

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

PART 3

GUARDIANS OF INCAPACITATED INDIVIDUALS

700.5301 Appointment of guardian or designation of standby guardian for incapacitated person by will or other writing.

Sec. 5301. (1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, and no standby guardian has been appointed under section 5301c, a parental appointment by will or other writing becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. If no standby guardian has been appointed under section 5301c, the appointment by will or other writing becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

(4) On the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument or a testamentary nominating instrument made by a testator who is not deceased, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person on an adjudication of incapacity in a proceeding under sections 5302 to 5317.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5301a Appointment of guardian in another state as temporary guardian.

Sec. 5301a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

History: Add. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

Popular name: EPIC

700.5301b Appointment of guardian; jurisdiction of court; conditions; connection to state; factors.

Sec. 5301b. (1) The court has jurisdiction over the appointment of a guardian under this part if any of the following apply:

- (a) The individual for whom a guardian is sought resides in this state.
- (b) The individual for whom a guardian is sought is present in this state and has a significant connection to this state.
- (2) In determining if the individual for whom a guardian is sought has a significant connection to this state under subsection (1)(b), the court shall consider all of the following factors:
 - (a) The wishes of the individual.
 - (b) The location of the individual's family and other interested persons.
 - (c) The length and time the individual was present in this state and the duration of any absence.
 - (d) The location of the individual's property.
 - (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services.
 - (f) Any other factor the court considers relevant.

History: Add. 2016, Act 498, Eff. Apr. 6, 2017.

Popular name: EPIC

700.5301c Designation of standby guardians.

Sec. 5301c. (1) At a hearing convened under this part, the court may designate 1 or more standby guardians. The court may designate as standby guardian a competent person that is suitable and willing to serve in the order of priority under section 5313.

(2) The nominated standby guardian must receive a copy of the petition nominating the person to serve, the court order establishing or modifying guardianship, and the order designating the standby guardian.

(3) A standby guardian shall file an acceptance of the person's designation under subsection (2) within 28 days after receiving notice of the order designating the standby guardian.

(4) If the standby guardian is unable or unwilling to serve, the standby guardian shall promptly notify the court and interested persons in writing.

(5) A standby guardian does not have authority to act unless the guardian is unavailable for any reason, including any of the following:

- (a) The guardian dies.
- (b) The guardian is permanently or temporarily unavailable.
- (c) The court removes or suspends the guardian.

(6) During an emergency affecting the legally incapacitated individual's welfare when the guardian is unavailable, the standby guardian may temporarily assume the powers and duties of the guardian. A person may rely on the standby guardian's representation that the standby guardian has the authority to act if the person is given the order issued under subsection (2) and acceptance filed under subsection (3). A person that acts in reliance on the representations and documentation described in this subsection without knowledge that the representations are incorrect is not liable to any person for so acting and may assume without further inquiry the existence of the standby guardian's authority.

(7) A standby guardian's appointment as guardian is effective, without further proceedings or reiteration of acceptance, immediately on the guardian's unavailability as described in subsection (5). The standby guardian has the same powers and duties as the prior guardian.

(8) On assuming office, the standby guardian shall promptly notify the court, any known agent appointed under a power of attorney executed under section 5103, and interested persons. On receiving notice under this subsection, the court may enter an order appointing a standby guardian as guardian without the need for additional proceedings. The guardian appointed under this subsection shall serve the court's order on the interested persons.

History: Add. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5302 Guardianship proceedings; venue.

Sec. 5302. The venue for a guardianship proceeding for an incapacitated individual is in the place where the incapacitated individual resides or is present. If the incapacitated individual is admitted to an institution by order of a court of competent jurisdiction, venue is also in the county in which that court is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.

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

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

(3) On the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of the individual's own choice, the court shall appoint a guardian ad litem to represent the individual in the proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 468, Eff. June 1, 2001;—Am. 2013, Act 157, Eff. Feb. 3, 2014;—Am. 2017, Act 155, Eff. Feb. 6, 2018;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5304 Evaluation and report; hearing.

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

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at the individual's own expense or, if indigent, at the expense of the state. Compensation for an independent evaluation at public expense must be in an amount that, based on time and expense, the court approves as reasonable.

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

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

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

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

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

(e) The signatures of all individuals who performed the evaluations on which the report is based.

(4) The individual alleged to be incapacitated is entitled to be present at the hearing to appoint a guardian or designate a standby guardian in person, and to see or hear all evidence bearing on the individual's condition. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence, including, if necessary, moving the hearing site.

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

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5305 Guardian ad litem; duties; compensation; legal counsel.

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

(a) Personally visiting the individual.

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

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

(i) The right to contest the petition.

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

(A) A do-not-resuscitate order.

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

(iii) The right to object to a particular person being appointed guardian or designated as standby guardian.

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

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

(vi) The right to have legal counsel appointed for the individual if the individual is unable to afford legal counsel.

(d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on the individual's behalf.

(e) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a physician orders for scope of treatment form on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a physician orders for scope of treatment form executed on the individual's behalf.

(f) Informing the individual of the name of each person known to be seeking appointment as guardian or designation as standby guardian.

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

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

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

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

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

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

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

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

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

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

(vi) Whether the individual objects to having a do-not-resuscitate order executed on the individual's behalf.

(vii) Whether the individual objects to having a physician orders for scope of treatment form executed on the individual's behalf.

(viii) Whether the individual objects to a particular person being appointed guardian or designated a standby guardian.

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

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

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

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the

appointment of a guardian ad litem terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001;—Am. 2012, Act 210, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014;—Am. 2017, Act 155, Eff. Feb. 6, 2018;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation; supervised access.

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

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

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

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

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

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2019, Act 170, Eff. Mar. 19, 2020.

Popular name: EPIC

700.5306a Rights of individual for whom guardian is sought or appointed; form.

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

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

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

(c) To petition on the individual's own behalf for the appointment of a guardian or designation of a standby guardian, as provided in section 5303.

(d) To have legal counsel of the individual's own choice represent him or her on the petition to appoint a guardian or designate a standby guardian, as provided in sections 5303, 5304, and 5305.

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

(f) To an independent evaluation of the individual's capacity by a physician or mental health professional,

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

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

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

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

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

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

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

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

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

(y) To personal notice of a petition for appointment or removal of a guardian or the designation or change in designation of a standby guardian, as provided in section 5311.

(aa) To choose the person who will serve as guardian and the person designated as standby guardian, if the chosen person is suitable and willing to serve, as provided in sections 5313 and 5301c, as applicable.

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

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

(2) A guardian ad litem shall inform the ward in writing of the ward's rights enumerated in this section. The state court administrative office and the health and aging services administration created under Executive

Reorganization Order No. 2021-2, MCL 400.562, shall promulgate a form to be used to give the written notice under this section, which must include space for the court to include information on how to contact the court or other relevant personnel with respect to the rights enumerated in this section.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5307 Jurisdiction over guardian.

Sec. 5307. By accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address as listed in the court records and to his or her address as then known to the petitioner.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5308 Termination of guardian's authority and responsibility.

Sec. 5308. The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5310. Testamentary appointment of a guardian under an unprobated will or a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5309 Review of guardianship.

Sec. 5309. The court shall review a guardianship not later than 1 year after the guardian's appointment and not later than every 3 years after each review.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5310 Resignation or removal of guardian.

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

(2) The ward, a person appointed guardian in a will or other writing by a parent or spouse under section 5301, or any other person interested in the ward's welfare may petition for an order removing the guardian, changing the designated standby guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. If a request under this subsection is made by the person appointed by will or other writing under section 5301, the person shall also present proof of the person's appointment by will or other writing. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

(3) Except as otherwise provided in the order finding incapacity, on receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or 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, must not be filed without special leave of the court.

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5311 Appointment or removal of guardian; designation or change of standby guardian; notice of hearing.

Sec. 5311. (1) In a proceeding for the appointment or removal of an incapacitated individual's guardian,

other than the appointment of a temporary guardian or temporary suspension of a guardian, or to designate a standby guardian or change the designated standby guardian, notice of hearing must be given to each of the following:

(a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.

(b) A person who is serving as the guardian or conservator or who has the individual's care and custody.

(c) If known, a person named as attorney in fact under a durable power of attorney.

(d) The standby guardian or the person nominated to be designated as standby guardian.

(e) If no other person is notified under subdivision (a), (b), (c), or (d), at least 1 of the individual's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated individual. Notice to all other persons must be given as prescribed by court rule. Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor.

(3) In a proceeding for a guardian's appointment or designation of a standby guardian under sections 5303 and 5304, a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

(a) The nature, purpose, and legal effects of the appointment of a guardian or designation of a standby guardian.

(b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5312 Court exercise of power of guardian; temporary guardian.

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

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

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5313 Guardian; qualifications.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

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

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

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

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

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

(e) A person appointed by a parent or spouse of a legally incapacitated individual by will or other writing

under section 5301.

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

(a) The legally incapacitated individual's spouse. This subdivision is considered to include a person nominated by will or other writing signed by a deceased spouse.

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

(c) A parent of the legally incapacitated individual. This subdivision is considered to include a person nominated by will or other writing signed by a deceased parent.

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

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

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2000, Act 463, Eff. June 1, 2001;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5314 Powers and duties of guardian.

Sec. 5314. If meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons because of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The duty 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, but not less often than annually. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision must contain all of the following:

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

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

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

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

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

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

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

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

(ix) Services received by the ward.

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

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

(xii) If a standby guardian has been designated, a statement signed by the standby guardian that the standby guardian continues to be willing to serve in the event of the unavailability, death, incapacity, or resignation of the guardian.

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

expended.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 313, Eff. Jan. 1, 2001;—Am. 2000, Act 467, Eff. June 1, 2001;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014;—Am. 2017, Act 155, Eff. Feb. 6, 2018;—Am. 2018, Act 555, Eff. Mar. 28, 2019;—Am. 2018, Act 594, Eff. Mar. 28, 2019;—Am. 2024, Act 1, Imd. Eff. Feb. 21, 2024.

Popular name: EPIC

700.5315 Payments for care of ward; claims at death.

Sec. 5315. (1) To the extent granted by the court under section 5306, the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to a third person or institution for the ward's care and maintenance.

(2) If a ward dies while under guardianship and a conservator has not been appointed for the ward's estate and if the guardian has possession of money of the deceased ward, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or any other claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of the claim and may provide in the order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the ward's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5316 Partial management of property by ward.

Sec. 5316. To encourage self-reliance and independence in a legally incapacitated individual, the court may authorize the individual to function without the consent or supervision of the individual's guardian or conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5317 Guardianship proceedings; concurrent jurisdiction.

Sec. 5317. (1) The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed.

(2) If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward. After this determination is made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report must be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5318 Third person dealing with guardian.

Sec. 5318. If a third person is dealing with a guardian or is assisting a guardian in the conduct of a transaction, the third person may assume the existence of trust powers and their proper exercise by the guardian without inquiry. The third person is not bound to inquire whether the guardian may act or is properly exercising the power. Unless the third person has actual knowledge that the guardian is exceeding the guardian's powers or improperly exercising them, a third person is fully protected in dealing with the guardian as if the guardian possessed and properly exercised the powers the guardian purports to exercise. A third person is not bound to assume the proper application of estate assets paid or delivered to the guardian. This section does not apply to a third person dealing with a limited guardian.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5319 Appointment of conservator or protective order; report of amount of additional cash or property.

Sec. 5319. (1) If the court determines that financial protection is required for the ward, the court may order the guardian to petition for the appointment of a conservator or for another protective order under part 4 of this article in relation to the ward's estate.

(2) If a conservator has not been appointed for a ward's estate and the guardian determines that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the guardian ad litem and reported to the court, the guardian shall report the amount of the additional cash or property to the court.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC