



MI DEPARTMENT OF ATTORNEY GENERAL

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ELDER ABUSE TASK FORCE

The Task Force launched in 2019 and consists of more than 55 different organizations in the public, private and nonprofit sectors - all working together to combat elder abuse.

“While most guardians and conservators work tirelessly for modest pay to ensure those under their supervision are well cared for, this serves as additional notice that my office will not hesitate to challenge anyone who breaches their duty of loyalty to the most vulnerable among us.”

Attorney General Dana Nessel





ELDER ABUSE LISTENING TOUR

W/ Michigan Supreme Court

- **12 stops**
- **Travelled over 2,500 Miles**
- **Met with Over 1,000 Seniors**
- **Hosted 8 Legislative Town Halls**



HOUSE BILLS 4909-4912

Guardian and Conservator Reform Legislation

LACK OF COMPETENCY INCAPACITATED INDIVIDUAL

An individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions. MCL 700.1105a



HOUSE BILLS 4909-4912

Lack of Competency: Incapacitated Individual

GUARDIAN

A guardian takes care of an incapacitated adult's personal needs.

CONSERVATOR

A conservator takes care of an incapacitated adult's property.

- One person can be both the guardian and the conservator for an incapacitated adult.
- A guardianship or conservatorship will limit an incapacitated adult's legal right to handle his or her own matters.

HOUSE BILL 4909

1

CERTIFICATION

Creates requirement that guardians and conservators must be certified.

2

NOT SUITABLE

If a non-professional (family member, person nominated by the LIP) is not chosen, the Judge must make specific findings on the record why that person is not suitable

3

DELEGATION

No delegation to staff of decisions.

4

EXPIRATION

Letters of authority expire at 15 months

HOUSE BILL 4910

DELEGATION

No delegation to staff of decisions.

GUARDIAN AD LITUM

Guardian ad litem (GAL)
"eyes and ears of the court"

GUARDIAN AD LITUM (GAL) ADDITIONAL RESPONSIBILITIES

- Interview the alleged LIP
- Ask the alleged LIP if they want to attend the hearing
- Determine if the alleged LIP has a POA, patient advocate, payee or trustee
- Determine if another expert (social worker, mental health professional, or medical professional) could provide the court with alternatives to guardianship
- If a guardianship were ordered who would the person want to serve, who would they not want to serve
- Do an estimate of the assets
- The report must be served on all parties 5 days before the hearing



GUARDIAN AD LITUM (GAL) ADDITIONAL RESPONSIBILITIES

Right to an attorney

- The court must appoint an attorney if the individual requests one, objects to the petition, if the GAL determines they should have one,
- The individual **always** has the right to retain an attorney

Visits by the Guardian

- Guardian must visit the ward in person 1 month after appointment and every 3 months after that. Monthly visits by audio and video.

Personal Property

- Guardian must identify a reasonable number of items of personal or sentimental value, family heirlooms, photo albums and collections.



HOUSE BILL 4911

1

SPEEDY TRIAL

- 7 days after initial hearing
- Independent Evaluation

2

CLEAR & CONVINCING EVIDENCE

3

COURT APPOINTED ATTORNEY

4

EMERGENCY PETITION

SPEEDY TRIAL

Independent Evaluation

- Paid for by the State of Michigan
- Physician or mental health professional
 - Contents of the report
- Length of time they've known the individual
- Length of time they met with them
 - Does the individual have capacity
 - Does the individual have a power of attorney or patient advocate
 - Assessment of current supports
 - The ability of supportive services to meet unmet needs
 - Other concerns-ability to address those



HOUSE BILL 4911

1

SPEEDY TRIAL

- 7 days after initial hearing
- Independent Evaluation

2

CLEAR & CONVINCING EVIDENCE

- Court shall dismiss if it's not shown that
 - Incapacitated
 - Appointment is necessary to provide continuing care & supervision
- Stay proceedings
- Court can dismiss

3

COURT APPOINTED ATTORNEY

4

EMERGENCY PETITION

CLEAR & CONVINCING EVIDENCE

- **AT ANY TIME**, the court may stay proceedings to explore alternatives
- Individual can name a patient advocate, Power of Attorney or Rep. Payee and the court can dismiss.



HOUSE BILL 4911

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COURT APPOINTED ATTORNEY

- If the guardian files to permanently remove the individual from their home
- Guardian must file a separate petition to move an individual to a new permanent residence.

4

EMERGENCY PETITION

HOUSE BILL 4911

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EMERGENCY PETITION

Within 7 days of filing a petition, the Court must determine:

- Emergency exists
- No other person has authority to act
- The person is incapacitated and the guardian is necessary for care and supervision

EMERGENCY PETITION

- **The emergency guardian order expires within 28 days**
- There can only be one extension.



HOUSE BILL 4912

TEMPORARY GUARDIAN

6 MONTHS

If the guardian has been appointed or if the appointed guardian is not effectively performing their duties

CONSERVATOR

Protected individual or interested person can petition for change of conservator

OFFICE OF STATE GUARDIAN

CERTIFICATION & REGISTRY



INVESTIGATION & COMPLIANCE

INDIGENT GUARDIAN PROGRAM



EDUCATION & INFORMATION

SURROGATE CONSENT STATUTE

Surrogate may make a health care decision for a patient who is an adult or emancipated minor if:

- Patient is unable to participate in health care decisions
- Patient doesn't have a patient advocate or guardian
- Order of surrogate
 - Spouse (unless pending divorce, separation, or annulment)
 - Adult child
 - Parent
 - Adult sibling
 - An adult who has exhibited special care and concern for the patient

Will reduce/eliminate the need for hospitals to file for emergency guardianship to treat patients



POWER OF ATTORNEY



Creates a statutory
power of attorney form



Promotes an increase
in the acceptance of
the power of attorney



Will reduce/eliminate
the need for guardians
or conservators to be
appointed



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