

SENATE BILL NO. 254

April 11, 2023, Introduced by Senators WOJNO, IRWIN, POLEHANKI, CHANG, CAVANAGH, RUNESTAD and BAYER and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5104, 5106, 5303, 5304, 5305, 5306, 5306a, 5310, 5312, 5313, 5314, 5406, 5409, 5414, 5415, 5416, 5417, and 5418 (MCL 700.5104, 700.5106, 700.5303, 700.5304, 700.5305, 700.5306, 700.5306a, 700.5310, 700.5312, 700.5313, 700.5314, 700.5406, 700.5409, 700.5414, 700.5415, 700.5416, 700.5417, and 700.5418), section 5106 as amended by 2017 PA 136, sections 5303 and 5305 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, sections 5310 and

5312 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, section 5314 as amended by 2018 PA 594, section 5406 as amended by 2000 PA 464, section 5409 as amended by 2000 PA 463, and sections 5417 and 5418 as amended by 2000 PA 312, and by adding sections 5106a, 5312a, 5314a, 5314b, and 5314c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5104. (1) An interested person who desires to be notified
 2 before an order is made in a guardianship proceeding, including a
 3 proceeding subsequent to the appointment of a guardian under
 4 section ~~5312~~, **5312a**, or in a protective proceeding under section
 5 5401 must file a request for notice with the register of the court
 6 in which the proceeding is pending and with the attorney of record
 7 of the guardian or conservator or, if none, with the guardian or
 8 conservator, if any. A request is not effective unless it contains
 9 a statement showing the interest of the person making it and the
 10 address of that person or an attorney to whom notice is to be
 11 given. The request is effective only as to a proceeding that occurs
 12 after the filing. If a guardianship or protective proceeding is not
 13 pending at the time a person files a request for notice as
 14 authorized by this subsection, the person shall pay a fee for
 15 filing the request, which fee ~~shall~~ **must** be in the same amount as,
 16 but is separate from, the fee required to commence such a
 17 proceeding.

18 (2) A governmental agency paying benefits to the individual to
 19 be protected or before whom an application for benefits is pending
 20 is an interested person in a protective proceeding.

21 Sec. 5106. (1) Subject to subsections (2) and (3), the court
 22 may appoint or approve a professional guardian or professional
 23 conservator, as appropriate, as a guardian or conservator under

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

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

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

11 (b) There is no other person that is competent, suitable, and
12 willing to serve in that fiduciary capacity in accordance with
13 section 5212, **5312a**, 5313, or 5409.

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

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

21 (b) **Either of the following conditions is met:**

22 (i) **Any of the following conditions are met:**

23 (A) **The person has obtained certification as set forth by**
24 **administrative order of the supreme court.**

25 (B) **The person will serve as professional guardian or**
26 **professional conservator, or both, for no more than 2 wards or**
27 **protected individuals.**

28 (C) **For an individual, the individual is licensed and in good**
29 **standing with the State Bar of Michigan and will serve as guardian**

1 or conservator, or both, for no more than 3 wards or protected
2 individuals.

3 (ii) The person is a financial institution.

4 (4) A professional guardian or professional conservator
5 appointed under this section shall not receive as a result of that
6 appointment a benefit beyond compensation specifically authorized
7 for that type of fiduciary by this act or the mental health code,
8 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
9 prevent a person from providing compensation or other benefits,
10 from a source other than the estate of the ward, developmentally
11 disabled individual, incapacitated individual, or protected
12 individual, to a professional guardian or professional conservator
13 appointed or approved under this section. If a professional
14 guardian or professional conservator appointed or approved under
15 this section receives or is to receive compensation or other
16 benefits as a result of that appointment from a person other than
17 this state, a political subdivision of this state, or a trust
18 created under section 5407(2), the professional guardian or
19 professional conservator shall file with the appointing or
20 approving court a written statement of the compensation or other
21 benefit received or to be received, including the source of the
22 compensation or other benefit, in a form and in a manner prescribed
23 by the Michigan court rules. The professional guardian or
24 professional conservator shall serve a copy of the form described
25 in this subsection to the ward, developmentally disabled
26 individual, incapacitated individual, or protected individual and
27 to interested persons.

28 (5) A professional guardian appointed under this section shall
29 ~~establish and maintain a schedule of visitation so that an~~

1 ~~individual associated with the professional guardian who is~~
2 ~~responsible for the ward's care visits~~ **visit** the ward ~~within 3~~
3 ~~months after the professional guardian's appointment and not less~~
4 ~~than once within 3 months~~ **a month** after each previous visit. **A**
5 **professional guardian that has obtained certification as described**
6 **in subsection (3) (b) (i) (A) shall not delegate required visitation**
7 **under this subsection to another person unless the other person has**
8 **obtained certification as described in subsection (3) (b) (i) (A) .**

9 (6) A professional guardian appointed under this section shall
10 ensure that there are a sufficient number of employees assigned to
11 the care of wards for the purpose of performing the necessary
12 duties associated with ensuring that proper and appropriate care is
13 provided.

14 (7) A professional guardian or professional conservator may
15 use support staff and other professionals, under the professional
16 guardian's or professional conservator's active and direct
17 supervision, to perform office functions and client services.
18 Support staff and professionals may be used to gather and provide
19 necessary information to the professional guardian or professional
20 conservator regarding a ward or protected individual and to make
21 recommendations to the professional guardian or professional
22 conservator based on their knowledge and expertise. The
23 professional guardian or professional conservator shall not
24 delegate decision-making authority to support staff, professionals,
25 or other persons regarding execution of contracts or informed
26 consent decisions, including, but not limited to, medical, mental
27 health, placement, or care planning decisions.

28 (8) ~~(7)~~ For the purposes of the statutory authorization
29 required by section 1105(2) (e) of the banking code of 1999, 1999 PA

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

11 **Sec. 5106a. (1) Subject to subsection (2), the court shall not**
12 **appoint an individual as a guardian of a legally incapacitated**
13 **individual or conservator of a protected individual who is not a**
14 **minor, or both, under this article unless 1 of the following**
15 **conditions is met:**

16 (a) The individual has obtained certification as set forth by
17 administrative order of the supreme court.

18 (b) The individual will serve as guardian or conservator, or
19 both, for no more than 2 legally incapacitated individuals or
20 protected individuals and receives no compensation for providing
21 those services.

22 (c) The individual is related to the legally incapacitated
23 individual or protected individual by blood, adoption, or marriage,
24 including step- or half-relations.

25 (d) The individual is licensed and in good standing with the
26 State Bar of Michigan and will serve as guardian or conservator, or
27 both, for no more than 3 legally incapacitated individuals or
28 protected individuals.

29 (2) This section does not apply to a professional guardian or

1 **professional conservator.**

2 Sec. 5303. (1) An individual in his or her own behalf, or any
3 person interested in the individual's welfare, may petition for a
4 finding of incapacity and appointment of a guardian. The petition
5 must contain specific facts about the individual's condition and
6 specific examples of the individual's recent conduct that
7 demonstrate the need for a guardian's appointment.

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

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

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

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

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

3 (c) Any reason as justice requires.

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

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

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

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

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

1 reasonable.

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

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

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.~~**the individual is able to receive,**
10 **understand, participate in, and evaluate information in making**
11 **decisions.**

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

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

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

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

29 (g) **Whether the individual has executed a document directing**

1 care or naming an agent to act on his or her behalf, including, but
2 not limited to, a power of attorney, patient advocate designation,
3 or do-not-resuscitate order.

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

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

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

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

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

26 Sec. 5305. (1) ~~The~~ **Subject to subsection (2), the** duties of a
27 guardian ad litem appointed for an individual alleged to be
28 incapacitated include all of the following:

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

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

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

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

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

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

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

12 ~~(iii) The right to object to a particular person being appointed~~
13 ~~guardian.~~

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

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

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

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

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

29 ~~(f) Informing the individual of the name of each person known~~

1 ~~to be seeking appointment as guardian.~~

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

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

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

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

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

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

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

29 ~~(iii) Whether the individual wishes to be present at the~~

1 hearing.

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

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

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

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

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

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

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

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

28 ~~(5) If the individual alleged to be incapacitated has legal~~
29 ~~counsel appointed under subsection (3) or (4), the appointment of a~~

1 ~~guardian ad litem terminates.~~

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

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

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

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

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

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

25 (g) Identify whether the individual plans to retain legal
26 counsel or wants appointed legal counsel. If the allegedly
27 incapacitated individual does not plan to retain legal counsel or
28 request appointed legal counsel, the guardian ad litem must make a
29 recommendation as to whether legal counsel should be appointed.

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

3 (2) The duties of a guardian ad litem appointed for an
4 individual alleged to be incapacitated or a legally incapacitated
5 individual include all of the following, as applicable:

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

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

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

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

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

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

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

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

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

27 (d) Explain to the individual that if a guardian is appointed,
28 the guardian may have the power to take certain actions on behalf
29 of the individual. A guardian ad litem must inform the individual

1 that a guardian may have any of the following powers and, if
2 meaningful communication is possible, discern if the individual
3 objects to a guardian having any of the following powers:

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

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

6 (iii) Consenting to any medical treatment.

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

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

10 (vi) Handling any financial and property matters, including the
11 sale or disposal of personal property and the maintenance of real
12 property. The guardian ad litem shall also inquire as to whether
13 there are any items of special or sentimental value that the
14 individual would not want sold or otherwise disposed of, such as
15 family photos, collections, personal correspondence, or pets, as
16 well as the location of those items.

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

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

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

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

27 (4) If an individual who is subject to an initial petition
28 under this part or petition to modify under this part contests the
29 petition, the guardian ad litem's written report required under

1 subsection (3) must include only the following:

2 (a) That the individual contests the petition.

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

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

7 (5) If an individual who is subject to an initial petition
8 under this part or petition to modify under this part does not
9 contest the petition, the guardian ad litem's report required under
10 subsection (3) must include only the following:

11 (a) The date and time the guardian ad litem met with the
12 individual.

13 (b) The length of time the guardian ad litem met with the
14 individual.

15 (c) The location where the guardian ad litem met with the
16 individual.

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

19 (e) Who, if anyone, was present for the interview besides the
20 individual.

21 (f) Whether the individual wishes to be present at the
22 hearing. If the individual wishes to be present at the hearing but
23 has a barrier to fully participating, the guardian ad litem must
24 include in the written report whether the barrier can be resolved
25 by moving the location of the hearing or using assistive
26 technology, or both, or other support.

27 (g) Whether the individual has identified a plan for how the
28 individual will attend.

29 (h) Whether the individual plans to retain legal counsel or

1 has requested appointed legal counsel. If the individual has not
2 indicated he or she wishes to be represented by legal counsel, the
3 guardian ad litem shall include in the written report a
4 recommendation as to whether legal counsel should be appointed to
5 represent the individual.

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

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

9 (ii) A patient advocate designation.

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

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

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

14 (k) Whether the appointment of a visitor with appropriate
15 knowledge, training, and education such as a social worker, mental
16 health professional, or medical professional could provide the
17 court with the information on whether alternatives to guardianship
18 or a limited guardianship is appropriate.

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

21 (m) If a guardian were appointed, who the individual would not
22 want to serve.

23 (n) An estimate of the amount of cash and property readily
24 convertible into cash that is in the individual's estate.

25 (6) If a guardian ad litem is appointed for any purpose other
26 than an initial petition under this part, petition to terminate
27 under this part, or petition to modify under this part, the
28 guardian ad litem must provide a written report to the court that
29 includes, at a minimum, the information described in subsection (4)

1 or (5), as applicable, and any other information required by law. A
2 special limited guardian ad litem appointed under subsection (13)
3 is not required to provide a written report unless ordered to do so
4 by the court under subsection (13).

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

11 (8) The court shall not consider evidence included in a report
12 or the testimony of a guardian ad litem that is not otherwise
13 admissible under the Michigan Rules of Evidence. If the guardian ad
14 litem does not personally appear for the hearing, the report must
15 not be admitted into evidence.

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

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

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

28 (a) The individual requests legal counsel.

29 (b) The individual objects to any part of the petition for

1 guardianship or potential authority of a guardian.

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

7 (12) If an individual who is subject to a petition under this
8 part has legal counsel appointed or retained, the appointment of a
9 guardian ad litem terminates. The report of the guardian ad litem
10 must not be admitted into evidence after the appearance or
11 appointment of legal counsel for the individual who is subject to
12 the petition.

13 (13) After appointment or retention of legal counsel for the
14 individual who is subject to the petition under this part, the
15 court may, for good cause shown, appoint a special limited guardian
16 ad litem to provide information on a narrowly defined issue that
17 will likely otherwise be inadequately addressed. A special guardian
18 ad litem is exempt from subsections (2) to (6). The court may order
19 that a special limited guardian ad litem appointed under this
20 subsection provide a written report. The report under this
21 subsection must contain the information the court considers
22 necessary to adequately address the issue leading to the
23 appointment of the special limited guardian ad litem. A special
24 limited guardian ad litem shall not communicate directly with the
25 individual who is subject to the petition and must instead
26 communicate through legal counsel to the individual who is subject
27 to the petition, unless legal counsel otherwise gives consent.

28 (14) An individual alleged to be incapacitated has the right
29 to retain legal counsel of his or her choice at any stage,

1 regardless of findings regarding his or her capacity. Retained
2 legal counsel shall file a substitution of legal counsel or a
3 motion to substitute if legal counsel has already been appointed.

4 Sec. 5306. (1) The court may appoint a guardian if the court
5 finds by clear and convincing evidence both that the individual for
6 whom a guardian is sought is an incapacitated individual and that
7 the appointment is necessary as a means of providing continuing
8 care and supervision of the incapacitated individual, with each
9 finding supported separately on the record. ~~Alternately, the court~~
10 ~~may dismiss the proceeding or enter another appropriate order.~~

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

14 (a) That the individual for whom a guardian is sought is an
15 incapacitated individual.

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

18 (3) At any time during the proceedings under subsection (1),
19 the court may stay the guardianship proceedings for a reasonable
20 period of time, based on the needs of the individual, to allow the
21 individual the opportunity to explore the alternatives to
22 appointment of a guardian. If the individual properly names a
23 patient advocate under a patient advocate designation, an attorney
24 in fact under a power of attorney, or a representative payee under
25 a governmental benefit during the stay under this subsection and
26 provides evidence of naming the patient advocate, attorney in fact,
27 or representative payee to the court, the court may dismiss the
28 petition with or without a hearing. This subsection does not
29 prevent the court from ordering a temporary guardianship under

1 **section 5312a if the temporary guardianship is limited in scope and**
 2 **the court explicitly finds that the individual has the capacity to**
 3 **execute a power of attorney, patient advocate designation, or**
 4 **designate a representative payee.**

5 (4) ~~(2)~~—The court shall grant a guardian only those powers and
 6 only for that period of time as is necessary to provide for the
 7 demonstrated need of the incapacitated individual. The court shall
 8 design the guardianship to encourage the development of maximum
 9 self-reliance and independence in the individual. If the court is
 10 aware that an individual has executed a patient advocate
 11 designation under section 5506, the court shall not grant a
 12 guardian any of the same powers that are held by the patient
 13 advocate. A court order establishing a guardianship shall specify
 14 any limitations on the guardian's powers and any time limits on the
 15 guardianship.

16 (5) ~~(3)~~—If the court finds by clear and convincing evidence
 17 that an individual is incapacitated and lacks the capacity to do
 18 some, but not all, of the tasks necessary to care for himself or
 19 herself, the court may appoint a limited guardian to provide
 20 guardianship services to the individual, but the court shall not
 21 appoint a full guardian.

22 (6) ~~(4)~~—If the court finds by clear and convincing evidence
 23 that the individual is incapacitated and is totally without
 24 capacity to care for himself or herself, the court shall specify
 25 that finding of fact in an order and may appoint a full guardian.

26 (7) ~~(5)~~—If an individual executed a patient advocate
 27 designation under section 5506 before the time the court determines
 28 that he or she became a legally incapacitated individual, a
 29 guardian does not have and shall not exercise the power or duty of

1 making medical or mental health treatment decisions that the
 2 patient advocate is designated to make. If, however, a petition for
 3 guardianship or for modification under section 5310 alleges and the
 4 court finds that the patient advocate designation was not executed
 5 in compliance with section 5506, that the patient advocate is not
 6 complying with the terms of the designation or with the applicable
 7 provisions of sections 5506 to 5515, or that the patient advocate
 8 is not acting consistent with the ward's best interests, the court
 9 may modify the guardianship's terms to grant those powers to the
 10 guardian.

11 (8) ~~(6)~~—If the court finds by clear and convincing evidence
 12 that the individual is incapacitated, that the person that has the
 13 care and custody of the incapacitated individual denied another
 14 person access to the incapacitated individual, and that the
 15 incapacitated individual desires contact with the other person or
 16 that contact with the other person is in the incapacitated
 17 individual's best interest, the court may appoint a limited
 18 guardian to supervise access with the other person.

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

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

24 (b) To have the guardianship proceeding commenced and
 25 conducted in the place where the individual resides or is present
 26 or, if the individual is admitted to an institution by a court, in
 27 the county in which the court is located, as provided in section
 28 5302.

29 (c) To petition on his or her own behalf for the appointment

1 of a guardian, as provided in section 5303.

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

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

8 (f) To an independent evaluation of his or her capacity by a
9 physician or mental health professional, at public expense if he or
10 she is indigent, as provided in section 5304.

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

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

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

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

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

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

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

29 (n) If a guardian ad litem is appointed, to an explanation by

1 the guardian ad litem of the individual's rights in the hearing
2 procedure, as provided in section 5305.

3 (o) If a guardian ad litem is appointed, to be informed by the
4 guardian ad litem of the right to contest the petition, to request
5 limits on the guardian's powers, to object to a particular person
6 being appointed guardian, to be present at the hearing, to be
7 represented by legal counsel, and to have legal counsel appointed
8 if the individual is unable to afford legal counsel, as provided in
9 section 5305.

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

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

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

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

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

25 (u) To periodic review of the guardianship by the court,
26 including the right to a hearing and the appointment of an attorney
27 if issues arise upon the review of the guardianship, as provided in
28 section 5309.

29 (v) To, at any time, seek modification or termination of the

1 guardianship by informal letter to the judge, as provided in
2 section 5310.

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

6 (x) To the same rights on a petition for modification or
7 termination of the guardianship including the appointment of a
8 visitor as apply to a petition for appointment of a guardian, as
9 provided in section 5310.

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

12 (z) To written notice of the nature, purpose, and legal
13 effects of the appointment of a guardian, as provided in section
14 5311.

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

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

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

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

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

29 **(ee)** ~~(ff)~~ To have the guardian take reasonable care of the

1 individual's clothing, furniture, vehicles, and other personal
2 effects, as provided in section 5314.

3 (2) A guardian ad litem shall inform the ward in writing of
4 his or her rights enumerated in this section. The state court
5 administrative office and the ~~office of services to the aging~~
6 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
7 ~~MCL 400.585,~~ **aging and adult services agency created under**
8 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall
9 promulgate a form to be used to give the written notice under this
10 section, which ~~shall~~ **must** include space for the court to include
11 information on how to contact the court or other relevant personnel
12 with respect to the rights enumerated in this section.

13 Sec. 5310. (1) On petition of the guardian and subject to the
14 filing and approval of a report prepared as required by section
15 5314, the court shall accept the guardian's resignation and make
16 any other order that is appropriate.

17 (2) The ward or a person interested in the ward's welfare may
18 petition for an order removing the guardian, appointing a successor
19 guardian, modifying the guardianship's terms, or terminating the
20 guardianship. A request for this order may be made by informal
21 letter to the court or judge. A person who knowingly interferes
22 with the transmission of this kind of request to the court or judge
23 is subject to a finding of contempt of court. **A petition for an**
24 **order appointing a successor guardian under this subsection is**
25 **subject to the priority of appointment under section 5313.**

26 (3) Except as otherwise provided in the order finding
27 incapacity, ~~upon~~ **on** receiving a petition or request under this
28 section, the court shall set a date for a hearing to be held within
29 28 days after the receipt of the petition or request. An order

1 finding incapacity may specify a minimum period, not exceeding 182
2 days, during which a petition or request for a finding that a ward
3 is no longer an incapacitated individual, or for an order removing
4 the guardian, modifying the guardianship's terms, or terminating
5 the guardianship, ~~shall~~**must** not be filed without special leave of
6 the court.

7 (4) Before removing a guardian, appointing a successor
8 guardian, modifying the guardianship's terms, or terminating a
9 guardianship, and following the same procedures to safeguard the
10 ward's rights as apply to a petition for a guardian's appointment,
11 the court may send a visitor to the present guardian's residence
12 and to the place where the ward resides or is detained to observe
13 conditions and report in writing to the court.

14 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~
15 ~~emergency exists, and no other person appears to have authority to~~
16 ~~act in the circumstances, the court shall provide notice to the~~
17 ~~individual alleged to be incapacitated and shall hold a hearing.~~
18 ~~Upon a showing that the individual is an incapacitated individual,~~
19 ~~the court may exercise the power of a guardian, or appoint a~~
20 ~~temporary guardian with only the powers and for the period of time~~
21 ~~as ordered by the court. A hearing with notice as provided in~~
22 ~~section 5311 shall be held within 28 days after the court has acted~~
23 ~~under this subsection.~~

24 ~~(2) If an appointed guardian is not effectively performing the~~
25 ~~guardian's duties and the court further finds that the legally~~
26 ~~incapacitated individual's welfare requires immediate action, the~~
27 ~~court may appoint, with or without notice, a temporary guardian for~~
28 ~~the legally incapacitated individual for a specified period not to~~
29 ~~exceed 6 months.~~

1 ~~(3) A temporary guardian is entitled to the care and custody~~
2 ~~of the ward, and the authority of a permanent guardian previously~~
3 ~~appointed by the court is suspended as long as a temporary guardian~~
4 ~~has authority. A temporary guardian may be removed at any time. A~~
5 ~~temporary guardian shall make reports as the court requires. In~~
6 ~~other respects, the provisions of this act concerning guardians~~
7 ~~apply to temporary guardians.~~

8 (1) An interested person may file a petition to appoint an
9 emergency guardian for an allegedly incapacitated individual under
10 this subsection. If a petition is filed under this subsection, the
11 petitioner shall give notice, except as otherwise provided in
12 subsection (2), as provided by section 5311, and the court shall
13 appoint a guardian ad litem under section 5305. The court shall
14 conduct a hearing on a petition under this subsection as soon as
15 possible and not later than 7 days after the court receives the
16 petition. Except as otherwise provided in subsection (2), following
17 the hearing under this subsection, the court may appoint an
18 emergency guardian if the court finds by a preponderance of the
19 evidence that all of the following apply:

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

23 (b) No other person appears to have authority to act in the
24 circumstances.

25 (c) There is a basis that both the individual is an
26 incapacitated individual and appointment of an emergency guardian
27 is necessary as a means of providing continuing care and
28 supervision of the individual.

29 (2) On the filing of a petition to appoint an emergency

1 guardian under subsection (1), the court may appoint an emergency
2 guardian for an allegedly incapacitated individual without notice
3 to the allegedly incapacitated individual only if the court
4 determines from an affidavit or ex parte testimony showing, by
5 clear and convincing evidence, that all of the following apply:

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

9 (b) No other person appears to have authority to act in the
10 circumstances.

11 (c) There is a basis that both the individual is an
12 incapacitated individual and appointment of an emergency guardian
13 is necessary as a means of providing continuing care and
14 supervision of the individual.

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

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

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

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

26 (4) If the court finds conditions exist for the appointment of
27 the emergency guardian at a hearing under this section, and the
28 individual wishes to contest the appointment, the court must set a
29 date for a hearing and enter an order consistent with section

1 5305(5).

2 (5) An order appointing an emergency guardian under this
3 section expires 28 days after the appointment. However, the court
4 may extend an order appointing an emergency guardian under this
5 section once for an additional 28 days if the court finds by a
6 preponderance of the evidence, upon an affidavit by the appointed
7 emergency guardian or following a hearing set at the discretion of
8 the court, that the conditions that led to the appointment of the
9 emergency guardian still exist.

10 (6) An emergency guardian may only exercise the powers
11 specified by the court.

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

13 (8) An appointment of an emergency guardian under this section
14 is not a determination that a basis exists for an appointment of a
15 guardian under section 5306(1).

16 Sec. 5312a. (1) The court may appoint a temporary guardian
17 under section 5301a and this section.

18 (2) If an appointed guardian is not effectively performing the
19 guardian's duties and the court further finds that the ward's
20 welfare requires immediate action, the court may appoint, with or
21 without notice, a temporary guardian for the ward for a specified
22 period not to exceed 6 months.

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

1 Sec. 5313. (1) ~~The~~ **Subject to section 5106a, the** court may
2 appoint a competent person as guardian of a legally incapacitated
3 individual. The court shall not appoint as a guardian an agency,
4 public or private, that financially benefits from ~~directly~~
5 providing housing, medical, mental health, **caregiving**, or social
6 services to the legally incapacitated individual. If the court
7 determines that the ward's property needs protection, the court
8 shall order the guardian to furnish a bond or shall include
9 restrictions in the letters of guardianship as necessary to protect
10 the property.

11 (2) In appointing a guardian under this section, the court
12 shall appoint a person, if suitable **under subsection (5)** and
13 willing to serve, in the following order of priority:

14 (a) A person previously appointed, qualified, and serving in
15 good standing as guardian for the legally incapacitated individual
16 in another state.

17 (b) A person the individual subject to the petition chooses to
18 serve as guardian.

19 (c) A person nominated as guardian in a durable power of
20 attorney or other writing by the individual subject to the
21 petition.

22 (d) A person named by the individual as a patient advocate or
23 attorney in fact in a durable power of attorney.

24 (3) If there is no person chosen, nominated, or named under
25 subsection (2), or if none of the persons listed in subsection (2)
26 are suitable **under subsection (5)** or willing to serve, the court
27 may appoint as a guardian an individual who is related to the
28 individual who is the subject of the petition in the following
29 order of preference:

1 (a) The legally incapacitated individual's spouse. This
2 subdivision ~~shall~~**must** be considered to include a person nominated
3 by will or other writing signed by a deceased spouse.

4 (b) An adult child of the legally incapacitated individual.

5 (c) A parent of the legally incapacitated individual. This
6 subdivision ~~shall~~**must** be considered to include a person nominated
7 by will or other writing signed by a deceased parent.

8 (d) A relative of the legally incapacitated individual with
9 whom the individual has resided for more than 6 months before the
10 filing of the petition.

11 (e) A person nominated by a person who is caring for the
12 legally incapacitated individual or paying benefits to the legally
13 incapacitated individual.

14 (4) If none of the persons as designated or listed in
15 subsection (2) or (3) are suitable **under subsection (5)** or willing
16 to serve, the court may appoint any competent person who is
17 suitable **under subsection (5)** and willing to serve, including a
18 professional guardian as provided in section 5106.

19 **(5) The court shall appoint a person with priority guardian of**
20 **a legally incapacitated individual unless specific findings on the**
21 **record indicate that the person is not suitable as set forth in**
22 **this subsection or is not willing to serve. A person is suitable to**
23 **serve on a determination of specific findings of the court,**
24 **including, but not limited to, all of the following factors:**

25 (a) The preference of the individual subject to the
26 guardianship, including who should serve and not serve as guardian.

27 (b) The person's availability to the individual subject to the
28 guardianship.

29 (c) The person's history and relationship with the individual

1 subject to the guardianship.

2 (d) The person's criminal history that is relevant to the
3 care, custody, and control of the individual subject to the
4 guardianship.

5 (e) The person's personal history, including, but not limited
6 to, employment, training, skills, and stability, that will
7 facilitate fulfillment of duties.

8 (f) The person's ability to fulfill duties regardless of
9 interpersonal disputes between interested persons or others with an
10 interest in the welfare of the individual subject to guardianship.
11 Interpersonal disputes alone must not be the basis for finding a
12 person with priority, under subsection (2) or (3), is unsuitable.

13 (g) The person's ability to meet the requirements of section
14 5410.

15 (6) In deciding between 2 persons with equal priority under
16 subsection (2), the court shall weigh the factors in subsection (5)
17 with specific findings on the record. The court may appoint 2
18 persons to serve as coguardians. Unless the order of appointment
19 and letters of guardianship otherwise state, coguardians must act
20 jointly. However, a coguardian may delegate the coguardian's
21 authority to the other coguardian under section 5103.

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~~ **Subject to section 5314c, the** custody of the person of
5 the ward and the power to establish the ward's place of residence
6 in or outside this state. The guardian shall visit the ward within
7 3 months after the guardian's appointment and not less than once
8 within 3 months after each previous visit. ~~The guardian shall~~
9 ~~notify the court within 14 days of a change in the ward's place of~~
10 ~~residence or a change in the guardian's place of residence.~~ **If the**
11 **guardian is a professional guardian, the professional guardian**
12 **shall visit the ward as required under this part.**

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

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

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

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

28 (ii) Consults directly with the ward's attending physician as
29 to the specific medical indications that warrant the do-not-

1 resuscitate order.

2 (e) If a guardian executes a do-not-resuscitate order under
3 subdivision (d), not less than annually after the do-not-
4 resuscitate order is first executed, the duty to do all of the
5 following:

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

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

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

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

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

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

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

29 (i) Visit the ward and, if meaningful communication is

1 possible, consult with the ward about reaffirming the physician
2 orders for scope of treatment form.

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

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

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

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

20 (iii) **The duties under sections 5314a and 5314b.**

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

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

29 (ii) Improvement or deterioration in the ward's mental,

1 physical, and social condition that occurred during the past year.

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

4 (iv) Whether the guardian recommends a more suitable living
5 arrangement for the ward.

6 (v) Medical treatment, including mental health treatment,
7 received by the ward.

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

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

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

17 (ix) Services received by the ward.

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

20 (xi) A recommendation as to the need for continued
21 guardianship.

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

28 **Sec. 5314a. (1) If a conservator has not been appointed for**
29 **the ward, within 56 days after appointment or within another time**

1 period specified by court rule, a guardian with any power over the
2 property of the ward under section 5314 shall prepare and file with
3 the appointing court a complete inventory of the estate subject to
4 the guardianship together with an oath or affirmation that the
5 inventory is believed to be complete and accurate so far as
6 information permits. The guardian shall file, along with the
7 inventory, account statements that reflect the value of depository
8 and investment accounts dated within 30 days after the inventory's
9 date. The guardian shall provide a copy of the inventory to the
10 ward if the ward can be located and to interested persons as
11 specified in the Michigan court rules.

12 (2) The guardian must keep suitable records of the
13 administration and provide those records on the request of an
14 interested person.

15 (3) The guardian shall identify on the inventory under
16 subsection (1) any items of special personal or sentimental value,
17 including, but not limited to, family heirlooms, photo albums, or
18 collections. To the extent meaningful communication permits, the
19 guardian must make an inquiry with the ward as to what items the
20 ward identifies as having special personal or sentimental value.
21 The items must include items identified by a guardian ad litem
22 under section 5305. If the guardian is unable to locate an item
23 identified as having special personal or sentimental value at the
24 time of filing the inventory, the guardian must state that on the
25 inventory.

26 (4) The guardian shall list on the inventory under subsection
27 (1) any merchandise, funeral services, cemetery services, or
28 prepaid contracts for which the legally incapacitated individual or
29 guardian is the contract buyer or contract beneficiary under the

1 prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
2 328.235. If the guardianship estate includes an asset described in
3 this subsection, the guardian must file, with the inventory, all of
4 the following:

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

7 (b) Proof that payments made under a prepaid contract are held
8 in escrow or under a trust agreement in compliance with the prepaid
9 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
10 328.235.

11 (c) The most recent escrow statement issued concerning the
12 prepaid contract.

13 (d) Proof of any assignments of life policies or annuity
14 contracts made to purchase merchandise, funeral services, or
15 cemetery services under the prepaid funeral and cemetery sales act,
16 1986 PA 255, MCL 328.211 to 328.235.

17 (5) The inventory under subsection (1) must list property with
18 reasonable detail and the type and amount of any encumbrance.

19 (6) The inventory under subsection (1) must be served on all
20 interested persons. Any interested person may file an objection
21 with the court to the inventory and serve it on all interested
22 persons. The court shall set the matter for hearing.

23 Sec. 5314b. (1) If a conservator has not been appointed for
24 the ward, the guardian shall account to the court for
25 administration of the ward's estate not less than annually unless
26 the court directs otherwise, on resignation or removal, and at
27 other times as the court directs. The guardian must file, along
28 with the account, account statements that reflect the value of
29 depository and investment accounts dated within 30 days after the

1 inventory's date and receipts, invoices, or other documentation for
2 expenses in excess of \$1,000.00. The account must be in the form as
3 provided by the state court administrative office, or substantially
4 similar. The account must detail assets including those identified
5 in section 5314a, debts, gross income, and expenses.

6 (2) Within 56 days after termination of the ward's
7 guardianship, a guardian with any authority over property of the
8 formerly legally incapacitated individual shall account to the
9 court or to the formerly legally incapacitated individual or that
10 formerly legally incapacitated individual's successors. Subject to
11 appeal or vacation within the time permitted, an order after notice
12 and hearing allowing an intermediate account of a guardian
13 adjudicates as to liabilities concerning the matters considered in
14 connection with the accounts, and an order, after notice and
15 hearing, allowing a final account adjudicates as to all previously
16 unsettled liabilities of the guardian to the formerly legally
17 incapacitated individual or the formerly legally incapacitated
18 individual's successors relating to the guardianship. In connection
19 with any account, the court may require a guardian to submit to a
20 physical check of the estate in any manner the court specifies.

21 (3) In the account required under subsection (1) or (2), the
22 guardian shall provide information on the status of any items
23 identified in section 5314a. If the guardian has disposed of or
24 sold any of the items described in section 5314a, the guardian must
25 describe on the account how the guardian fulfilled the guardian's
26 duties under section 5314a.

27 (4) If the individual's estate includes any merchandise,
28 funeral services, cemetery services, or prepaid contracts for which
29 the individual or guardian is the contract buyer or contract

1 beneficiary under the prepaid funeral and cemetery sales act, 1986
2 PA 255, MCL 328.211 to 328.235, the guardian must file all of the
3 following, with the account under subsection (1) or (2):

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

6 (b) Proof that payments made under a prepaid contract are held
7 in escrow or under a trust agreement in compliance with the prepaid
8 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
9 328.235.

10 (c) The most recent escrow statement issued concerning the
11 prepaid contract.

12 (d) Proof of any assignments of life policies or annuity
13 contracts made to purchase merchandise, funeral services, or
14 cemetery services under the prepaid funeral and cemetery sales act,
15 1986 PA 255, MCL 328.211 to 328.235.

16 (5) The guardian shall file a copy of an account under
17 subsection (1) or (2), as applicable, and account statements with
18 the court and serve on all interested persons. Within 28 days after
19 serving the account and account statements under this subsection,
20 an interested person may file an objection to the account with the
21 court and serve the objection on all interested persons. If an
22 interested person objects, the court shall set the matter for
23 hearing. If the ward objects to an account filed under this
24 section, the court must appoint a guardian ad litem to visit the
25 ward in the same manner as specified in section 5305. The court
26 shall appoint legal counsel to represent the ward if any of the
27 following apply:

28 (a) The ward requests legal counsel.

29 (b) The guardian ad litem believes that appointment of legal

1 counsel is in the best interest of the ward.

2 (c) The court otherwise believes it is necessary to protect
3 the interest of the ward.

4 (6) On receipt of an annual account under subsection (1), the
5 court shall set the matter for hearing unless both of the following
6 apply:

7 (a) No objection to the annual account has been filed within
8 28 days after the annual account is served on interested persons.

9 (b) The probate judge, probate register, or deputy probate
10 register makes written findings that all of the following apply:

11 (i) The account includes sufficient documentation that the
12 estate's assets are to the extent possible correctly titled to the
13 guardian in its fiduciary capacity if necessary.

14 (ii) The guardian has filed a copy of account statements that
15 reflect the value of depository and investment accounts dated
16 within 30 days after the end of the accounting period.

17 (iii) The guardian has filed documentation for expenses over
18 \$1,000.00.

19 (iv) Fees and costs are reasonable and should be allowed.

20 (v) On the face of the filing it appears to meet the
21 requirements of subsections (1), (3), and (4).

22 (vi) The guardian properly filed and served the account and
23 required documentation on all interested persons.

24 Sec. 5314c. (1) The guardian shall maintain a legally
25 incapacitated individual in the legally incapacitated individual's
26 permanent residence if possible and consistent with the well-being
27 and preferences of the legally incapacitated individual. If a
28 legally incapacitated individual is removed from his or her
29 permanent residence temporarily for any reason, the guardian shall

1 make all reasonable efforts to return the legally incapacitated
2 individual to his or her permanent residence at the earliest
3 opportunity consistent with the legally incapacitated individual's
4 wishes. Temporary removal of the legally incapacitated individual
5 from his or her permanent residence for the purpose of receiving
6 health care or supervision, for engaging in family or social
7 activities, or for other reasons including the well-being or
8 convenience of the legally incapacitated individual does not
9 relieve the guardian of the obligations set forth in this section
10 regarding permanent removal from the permanent residence. A
11 guardian shall not primarily consider the guardian's own
12 convenience or benefit when making a decision to remove the legally
13 incapacitated individual from the legally incapacitated
14 individual's permanent residence or selecting a new residence for
15 the legally incapacitated individual.

16 (2) A guardian shall explore reasonably available and
17 affordable supports and services that could enable the legally
18 incapacitated individual to remain in his or her permanent
19 residence.

20 (3) If a guardian proposes to move the legally incapacitated
21 individual from his or her permanent residence, the guardian shall
22 attempt to consult with the legally incapacitated individual and
23 honor the legally incapacitated individual's preference to the
24 greatest extent possible.

25 (4) If a person petitioning for guardianship under section
26 5303 or a guardian that has been appointed under section 5306
27 believes that it is necessary for the well-being of the alleged
28 incapacitated individual or legally incapacitated individual, as
29 applicable, to move the individual permanently from his or her

1 permanent residence, the petitioner may seek court approval to do
2 so by filing a separate petition for authority to move the
3 individual. The separate petition must include all of the following
4 information:

5 (a) The individual's current permanent residence.

6 (b) The proposed new residence.

7 (c) The reason for the proposed move.

8 (d) Whether the move is to a more or less restrictive setting.

9 (e) The efforts made or resources explored to enable the
10 individual to remain in his or her current permanent residence.

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

13 (g) Whether the individual objects to or supports the proposed
14 move.

15 (5) If a petition for removal from the permanent residence has
16 been filed under subsection (4), the guardian ad litem appointed
17 for the alleged incapacitated individual or legally incapacitated
18 individual, as applicable, shall, in addition to the other duties
19 set forth in section 5305, do all of the following:

20 (a) Advise the individual that a petition has been filed to
21 move the individual from his or her permanent residence to the new
22 residence identified in the petition.

23 (b) Explain that if the court grants the petition to move the
24 individual, the guardian will have the authority to change the
25 individual's permanent residence to the location specified in the
26 petition.

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

29 (d) Include a summary of the discussion in the guardian ad

1 litem's written report.

2 (6) If the alleged incapacitated individual or legally
3 incapacitated individual does not already have legal counsel, the
4 court shall appoint legal counsel if the individual files an
5 objection to the petition for authority to move the individual from
6 his or her permanent residence under subsection (4) or if the
7 guardian ad litem's report under subsection (5) states that the
8 individual objects to being removed from his or her permanent
9 residence.

10 (7) If the court grants the petition for a finding of
11 incapacity and appointment of a guardian under section 5303, the
12 court may also grant the separate petition for authority to move
13 the legally incapacitated individual under subsection (4) if, after
14 due consideration and opportunity for testimony on the matter, it
15 determines by clear and convincing evidence that moving the legally
16 incapacitated individual from the permanent residence to the
17 residence identified in the petition is 1 or more of the following:

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

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

21 (8) If the court does not grant the separate petition to move
22 the legally incapacitated individual under section (4) at the
23 hearing where the court appoints the guardian under section 5306,
24 the guardian shall not permanently remove the legally incapacitated
25 individual, except as otherwise provided in this section, unless
26 the guardian files a subsequent separate petition under section (4)
27 and the court grants that petition.

28 (9) If the guardian determines that failure to move the
29 legally incapacitated individual from his or her permanent

1 residence more promptly is likely to be detrimental to the legally
2 incapacitated individual's physical health, safety, or welfare, the
3 guardian may file an emergency ex parte motion before any move and
4 explain the urgency of the circumstances that necessitate a more
5 immediate order. The guardians shall provide affidavits or ex parte
6 testimony in support of the motion. The court shall grant the
7 motion if the court determines by clear and convincing evidence
8 that delaying the change in the permanent residence is likely to
9 result in substantial harm to the legally incapacitated
10 individual's physical health, safety, or welfare. If the ex parte
11 motion is granted, the court shall hold a hearing within 7 days
12 after the order to determine whether the move must be made
13 permanent unless or until further order of the court. The court
14 shall appoint a guardian ad litem under subsection (5). The
15 guardian ad litem must file and serve his or her report by a date
16 and time ordered by the court that is before the hearing.

17 (10) If the legally incapacitated individual must leave the
18 permanent residence because the residence becomes permanently
19 unavailable as the result of a facility closure, removal of the
20 property from the rental market, irreparable damage to the
21 permanent residence, or other circumstances, the guardian shall
22 provide at least 14 days' prior written notice to the legally
23 incapacitated individual if possible under the circumstances or, if
24 less time is available before the legally incapacitated individual
25 must move, notice at the earliest opportunity. The guardian shall
26 also attempt to consult with the legally incapacitated individual
27 and honor the legally incapacitated individual's preferences to the
28 greatest extent possible regarding where the legally incapacitated
29 individual would like to move. The guardian shall provide written

1 notice to the court within 14 days after the move explaining why
2 the permanent residence is no longer available, whether the
3 guardian attempted to consult with the legally incapacitated
4 individual about where the legally incapacitated individual wanted
5 to move, whether the guardian honored the legally incapacitated
6 individual's preferences regarding where he or she wanted to move,
7 the address of the new residence, the type of residence, and how
8 the new residence will meet the legally incapacitated individual's
9 needs. If the legally incapacitated individual's residence becomes
10 permanently unavailable, the guardian is not required to file a
11 petition under subsection (4) and the court is not required to
12 appoint a guardian ad litem or legal counsel or hold a hearing.

13 (11) The guardian shall not move the legally incapacitated
14 individual out of state without order of the court. If the guardian
15 petitions to move the legally incapacitated individual out of
16 state, a guardian ad litem must be appointed and the court shall
17 schedule a hearing regardless of whether the individual files
18 objections or expresses dissatisfaction with the proposed move. If
19 the legally incapacitated individual files objections or expresses
20 dissatisfaction with the proposed move, the court shall appoint
21 legal counsel if the legally incapacitated individual is not
22 already represented by legal counsel.

23 (12) In exercising the guardian's power to establish the
24 legally incapacitated individual's place of residence, the guardian
25 shall do both of the following:

26 (a) Select a residential setting the guardian believes the
27 legally incapacitated individual would select if the legally
28 incapacitated individual were able. If the guardian does not know
29 and cannot reasonably determine what setting the legally

1 incapacitated individual would likely select, or the guardian
2 reasonably believes the decision the legally incapacitated
3 individual would make would unreasonably harm or endanger the
4 welfare or personal or financial interests of the legally
5 incapacitated individual, the guardian shall choose a residential
6 setting that is consistent with the legally incapacitated
7 individual's best interest.

8 (b) Give priority to a residential setting in a location that
9 will allow the legally incapacitated individual to interact with
10 persons and participate in activities important to the legally
11 incapacitated individual and meet the legally incapacitated
12 individual's needs in the least restrictive manner reasonably
13 feasible.

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

27 (14) As used in this section, "permanent residence" means any
28 of the following:

29 (a) The location the allegedly incapacitated individual or

1 **legally incapacitated individual uses as a permanent address, in**
2 **which most of the individual's possessions are maintained.**

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

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

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

1 visitor may be a guardian ad litem or a court officer or employee.

2 (3) The court may utilize, as an additional visitor, the
3 service of a public or charitable agency to evaluate the condition
4 of the individual to be protected and make appropriate
5 recommendations to the court.

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

10 (a) Consider whether there is an appropriate alternative to a
11 conservatorship.

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

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

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

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

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

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

28 **(d) Advise the individual that the guardian ad litem does not**
29 **represent the individual as an attorney and that no attorney-client**

1 relationship has been created.

2 (e) Identify whether the individual wishes to be present at
3 the hearing. If the individual alleged to need protection does not
4 wish to be present at the hearing, the guardian ad litem shall
5 identify the reasons why the individual does not wish to be
6 present.

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

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

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

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

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

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

29 (c) Explain to the individual the hearing procedure and the

1 individual's rights in the hearing procedure, including, but not
2 limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

11 (a) That the individual contests the petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (ii) A patient advocate designation.

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

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

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

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

1 (l) If a conservator were appointed, who the individual would
2 want to serve in order of preference.

3 (m) If a conservator were appointed, who the individual would
4 not want to serve.

5 (n) An estimate of the amount of cash and property readily
6 convertible into cash that is in the individual's estate.

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

16 (11) The court shall not consider evidence included in a
17 report under subsection (7) or the testimony of a guardian ad litem
18 that is not otherwise admissible under the Michigan Rules of
19 Evidence. If the guardian ad litem does not personally appear for
20 examination, the report must not be admitted into evidence.

21 (12) A guardian ad litem shall file any report required under
22 this section with the court and serve the report on all interested
23 persons at least 7 days before the hearing. The court shall not
24 order compensation of the guardian ad litem unless the guardian ad
25 litem states in the guardian ad litem's written report that the
26 guardian ad litem complied with this subsection.

27 (13) The court shall not appoint a guardian ad litem as legal
28 counsel for the individual if the guardian ad litem's report under
29 subsection (7) or recommendation to the court conflicts with the

1 wishes of the individual.

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

5 (a) The individual who is subject to the petition requests
6 legal counsel.

7 (b) The individual who is subject to the petition objects to
8 any part of the petition for conservatorship or potential authority
9 of a conservator.

10 (c) The guardian ad litem determines it is in the best
11 interest of the individual subject to the petition to have legal
12 counsel and, if legal counsel has not been secured, the court shall
13 appoint legal counsel. If the individual who is subject to the
14 petition is indigent, this state shall bear the expense of
15 appointed legal counsel.

16 (15) If an individual who is subject to a petition under this
17 part has legal counsel appointed or retained, the appointment of a
18 guardian ad litem terminates. The report of the guardian ad litem
19 under subsection (7) must not be admitted into evidence after the
20 appearance or appointment of legal counsel for the individual who
21 is subject to the petition.

22 (16) After appointment or retention of legal counsel for the
23 individual who is subject to the petition under this part, the
24 court may, for good cause shown, appoint a special limited guardian
25 ad litem to provide information on a narrowly defined issue that
26 will likely otherwise be inadequately addressed. A special guardian
27 ad litem is exempt from subsections (5) to (10). The court may
28 order that a special limited guardian ad litem provide a written
29 report. The report under this subsection must contain the

1 information the court considers necessary to adequately address the
2 issue leading to the appointment of the special limited guardian ad
3 litem. A special limited guardian ad litem shall not communicate
4 directly with the individual who is subject to the petition and
5 must instead communicate through legal counsel to the individual
6 who is subject to the petition, unless legal counsel otherwise
7 gives consent.

8 (17) ~~(5)~~—The individual to be protected is entitled to be
9 present at the hearing in person. If the individual wishes to be
10 present at the hearing, all practical steps must be taken to ensure
11 the individual's presence including, if necessary, moving the site
12 of the hearing. The individual is entitled to be represented by
13 **legal** counsel, to present evidence, to cross-examine witnesses,
14 including a court-appointed physician or other qualified person and
15 a visitor, and to trial by jury. The issue may be determined at a
16 closed hearing or without a jury if the individual to be protected
17 or **legal** counsel for the individual so requests.

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

23 (19) ~~(7)~~—After hearing, ~~upon~~**on** finding that a basis for a
24 conservator's appointment or another protective order is
25 established by clear and convincing evidence, the court shall make
26 the appointment or other appropriate protective order.

27 Sec. 5409. (1) The court may appoint an individual, a
28 corporation authorized to exercise fiduciary powers, or a
29 professional conservator described in section 5106 to serve as

1 conservator of a protected individual's estate. The following are
 2 entitled to consideration for appointment in the following order of
 3 priority:

4 (a) A conservator, guardian of property, or similar fiduciary
 5 appointed or recognized by the appropriate court of another
 6 jurisdiction in which the protected individual resides.

7 (b) ~~An individual or corporation~~ **A person** nominated by the
 8 protected individual if he or she is 14 years of age or older and
 9 of sufficient mental capacity to make an intelligent choice,
 10 including a nomination made in a durable power of attorney.

11 (c) The protected individual's spouse.

12 (d) An adult child of the protected individual.

13 (e) A parent of the protected individual or a person nominated
 14 by the will of a deceased parent.

15 (f) A relative of the protected individual with whom he or she
 16 has resided for more than 6 months before the petition is filed.

17 (g) A person nominated by the person who is caring for or
 18 paying benefits to the protected individual.

19 (h) If none of the persons listed in subdivisions (a) to (g)
 20 are suitable **under subsection (3)** and willing to serve, any person
 21 that the court determines is suitable **under subsection (3)** and
 22 willing to serve.

23 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)
 24 may designate in writing a substitute to serve instead, and that
 25 designation transfers the priority to the substitute. ~~If persons~~
 26 ~~have equal priority, the court shall select the person the court~~
 27 ~~considers best qualified to serve. Acting in the protected~~
 28 ~~individual's best interest, the court may pass over a person having~~
 29 ~~priority and appoint a person having a lower priority or no~~

1 ~~priority.~~

2 (3) The court shall appoint a person with priority to serve as
3 conservator of a protected individual's estate unless specific
4 findings on the record indicate the person is not suitable as set
5 forth in this subsection or is not willing to serve. A person is
6 suitable to serve on a determination of specific findings by the
7 court, including, but not limited to, all of the following factors:

8 (a) Preference of the individual subject to the
9 conservatorship, including who should serve and not serve as
10 conservator.

11 (b) Availability to the individual subject to the
12 conservatorship.

13 (c) History and relationship with the individual subject to
14 the conservatorship.

15 (d) Criminal history that is relevant to the role of a
16 conservator.

17 (e) Personal history, including, but not limited to,
18 employment, training, skills, and stability that will facilitate
19 fulfillment of duties.

20 (f) Ability to fulfill duties regardless of interpersonal
21 disputes between interested parties or others with an interest in
22 the welfare of the individual subject to conservatorship.
23 Interpersonal disputes alone must not be the basis for finding a
24 person with priority is unsuitable.

25 (g) Ability to meet the requirements of section 5410.

26 (4) In deciding between 2 persons with equal priority, the
27 court shall weigh the factors in subsection (3) with specific
28 findings on the record. The court may appoint not more than 2
29 persons to serve as coconservators. Unless the order of appointment

1 and letters of conservatorship otherwise state, coconservators must
2 act jointly.

3 Sec. 5414. (1) The court may remove a conservator for good
4 cause, ~~upon~~ on notice and hearing, or accept a conservator's
5 resignation. ~~Upon~~ On the conservator's death, resignation, or
6 removal, the court may appoint another conservator. A conservator
7 ~~so~~ appointed **under this subsection** succeeds to the title and powers
8 of the predecessor.

9 (2) **The protected individual or a person interested in the**
10 **protected individual's welfare may petition for an order removing**
11 **the conservator, appointing a successor conservator, modifying the**
12 **terms of the conservatorship, or terminating the conservatorship. A**
13 **request for this order under this subsection may be made by**
14 **informal letter to the court. A person who knowingly interferes**
15 **with transmission of a request described in this subsection to the**
16 **court is subject to a finding of contempt of court. A petition for**
17 **an order appointing a successor conservator under this subsection**
18 **is subject to the priority of appointment under section 5409.**

19 Sec. 5415. (1) A person interested in the welfare of an
20 individual for whom a conservator is appointed may file a petition
21 in the appointing court for an order to do any of the following:

22 (a) Require bond or security or additional bond or security,
23 or reduce bond.

24 (b) Require an accounting for the administration of the trust.

25 (c) Direct distribution.

26 (d) Remove the conservator and appoint a temporary or
27 successor conservator.

28 (e) Grant other appropriate relief.

29 (2) A conservator may petition the appointing court for

1 instructions concerning fiduciary responsibility. ~~Upon~~ **On** notice
2 and hearing, the court may give appropriate instructions or make an
3 appropriate order.

4 **(3) A petition for an order appointing a successor guardian**
5 **under subsection (1) is subject to the priority of appointment**
6 **under section 5409.**

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

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

17 Sec. 5417. **(1)** Within 56 days after appointment or within
18 another time period specified by court rule, a conservator shall
19 prepare and file with the appointing court a complete inventory of
20 the estate subject to the conservatorship together with an oath or
21 affirmation that the inventory is believed to be complete and
22 accurate so far as information permits. **The conservator shall file,**
23 **along with the inventory, account statements that reflect the value**
24 **of depository and investment accounts dated within 30 days after**
25 **the inventory's date.** The conservator shall provide a copy of the
26 inventory to the protected individual if the individual can be
27 located and is 14 years of age or older and to interested persons
28 as specified in the Michigan court rules.

29 **(2)** The conservator must keep suitable records of the

1 administration and exhibit those records on the request of an
2 interested person.

3 (3) The conservator must identify on the inventory under
4 subsection (1) any items of special personal or sentimental value,
5 including, but not limited to, family heirlooms, photo albums, or
6 collections. To the extent meaningful conversation permits, the
7 conservator must make an inquiry with the protected individual as
8 to what items the protected individual identifies as having special
9 personal or sentimental value. If the conservator is unable to
10 locate an item identified as having special personal or sentimental
11 value at the time of filing the inventory under subsection (1), the
12 conservator must state that on the inventory. A conservator shall
13 make all reasonable efforts to identify and honor the protected
14 individual's wishes to preserve items of special personal or
15 sentimental value in the overall context of the protected
16 individual's estate, including items identified in the inventory
17 and annual accounts, and shall take reasonable steps to safeguard
18 the property. The court may remove a conservator that fails to
19 comply with this subsection.

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

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

1 (b) Proof that payments made under a prepaid contract are held
2 in escrow or under a trust agreement in compliance with the prepaid
3 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
4 328.235.

5 (c) The most recent escrow statement issued concerning the
6 prepaid contract.

7 (d) Proof of any assignments of life policies or annuity
8 contracts made to purchase merchandise, funeral services, or
9 cemetery services under the prepaid funeral and cemetery sales act,
10 1986 PA 255, MCL 328.211 to 328.235, under subsection (1) must list
11 property with reasonable detail and the type and amount of any
12 encumbrance.

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

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

29 (2) Within 56 days after the termination of the protected

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

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

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

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

26 **(b) Proof that payments made under a prepaid contract are held**
27 **in escrow or under a trust agreement in compliance with the prepaid**
28 **funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to**
29 **328.235.**

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

3 (d) Proof of any assignments of life policies or annuity
4 contracts made to purchase merchandise, funeral services, or
5 cemetery services under the prepaid funeral and cemetery sales act,
6 1986 PA 255, MCL 328.211 to 328.235.

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

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

16 (a) The protected individual requests legal counsel.

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

19 (c) The court otherwise believes it is necessary to protect
20 the interest of the protected individual.