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

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.

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.

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