

Legislative Analysis



GUARDIANS AND CONSERVATORS

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<http://www.house.mi.gov/hfa>

House Bills 4847 and 4848 as introduced
Sponsor: Rep. Graham Filler

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4849 as introduced
Sponsor: Rep. Kyra Harris Bolden

House Bill 4850 as introduced
Sponsor: Rep. Rodney Wakeman

Committee: Judiciary
Complete to 6-21-21

SUMMARY:

The bills would amend the Estates and Protected Individuals Code (EPIC) to revise provisions in Article V (Protection of an Individual Under Disability and His or Her Property) regarding guardianships and conservatorships in Michigan. The bills would do all of the following:

House Bill 4847 would amend Part 1 (General Provisions), Part 3 (Guardians of Incapacitated Individuals), and Part 4 (Protection of Property of an Individual Under Disability or of a Minor) of Article V, concerning professional guardians and conservators, legally incapacitated individuals or protected individuals, and priority of appointment.

House Bill 4848 would amend Parts 3 and 4 to establish duties of a guardian ad litem (GAL) or special guardian ad litem appointed in a guardianship or conservatorship proceeding, what must be included in a written report to the court by a GAL or special GAL, what must be included in a conservator's account, and responsibilities of a guardian.

House Bill 4849 would amend Parts 3 and 4 to do the following:

- Allow a court, under certain circumstances, to set a trial date in a guardianship proceeding at the initial hearing.
- Revise the information to be provided in a report by a physician or mental health professional who conducted a physical or mental health evaluation of an allegedly incapacitated individual.
- Prescribe the conditions under which a court could dismiss or stay a guardianship proceeding.
- Remove and replace provisions regarding appointment of an emergency guardian.
- Declare that a conservator has the duty to take steps to ensure an adult subject of a conservatorship attends any hearing concerning the conservatorship if the individual wishes to attend.

House Bill 4850 would amend Parts 3 and 4 concerning the appointment of a temporary and successive guardian and removal of a conservator.

The bills are tie-barred to each other, which means that none of them could take effect unless all of them were enacted.

HOUSE BILL 4847

Professional guardians and conservators

Currently under the act, a court cannot appoint a professional guardian or conservator unless the professional guardian or conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond are subject to sections 5410¹ and 5411² of the act.

The bill would add that a professional guardian or conservator must also either be a financial institution or meet any of the following conditions before the person may be appointed as a professional guardian or conservator:

- The person has obtained certification as set forth by administrative order of the Supreme Court.
- The person will serve as professional guardian or conservator, or both, for no more than two wards or protected individuals.
- For an individual, he or she is licensed and in good standing with the State Bar of Michigan and will serve as guardian or conservator, or both, for no more than three wards or protected individuals.

Additionally, the act now 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 and instead require that the professional guardian visit the ward at least once a month after each previous visit. A guardian that has obtained certification as set forth by administrative order of the Supreme Court could not delegate required visitation to another person unless the other person has obtained the same certification.

The bill would add that a professional guardian or conservator may use support staff and other professionals, under the guardian's or conservator's active and direct supervision, to perform office functions and client services. 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 to make recommendations to the guardian or conservator based on their knowledge and expertise. However, the guardian or conservator could *not* delegate decision-making authority to support staff, professionals, or other persons regarding execution of contracts or informed consent decisions, including medical, mental health, placement, or care planning decisions.

Legally incapacitated individuals or protected individuals

The bill would add a new section to prohibit a court from appointing an individual as a guardian of a legally incapacitated individual or conservator of a protected individual who is not a minor, or both, under Article V unless the individual meets one of the following conditions:

- The individual has obtained certification as set forth by administrative order of the Supreme Court.

¹ MCL 700.5410 pertains to bonds: <http://legislature.mi.gov/doc.aspx?mcl-700-5410>

² MCL 700.5411 pertains to terms and requirements of bonds: <http://legislature.mi.gov/doc.aspx?mcl-700-5411>

- The individual will serve as guardian or conservator, or both, for no more than two legally incapacitated individuals or protected individuals and receives no compensation for providing those services.
- The individual is licensed and in good standing with the State Bar of Michigan and will serve as guardian or conservator, or both, for no more than three legally incapacitated individuals or protected individuals.
- The individual is related to the legally incapacitated individual or protected individual by blood, adoption, or marriage, including step- or half-relations.

The above appointment would not apply to a professional guardian or conservator.

Priority of appointment 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, as further described below.

First, currently under the act, 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.

Next, the court is currently required to appoint a person as a guardian to an individual in a specific order of priority. However, 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 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 priority as unsuitable.)
- The person's ability to meet the requirements of section 5410 (pertaining to bonds).

Additionally, 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 coguardians and to act jointly, unless the order of appointment and letters of guardianship state otherwise. However, a coguardian could delegate authority to the other coguardian.

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 would have to 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 parties 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.)
- 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 coconservators. Unless the order of appointment and letters of conservatorship stated otherwise, coconservators would have to act jointly.

MCL 700.5104 et seq.

HOUSE BILL 4848

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 himself or herself. As part of the process, the court may appoint a guardian ad litem (GAL) to collect information to aid the court in deciding whether or not to appoint a guardian or conservator and, if so, who should fill those positions.

House Bill 4848 would revise the duties of a GAL appointed by a court in a guardianship proceeding for an individual alleged to be incapacitated (who no longer has the ability to provide self-care) or a proceeding to appoint a conservator for a protected individual (who can no longer manage his or her property or business affairs). If the incapacitated or protected individual does not have an attorney, a GAL is appointed by the court to represent him or her. Among many things, a GAL must personally visit the individual and explain the petition for guardianship or for a conservator, the incapacitated or protected individual's rights, and what may happen at the hearing on the petition for a guardian or conservator to be appointed.

The bill would remove the current list of duties for a GAL for an incapacitated individual and replace it with by a more comprehensive list for a GAL. The bill also would propose a list of duties for a GAL for a person alleged to need protection or a protected individual in a conservatorship proceeding that would be similar to the list of duties proposed for a GAL in a guardianship proceeding.

GAL duties

GAL duties regarding gathering of information would include all of the following:

- Impartially gather information as provided by law.
- Seek information from the incapacitated individual, communicating in a manner the individual can best understand and noting in the required report if there is a barrier to communication or if communication is not possible.
- Interview the individual in person, at his or her location, and out of the presence of any interested persons.
- Advise the individual that the GAL does not represent him or her as an attorney and that no attorney-client relationship has been created.
- Identify whether the individual wishes to be present at the hearing and identify the reasons if he or she does not.
- Identify any barrier to attend the hearing at the court location or to fully participate in the hearing, including the need for assistive technology, transportation, or other support. The GAL would also have to identify whether the individual has identified a plan for how he or she 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 GAL 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.

Other general GAL duties would include the following:

- Explain the nature, purpose, and legal effects of a guardian's or conservator's appointment.
- Explain who filed the petition and who, if anyone, has been nominated as guardian or conservator.
- 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 or conservator'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 his or her choice or, if he or she cannot secure legal counsel, the right to have legal counsel appointed by the court.
 - Request an independent medical evaluation.
- Explain that a guardian or conservator may take certain actions on his or her behalf and inform the individual that a conservator could have any of the powers described in section 5407³ and a guardian could have any of the following powers, and—if meaningful communication is possible—discern whether the individual objects to the guardian or conservator 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.

³ <http://legislature.mi.gov/doc.aspx?mcl-700-5407>

- Consenting to placement decisions, including a move to a nursing facility or adult foster care home.
- Choosing whether he or she can marry or divorce.
- Handling financial and property matters, including the sale or disposal of personal property and maintenance of real property. The GAL would have to inquire as to items of special or sentimental value the individual would not want sold or disposed of, such as family photos, collections, personal correspondence, or pets, and as to the location of those items.
- Identify whether the individual objects to the particular person proposed as guardian or conservator.
- Identify whom the individual would, and would not, want to serve if a guardian or conservator were to be appointed.

Written reports

A GAL appointed for an individual in need of protection, 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 the State Court Administrative Office (SCAO). If the individual subject to an initial petition or modification petition under Article V contests the petition, the report would have to include only the following:

- That the individual contests the petition.
- Whether he or she retained legal counsel or wishes for counsel to be appointed.
- Whether he or she has any barriers to attending court at the place usually held.

If the petition is not contested, the GAL report would have to contain only the following:

- The date, time, length of time, and location where the GAL met with the individual.
- Whether the GAL 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 his or her fully participating, the GAL 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 he or she 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 GAL 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 conservatorship or a limited guardianship or conservatorship is appropriate.

- Whom the individual would want to serve if a guardian or conservator were appointed, in order of preference, and whom he or she would not want.
- An estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

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 GAL were appointed for any purpose other than an initial petition for appointment of a guardian or conservator. A special limited GAL (see below) would not have to provide a report unless ordered to do so by the court.

The GAL would have to file the report with the court and serve it on all interested persons at least seven 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 GAL could not be ordered by the court unless the GAL states in the written report that he or she complied with this provision.

A court could not consider evidence included in a report, or the testimony of a GAL, that is not otherwise admissible under the Michigan Rules of Evidence. The report could not be admitted into evidence if the GAL failed to appear for the hearing.

If the GAL'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 GAL as the individual's legal counsel.

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 GAL 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 GAL would terminate when the individual has legal counsel appointed or retained. The GAL'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 GAL to provide information on a narrowly defined issue likely to be inadequately addressed. A special limited GAL would be exempt from the list of duties and written report requirement as described above. However, the court could order the special limited GAL to provide a written report with the information the court considers necessary to adequately address the issue leading to the special limited GAL appointment. A special limited GAL 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 his or her choice at any stage, regardless of findings regarding his or her 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.

Responsibilities of a guardian

Under the bill, a guardian would hold the following responsibilities:

- A professional guardian would be required to visit a ward as required of guardians under Part 3.
- A guardian would have to notify the court within 14 days of a change in the ward's or guardian's place of residence.
- If a conservator for the ward's estate is not appointed, the guardian would have to, in addition to currently required requirements, fulfill the duties added by the bill pertaining to a conservator.

Conservator inventory

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

The bill would also require the conservator to identify on the inventory any 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 he or she identifies as having special personal or sentimental value. The conservator would have to state on the inventory if he or she could not locate an item identified as having special personal or sentimental value. 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 file account statements reflecting the value of depository and investment accounts dated within 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 his or her duties.

If the protected individual objects to an account, the court would have to appoint a GAL 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 GAL 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 4849

House Bill 4849 would do all of the following:

- Allow a court, under certain circumstances, to set a trial date in a guardianship proceeding at the initial hearing.
- Revise the information to be provided in a report by a physician or mental health professional who conducted a physical or mental health evaluation of an allegedly incapacitated individual.
- Prescribe the conditions under which a court could dismiss or stay a guardianship proceeding.
- Remove and replace provisions regarding appointment of an emergency guardian.
- Declare that a conservator has the duty to take steps to ensure an adult subject of a conservatorship attends any hearing concerning the conservatorship if the individual wishes to attend.

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 GAL

is appointed to represent the subject of the petition in the proceeding unless the subject has his or her own legal counsel.

The bill would indicate that this is the *initial hearing*, with the GAL 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 be required to set a trial date at the initial hearing on the petition if any of the following apply:

- The GAL reports that the allegedly incapacitated individual objects to any portion of the relief requested by the petitioner.
- The allegedly incapacitated individual or his or her legal counsel requests 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 he or she wishes 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 be examined by a physician or mental health professional who was appointed by the court. The individual may also secure an independent evaluation. 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 the individual.
- Add that whether the individual has the ability to assign or delegate responsibilities to ensure his or her well-being.
- Add that whether the individual has executed a document directing care or naming an agent to act on his or her 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.

Currently, a person for whom a guardian is sought or has been appointed has the right to have the guardian notify the court within 14 days of a change in his or her residence. The bill would delete this provision.

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 GAL. 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 him or her *only* if the court determines from an affidavit or ex parte testimony 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 GAL for the allegedly incapacitated individual.
- Within 48 hours after the appointment of an emergency guardian, give notice of the appointment to the allegedly incapacitated individual and any other person, as determined by the court.
- Within 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 only exercise 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 his or her 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 4850

Appointing a temporary or successive guardian

The bill would add a new section to allow the court to appoint a temporary guardian. Currently under the act, the court may appoint a guardian from another state as temporary guardian in Michigan when certain conditions are met.

The bill would provide that, if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the ward's welfare requires immediate action, the court could appoint, with or without notice, a temporary guardian for the ward for up to six months.

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

EPIC currently allows a person interested in the welfare of an individual for whom a conservator is appointed to file a petition in the appointing court for an order to perform various acts, including removing the conservator and appointing a temporary or successive *conservator*. The bill would add that a petition for an order appointing a successor *guardian* would be subject to the priority of appointment under section 5409, which governs the appointment of a conservator.

Removing a conservator

EPIC currently provides for the removal of a conservator for good cause. The bill would allow the protected individual, or a person interested in the protected individual's 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, and a person who knowingly interfered with its transmission 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.

MCL 700.5414 and 700.5415 and proposed MCL 700.5312a

FISCAL IMPACT:

A fiscal analysis is in progress.

Legislative Analysts: Emily S. Smith
Susan Stutzky
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.