

# SENATE BILL No. 1102

October 2, 2014, Introduced by Senator JONES and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending section 5313 (MCL 700.5313), as amended by 2012 PA 545.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

10       (2) In appointing a guardian under this section, the court

1 shall appoint a person, if suitable and willing to serve, in the  
2 following order of priority:

3 (a) ~~A~~**SUBJECT TO THIS SUBDIVISION, A** person previously  
4 appointed, qualified, and serving in good standing as guardian for  
5 the legally incapacitated individual in another state. **THE PERSON**  
6 **IS NOT SUITABLE TO SERVE AS GUARDIAN IF ANY OF THE FOLLOWING APPLY:**

7 (i) **THE COURT FINDS BY A PREPONDERANCE OF EVIDENCE THAT THE**  
8 **PERSON COMMITTED ABUSE, NEGLECT, OR EXPLOITATION WITH RESPECT TO**  
9 **THE LEGALLY INCAPACITATED INDIVIDUAL. AS USED IN THIS SUBPARAGRAPH,**  
10 **"ABUSE", "EXPLOITATION", AND "NEGLECT" MEAN THOSE TERMS AS DEFINED**  
11 **IN SECTION 11 OF THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.11.**

12 (ii) **THE DEPARTMENT OF HUMAN SERVICES DETERMINES THAT THE**  
13 **PERSON ABUSED, NEGLECTED, OR EXPLOITED THE LEGALLY INCAPACITATED**  
14 **INDIVIDUAL UNDER SECTION 11B OF THE SOCIAL WELFARE ACT, 1939 PA**  
15 **280, MCL 400.11B.**

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

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

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

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

1 (a) The legally incapacitated individual's spouse ~~—This~~  
2 ~~subdivision shall be considered to include—~~OR a person nominated by  
3 will or other writing signed by a deceased spouse.

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

5 (c) A parent of the legally incapacitated individual ~~—This~~  
6 ~~subdivision shall be considered to include—~~OR a person nominated by  
7 will or other writing signed by a deceased parent.

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

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

14 (4) If none of the persons as designated or listed in  
15 subsection (2) or (3) are suitable or willing to serve, the court  
16 may appoint any competent person who is suitable and willing to  
17 serve, including a professional guardian as provided in section  
18 5106.