

**SUBSTITUTE FOR
HOUSE BILL NO. 4847**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5104, 5106, 5310, 5313, and 5409 (MCL
700.5104, 700.5106, 700.5310, 700.5313, and 700.5409), section 5106
as amended by 2017 PA 136, section 5310 as amended by 2000 PA 54,
section 5313 as amended by 2012 PA 545, and section 5409 as amended
by 2000 PA 463, and by adding section 5106a.

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



1 in which the proceeding is pending and with the attorney of record
2 of the guardian or conservator or, if none, with the guardian or
3 conservator, if any. A request is not effective unless it contains
4 a statement showing the interest of the person making it and the
5 address of that person or an attorney to whom notice is to be
6 given. The request is effective only as to a proceeding that occurs
7 after the filing. If a guardianship or protective proceeding is not
8 pending at the time a person files a request for notice as
9 authorized by this subsection, the person shall pay a fee for
10 filing the request, which fee ~~shall~~**must** be in the same amount as,
11 but is separate from, the fee required to commence such a
12 proceeding.

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

16 Sec. 5106. (1) Subject to subsections (2) and (3), the court
17 may appoint or approve a professional guardian or professional
18 conservator, as appropriate, as a guardian or conservator under
19 this act, or as a plenary guardian or partial guardian as those
20 terms are defined in section 600 of the mental health code, 1974 PA
21 258, MCL 330.1600.

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

25 (a) The appointment of the professional guardian or
26 professional conservator is in the ward's, developmentally disabled
27 individual's, incapacitated individual's, or protected individual's
28 best interests.

29 (b) There is no other person that is competent, suitable, and



1 willing to serve in that fiduciary capacity in accordance with
2 section 5212, **5312a**, 5313, or 5409.

3 (3) The court shall not appoint a **person as a** professional
4 guardian or professional conservator as authorized under subsection
5 (1) unless the professional guardian or professional conservator
6 files a bond in an amount and with the conditions as determined by
7 the court. For a professional conservator, the sureties and
8 liabilities of the bond are subject to sections 5410 and 5411.

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



1 in this subsection to the ward, developmentally disabled
2 individual, incapacitated individual, or protected individual and
3 to interested persons.

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

10 (5) ~~(6)~~ A professional guardian appointed under this section
11 shall ensure that there are a sufficient number of employees
12 assigned to the care of wards for the purpose of performing the
13 necessary duties associated with ensuring that proper and
14 appropriate care is provided.

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



1 **obtained certification as described in section 5106a.**

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

14 **Sec. 5106a. (1) The court shall not appoint a person as a**
15 **guardian of a legally incapacitated individual or conservator of a**
16 **protected individual who is not a minor, or both, under this**
17 **article unless the person has obtained certification as set forth**
18 **by administrative order of the supreme court. This section does not**
19 **apply until both of the following occur:**

20 (a) The legislature appropriates money for the certification
21 process.

22 (b) The supreme court establishes the certification process.

23 (2) The guardian and conservator certification advisory
24 council is created within the state court administrative office.
25 The advisory council shall recommend to the supreme court criteria
26 for guardian and conservator certification under subsection (1).
27 The advisory council consists of the following members:

28 (a) The attorney general or his or her designee.

29 (b) The state court administrator or his or her designee.



(c) The following members appointed by the governor:

(i) One member representing the Michigan Guardianship Association.

(ii) One member representing the Michigan Elder Justice Initiative.

(iii) One member representing the Elder Law and Disability Rights Section of the State Bar of Michigan.

(iv) One member representing the Probate and Estate Planning Section of the State Bar of Michigan.

(v) One member representing the Michigan Probate Judges Association.

(vi) One member representing the Michigan Probate and Juvenile Registers Association.

(vii) One member from a county guardianship office.

(viii) One member from a list of 3 or more individuals recommended by the senate majority leader.

(ix) One member from a list of 3 or more individuals recommended by the speaker of the house of representatives.

(x) One member from a list of 3 or more individuals recommended by the house minority leader.

(xi) One member from a list of 3 or more individuals recommended by the senate minority leader.

(3) The guardian and conservator certification advisory council is dissolved after 2 years after the effective date of the amendatory act that added this section.

(4) This section does not apply to a financial institution appointed as a professional conservator.

Sec. 5310. (1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section



1 5314, the court shall accept the guardian's resignation and make
2 any other order that is appropriate.

3 (2) The ward or a person interested in the ward's welfare may
4 petition for an order removing the guardian, appointing a successor
5 guardian, modifying the guardianship's terms, or terminating the
6 guardianship. A request for this order may be made by informal
7 letter to the court or judge. A person who knowingly interferes
8 with the transmission of this kind of request to the court or judge
9 is subject to a finding of contempt of court. **A petition for an
10 order appointing a successor guardian under this subsection is
11 subject to the priority of appointment under section 5313.**

12 (3) Except as otherwise provided in the order finding
13 incapacity **or as provided by court rule**, ~~upon~~ on receiving a
14 petition or request under this section, the court shall set a date
15 for a hearing to be held within 28 days after the receipt of the
16 petition or request. ~~An order finding incapacity may specify a
17 minimum period, not exceeding 182 days, during which a petition or
18 request for a finding that a ward is no longer an incapacitated
19 individual, or for an order removing the guardian, modifying the
20 guardianship's terms, or terminating the guardianship, shall not be
21 filed without special leave of the court.~~

22 (4) Before removing a guardian, appointing a successor
23 guardian, modifying the guardianship's terms, or terminating a
24 guardianship, and following the same procedures to safeguard the
25 ward's rights as apply to a petition for a guardian's appointment,
26 the court may send a visitor to the present guardian's residence
27 and to the place where the ward resides or is detained to observe
28 conditions and report in writing to the court.

29 Sec. 5313. (1) ~~The~~ **Subject to sections 5106 and 5106a, the**



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

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

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

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

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

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

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

29 (a) The legally incapacitated individual's spouse. This



1 subdivision ~~shall~~**must** be considered to include a person nominated
2 by will or other writing signed by a deceased spouse.

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

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

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

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

13 (4) If none of the persons as designated or listed in
14 subsection (2) or (3) are suitable **under subsection (5)** or willing
15 to serve, the court may appoint any competent person who is
16 suitable **under subsection (5)** and willing to serve, including a
17 professional guardian as provided in section 5106. **If the court**
18 **appoints a professional guardian that employs 2 or more employees**
19 **who have obtained certification under section 5106a, the**
20 **professional guardian shall designate a certified employee who must**
21 **be the decision maker for the ward. The professional guardian shall**
22 **notify the ward and interested persons in writing of the name and**
23 **contact information of the designated decision maker within 7 days**
24 **after the court appoints the professional guardian and, if there is**
25 **a permanent change in the designated decision maker, within 7 days**
26 **after the permanent change. The professional guardian shall make**
27 **the name and contact information of the designated decision maker**
28 **available on request to the court, the ward's caregivers, medical**
29 **and service providers, advocates, law enforcement, and any other**



1 person who requests the name and contact information to address a
2 concern regarding the ward's health, safety, or welfare.

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

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

11 (b) The person's availability to the individual subject to the
12 guardianship.

13 (c) The person's history and relationship with the individual
14 subject to the guardianship.

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

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

21 (f) The person's ability to fulfill duties regardless of
22 interpersonal disputes between interested persons or others with an
23 interest in the welfare of the individual subject to guardianship.
24 Interpersonal disputes alone must not be the basis for finding a
25 person with priority, under subsection (2) or (3), is unsuitable
26 unless the court finds by clear and convincing evidence that no
27 other person is able to fulfill the duties.

28 (g) The person's ability to meet the requirements of section
29 5410, if applicable.



1 (h) The person's ability to advocate appropriately for the
2 best interests of the individual subject to the guardianship with
3 health care and service providers.

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

11 (7) Letters of guardianship must expire not later than 15
12 months after the date of appointment. The expiration date must be
13 printed on the letters of guardianship. Letters of guardianship
14 must not be reissued to a guardian that fails to report the
15 condition of the ward and the ward's estate that is subject to the
16 guardian's possession or control, as required by the court, under
17 section 5314. The probate register may reissue letters of
18 guardianship under this subsection without a hearing.

19 Sec. 5409. (1) The court may appoint an individual, a
20 corporation authorized to exercise fiduciary powers, or a
21 professional conservator described in section 5106 to serve as
22 conservator of a protected individual's estate. The following are
23 entitled to consideration for appointment in the following order of
24 priority:

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

28 (b) ~~An individual or corporation~~ **A person** nominated by the
29 protected individual if he or she is 14 years of age or older and



1 of sufficient mental capacity to make an intelligent choice,
 2 including a nomination made in a durable power of attorney.

3 (c) The protected individual's spouse.

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

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

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

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

11 (h) If none of the persons listed in subdivisions (a) to (g)
 12 are suitable **under subsection (3)** and willing to serve, any person
 13 that the court determines is suitable **under subsection (3)** and
 14 willing to serve.

15 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)
 16 may designate in writing a substitute to serve instead, and that
 17 designation transfers the priority to the substitute. ~~If persons~~
 18 ~~have equal priority, the court shall select the person the court~~
 19 ~~considers best qualified to serve. Acting in the protected~~
 20 ~~individual's best interest, the court may pass over a person having~~
 21 ~~priority and appoint a person having a lower priority or no~~
 22 ~~priority.~~

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

29 (a) **Preference of the individual subject to the**



1 conservatorship, including who should serve and not serve as
2 conservator.

3 (b) Availability to the individual subject to the
4 conservatorship.

5 (c) History and relationship with the individual subject to
6 the conservatorship.

7 (d) Criminal history that is relevant to the role of a
8 conservator.

9 (e) Personal history, including, but not limited to,
10 employment, training, skills, and stability that will facilitate
11 fulfillment of duties.

12 (f) Ability to fulfill duties regardless of interpersonal
13 disputes between interested persons or others with an interest in
14 the welfare of the individual subject to conservatorship.
15 Interpersonal disputes alone must not be the basis for finding a
16 person with priority is unsuitable unless the court finds by clear
17 and convincing evidence that no person with priority can fulfill
18 the duties.

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

20 (4) In deciding between 2 persons with equal priority, the
21 court shall weigh the factors in subsection (3) with specific
22 findings on the record. The court may appoint not more than 2
23 persons to serve as coconservators. Unless the order of appointment
24 and letters of conservatorship otherwise state, coconservators must
25 act jointly.

26 (5) Letters of conservatorship must expire not later than 15
27 months after the date of appointment. The expiration date must be
28 printed on the letters of conservatorship. Letters of
29 conservatorship must not be reissued to a conservator that fails to



1 account to the court as required under section 5418. The probate
2 register may reissue letters of conservatorship under this
3 subsection without a hearing.

4 Enacting section 1. This amendatory act takes effect 180 days
5 after the date it is enacted into law.

6 Enacting section 2. This amendatory act does not take effect
7 unless all of the following bills of the 101st Legislature are
8 enacted into law:

- 9 (a) House Bill No. 4848.
10 (b) House Bill No. 4849.
11 (c) House Bill No. 4850.

