

HOUSE BILL No. 5441

February 28, 2012, Introduced by Rep. Hughes and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5305 (MCL 700.5305), as amended by 2000 PA 464.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (a) Personally visiting the individual.

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

7 (c) Explaining to the individual the hearing procedure and the
8 individual's rights in the hearing procedure, including, but not
9 limited to, the right to contest the petition, to request limits on
10 the guardian's powers, to object to a particular person being

1 appointed guardian, to be present at the hearing, to be represented
2 by legal counsel, and to have legal counsel appointed for the
3 individual if he or she is unable to afford legal counsel.

4 (d) Informing the individual of the name of each person known
5 to be seeking appointment as guardian.

6 **(E) ASKING THE INDIVIDUAL AND THE PETITIONER ABOUT THE AMOUNT**
7 **OF CASH AND PROPERTY READILY CONVERTIBLE INTO CASH THAT IS IN THE**
8 **INDIVIDUAL'S ESTATE.**

9 **(F)** ~~(e)~~—Making determinations, and informing the court of
10 those determinations, on all of the following:

11 (i) Whether there are 1 or more appropriate alternatives to the
12 appointment of a full guardian **OR WHETHER 1 OR MORE ACTIONS SHOULD**
13 **BE TAKEN IN ADDITION TO THE APPOINTMENT OF A GUARDIAN.** Before
14 informing the court of his or her determination under this
15 subparagraph, the guardian ad litem shall consider the
16 appropriateness of at least each of the following **AS** alternatives
17 **OR ADDITIONAL ACTIONS:**

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

21 (B) Appointment of a conservator or another protective order
22 under part 4 of this article. **IN THE REPORT INFORMING THE COURT OF**
23 **THE DETERMINATIONS UNDER THIS SUBDIVISION, THE GUARDIAN AD LITEM**
24 **SHALL INCLUDE AN ESTIMATE OF THE AMOUNT OF CASH AND PROPERTY**
25 **READILY CONVERTIBLE INTO CASH THAT IS IN THE INDIVIDUAL'S ESTATE.**

26 (C) Execution of a patient advocate designation, do-not-
27 resuscitate declaration, or durable power of attorney with or

1 without limitations on purpose, authority, or duration.

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

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

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

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

10 (vi) Whether the individual objects to a particular person
11 being appointed guardian.

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

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

23 (4) If the individual alleged to be incapacitated requests
24 legal counsel or the guardian ad litem determines it is in the
25 individual's best interest to have legal counsel, and if legal
26 counsel has not been secured, the court shall appoint legal
27 counsel. If the individual alleged to be incapacitated is indigent,

House Bill No. 5441 as amended May 9, 2012

1 the state shall bear the expense of legal counsel.

2 (5) If the individual alleged to be incapacitated has legal
3 counsel appointed under subsection (3) or (4), the appointment of a
4 guardian ad litem terminates.

5 Enacting section 1. This amendatory act takes effect [October] 1,
6 2012.