is**
20 **not limited to, a report listing separately each check, electronic**
21 **payment, or any other expenditure issued or made by the conservator**
22 **along with the date, amount, payee, and purpose.** In connection with
23 any account, the court may require a conservator to submit to a
24 physical check of the estate to be made in any manner the court
25 specifies.

26 (2) The conservator shall provide a copy of an account to the
27 protected individual if the individual can be located and is 14
28 years of age or older and to interested persons as specified in the
29 Michigan court rules.