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GUARDIANS AND CONSERVATORS

House Bill 4909 (H-1) as reported from committee
Sponsor: Rep. Kelly Breen

House Bill 4910 (H-1) as reported
Sponsor: Rep. Penelope Tsernoglou

House Bill 4911 (H-1) as reported
Sponsor: Rep. Graham Filler

House Bill 4912 (H-1) as reported
Sponsor: Rep. Ken Borton

House Bill 5047 (H-1) as reported
Sponsor: Rep. Betsy Coffia

Committee: Judiciary
Complete to 10-24-23

SUMMARY:

House Bill 4909 to 4912 and 5047 would amend several provisions in the Estates and Protected Individuals Code (EPIC) regarding guardians and conservators in Michigan. The bills would notably do the following:

- Require professional guardians and professional conservators to be licensed and establish a process for processing complaints and upholding licensure standards.
- Establish the Office of State Guardian Board and prescribe its duties and that of its executive director to facilitate licensure.
- Establish new suitability requirements in the appointment of a guardian or conservator.
- Revise the duties of a guardian ad litem related to guardianship and conservatorship proceedings.
- Modify requirements concerning the appointment of a temporary guardian or a successor conservator.

House Bill 4909 would amend suitability requirements and priority provisions for guardians and conservators and make related changes.

Professional guardians and conservators

The act currently requires a professional guardian to establish and maintain a schedule of visitation so that an individual associated with the guardian who is responsible for the ward's care visits the ward within three months after the professional guardian's appointment and at least once within three months after each previous visit. The bill would eliminate this provision.

The bill would add language providing that a professional guardian or conservator may use support staff and other professionals to perform office functions and client services under the guardian's or conservator's active and direct supervision. Support staff and professionals could be used to gather and provide necessary information to the guardian or conservator regarding a ward or protected individual and make recommendations based on their knowledge and expertise. However, the guardian or conservator could not delegate decision-making authority

to support staff, a professional, or another person regarding financial decisions or decisions requiring informed consent, such as medical, mental health, placement, or care planning decisions, unless the support staff, professional, or other person holds a license issued under the Part 5A proposed by House Bill 5047.

Guardian and conservator certification

The bill would prohibit a court from appointing a person as a professional guardian of a legally incapacitated individual or professional conservator of a protected individual who is not a minor, or both, unless the person holds a license issued under the Part 5A proposed by House Bill 5047. (This would not apply to a financial institution appointed as a professional conservator.) These provisions would not become effective until the governor appoints members and an executive director of the Office of State Guardian Board under Part 5A.

Order finding incapacity

The bill would remove a provision that now allows an order finding incapacity to specify a minimum period of up to 182 days during which certain petitions or requests[1] cannot be filed without special leave of the court.

Suitability of guardians

Currently under the act, the ward or a person interested in the ward's welfare can petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. The bill would add that a petition for an order appointing a successor guardian is subject to the priority of appointment, including provisions concerning suitability as described below.

The act now provides that the court may appoint a competent person as guardian of a legally incapacitated individual, but cannot appoint as a guardian an agency, public or private, that financially benefits from *directly* providing housing, medical, mental health, or social services to the individual. The bill would remove "directly" from this provision and add that an agency could also not benefit from providing caregiving to the individual.

The court is currently required to appoint a person as a guardian to an individual in a specific order of priority. The bill would add that the person must be suitable, based on a determination of specific findings of the court that includes at least all of the following factors:

- The preference of the individual subject to the guardianship, including who should serve and not serve as guardian.
- The person's availability to the individual.
- The person's history and relationship with the individual.
- The person's criminal history that is relevant to the care, custody, and control of the individual.
- The person's personal history that will facilitate fulfillment of duties, including employment, training, skills, and stability.
- The person's ability to fulfill duties regardless of interpersonal disputes between interested persons or others with an interest in the welfare of the individual. (Interpersonal disputes could not be the sole basis for finding certain persons with

[1] Specifically, a request for a finding that a ward is no longer an incapacitated individual or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship.

priority as unsuitable unless the court finds by clear and convincing evidence that no other person is able to fulfill the duties.)

- The person's ability to meet the requirements of section 5410 (pertaining to bonds), if applicable.

When deciding between two certain persons with equal priority, the court would have to weigh the above factors with specific findings on the record. The court could appoint two persons to serve as co-guardians and to act jointly, unless the order of appointment and letters of guardianship state otherwise. However, a co-guardian could delegate authority to the other co-guardian.

If none of the persons with priority are suitable as described above or willing to serve, the court could appoint any competent person who is suitable and willing to serve, including a professional guardian.

If the court appoints a professional guardian that employs two or more employees who hold a license issued under the Part 5A proposed by House Bill 5047, the professional guardian would have to designate a licensed employee who would have to be the decision maker for the ward. The professional guardian would have to notify the ward and interested persons in writing of the name and contact information of the designated decision maker by seven days after the court appoints the professional guardian and by seven days of any permanent change in the designated decision maker. The professional guardian would have to make the decision maker's name and contact information available on request to the court, the ward's caregivers, medical and service providers, advocates, law enforcement, and any other person who requests the information to address a concern regarding the ward's health, safety, or welfare.

Letters of guardianship would have to expire not later than 15 months after the date of appointment. The expiration date would have to be printed on the letters of guardianship. Letters of guardianship could not be reissued to a guardian that fails to report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court. The probate register could reissue letters of guardianship under this provision without a hearing.

Priority of appointment of conservators

The act also now prescribes an order of priority when appointing a conservator of a protected individual's estate. The bill would add that the person must be suitable, based on a determination of specific findings of the court, including at least all of the following factors:

- The preference of the individual subject to the conservatorship, including who should serve and not serve as conservator.
- The person's availability to the individual.
- The person's history and relationship with the individual.
- The person's criminal history that is relevant to the role of a conservator.
- The person's personal history that will facilitate fulfillment of duties, including employment, training, skills, and stability.
- The person's ability to fulfill duties regardless of interpersonal disputes between interested persons or others with an interest in the welfare of the individual. (Interpersonal disputes could not be the sole basis for finding certain persons with

priority as unsuitable unless the court finds by clear and convincing evidence that no person with priority can fulfill the duties.)

- The person's ability to meet the requirements of section 5410 (pertaining to bonds).

The act now requires the court to select the person best qualified to serve if persons have equal priority. The bill would require the court to weigh the above factors in deciding between two persons with equal priority, stating specific findings on the record. Also, under the bill, the court could appoint up to two persons to serve as co-conservators. Unless the order of appointment and letters of conservatorship stated otherwise, co-conservators would have to act jointly.

Letters of conservatorship would have to expire not later than 15 months after the date of appointment. The expiration date would have to be printed on the letters of conservatorship. Letters of conservatorship could not be reissued to a conservator that fails to account to the court as required. The probate register could reissue letters of conservatorship under this provision without a hearing.

MCL 700.5104 et seq.

House Bill 4910 would revise the duties of a guardian ad litem appointed by a court in a guardianship proceeding when an individual is alleged to be incapacitated (no longer having the ability to provide self-care) or a proceeding to appoint a conservator for a protected individual (who can no longer manage their property or business affairs).

Generally speaking, under Michigan law, any person may petition a court to appoint a guardian or a conservator for an individual who, because of mental status or disability, may no longer have the capacity to make legal decisions for themselves. If the incapacitated or protected individual does not have an attorney, the court may appoint a guardian ad litem[2] to represent them. As part of the process, the guardian ad litem may collect information to help the court decide whether to appoint a guardian or conservator and, if so, who should fill that position.

Among other things, a guardian ad litem must personally visit the individual and explain the petition for a guardian or conservator to be appointed, the individual's rights, and what may happen at the hearing on the petition.

The bill would remove and replace the current list of duties for a guardian ad litem when an individual is alleged to be incapacitated.

The bill also would propose a list of duties for a guardian ad litem for a person alleged to need protection or a protected individual in a conservatorship proceeding that is similar to the list of duties proposed for guardianship proceedings.

Guardian ad litem duties

Under the bill, a guardian ad litem's duties when an individual is alleged to be an incapacitated would include all of the following:

- Impartially gather information as provided by law.

[2] The phrase *ad litem* is Latin for "for the suit" or, more expansively, "for purposes of the legal action only." A guardian ad litem acts in a lawsuit or legal proceeding on behalf of a party who is incapable of representing themselves.

- Seek information from the individual, communicating in a manner the individual can best understand and noting in the required report if there is a barrier to communication.
- Interview the individual in person, at their location, and out of the presence of any interested persons.
- Advise the individual that the guardian ad litem does not represent them as an attorney and that no attorney-client relationship has been created.
- Identify whether the individual wishes to be present at the hearing and, if they do not, identify the reasons.
- Identify any barrier to the individual's attending or fully participating in the hearing, including the need for assistive technology, transportation, or other support, and whether the individual has a plan for how they will attend.
- Identify whether the individual plans to retain legal counsel or wants appointed counsel. If the individual does not have a plan or does not request appointed legal counsel, the guardian ad litem would have to make a recommendation as to whether legal counsel should be appointed.
- Identify whether court-ordered mediation could be used to resolve a disagreement or dispute related to the petition.

[The duties described above would also apply to a guardian ad litem appointed for an individual alleged to need protection, with relation to a conservator instead of a guardian.]

The duties of a guardian ad litem appointed when an individual is alleged to be incapacitated or a legally incapacitated individual would include the following, as applicable:

- Explain the nature, purpose, and legal effects of a guardian's appointment.
- Explain who filed the petition and who, if anyone, has been nominated as guardian.
- Explain the hearing procedure and the individual's rights, including the right to do the following:
    - Contest the petition in whole or in part.
    - Request limits on the guardian's powers.
    - Be present at the hearing.
    - Request a reasonable accommodation to allow participation as fully as possible, including with assistive technology or other support.
    - Be represented by legal counsel of their choice or, if they cannot secure legal counsel, the right to have legal counsel appointed by the court.
    - Request an independent medical evaluation.
- Explain that a guardian may take certain actions on their behalf and inform the individual that a guardian could have any of the following powers, and—if meaningful communication is possible—discern whether the individual objects to the guardian having any of those powers:
    - Executing a do-not-resuscitate (DNR) order.
    - Executing a physician orders for scope of treatment (POST) form.
    - Consenting to any medical treatment.
    - Consenting to placement decisions, including a move to a nursing facility or adult foster care home.
    - Choosing whether they can marry or divorce.
    - Handling financial and property matters, including the sale or disposal of personal property and maintenance of real property.
- Identify whether the individual objects to any particular person proposed as guardian.

- Identify, in order of preference, who the individual would want to serve if a guardian were to be appointed.
- Identify who the individual would not want to serve.

[The duties described above would also apply to a guardian ad litem appointed for an individual alleged to need protection, with relation to a conservator instead of a guardian, and an explanation of the conservator's powers rather than those of a guardian that are listed above.]

Written reports

A guardian ad litem appointed for an individual alleged to be incapacitated or a legally incapacitated individual would have to file a written report with the court in the form required by SCAO. If the individual subject to an initial petition, petition to terminate, or modification petition contests the petition, the report would have to include only the following:

- That the individual contests the petition.
- Whether they retained legal counsel or wishes for counsel to be appointed.
- Whether they have any barriers to attending court at the place usually held.
- Who the individual would want to serve if a guardian were to be appointed.
- Who the individual would not want to serve in that case.
- Any other information the guardian ad litem determines would be helpful to the court in ruling on the petition.

[The requirements described above would also apply to a guardian ad litem appointed for an individual alleged to need protection, with relation to a conservator instead of a guardian, except that the report would only have to include the first three items listed above.]

If the petition is not contested, the guardian ad litem report would have to include only the following:

- The date, time, length of time, and location where the guardian ad litem met with the individual.
- Whether the guardian ad litem was able to meaningfully communicate with the individual and any barriers to communication.
- Who, if anyone, was present for the interview other than the individual.
- Whether the individual wishes to be present at the hearing. If so, but there is a barrier to their fully participating, the guardian ad litem would have to include in the report whether the barrier can be resolved by moving the location of the hearing or using assistive technology, or both, or by other support.
- Whether the individual has identified a plan for how they will attend.
- Whether the individual plans to retain legal counsel or has requested appointed counsel. If a wish to be represented by legal counsel has not been indicated, the guardian ad litem would have to include a recommendation as to whether legal counsel to represent the individual should be appointed.
- Whether the individual has any of the following:
    - A power of attorney (POA) with or without limitations on purpose, authority, or time period.
    - A patient advocate designation.
    - A POST form.
    - A benefits payee, trustee, or other fiduciary.

- Whether a disagreement or dispute related to the petition might be resolved through court-ordered mediation.
- Whether the appointment of a visitor with appropriate knowledge, training, and education, such as a social worker, mental health professional, or medical professional, could provide the court with the information on whether alternatives to guardianship or a limited guardianship is appropriate.
- Who the individual would want to serve if a guardian were appointed, in order of preference, and who they would not want.
- An estimate of the ***liquid assets***, income, real property, and a description of personal property to the extent known after reasonable inquiry.
- Any other information the guardian ad litem determines would be helpful to the court in ruling on the petition.

  Liquid assets would mean assets that can easily be converted into cash in a short amount of time, including cash, checking and savings accounts, money market instruments, certificates of deposit, mutual funds held in a taxable account, marketable securities, bonds, and the monetary value of life or other insurance. A retirement account would be considered a liquid asset once the individual's circumstances allow them to withdraw cash without facing any Internal Revenue Service early withdrawal penalties.

[The requirements described above would also apply to a guardian ad litem appointed for an individual alleged to need protection, with relation to a conservator instead of a guardian, except that the questions about the individual's conservator preferences would be specified to apply only to an initial petition, and the last item listed would not apply.]

At a minimum, all of the applicable information above, and any other information required by law, would also have to be provided in a written report to the court if a guardian ad litem were appointed for any purpose other than an initial petition for appointment of a guardian. A special limited guardian ad litem (see below) would not have to provide a report unless ordered to do so by the court.

The guardian ad litem would have to file the report with the court and serve it on all interested persons at least five days before the date of the hearing. For a guardianship proceeding, the court could order the report to be filed and served in less time only if the petition was made on an emergency basis under section 5312. Compensation of the guardian ad litem could not be ordered by the court unless the guardian ad litem states in the written report that they complied with this provision.

A court could receive the written report of the guardian ad litem into evidence without testimony if the report is filed with the court and served on all interested persons at least five days before the hearing. The guardian ad litem would have to report findings until the date of the termination of the guardian ad litem. The court could issue on its own initiative, or any interested person could secure, a subpoena to compel the preparer of the report to testify. The court would have to issue such a subpoena upon request of any interested person.

If the guardian ad litem's report or recommendation to the court conflicts with the wishes of the individual, the court could not appoint a person who was previously appointed as guardian ad litem as the individual's legal counsel.

[The above provisions, with applicable modifications, would also apply with respect to conservatorships.]

Appointment of legal counsel and special guardian ad litem

If an individual who is subject to a petition had not already secured legal counsel, the court would be required to do so if any of the following applied:

- The individual requests legal counsel.
- The individual objects to any part of the petition for guardianship or potential authority of a guardian.
- The guardian ad litem determines that it is in the individual's best interest to have legal counsel if it has not been secured. The state would bear the expense of appointed legal counsel if the individual were indigent.

The appointment of a guardian ad litem would terminate when the individual has legal counsel appointed or retained. The guardian ad litem's report could not be admitted into evidence after the appearance or appointment of legal counsel for the individual. However, after appointment or retention of legal counsel, the court could, for good cause shown, appoint a special limited guardian ad litem to provide information on a narrowly defined issue likely to be inadequately addressed. A special limited guardian ad litem would be exempt from the list of duties and written report requirement as described above. However, the court could order the special limited guardian ad litem to provide a written report with the information the court considers necessary to adequately address the issue leading to the special limited guardian ad litem appointment. A special limited guardian ad litem could not communicate directly with the individual who is the subject to the petition and instead would have to communicate through the individual's legal counsel, unless the legal counsel otherwise gave consent.

An individual alleged to be incapacitated would have the right to retain legal counsel of their choice at any stage, regardless of findings regarding their capacity. Retained legal counsel would have to file a substitution of legal counsel or a motion to substitute if legal counsel had already been appointed. Retained counsel would be entitled to reasonable attorney fees.

[The above provisions, with applicable modifications, would also apply with respect to conservatorships.]

Responsibilities of a guardian

Under the bill, a guardian would hold the following powers and duties, to the extent granted by court order, in addition to or modification of requirements already included in the act:

- The guardian would have to notify the court by 14 days after a change in the ward's or guardian's place of residence.
- All of the following would apply to the duty of the guardian to visit the ward:
    - The guardian would have to visit the ward in person by one month after the guardian's appointment and at least once within three months after each in-person visit. The guardian would also have to visit the ward using both audio and video technology, or if that technology is not available, only audio means,

each month in which an in-person visit does not occur. If the ward were unable to communicate using audio and visual or audio-only means, the guardian would have to communicate with the ward's caregivers or any other party who is familiar with the ward's circumstances and can apprise the guardian of the ward's needs and progress. If the guardian determines that audio and visual visits or audio-only visits are not possible or that the ward is unable to communicate through audiovisual means, the records the guardian must maintain would have to also identify the circumstances that required the guardian to rely on an audio-only visit or that required the guardian to consult with caregivers or others instead of communicating directly with the ward. The guardian would have to maintain records relating to the date, time, duration, and significant information for each required visit. The guardian would have to make the records available for the court's review and for review of interested persons.

  - If the guardian is a limited guardian, the visitation duties described above apply. However, the limited guardian could seek approval from the court to conduct audiovisual or audio-only visits less often than monthly in the months in which the limited guardian is not visiting in person. The court could grant the request if the court finds on the record that monthly audiovisual or audio-only visits in the months in which an in-person visit is not occurring are not necessary for the individual's well-being and best interests and identifies on the record the individual's circumstances that led to that finding.
  - If the guardian is not a professional guardian, the guardian could delegate the required in-person visits described above to another person. The guardian would have to communicate with the person who conducted the in-person visit and maintain records regarding the information shared by the person who conducted the visit.
  - If the guardian is a professional guardian and the professional guardian employs two or more employees who hold a license issued under the Part 5A proposed by House Bill 5047, the designated decision maker under House Bill 4909 could not delegate the required in-person visits described above to another person. The designated decision maker could delegate the required audio-visual or audio-only visits to another licensed employee only if the designated decision maker is unavailable to conduct the audio-visual or audio-only visits. If the designated decision maker delegates a visit requirement to another licensed employee, the licensed employee who conducts the visit would have to prepare and submit a written report consistent with the above requirements to the designated decision maker.
  - If the guardian is an individual professional guardian, the professional guardian could not delegate the required in-person visits described above to another person.

- The guardian would have to make a reasonable effort to identify a reasonable number of items of personal or sentimental value, such as family heirlooms, photo albums, and collections. By 56 days after appointment, the guardian would have to serve on all interested persons a list of the identified items. The list would have to be signed by the guardian and include an attestation (whose specific language is prescribed by the bill) that the list is true and correct and that the guardian understands that they must handle the property consistently with their fiduciary duties.

- If a conservator for the ward's estate is not appointed, the guardian would have to, in addition to currently required requirements, allow interested persons to review proofs of income and disbursements at a time reasonably convenient to the guardian and interested persons.

If a conservator has not been appointed for the ward, and if the ward's qualified estate (as determined under the bill) is greater than 400% of the federal poverty level, the guardian would have to file a petition for conservatorship. This provision would not prevent the appointment of a conservator for the ward if the ward's qualified estate is less than 400% of the federal poverty level.

Place of residence

A guardian would have to maintain a legally incapacitated individual in their ***permanent residence*** if possible, consistent with the individual's well-being and preferences. If the individual is removed from their permanent residence temporarily for any reason, the guardian would have to make all reasonable efforts to return them to their permanent residence at the earliest opportunity, consistent with their wishes. Temporary removal of the individual from their permanent residence to receive health care or supervision, to engage in family or social activities, or for other reasons would not relieve the guardian of obligations described above. A guardian could not primarily consider their own convenience or benefit when making a decision to remove the individual from their permanent residence or selecting a new residence for the individual. A guardian would have to explore reasonably available and affordable supports and services that could enable the individual to remain in their permanent residence. If a guardian proposes to move the individual from their her permanent residence, the guardian would have to attempt to consult with the individual and honor their preference to the greatest extent possible.

Permanent residence would mean either of the following:

- The location the allegedly incapacitated individual or legally incapacitated individual uses as a permanent address, in which most of the individual's possessions are maintained.
- The location the allegedly incapacitated individual or legally incapacitated individual considers to be their home.

In exercising the guardian's power to establish the legally incapacitated individual's place of residence, the guardian would have to do both of the following:

- Select a residential setting the guardian believes the individual would select if able. If the guardian does not know and cannot reasonably determine what setting the would likely select, or the guardian reasonably believes that the decision the individual would make would unreasonably harm or endanger their welfare or personal or financial interests, the guardian would have to choose a residential setting that is consistent with the individual's best interest.
- Give priority to a residential setting in a location that will allow the individual to interact with people and participate in activities important to the individual and meet their needs in the least restrictive manner reasonably feasible.

If a guardian that is not a professional guardian removes a legally incapacitated individual from the individual's permanent residence to another location in Michigan, the guardian would have

to notify the court in writing by 14 days after the removal and include the address of the new permanent residence.

A guardian could not move a legally incapacitated individual out of Michigan without order of the court. If the guardian petitions to move the individual out of state, a guardian ad litem would have to be appointed and the court would have to schedule a hearing regardless of whether the individual files objections or expresses dissatisfaction with the proposed move. If the individual does file objections or express dissatisfaction with the proposed move, the court would have to appoint legal counsel if the individual is not already represented by counsel.

Except as otherwise provided, a professional guardian could not permanently remove a legally incapacitated individual from the individual's permanent residence unless the professional guardian files a petition described below and the court grants the petition. The petition would have to be separate from the petition for a finding of incapacity and appointment of guardian. The petition would have to include all of the following information:

- The individual's current permanent residence.
- The proposed new residence.
- The reason for the proposed move.
- Whether the move is to a more or less restrictive setting.
- The efforts made or resources explored to enable the individual to remain in their current permanent residence.
- Whether the guardian has engaged in meaningful communication with the individual about the proposed move.
- Whether the individual objects to or supports the proposed move.

If the person petitioning for guardianship proposes or anticipates that a professional guardian will be appointed, the petitioner or any interested person that believes that it is necessary for the well-being of the alleged incapacitated individual to move the individual permanently from their permanent residence could file a petition described above seeking authority for a professional guardian, if appointed, to permanently remove the individual from their permanent residence.

If a professional guardian determines that to protect the health, safety, or welfare of the legally incapacitated individual, it is necessary to move the individual from their permanent residence to a another residence the professional guardian intends to be permanent before obtaining court approval as described below, the professional guardian would move the legally incapacitated individual. By 14 days after doing so, the professional guardian would have to file a petition as described above. The petition would have to include the circumstances that the professional guardian determined were necessary to move the legally incapacitated individual before filing a petition.

If, after a temporary stay in a health care facility or at a residence the professional guardian initially intended to be temporary, the professional guardian determines that it is necessary to change to the permanent residence of the legally incapacitated individual, the professional guardian, by 14 days after making the determination, would have to file a petition as described above. The petition would have to include the circumstances underlying the professional guardian's determination.

If a petition for removal from the permanent residence has been filed, the court would have to promptly appoint a guardian ad litem and hold the hearing by 28 days after the petition is filed. The guardian ad litem, in addition to their other duties, would have to do all of the following:

- Advise the individual that a petition has been filed to move them from their permanent residence to the new residence identified in the petition or another location the court determines is appropriate.
- Explain that if the court grants the petition, the guardian will have the authority to change the individual's permanent residence to the location specified in the petition or to another location the court determines is appropriate.
- Ascertain, if possible, the wishes of the individual to remain in their permanent residence.
- Include a summary of the discussion in the guardian ad litem's written report.

If the alleged incapacitated individual or legally incapacitated individual does not already have legal counsel, the court would have to appoint legal counsel if the individual files an objection to the petition or if the guardian ad litem's report states that the individual objects to being removed from their permanent residence.

The court could not grant a petition described above unless the court, after due consideration and opportunity for testimony on the matter, determines by clear and convincing evidence that moving the legally incapacitated individual from the permanent residence to the residence identified in the petition is one or both of the following:

- Necessary to protect the individual's physical health, safety, or welfare.
- Consistent with the individual's wishes.

If the legally incapacitated individual must leave the permanent residence because the residence becomes permanently unavailable, the professional guardian would have to provide at least 14 days' prior written notice to the legally incapacitated individual if possible under the circumstances or, if less time is available, at the earliest opportunity. The professional guardian would have to provide written notice to the court and all interested persons by 14 days after the move explaining why the permanent residence is no longer available, whether the professional guardian attempted to consult with the individual about where they wanted to move, whether the professional guardian honored the individual's preferences regarding where they wanted to move, the address of the new residence, the type of residence, and how the new residence will meet the individual's needs. If the individual's residence becomes permanently unavailable, the professional guardian would not be required to file a petition described above, and the court would not be required to appoint a guardian ad litem or legal counsel or hold a hearing. For purposes of these provisions, a residence could become permanently unavailable as a result of a facility closure, removal of the property from the rental market, involuntary discharge, notice to quit, or eviction that cannot be appropriately resolved by the professional guardian, irreparable damage to the permanent residence, or other circumstances that are not initiated by the professional guardian but necessitate the permanent removal of the individual from their permanent residence.

If removal from the permanent residence necessitates the sale, transfer, or disposal of real property or sentimental personal property and if meaningful communication is possible, the guardian would have to consult with the legally incapacitated individual before taking any action to dispose of the property. A guardian would have to make all reasonable efforts to

identify and honor the individual's wishes to preserve sentimental personal property in the overall context of the individual's estate, including items identified in the list described above, and would have to take reasonable steps to safeguard that personal property. The court could remove a guardian that fails to comply with these provisions.

Conservator inventory

A conservator currently must prepare a complete inventory of a protected person's estate for the court by 56 days after appointment or within another time period if specified by court rule. The bill would add a requirement for the conservator to serve on interested persons, along with the inventory, account statements (with account numbers redacted) that reflect the value of depository and investment accounts by 30 days after the inventory's date.

The bill would also require the conservator to make reasonable efforts to identify on the inventory a reasonable number of items of special personal or sentimental value, including at least family heirlooms, photo albums, or collections. To the extent meaningful communication permits, the conservator would have to ask the protected individual which items they identify as having special personal or sentimental value. The conservator would have to state on the inventory if they could not locate an item identified as having special personal or sentimental value.

The inventory would have to be signed by the conservator and include an attestation (whose specific language is prescribed by the bill) that the inventory is true and correct and that the conservator understands that they must handle the property consistently with the conservator's fiduciary duties.

The conservator would have to make all reasonable efforts to identify and honor the protected individual's wishes to preserve those special items in the overall context of the individual's estate, including items identified in the inventory and annual accounts, and would have to take reasonable steps to safeguard the property. A conservator who failed to comply could be removed by the court.

The inventory would have to list any merchandise, funeral services, cemetery services, or prepaid contracts for which the protected individual or conservator is the contract buyer or contract beneficiary under the Prepaid Funeral and Cemetery Sales Act (PFCSA). If the conservatorship estate includes any of these assets, the conservator would have to file all of the following with the inventory as well as the account the conservator must make to the court (see below):

- A copy of any prepaid contract under the PFCSA.
- Proof that payments made under a prepaid contract are held in escrow or under a trust agreement in compliance with the PFCSA.
- The most recent escrow statement issued concerning the prepaid contract.
- Proof of any assignments of life policies or annuity contracts made to purchase merchandise, funeral services, or cemetery services under the PFCSA would have to list property with reasonable detail and the type and amount of any encumbrance.

The inventory would have to be served on all interested persons. Any interested person could file an objection to the inventory with the court and serve the objection on all other interested persons. The court would be required to set the matter for hearing.

Account by conservator

At a minimum, a conservator must currently account to the court for administration of the trust at least annually. The bill would also require the conservator, in addition to giving the account, to serve on interested persons account statements (with account numbers redacted) reflecting the value of depository and investment accounts dated by 30 days after the inventory's date and receipts, invoices, or other documentation for expenses in excess of $1,000. The account would have to be in the form as provided by SCAO or substantially similar. The account would have to detail assets, including those identified in the inventory, debts, gross income, and expenses. Any of the items disposed of or sold by the conservator would have to be described on the account as to how the conservator fulfilled their duties.

If the protected individual objects to an account, the court would have to appoint a guardian ad litem to visit the protected individual in the same manner as described above when assigned to a person who is the subject of a petition. The court would have to appoint legal counsel to represent the protected individual if any of the following are met:

- The protected individual requests legal counsel.
- The guardian ad litem believes that appointment of legal counsel is in the individual's best interest.
- The court otherwise believes it is necessary to protect the interest of the individual.

Currently, a conservator must account to the court or to the formerly protected individual on the termination of the protected individual's minority or disability. The bill would provide that this must be done within 56 days after the minority or disability was terminated.

MCL 700.5305 et seq.

House Bill 4911 would make changes concerning initial hearings, examination reports, and the appointment of a guardian or emergency guardian.

Trial date in a guardianship proceeding at the initial hearing

Currently, upon the filing of a petition for a finding of incapacity and appointment of a guardian, the court is required to set a date for a hearing on the issue of incapacity and a guardian ad litem is appointed to represent the subject of the petition in the proceeding unless the subject has their own legal counsel.

The bill would indicate that this is the *initial hearing*, with the guardian ad litem being appointed for the initial hearing. At this initial hearing, the court could enter a final order on the petition if it does not set a trial date. The court would have to set a trial date at least seven days after the initial hearing on the petition if any of the following apply:

- The guardian ad litem requests that the proceeding be set for trial.
- The allegedly incapacitated individual or their legal counsel requests that the matter be set for trial.
- Any reason as justice requires.

If a trial date is set at the initial hearing, the court would have to enter a scheduling order to the extent necessary and would also have to enter an order that provides, to the extent practicable, for the attendance of the allegedly incapacitated individual at the trial if they wish to attend. An order entered under this provision could order any interested person over whom the court has jurisdiction to facilitate attendance or move the hearing site.

Examination report

Under the act, a court may order that an individual alleged to be incapacitated by examined by a physician or mental health professional who was appointed by the court. The individual may also secure an independent evaluation. The bill would require an independent eavaluation performed at the expense of the state to be performed by a physician or mental health professional.

In addition, a report must be submitted in writing to the court at least five days before the hearing. The bill would revise the information required to be included in the report as follows:

- A detailed description of the individual's cognitive and functional abilities and limitations (instead of the individual's physical or psychological infirmities).
- An explanation of how and to what extent the individual is able to receive, understand, participate in, and evaluate information in making decisions (instead of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions).
- Apply the following two current requirements to a report being completed by a physician or mental health professional:
    - A listing of all medications the individual is receiving, the dose of each, and a description of the effects each has on the individual's behavior.
    - A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan. The bill would also require the report to include whether the individual's condition is a permanent or temporary condition.
- The signatures of all individuals who performed the evaluations. The bill would add that the printed names would also have to be included, as well as where the individuals are employed, the date of examination on which the report is based, the length of time they have known the individual, and the length of time they met with the individual.
- Add that whether the individual has the capacity to assign or delegate responsibilities to ensure their well-being.
- Add that whether the individual has executed a document directing care or naming an agent to act on their behalf, including, but not limited to, a power of attorney, patient advocate designation, or do-not-resuscitate order.
- Add that if completed by a visitor, the report would also have to include, at a minimum, as assessment of the existence of current formal and informal supports, the ability of supportive services and benefits to meet any unmet needs, the identification of any existing concerns regarding the individual's well-being, and the individual's ability to address those existing concerns.

The court could not consider the evaluation if it finds that the report does not substantially comply with the requirements of section 5304.

Appointment of guardian

Currently, a guardian may be appointed if the court finds by clear and convincing evidence that the individual is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of that individual, with each finding supported separately on the record.

The bill would require the court to dismiss the proceeding if the court cannot be shown both of the following by clear and convincing evidence:

- That the individual for whom a guardian is sought is an incapacitated individual.
- That the appointment is necessary as a means of providing continuing care and supervision of the individual.

At any time during the guardianship proceedings, the court could stay the proceedings for a reasonable period of time, based on the needs of the individual, to allow the opportunity to explore the alternatives to appointment of a guardian. If the individual properly names a patient advocate under a patient advocate designation, an attorney in fact under a power of attorney, or a representative payee under a governmental benefit during the stay, and provides evidence to the court of doing so, the court could dismiss the petition with or without a hearing. This provision would not prevent the court from ordering a temporary guardianship if the temporarily guardianship is limited in scope and the court explicitly finds that the individual has the capacity to execute a patient advocate designation, power of attorney, or designate a representative payee.

Specified rights

A person for whom a guardian is sought or has been appointed has certain specified rights. Among these is the right to quarterly visits by the guardian as provided in the act. The bill would delete the word "quarterly" and so provide that the person has the right to visits by the guardian as provided in the act.

Currently, the person has a right to have legal counsel of the person's own choice represent them on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305 of the code. If the person is not represented by legal counsel, the person has the right to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian as provided in section 5303 of the code.

The bill would instead provide that the person has the right to have legal counsel of the person's own choice represent them on either of the following:

- The petition to appoint a guardian, as provided in sections 5303, 5304, and 5305 of the code.
- If applicable, a professional guardian's petition to permanently remove the individual from the individual's permanent residence, as provided in section 5314a.

The bill would remove the description of the purpose of representation by a guardian ad litem and instead provide that a person has the right, if they are not represented by legal counsel, to the appointment of a guardian ad litem as provided in section 5303.

In addition, the person has the right to have the guardian notify the court by 14 days of a change in residence. The bill would instead provide that, if the guardian is not a professional guardian, the person has the right to have the guardian notify the court within 14 days after a change in the individual's permanent residence, as provided in section 5314a of the code. The bill would also add that the person has the right, if the guardian is a professional guardian, to have the court consider a separate petition, as provided in section 5314a of the code, if a professional guardian seeks to move the individual to a new permanent residence.

Appointment of emergency guardian

The bill would delete current provisions providing for appointment of a guardian or temporary guardian if an emergency exists. Instead, the bill would provide that a person could file a petition to appoint an emergency guardian for an allegedly incapacitated individual. If a petition for an emergency guardian were filed, the petitioner would have to give notice of hearing and the court would have to appoint a guardian ad litem. The hearing on the petition would have to be conducted as soon as possible and not later than seven days after the court receives the petition. The court could appoint an emergency guardian if it finds by a *preponderance of the evidence* that all of the following apply:

- An emergency exists that is likely to result in a substantial harm to the allegedly incapacitated individual's physical health, safety, or welfare.
- No other person appears to have authority to act in the circumstances.
- There is a basis that the individual is an incapacitated individual and that appointment of an emergency guardian is necessary as a means of providing continuing care and supervision.

Upon the filing of a petition to appoint an emergency guardian, the court could appoint an emergency guardian for an allegedly incapacitated individual without notice to them *only* if the court determines from an affidavit showing, by *clear and convincing evidence*, that all of the following apply:

- An emergency exists that is likely to result in a substantial harm to the allegedly incapacitated individual's physical health, safety, or welfare.
- No other person appears to have authority to act in the circumstances.
- There is a basis that the individual is an incapacitated individual and that appointment of an emergency guardian is necessary as a means of providing continuing care and supervision.

If the court appointed an emergency guardian under the above provision (clear and convincing evidence), the court would be required to do all of the following:

- Appoint a guardian ad litem for the allegedly incapacitated individual.
- By 48 hours after the appointment of an emergency guardian, order the petitioner to give notice by personal service of the appointment to the allegedly incapacitated induvial and service as required by court rule to all interested persons.
- By seven days after the appointment, hold a hearing on whether the conditions for the appointment of emergency guardian exist.

If the court finds conditions exist for the appointment of an emergency guardian at a hearing, and the individual wishes to contest the appointment, the court would have to set a date for a hearing and enter an order consistent with the act's provisions.

An order appointing an emergency guardian would expire 28 days after the appointment. The court could extend the order one time for an additional 28 days if it finds by a preponderance of the evidence, upon an affidavit by the appointed emergency guardian or following a hearing set at the discretion of the court, that the conditions leading to the appointment still exist.

An emergency guardian could exercise only the powers specified by the court, and the court could remove an emergency guardian at any time. Further, an appointment of an emergency guardian would not be a determination that a basis exists for an appointment of a guardian.

Conservator

The act requires a conservator (for an individual who can no longer manage their property or business affairs) to act as a fiduciary and observe the standard of care applicable to a trustee. The bill would add that a conservator for an individual subject to a conservatorship for a reason other than minority has the duty to take all steps within the scope of the conservator's authority to ensure the individual attends any hearing concerning the individual's conservatorship if the individual wishes to attend the meeting in a manner as provided under Article 5.

MCL 700.5303 et seq.

House Bill 4912 would modify and add provisions related to temporary guardians and successor conservators.

Temporary guardians

The bill would allow the court to appoint a temporary guardian for a specified period of up to six months if all of the following apply:

- A guardian has not been appointed or an appointed guardian is not effectively performing their duties.
- The court finds that the welfare of the alleged incapacitated individual or the ward requires immediate action.
- Oral or written notice of the hearing was provided to all interested persons, or a petitioner that did not provide notice to all interested persons submits a written explanation to the court that includes a description of their efforts to provide notice and the reason notice should not be required.

A temporary guardian would be entitled to the care and custody of the ward. The authority of a previously appointed permanent guardian would be suspended while a temporary guardian has authority. A temporary guardian would have to make reports as determined by the court and could be removed at any time. Otherwise, the provisions of the act concerning guardians would apply to a temporary guardian.

Conservators and successor conservators

EPIC currently allows the court to remove a conservator for good cause and to appoint a successor conservator if a conservator is removed or resigns or dies.

The bill would allow the protected individual, or a person interested in their welfare, to petition for an order removing the conservator, appointing a successor conservator, modifying the terms of the conservatorship, or terminating the conservatorship. Such a request could be made by informal letter to the court. A person who knowingly interfered with transmission of such a request to the court would be subject to a finding of contempt of court. A petition for an order appointing a successor conservator would be subject to the priority of appointment under section 5409, which governs the appointment of a conservator (see HB 4909).

In addition, EPIC now allows a person interested in the welfare of an individual for whom a conservator is appointed to petition the court for an order to remove the conservator and appoint a temporary or successor conservator. The bill would provide that such a petition is subject to the priority of appointment under section 5409.

MCL 700.5414 and 700.5415 and proposed MCL 700.5312a

House Bill 5047 would add Part 5A (Office of State Guardian) to Article V (Protection of an Individual under Disability and His or Her Property) of the code.

Office of State Guardian Board

The bill would create the Office of State Guardian Board as an autonomous entity in the Department of Health and Human Services (DHHS). The board would exercise its powers, duties, functions, and responsibilities independently of DHHS, except that the procurement and related management functions of the board would have to be performed under DHHS direction and supervision. The board would consist of the following members appointed by the governor:

- One from a list of at least three individuals recommended by the Department of the Attorney General (AG).
- One from a list of at least three individuals recommended by the Senate Majority Leader.
- One from a list of at least three individuals recommended by the Speaker of the House of Representatives.
- One from a list of at least three individuals recommended by the chief justice of the Michigan Supreme Court.
- One from a list of at least three individuals recommended by Disability Rights Michigan (or successor designated protection and advocacy agency).[3]
- One from a list of at least three individuals recommended by the DHHS Behavioral Physical Health and Aging Administration, representing the interests of vulnerable adults.[4]
- One who is a probate judge.
- One who is a probate court register.
- One from Adult Protective Services.
- One who is a professional guardian.
- One who is a professional conservator.
- One who is a licensed master's social worker.
- One who is recommended by the Michigan Long-Term Care Ombudsman.[5]
- One member who is recommended by a community mental health authority to represent the interests of community mental health services programs.

The governor would have to appoint the first members to the board by 180 days after the bill takes effect. Members would serve four-year terms, staggered so that a different third of them end in three of the years in any four-year period. Members would serve without compensation but could be reimbursed for expenses. The governor also would have to appoint the executive director of the board to a four-year term as a voting member of the board. The executive director would call the first meeting of the board, at which the board would elect a chair and any other necessary officers and after which the board would meet at least quarterly. The bill addresses such matters as quorum (majority), vacancies (filled as the original appointment was made), the ability of the governor to remove members for cause, the applicability of the Open Meetings Act to board meetings, and the exemption of board documents from disclosure under the Freedom of Information Act (FOIA).

[3] https://www.drmich.org/about-us/what-are-protection-advocacy-agencies-pas/
[4] The term vulnerable adult is defined here: http://legislature.mi.gov/doc.aspx?mcl-750-145m
[5] https://mltcop.org/

Duties of the executive director

In addition to establishing procedures and developing educational resources as described below, the executive director would have to do all of the following:

- Maintain the records of the board.
- Employ, supervise, and retain staff, with the approval of the board.
- Act as an interested party, upon appearance, in any guardianship or conservatorship matter.
- Issue licenses under Part 5A.
- Supervise investigations and disciplinary proceedings.
- Coordinate meetings and activities of the board.
- Perform other duties as assigned by the board.

Duties of the board

The board would have to do all of the following:

- Set minimum standards for licensure of professional guardians and conservators.
- Ensure that professional guardians and conservators comply with minimum standards of practice.
- Adopt a written process for receiving or initiating complaints against guardians and conservators.
- Adopt a process for receiving requests for technical assistance from guardians and conservators.
- Adopt a process to refer appropriate complaints to the AG or another investigatory agency for investigation.
- Develop and issue rules concerning the discipline of professional guardians and conservators who fail to meet licensure standards.
- Develop and issue rules concerning the discipline of professional guardians and conservators who breach their fiduciary duties or otherwise engage in misconduct.
- Conduct contested case hearings under the Administrative Procedures Act as required to administer licensing and discipline under Part 5A.
- Adopt a process to refer wards or interested persons to an agency that provides legal representation or advocacy for wards.
- Adopt a process for the executive director, on behalf of the board, to contract with professional guardians to provide guardianship services to eligible ***indigent*** wards or prospective wards and maintain minimum standards for contracting professional guardians.
- Collect uniform and consistent data regarding service delivery. The data would have to be made available quarterly to the legislature and the supreme court in a format that protects the confidentiality of individual identity. It would have to include all of the following:
    - The number of wards under a guardianship, the number of wards under a partial guardianship, and the number of wards under a full guardianship.
    - The number of protected individuals under a conservatorship.
    - The number of guardians and conservators licensed under Part 5A.
    - The number of wards each professional guardian was appointed to.
    - The number of protected individuals each professional conservator was appointed to.

- Consult with and assist other public or private agencies or organizations to implement the intent of Part 5A.
- Make recommendations to the legislature and the supreme court on matters relating to the board's responsibilities under Part 5A.
- Modify any minimum requirement under Part 5A with the approval of the board.
- Develop and issue any other rules that are necessary and appropriate to enable the board to fulfill its role and efficiently administer Part 5A.

Indigent would mean that an individual is unable, without substantial financial hardship to the individual or to the individual's dependents, to pay a competent, qualified professional guardian on the individual's own. Substantial financial hardship would be rebuttably presumed if the ward receives personal public assistance, including under the food assistance program, temporary assistance for needy families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline.

Licensure

A person could not serve as a professional guardian or conservator without a license issued by the executive director. An applicant would have to meet all of the following to be issued a license:

- Hold a certification from the National Center for Guardianship Certification.
- Submit a criminal background check to the Department of State Police.
- Not have been found liable in a civil action that involved fraud, misrepresentation, material omission, misappropriation, theft, exploitation, abuse, neglect, sexual assault, or conversion.

A professional guardian or conservator who is an individual would have to report to the executive director within 30 days after any of the following events:

- The professional guardian or conservator is convicted of a felony.
- DHHS has classified the professional guardian or conservator as a confirmed case on the central registry.[6]
- The professional guardian or conservator is convicted of a misdemeanor related to child abuse or neglect, vulnerable adult abuse or neglect, controlled substances, criminal sexual conduct, domestic violence, stalking, embezzlement, or crimes of theft or dishonesty.
- The professional guardian or conservator files for bankruptcy.
- A personal protection order is entered against the professional guardian or conservator.
- The probate court enters an order to surcharge the professional guardian's or conservator's bond.
- The probate court finds that the professional guardian or conservator breached their fiduciary duties.
- Any court enters a judgment against the professional guardian or conservator.

[6] See http://legislature.mi.gov/doc.aspx?mcl-722-622

Contracting with professional guardians for indigent wards

The executive director would have to contract with professional guardians to provide guardianship services for an indigent ward who is any of the following:

- At significant risk of harm from abuse, neglect, exploitation, abandonment, self-harm, or self-neglect.
- In imminent danger of loss of, or significant reduction in, public services that are necessary for the ward to live successfully in the most integrated and least restrictive environment that is appropriate in light of the ward's needs and values.
- Homeless or at risk of homelessness.

In general, a professional guardian that contracts with the executive director under these provisions could not serve as a professional guardian for more than 36 wards total (or, for a professional guardian that is an organization, more than 36 wards for each employee who holds a license under Part 5A), including wards for whom guardianship services are not provided for under such a contract. However, the executive director could allow a professional guardian to serve as guardian for more than 36 wards if the professional guardian requests that a guardianship is necessary in an emergency or unusual circumstance and does not serve as guardian for more than three consecutive months or more than four months in twelve.

The executive director would have to develop a fee schedule for contracting professional guardians as above. The fee schedule also would have to provide for all of the following:

- Case-weighting guidelines that provide for greater compensation for the first three months of a new guardianship.
- Higher compensation if the case is complex at the time of appointment.
- Adjustment during the guardianship if the complexity of the case changes.

Procedures

The executive director would have to establish procedures for doing all of the following:

- Reviewing complaints against professional guardians and conservators to determine whether they have failed to meet licensure standards.
- Reviewing complaints against guardians and conservators to determine whether they have breached their fiduciary duties or otherwise engaged in misconduct.
- Obtaining the information necessary to investigate a complaint by filing an appearance as an interested party in the relevant court proceeding.
- Responding to complaints, conducting investigations and hearings, and taking administrative action consistent with Part 54A.
- Making findings as to whether a professional guardian or conservator has failed to meet licensure standards.
- Making findings as to whether a guardian or conservator has breached their fiduciary duties or otherwise engaged in misconduct.
- Issuing appropriate disciplinary orders when there are findings of wrongdoing.
- Dismissing complaints without merit.
- Referring appropriate complaints to the AG or another law enforcement agency.

Upon determining that a nonpublic court file exists that is relevant to a pending complaint, the executive director could request the court to release the file to the executive director, and the court would have to do so upon that request.

The executive director also could request a law enforcement officer to provide all available information about a given complaint filed against a professional guardian or conservator after the officer has completed an investigation of that complaint. (An investigation would be considered completed after a prosecutor decides whether or not to issue charges.) A law enforcement officer could redact information if necessary to protect the safety of witnesses or preserve the integrity of an investigation.

If the executive director finds that a professional guardian or conservator fails to meet the conditions described above under "Licensure," after an opportunity for a hearing under the Administrative Procedures Act, the executive director would have to reduce the findings and decision to writing and issue and cause to be served on the professional guardian or conservator a copy of the findings and an order requiring the person to cease and desist from the violation.

The executive director also could order any of the following:

- Revocation of the person's license.
- Suspension of at least 30 days, with conditions relevant to the failure to meet the licensure conditions. A suspension exceeding 179 days would have to remain until further order of the executive director.
- Reprimand with conditions relevant to the failure to meet the licensure conditions.
- Probation.
- Restitution.

If the executive director determines or has reasonable cause to suspect that a ward has been or is being abused, neglected, or exploited as a result of a filed complaint or during the course of an investigation, the executive director shall immediately report the determination or suspicion to Adult Protective Services.

Educational resources

The executive director would have to develop and distribute educational resources, which could be written materials, web materials, videos, in-person trainings, or in another form, and which would have to include all of the following:

- Training materials for guardians and conservators that are not professional guardians and conservators, including the following:
    - Training on duties as a guardian.
    - Training on duties as a conservator.
    - Training on maximizing independence and autonomy.
    - Other training.
- Resources on alternatives to guardianship, including the following:
    - Supported decision making.
    - Power of attorney.
    - Designations of patient advocate.
    - Representative payees.
- Resources on supports and services, including at least the following:
- Home- and community-based services.
- Area agencies on aging.
- Centers for independent living.
- Community mental health.
- Other supports and services.

- Resources on caregiver support.
- Resources on common issues in guardianship and conservatorship, including the following:
    - Dementia.
    - Mental illness.
    - Traumatic brain injury.
    - Development disabilities.
    - Substance use disorders.
    - Other issues.
- Other resources.

Attorney general

The AG could do any of the following:

Subpoena documents from any probate court, guardian, conservator, or other fiduciary.

- Intervene on behalf of the public and participate as an interested party, at any stage of the proceeding, in any guardian, conservator, or protective proceeding.
- Investigate any complaint referred by the executive director and make recommendations to the executive director and law enforcement about the complaint.

Office of State Guardian Fund

The bill would create the Office of State Guardian Fund in the state treasury, allow the state treasurer to receive other assets from any source for deposit into it, and require the state treasurer to direct its investment and credit it with interest and earnings from those investments. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. DHHS would be the administrator of the fund for auditing purposes.

DHHS could expend money from the fund, upon appropriation, to reimburse the AG for expenses incurred related to investigations under and enforcement of Part 5A.

MCL 700.5106 and proposed MCL 700.5531 to 700.5538

Each bill would take effect October 1, 2026, but none of them could take effect unless all of them were enacted.

FISCAL IMPACT:

House Bills 4909 through 4912 would have an indeterminate fiscal impact on the state and on local court funding units. Costs to local court funding units would be incurred depending on how provisions of the bills affect court caseloads and related administrative costs. It is likely there would be an increase in court cases, though it is not possible to determine the number by which caseloads would increase.

House Bill 5047 would have an indeterminate fiscal impact on the state. The bill would create the Office of State Guardian Board as an autonomous entity within the Department of Health and Human Services. While board members would not receive compensation for their services, the bill would require members of the board to be reimbursed for expenses they incur while serving. The amount of reimbursement would depend on a variety of factors, including the scope and magnitude of board activity, amount of expenses members incur, and administrative

or staffing costs the department might accrue related to the board. The Department of Health and Human Services would incur administrative costs for responsibilities assigned to them under the bill. Also, the Department of Attorney General would incur additional costs if it chose to engage in intervention and investigative activities described in the bill. However, the bill also would create the Office of State Guardian Fund from which the Department of Attorney General would be reimbursed for costs it incurs.

POSITIONS:

Attorney General Dana Nessel testified in support of the bills. (9-27-23)

Representatives of the following entities testified in support of the bills:

- Department of the Attorney General (10-11-23)
- Elder Abuse Task Force (9-27-23)
- Michigan Long Term Care Ombudsman Program (10-4-23)
- Michigan Elder Justice Initiative (10-4-23)
- Disability Rights Michigan (9-27-23)

The following entities indicated support for the bills:

- Alzheimer's Association (9-27-23)
- Mid-Michigan Guardianship Services (10-11-23)

AARP Michigan indicated support for HBs 4909 to 4912. (9-27-23)

Michigan Bankers indicated support for HBs 4910 and 5047 with amendment. (10-4-23)

Right to Life of Michigan testified to a neutral position on HBs 4909 and 4910. (10-11-23)

The Michigan Guardianship Association testified in opposition to the bills. (10-11-23)

The Oakland County Bar Association indicated opposition to the bills. (10-11-23)

Guardianship Assistance of Michigan indicated opposition to HBs 4909 to 4912. (9-27-23)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.