

1 this act, or as a plenary guardian or partial guardian as those
2 terms are defined in section 600 of the mental health code, 1974 PA
3 258, MCL 330.1600.

4 (2) The court shall only appoint a professional guardian or
5 professional conservator as authorized under subsection (1) if the
6 court finds on the record all of the following:

7 (a) The appointment of the professional guardian or
8 professional conservator is in the ward's, developmentally disabled
9 individual's, incapacitated individual's, or protected individual's
10 best interests.

11 (b) There is no other person that is competent, suitable, and
12 willing to serve in that fiduciary capacity in accordance with
13 section 5212, 5313, or 5409.

14 (3) The court shall not appoint a professional guardian or
15 professional conservator as authorized under subsection (1) unless
16 ~~the~~ **both of the following conditions are met:**

17 (a) **The professional guardian or professional conservator**
18 **files a bond in an amount and with the conditions as determined by**
19 **the court. For a professional conservator, the sureties and**
20 **liabilities of the bond are subject to sections 5410 and 5411.**

21 (b) **The professional guardian or professional conservator**
22 **holds a license issued under part 5A of this article.**

23 (4) A professional guardian or professional conservator
24 appointed under this section shall not receive as a result of that
25 appointment a benefit beyond compensation specifically authorized
26 for that type of fiduciary by this act or the mental health code,
27 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
28 prevent a person from providing compensation or other benefits,
29 from a source other than the estate of the ward, developmentally

1 disabled individual, incapacitated individual, or protected
2 individual, to a professional guardian or professional conservator
3 appointed or approved under this section. If a professional
4 guardian or professional conservator appointed or approved under
5 this section receives or is to receive compensation or other
6 benefits as a result of that appointment from a person other than
7 this state, a political subdivision of this state, or a trust
8 created under section 5407(2), the professional guardian or
9 professional conservator shall file with the appointing or
10 approving court a written statement of the compensation or other
11 benefit received or to be received, including the source of the
12 compensation or other benefit, in a form and in a manner prescribed
13 by the Michigan court rules. The professional guardian or
14 professional conservator shall serve a copy of the form described
15 in this subsection to the ward, developmentally disabled
16 individual, incapacitated individual, or protected individual and
17 to interested persons.

18 (5) A professional guardian appointed under this section shall
19 establish and maintain a schedule of visitation so that an
20 individual associated with the professional guardian who is
21 responsible for the ward's care visits the ward within 3 months
22 after the professional guardian's appointment and not less than
23 once within 3 months after each previous visit.

24 (6) A professional guardian appointed under this section shall
25 ensure that there are a sufficient number of employees assigned to
26 the care of wards for the purpose of performing the necessary
27 duties associated with ensuring that proper and appropriate care is
28 provided.

29 (7) For the purposes of the statutory authorization required

1 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL
2 487.11105, to act as a fiduciary in this state, if the court
3 appoints a for-profit or nonprofit, nonbanking corporation
4 organized under the laws of this state to serve in a fiduciary
5 capacity that is listed in subsection (1), the nonbanking
6 corporation is authorized to act in that fiduciary capacity. The
7 authorization under this subsection confers the fiduciary capacity
8 only to the extent necessary in the particular matter of each
9 appointment and is not a general grant of fiduciary authority. A
10 nonbanking corporation is not authorized to act in any other
11 fiduciary capacity.

12 **PART 5A**

13 **PROFESSIONAL GUARDIANS AND PROFESSIONAL CONSERVATORS**

14 **Sec. 5531. As used in this part:**

15 (a) "Adult protective services" means the office, division, or
16 unit of the department that is charged with investigation of abuse,
17 neglect, or exploitation of vulnerable individuals under the social
18 welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

19 (b) "Attorney general" means the department of attorney
20 general.

21 (c) "Board" means the professional guardian and professional
22 conservator board created in section 5532.

23 (d) "Department" means the department of health and human
24 services.

25 (e) "Executive director" means the executive director of the
26 board appointed by the governor under section 5532.

27 (f) "Indigent" means an individual who is unable, without
28 substantial financial hardship to the individual or to the
29 individual's dependents, to pay a competent, qualified professional

1 guardian on the individual's own. Substantial financial hardship is
2 rebuttably presumed if the ward receives personal public
3 assistance, including under the food assistance program, temporary
4 assistance for needy families, Medicaid, or disability insurance,
5 resides in public housing, or earns an income less than 140% of the
6 federal poverty guideline.

7 Sec. 5532. (1) The professional guardian and professional
8 conservator board is created within the department.

9 (2) The board consists of the following members, appointed by
10 the governor:

11 (a) One member from a list of 3 or more individuals
12 recommended by the attorney general.

13 (b) One member from a list of 3 or more individuals
14 recommended by the senate majority leader.

15 (c) One member from a list of 3 or more individuals
16 recommended by the speaker of the house of representatives.

17 (d) One member from a list of 3 or more individuals
18 recommended by the chief justice of the supreme court.

19 (e) One member from a list of 3 or more individuals
20 recommended by the agency that implements and administers the
21 program for the protection and advocacy of the rights of persons
22 with developmental disabilities under section 931 of the mental
23 health code, 1974 PA 258, MCL 330.1931.

24 (f) One member who is a probate judge.

25 (g) One member who is a probate court register.

26 (h) One member from a list of 3 or more individuals
27 recommended by the department's behavioral physical health and
28 aging administration representing the interests of vulnerable
29 adults as that term is defined in section 145m of the Michigan

1 penal code, 1931 PA 328, MCL 750.145m.

2 (i) One member from adult protective services.

3 (j) One member who is a professional guardian.

4 (k) One member who is a professional conservator.

5 (l) One member who is a licensed master's social worker as that
6 term is defined in section 18501 of the public health code, 1978 PA
7 368, MCL 333.18501.

8 (m) One member who is recommended by the state long-term care
9 ombudsman established under section 6 of the older Michiganians
10 act, 1981 PA 180, MCL 400.586.

11 (n) One member who is recommended by a community mental health
12 authority as that term is defined in section 100a of the mental
13 health code, 1974 PA 258, MCL 330.1100a, to represent the interests
14 of community mental health services programs as that term is
15 defined in section 100a of the mental health code, 1974 PA 258, MCL
16 330.1100a.

17 (3) The governor shall appoint the executive director of the
18 board to a 4-year term. The executive director is a full, voting
19 member of the board.

20 (4) The governor shall appoint the first members to the board
21 not later than 180 days after the effective date of the amendatory
22 act that added this part.

23 (5) Members of the board shall serve for terms of 4 years or
24 until a successor is appointed, whichever is later, except that of
25 the members first appointed, the members provided for in subsection
26 (2)(a) to (e) shall serve for 2 years, the members provided for in
27 subsection (2)(f) to (j) shall serve for 3 years, and the members
28 provided for in subsection (2)(k) to (n) shall serve for 4 years.

29 (6) If a vacancy occurs on the board, the governor shall make

1 an appointment for the unexpired term in the same manner as the
2 original appointment.

3 (7) The governor may remove a member of the board for
4 incompetence, dereliction of duty, malfeasance, misfeasance, or
5 nonfeasance in office, or any other good cause.

6 (8) The executive director shall call the first meeting of the
7 board. At the first meeting, the board shall elect from among its
8 members a chairperson and other officers as it considers necessary
9 or appropriate. After the first meeting, the board shall meet at
10 least quarterly.

11 (9) A majority of the members of the board constitute a quorum
12 for the transaction of business at a meeting of the board. A
13 majority of the members present and serving are required for
14 official action of the board.

15 (10) The business that the board may perform must be conducted
16 at a public meeting of the board held in compliance with the open
17 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

18 (11) A writing prepared, owned, used, in the possession of, or
19 retained by the board in the performance of an official function is
20 subject to the freedom of information act, 1976 PA 442, MCL 15.231
21 to 15.246.

22 (12) Members of the board shall serve without compensation.
23 However, members of the board may be reimbursed for their actual
24 and necessary expenses incurred in the performance of their
25 official duties as members of the board.

26 Sec. 5533. (1) The executive director shall do all of the
27 following:

28 (a) Set minimum standards for licensure of professional
29 guardians and professional conservators.

1 (b) Ensure that professional guardians and professional
2 conservators maintain compliance with minimum standards of
3 practice.

4 (c) Adopt a process for receipt of complaints against
5 guardians and conservators. The board may initiate complaints.

6 (d) Act as an interested party, upon appearance, in any
7 guardianship or conservatorship proceeding and be entitled to any
8 documents or information requested in writing.

9 (e) Adopt a process to refer appropriate complaints regarding
10 guardians and conservators to the attorney general or another
11 investigatory agency, including, but not limited to, adult
12 protective services or a law enforcement agency, for investigation.

13 (f) Adopt a process to refer wards or interested persons to an
14 agency that provides legal representation or advocacy for wards.

15 (g) Establish rules concerning the discipline of guardians and
16 conservators who fail to meet licensure standards, breach their
17 fiduciary duties, or otherwise engage in misconduct.

18 (h) Publish educational materials that assist guardians and
19 conservators to better meet their fiduciary responsibilities.

20 (i) Contract with professional guardians to provide
21 guardianship services to eligible indigent wards or prospective
22 wards and maintain minimum standards for contracting professional
23 guardians.

24 (j) Collect uniform and consistent data regarding service
25 delivery that must be made available, on a quarterly basis, to the
26 legislature and the supreme court in a format that is not
27 identifiable by individual ward or protected individual to protect
28 confidentiality. The data under this subdivision must include all
29 of the following:

1 (i) The number of wards under a guardianship.

2 (ii) The number of protected individuals under a
3 conservatorship.

4 (iii) The number of wards under a partial guardianship.

5 (iv) The number of wards under a full guardianship.

6 (v) The number of guardians and conservators licensed under
7 this part.

8 (vi) For each professional guardian, the number of wards to
9 whom the professional guardian was appointed.

10 (vii) For each professional conservator, the number of
11 protected individuals to whom the professional conservator was
12 appointed.

13 (k) Consult with and assist other public or private agencies
14 or organizations to implement the intent of this part.

15 (l) Make recommendations to the legislature and the supreme
16 court on matters relating to the board's responsibilities under
17 this part.

18 (m) Conduct contested case hearings under the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as
20 required to administer licensing and discipline under this part.

21 (n) Modify any minimum requirement under this part with the
22 approval of the board.

23 (o) Promulgate any other rules that are necessary and
24 appropriate to enable the board to fulfill its role and efficiently
25 administer this part.

26 (2) The executive director shall not petition for a
27 guardianship or conservatorship or accept appointment as a guardian
28 or conservator of any individual.

29 Sec. 5534. (1) A person shall not serve as a professional

1 guardian or professional conservator unless the person is issued a
2 license under this section by the executive director.

3 (2) The executive director shall not issue a professional
4 guardian license or professional conservator license unless the
5 applicant meets all of the following conditions:

6 (a) The applicant holds a certification from the National
7 Center for Guardianship Certification.

8 (b) The applicant submits a criminal background check to the
9 department of state police.

10 (c) The applicant has not been found liable in a civil action
11 that involved fraud, misrepresentation, material omission,
12 misappropriation, theft, exploitation, abuse, neglect, sexual
13 assault, or conversion.

14 (3) A professional guardian or professional conservator shall
15 report to the executive director not later than 30 days after any
16 of the following events have occurred:

17 (a) Conviction of a felony.

18 (b) A substantiated case on the central registry as those
19 terms are defined in section 2 of the child protection law, 1975 PA
20 238, MCL 722.622.

21 (c) Conviction of a misdemeanor related to child abuse or
22 neglect, vulnerable adult abuse or neglect, controlled substances,
23 criminal sexual conduct, domestic violence, stalking, embezzlement,
24 or crimes of theft or dishonesty.

25 (d) Filing of bankruptcy.

26 (e) Entry of a personal protection order against the
27 professional guardian or professional conservator.

28 (f) Entry of an order from the probate court to surcharge the
29 professional guardian's or the professional conservator's bond or

1 entry of a judgment against the professional guardian or
2 professional conservator in any court.

3 (g) Finding by the probate court that the professional
4 guardian or professional conservator breached the professional
5 guardian's or the professional conservator's fiduciary duties.

6 Sec. 5535. (1) The executive director shall contract with
7 professional guardians to provide guardianship services for an
8 indigent ward who is any of the following:

9 (a) At significant risk of harm from abuse, neglect,
10 exploitation, abandonment, self-harm, or self-neglect.

11 (b) In imminent danger of loss of, or significant reduction
12 in, public services that are necessary for the ward to live
13 successfully in the most integrated and least restrictive
14 environment that is appropriate in light of the ward's needs and
15 values.

16 (c) Homeless or at risk of homelessness.

17 (2) Except as otherwise provided in this subsection, a
18 professional guardian that contracts with the executive director
19 under this section shall not serve as a professional guardian for
20 more than 30 wards total, including those wards for whom
21 guardianship services are not provided for under a contract in
22 accordance with this section. The executive director may allow a
23 professional guardian to serve as guardian for more than 30 wards
24 if all of the following conditions are met:

25 (a) The professional guardian requests that a guardianship is
26 necessary in an emergency or unusual circumstance.

27 (b) The professional guardian does not serve as guardian for
28 more than 3 consecutive months or more than 4 months in 12 months.

29 (3) The executive director shall develop a fee schedule for

1 the payment of contracting professional guardians under this
2 section. All of the following apply to the fee schedule under this
3 subsection:

4 (a) Fees for contracting professional guardians must not be
5 lower than patient pay offsets permitted for the payment of
6 guardian expenses as provided in the Bridges Eligibility Manual 546
7 published by the department.

8 (b) The fee schedule must include all of the following:

9 (i) Case-weighting guidelines that provide for greater
10 compensation for the first 3 months of a new guardianship.

11 (ii) Higher compensation if the case is complex at the time of
12 appointment.

13 (iii) Allow for adjustment during the guardianship if the
14 complexity of the case changes.

15 Sec. 5536. (1) The executive director shall establish
16 procedures to do all of the following:

17 (a) Receive or initiate complaints against guardians and
18 conservators, which must be in writing.

19 (b) Review complaints against guardians and conservators to
20 determine whether the guardian or conservator has failed to meet
21 licensure standards, breached the guardian's or the conservator's
22 fiduciary duties, or otherwise engaged in misconduct.

23 (c) Obtain the information necessary to investigate a
24 complaint by filing an appearance as an interested party in the
25 relevant court proceeding.

26 (d) Develop procedures to respond to complaints, conduct
27 investigations and hearings, and take administrative action
28 consistent with this part.

29 (e) Make findings as to whether a guardian or conservator has,

1 or has not, failed to meet licensure standards, breached the
2 guardian's or the conservator's fiduciary duties, or otherwise
3 engaged in misconduct.

4 (f) Issue appropriate disciplinary orders when there are
5 findings of wrongdoing and dismiss complaints without merit.

6 (g) Refer appropriate complaints to the attorney general or
7 another law enforcement agency.

8 (2) If the executive director determines that a nonpublic
9 court file exists and that it is relevant to a pending complaint,
10 the executive director may request that the court release the
11 nonpublic court file to the executive director. On request of the
12 executive director, the court shall release the nonpublic court
13 file to the executive director.

14 (3) The executive director may request a law enforcement
15 officer to provide all available information about a given
16 complaint filed against a professional guardian or professional
17 conservator after a law enforcement officer has completed an
18 investigation regarding that complaint against the professional
19 guardian or professional conservator. An investigation is
20 considered completed after a prosecutor issues or declines to issue
21 charges. A law enforcement officer may redact information if needed
22 to protect the safety of witnesses or preserve the integrity of an
23 investigation.

24 (4) If the executive director finds that a professional
25 guardian or professional conservator fails to meet the conditions
26 under section 5534, after an opportunity for a hearing under the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
28 24.328, the executive director shall reduce the findings and
29 decision to writing and shall issue and cause to be served on the

1 professional guardian or professional conservator charged with the
2 failure a copy of the findings and an order requiring the person to
3 cease and desist from the violation. In addition, the executive
4 director may order any of the following:

5 (a) Revocation of the license of the professional guardian or
6 professional conservator.

7 (b) The suspension of the professional guardian or
8 professional conservator, subject to the following:

9 (i) The suspension must not be less than 30 days, with
10 conditions relevant to the failure to meet the conditions under
11 section 5534.

12 (ii) If the suspension exceeds 179 days, the suspension must
13 remain until further order of the executive director.

14 (c) Reprimand with conditions relevant to the failure to meet
15 the conditions under section 5534.

16 (d) Probation.

17 (e) Restitution in an amount determined by the executive
18 director.

19 (5) If the executive director determines or has reasonable
20 cause to suspect that a ward has been or is being abused,
21 neglected, or exploited as a result of a filed complaint or during
22 the course of an investigation of a complaint, the executive
23 director shall immediately report the determination or suspicion to
24 adult protective services.

25 Sec. 5537. The attorney general may do any of the following:

26 (a) Subpoena documents from any probate court, guardian,
27 conservator, or other fiduciary.

28 (b) Intervene on behalf of the public and participate as an
29 interested party, at any stage of the proceeding, in any guardian,

1 conservator, or protective proceeding.

2 (c) Investigate any complaint referred by the executive
3 director and make recommendations to the executive director and law
4 enforcement about the complaint.

5 Sec. 5538. (1) The professional guardian and professional
6 conservator compliance fund is created within the state treasury.

7 (2) The state treasurer may receive money or other assets from
8 any source for deposit into the fund. The state treasurer shall
9 direct the investment of the fund. The state treasurer shall credit
10 to the fund interest and earnings from fund investments.

11 (3) Money in the fund at the close of the fiscal year remains
12 in the fund and does not lapse to the general fund.

13 (4) The department is the administrator of the fund for
14 auditing purposes.

15 (5) The department shall expend money from the fund, on
16 appropriation, to reimburse the attorney general for expenses
17 incurred related to investigations under and enforcement of this
18 part.