



MI DEPARTMENT OF

ATTORNEY GENERAL

Detroit:

Cadillac Place, 10th Floor 3030 W. Grand Blvd. Detroit, MI 48202 313-456-0240

Lansing:

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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





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.

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

DELEGATION

No delegation to staff of decisions.

GUARDIAN AD LITUM

Guardian ad litum (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 month 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.



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





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.



SPEEDY TRIAL

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- Independent Evaluation

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CLEAR & CONVINCING EVIDENCE

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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

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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



 The emergency guardian order expires within 28 days

• There can only be one extension.



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:

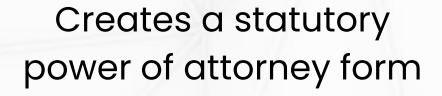
- · Patient is unable to participate in health care decisions
- Patient doesn't have a patient advocate or guardian
- Order of surrogate
 - Spouse (unless pending divorce, separation, or annulment
 - Adult child
 - Parent
 - Adult sibling
 - An adult who has exhibited special care and concern for the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

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



POWER OF ATTORNEY







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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