

guardian ad litem as to the proposed ward's ~~or alleged incompetent's~~ best interests or that the proposed ward's ~~or alleged incompetent's~~ position on these matters is ambiguous. If the guardian ad litem recommends that the hearing be held in a place other than a courtroom, the guardian ad litem shall provide the information under this paragraph as soon as possible.

(g) If the proposed ward requests representation by counsel, inform the court and the petitioner or the petitioner's counsel, if any.

(h) Attend all court proceedings related to the guardianship.

(i) Present ~~nontestamentary~~ evidence concerning the best interests of the proposed ward ~~or alleged incompetent~~, if necessary.

***NOTE: Does the term "nontestamentary" clarify sufficiently for your purposes that the GAL may not testify in the proceedings?

(j) Report to the court on any other relevant matter that the court requests.

(5) COMMUNICATION TO A JURY. In jury trials under ~~ch. 55 or 880~~, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward ~~or alleged incompetent~~.

(6) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward ~~or alleged incompetent~~. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party, or the ~~person~~ individual for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may

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appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL. (a) The proposed

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~~ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal. if any of the following occurs:~~

- 1. The proposed ward requests counsel.
- 2. The guardian ad litem or another person states to the court that the proposed ward is opposed to the guardianship petition.
- 3. The court determines that the interests of justice require counsel for the proposed ward.

(b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an advocate for the expressed wishes of the proposed ward.

(c) ~~If the person requests but is~~ par. (a) 1., 2., or 3. applies but the proposed ward is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

(2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney, or the guardian ad litem, except that the right is waived unless demanded at least 48 hours before the time set for the hearing. The number of jurors for such a trial is determined under s. 756.06

(2) (b). The proposed ward, his or her attorney, or the guardian ad litem each has the right to present and cross-examine witnesses, including any physician or licensed psychologist who reports to the court concerning the proposed ward.

****NOTE: I did not change "or" to "and" in the third sentence, as requested, because it is important to avoid the implication that the ward, attorney, and GAL must act jointly to present and cross-examine witnesses. I did, however, add "each," to distinguish the actor for that sentence from the actor in the first sentence. In ordinary statutory usage, however, "or," when used to link several actors, allows each actor to perform the action and does not exclude one from the other.

(3) RIGHT TO INDEPENDENT ~~MEDICAL~~ EXAMINATION. If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is

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filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(4) WARD'S RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS. When If a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

These expenses are payable before other attorney or guardian ad litem fees.

(5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be present at any hearing regarding the guardianship.

or ward and *manner*

(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right to have any hearing regarding the guardianship conducted in a location that is accessible to the proposed ward.

par. (b) or (a) report

54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS. A petition for guardianship, other than a petition under the circumstances of s. 54.50 (1) or (2) shall be heard within 90 days after it is filed. The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the statement of the examining physician or psychologist under s. 54.36 at least 96 hours before the time of the hearing.

****NOTE: Note that I added s. 54.50 (1), as well as s. 54.50 (2), as exceptions to the 90-day time limit. Note also, that, pending your decision, s. 54.50 (2) may be moved to ch. 55, stats., as an "admission without court involvement," since it does not, at least initially, depend on a guardianship for its action. However, please see the following ****NOTE.

****NOTE: Your proposed material does not affect s. 880.075, stats. If you do not intend that I repeal it, where should I put it? Should I make an exception for it in s. 54.44 (1)?

or is a spendthrift

(2) STANDARD OF PROOF. Any determination by the court as to whether the proposed ward is incompetent shall be by clear and convincing evidence.

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(3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the court excuses the attendance of either or, for good cause shown, permits attendance by telephone.

(4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the proposed ward, the guardian ad litem shall consider the ability of the proposed ward to understand and meaningfully participate, the effect of the proposed ward's attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the proposed ward's expressed desires. If the proposed ward is unable to attend the hearing because of residency in a nursing home or other facility, physical inaccessibility, or a lack of transportation and if the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court shall hold the hearing in a place where the proposed ward may attend.

(5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m) under this chapter~~ shall be ~~open~~ closed, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be ~~closed~~ open. If the hearing is closed, only ~~persons in interest, including representatives of providers of service and interested persons,~~ their attorneys, and witnesses, may be present.

***NOTE: I deleted "representatives of providers of service" from this subsection because they are included in the definition of "interested person" under s. 54.01 (12).

(6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed guardian is inappropriate, the court shall request that a petition proposing a suitable guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

require the guardian ad litem to investigate the suitability of a new proposed guardian.

54.46 Disposition of petition. After the hearing under s. 54.44, the court shall dispose of the case in one of the following ways:

(1) DISMISSAL OF THE PETITION. (a) If the court finds any of the following, the court shall dismiss the petition:

1. Contrary to the allegations of the petition, the proposed ward is not any of the following:

- a. Incompetent.
- b. A spendthrift.
- c. A minor.

as specified in s. 54.10(3)(c)3.,

2. Advance planning by the ward renders guardianship unnecessary.

3. The elements of the petition are unproven.

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(b) The court may also consider an application by the proposed ward for the appointment of a conservator under s. 54.76.

~~(2) PROTECTIVE ARRANGEMENT; FINANCIAL TRANSACTIONS; APPOINTMENT OF SPECIAL GUARDIAN. (a) If a proposed ward is found to be a minor, incompetent, or a spendthrift, the court may, without appointing a guardian, do any of the following if the court first considers the interests of dependents and creditors of the ward and whether a guardianship is necessary, given the ward's functional level:~~

~~1. Authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service, or care arrangement that meets the foreseeable needs of the ward.~~

2. Authorize, direct, or ratify a contract, trust, or other transaction related to the ward's property or financial affairs if necessary as a means of providing for the personal needs of or property management for the ward.

(b) The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or transaction under par. (a). The special guardian has any authority conferred by the order of appointment, shall report to the court on all actions taken under the order of appointment, and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian, except that, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily, the court may deny or reduce the amount of compensation or remove the special guardian.

***NOTE: Should the compensation language be under subch. V, around s. 54.72 or 54.74, instead of here?

② (3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be incompetent, a minor, or a spendthrift, the court may enter a determination and order appointing a guardian that specifies any powers of the guardian that require court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

under s. 54.10(5), and

***NOTE: I have assumed that s. 54.46 (3) was intended to replace s. 880.12, stats., although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. On Betsy Abramson's advice, I have repealed s. 880.12.

(a) *Co-guardians.* The court may appoint^s co-guardians of the person or co-guardians of the estate, ~~subject to any conditions that the court imposes.~~ Unless otherwise ordered by the court, each decision made by a co-guardian with respect to the ward must be concurred in by any other co-guardian, or the decision is void.

(b) *Power of attorney for health care.* If the ~~proposed incompetent ward~~ has executed a power of attorney for health care under ch. 155, ~~find that the power of~~

attorney for health care instrument should remain remains in effect. ~~If the court so finds, the court shall so order and shall, except that the court may, only for good cause shown, revoke the power of attorney for health care or limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care authority of the agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.~~

****NOTE: This provision may require amending the health care power of attorney chapter, which will, if necessary, be done in a subsequent version.

(c) *Durable power of attorney.* If the ward has executed a durable power of attorney, the durable power of attorney remains in effect, except that the court may, only for good cause shown, revoke the durable power of attorney or limit the authority of the agent under the terms of the durable power of attorney.

****NOTE: This provision may require amending the durable power of attorney chapter, which will, if necessary, be done in a subsequent version.

(4) FEES AND COSTS OF PETITIONER. (a) Petitioner's attorney fees and costs.

~~Except as provided in par. (b), when a guardian is appointed, the court shall award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those fees and costs, if any, related to protective placement of the ward, unless the court finds, after considering all of the following, that it would be inequitable to do so:~~

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****NOTE: In the Legislative Council draft WLC: 0220/P1, "including those fees and costs, if any, related to protective placement of the ward" is stricken. Do you wish to also strike that language in this draft?

****NOTE: I did not eliminate "Except as provided in par. (b)" from this paragraph, as requested, because the new paragraph (b) (formerly numbered s. 54.32, renumbered from s. 880.33 (2) (a) 3., stats.) (guardian ad litem and defense fees for indigents; liability) seems to be a clear exception to paragraph (a).

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

for financial and health care decision making

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. ~~If the court finds that~~ Whether the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court may not make the award specified in par. (a).~~

5. Any other factors that the court considers to be relevant.

(b) Guardian ad litem and defense fees for indigents; liability. If the person proposed ward is an adult who is indigent, the county of legal settlement shall be in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's proposed ward's legal counsel. ~~If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).~~

(c) Fees if guardian is not appointed. If a guardian is not appointed under sub.

(2) ~~or (3)~~ the county in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem. The proposed ward is liable for any fees due his or her legal counsel, except as follows:

1. If counsel is appointed under s. 977.08, the proposed ward is liable only for the fees applicable under s. 977.07 and 977.075.

2. If the court finds the petition for guardianship frivolous under s. 814.025, the court may assess fees to the petitioner.

3. If the proposed ward is indigent and counsel is not appointed under s. 977.08, the county in which venue lies for the guardianship proceeding is liable.

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****NOTE: I included in this paragraph mention of public defender representation, because par. (b) mentions it. Is this drafted as you wish?

2 (4) (5) BOND. (a) ~~Form~~ Amount and sufficiency of bond. Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345 The order under sub. (3) shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person. 54.852

(b) Waiver of Bond. Unless required under s. 880.60 (9), the court may waive the requirement of a bond at under any of the following circumstances:

1. At any time in its discretion or if
2. If so requested in a will wherein in which a nomination appears.
3. ~~Whenever~~ If a guardian has or will have possession of funds of the ward with a total value of \$40,000 \$100,000 or less; and the court ~~may direct~~ directs deposit of the funds in an insured account of a bank, credit union, savings bank, or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. ~~In such event the court may waive the requirement of a bond.~~

(5) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. ~~When~~ If a guardian of the estate has given bond as, if required, and the bond has been approved by the judge court, letters under the seal of the court shall be issued to the guardian of the estate. If a court determination and order appointing a guardian of the person is entered, letters under the seal of the court shall be issued to the guardian of the person.

income and assets

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(7) EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor found to be incompetent, upon marriage, a minor ~~shall~~ is no longer be a proper subject for guardianship of the person ~~and a~~ A guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the ~~estate~~ of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

****NOTE: I repealed the last sentence (it is broader than merely applying to a minor), but am uncertain if that is what you want. Your proposal does not touch s. 880.34 (2)--do you no longer want to have marriage of an incompetent considered as a trigger for review of the guardianship?

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54.47 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 880.07 54.34 and 880.08 54.38 may be filed in the office of the register of deeds for the county; ~~and if.~~ If a guardian shall be ~~is~~ appointed upon such application after a hearing on the petition, all contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of property made by such ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified copy of such petition and the order as aforesaid, shall be void. ~~The are void, except that the validity of~~ a contract made by a person a ward under a limited guardianship is not void, however, unless the determination is made by the court in its court's order includes a finding under s. 880.33 (3) that the ward is incapable of exercising the power to may not make contracts.

unless ratified by the guardian in writing

validity of

****NOTE: Have I amended this section as you intend?

54.48 Protective placement and protective services. A finding of incompetency and appointment of a guardian under this subchapter chapter is not grounds for involuntary protective placement. Such or the provision of protective services. Protective placement and the provision of protective services may be made only in accordance with s. 55.06 ch. 55.

54.50 Temporary guardianships. (1) ~~TEMPORARY GUARDIAN.~~ (a) *Standard.*

If it is demonstrated to the court that a proposed ward's particular situation, including the needs of the proposed ward's dependents, requires the immediate appointment of a temporary guardian of the person or estate, the court may appoint a temporary guardian under this section.

(3)
(2) (b) Appointment Duration and extent of authority. CS NO (I)

~~If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it~~ The court may appoint a temporary guardian for a ward for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once, except that the court may extend this period for good cause shown for one additional 60-day period. The court may impose no further temporary guardianship on the ward for at least 90 days after the expiration of the temporary guardianship and any extension. The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian and shall be limited to those acts that are reasonably related to the reasons for appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian shall be is limited to the performance of duties respecting specific property, or to the performance of particular those acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary

~~guardian of a minor for medical purposes but shall proceed in accordance with this section~~ Unless the court first specifically approves ~~and orders bond~~, the temporary guardian may not sell real estate or expend an amount in excess of \$2,000.

(3)

(5) (1)

Procedures for appointment. All of the following procedures apply to the appointment of a temporary guardian:

(a) 1. Any person may petition for the appointment of a temporary guardian for an individual. The petition shall contain the information required under s. 54.34 (1), shall specify reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

***NOTE: Note that the notice provisions concerning petition and hearing for temporary guardianship have been moved from this section to s. 54.38 (6).

(b) 2. The court shall appoint a guardian ad litem, who shall attempt to meet with the proposed ward before the hearing or as soon as is practicable after the hearing, but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing or not later than 10 calendar days after the hearing.

The hearing may be held

(c) 3. The court shall hold a hearing on the temporary guardianship no earlier than 48 hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the proposed ward is incompetent. The guardian ad litem shall attend the hearing in person or by telephone or, instead, shall provide to the court a written report concerning the proposed ward for review at the hearing.

4. ^(d) If the court appoints a temporary guardian and if the ward, his or her counsel, the guardian ad litem, or an interested party requests, the court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days after the request. If a rehearing is requested, the temporary guardian may take no action to expend the ward's assets, pending a rehearing, without approval by the court.

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⁽⁴⁾ ~~Cessation of powers.~~ ^{CS} ^{NO I} ~~If the temporary guardianship is not sooner terminated the~~ The duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined ^{of the} expiration of the time period, ~~or extension of the time period,~~ specified

⁽²⁾ ~~in sub. (1)(b),~~ or if the court sooner determines that any other disability of the temporary ward which situation of the ward that was the cause of the temporary guardianship has terminated. Upon the termination of ~~the temporary guardian's duties and powers,~~ a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon the termination of ~~duties and powers,~~ account to the court and deliver to the person ~~or persons entitled to them~~ all the estate of the ward in his or her hands the ward's estate over which the temporary guardian of the estate has had control. Any action ~~which~~ that has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

***NOTE: Please review this paragraph (renumbered from s. 880.15 (3)) to ensure that it meets your intent.

⁽²⁾ CERTAIN ADMISSIONS TO FACILITIES. (a) In this section subsection, notwithstanding s. 54.01 (10), "incapacitated" means unable to receive and evaluate

information effectively or to communicate decisions to such an extent that the individual ~~lacks the capacity~~ is unable to manage his or her health care decisions, including decisions about his or her post-hospital care.

(b) An individual under ~~sub. (3) par. (c)~~ may consent to admission, ~~directly from a hospital~~ to a facility, as defined in s. 50.01 (1m), of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880 54, if all of the following apply:

1. No person who is listed under ~~sub. (3) par. (c)~~ in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

2. a. Except as provided in subd. 2. b., no person who is listed under ~~sub. (3) par. (c)~~ and who resides with the incapacitated individual disagrees with the proposed admission.

b. Subdivision ~~1. 2. a.~~ does not apply if ~~any of the following applies:~~ the individual who is consenting to the proposed admission resides with or is the spouse of the incapacitated individual.

3. The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

4. A petition for guardianship for the individual under s. 880.07 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

(c) The following individuals, in the following order of priority, may consent to an admission under ~~sub. (2) par. (b)~~:

1. The spouse of the incapacitated individual.

2. An adult son or daughter of the incapacitated individual.
3. A parent of the incapacitated individual.
4. An adult brother or sister of the incapacitated individual.
5. A grandparent of the incapacitated individual.
6. An adult grandchild of the incapacitated individual.
7. An adult close friend of the incapacitated individual.

(d) A determination that an individual is incapacitated for purposes of ~~sub. (2)~~ par. (b) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity, or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(e) 1. Except as provided in ~~par. (b) subd. 2.~~, an individual who consents to an admission under this section subsection may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

- a. Sixty days after the admission to the facility of the incapacitated individual.
- b. Discharge of the incapacitated individual from the facility.
- c. Appointment of a guardian for the incapacitated individual.

2. An individual who consents to an admission under this ~~section~~ subsection may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, ~~as defined in s. 243.07 (1) (a)~~, who may authorize expenditures related to health care.

(f) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(g) An individual who consents to an admission under this ~~section~~ subsection may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

(h) If the allegedly incapacitated individual, his or her guardian ad litem, or any interested person objects to the admission, the individual, guardian ad litem, or person may request the court in which the guardianship petition is pending to hold a hearing on whether the individual is incapacitated or whether the admission shall continue before the guardianship hearing. If requested, the court shall hold such a hearing within 7 calendar days after receipt of the request.

****NOTE: If you do not want sub. (2) to be under s. 54.50, where do you want it to be placed?

54.52 Standby guardianship. (1) A person may at any time bring a petition for the appointment of a standby guardian of the person or ~~property or both~~ estate of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978 an individual who is determined under s. 54.10 to be incompetent or a spendthrift.

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unwillingness or

to act

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or ~~property~~ estate whose appointment shall become effective immediately upon the death, ~~incapacity~~ inability, or resignation of the initially appointed guardian or during a period, as determined by the initially appointed guardian, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

or court's removal

X

s. 48.978 exists

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal. Your redraft instructions are for me to "add" this to s. 54.52; do you want me to renumber all of s. 48.978, stats., into ch. 54? There are substantial problems of reconciliation, including, in s. 48.978 (1) (c), stats., a definition of "incapacity" that differs from the definition in s. 54.01 (10). Please review.

INSERT 69A

strike

IF

54.54 Successor guardian. (1) APPOINTMENT. ~~When~~ a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

INSERT 69 B

SUBCHAPTER V

POST-APPOINTMENT MATTERS

54.60 Inventory. (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court prepare an inventory that lists all of the ward's property and interests in

income and assets, including

property, ~~including~~ ^{and} any marital property interest, regardless of how the asset is titled.

(2) CONTENTS OF INVENTORY. The inventory shall provide all of the following information with respect to each asset:

- (a) How the asset is held or titled.
- (b) The name and relationship to the ward of any co-owner.
- (c) The marital property classification of the property and, for any property that is marital property, the spouse who has management and control rights with respect to the property.

(3) TIME FOR FILING. The guardian of the estate shall file the initial inventory within 60 days after appointment, unless the court extends or reduces the time.

(4) NOTICE OF INVENTORY. The court shall specify the persons to whom the guardian shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay from the ward's ~~estate~~ the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents concerning the ~~estate's~~ ^{of the} value are filed. to the best of the guardian's information and belief

(6) APPRAISAL. The court may order that the guardian of the estate appraise all or any part of the ward's ~~estate~~ income and assets

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the guardian's oath ~~that~~ every inventory required of the guardian and verification shall be to the effect that the inventory is true of includes all property which ~~that~~ belongs to his or her decedent's estate or his or her ward, which has come to ~~the estate of the ward~~ the estate of the ward in the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able ~~unable~~ to discover any property belonging to the estate or ward which is not included therein ~~that the inventory does not include~~. The court,

income and assets of the ward

at the request of any party ~~interested~~, or on its own motion, may examine the guardian on oath ~~in relation thereto~~, as to the inventory or ~~in relation to~~ any supposed omission from the inventory.

INSERT
71

54.62 Accounts. (1) ANNUAL REPORTS. ~~Every~~ Except as provided in sub. (3) or unless waived by a court, every guardian, ~~except~~ including a corporate guardian, shall, prior to April 15 of each year, file an account under oath ~~specifying that~~ specifies the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. ~~When ordered by the court,~~ The court may order the guardian ~~shall within 30 days to~~ render and file, within 30 days, a like account for ~~any shorter term~~ less than a year. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to ~~thereafter~~ render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. ~~When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered and the name of the school.~~ The guardian shall also report any change in the status of the surety upon the guardian's bond. If the court determines it to be in the ward's best interests, the court may specify the persons to whom the guardian shall distribute copies of the account.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or ~~some~~ by a person satisfactory to the court, evidence of all of the ward's securities, evidences of deposit depository accounts, and other

investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. ~~It shall be ascertained~~ The court or person satisfactory to the court shall ascertain whether the evidence of securities, evidences of deposit depository accounts, and other investments correspond with the account.

****NOTE: I replaced the term "deposit" with "depository accounts," and defined that term in s. 54.01 (5) using the definition in s. 815.18 (2) (e), stats. Is this the meaning you intended? I also added "of the ward's" in the first sentence; it's unnecessary to add it to the second, because the referent "the evidence of ... etc." suffices.

\$20,000

income and assets do

(3) SMALL ESTATES. (a) If a ward's ~~estate does~~ ^{income and assets do} not exceed \$5,000 in value, the guardian need not file an account under sub. (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph, the value of the ward's ~~estate~~ ^{income and assets} does not include the ward's income, any burial trust possessed by the ward, or any term or other life insurance policy that is irrevocably assigned to pay for the disposition of the ward's remains at death.

\$20,000

(b) If the ward's ~~estate~~ ^{estate}, as calculated under par. (a), increases above \$5,000 in value, the guardian shall so notify the court, which shall determine if an annual account under sub. (1) or a final account under s. 54.66 is required.

(4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may waive filing of an annual account under sub. (1) or permit the filing of a modified annual account, which shall be signed by the ward's guardian and spouse and shall consist of all of the following:

1. Total assets of the ward, as determined under ch. 766, on January 1 of the year in question.
2. Income in the name of the ward, without regard to ch. 766, and the ward's joint income.

3. Expenses incurred on behalf of the ward, including the ward's proportionate share of household expenses if the ward and the ward's spouse reside in the same household, without regard to ch. 766.

marital property

4. Total assets of the ward, as determined under ch. 766, on December 31 of the year in question.

***NOTE: I may have questions about this subsection after consulting with the Domestic Relations drafter, who is presently unavailable.

(b) The court shall provide notice of the waiver under par. (a) to any adult child of the ward.

(5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under the court's direction and if it as the court directs. If the account is not satisfactory it shall be examined on 8 days' notice and, the court shall make such order thereon order action as justice requires. Notice and shall direct that notice be provided to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice. If notice is provided to the guardian under this subsection, the court may appoint a guardian ad litem of for the ward may be appointed.

RESTORE TO PLAIN TEXT

(6) ACCOUNTING BY AGENT THIRD PARTIES TO GUARDIAN. The circuit court, upon the application of any If a guardian appointed by it a court so requests, the court may order any person who has been entrusted by the guardian with any part of the estate income or assets of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession the income or assets and of his or her proceedings thereon action regarding the income or assets. If the person

refuses to appear and render an account, the court may proceed against him or her as for contempt.

****NOTE: I think current law refers to "decedent or ward" because of the way s. 54.64 (1) is worded (guardianship continues during life of ward, etc.). I eliminated "decedent," but I'm unsure if that's the right decision.

****NOTE: There is no definition of "estate" of "property" in ch. 880, stats., and I would defer to your judgment as to whether the terms include both assets and income. I have in this subsection changed all references to "estate" or "property" to "income or assets." Do you want me to define "estate" for ch. 54 as including income and assets?

(7) NOTICE OF FINAL ACTION ON AN ACCOUNT (intro.) No action by the court upon any on an account shall be is final unless it is upon the guardian first provides notice to all of the following: as applicable

of the estate of a deceased ward

- (a) The ward.
- (b) Any guardian ad litem appointed by the court.
- (c) Any personal representative or special administrator appointed by the court.

INSERT
74

54.63 Expansion of order of guardianship; procedure. (1) If the guardian or another interested person submits to the court a written statement with relevant accompanying support requesting the removal of rights from the ward and transfer to the guardian of powers in addition to those specified in the order of appointment of the guardian, based on an expansion of the ward's incapacity, the court shall do all of the following:

- (a) Appoint a guardian ad litem for the ward.
- (b) Order that notice, including notice concerning potential court action if circumstances are extraordinary, be given to all of the following:
 1. The county department of social services or human services if the ward is protectively placed or receives long-term support services as a public benefit.
 2. The ward.

- 3. The guardian.
- 4. The agent under the ward's power of attorney for health care under ch. 155 ^{under ch. 243} ^{if any,} durable power of attorney, if any. ^{and the agent under the ward's}
- 5. Any other persons determined by the court.

(2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person submits to the court an objection to the request under sub. (1), the court may amend the order entered under s. 54.46 ~~(3)~~ and enter a determination and the amended order that specifies any change in the powers of the guardian. ^{the court shall hold}

(b) If, within 10 days after notice is provided under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), ~~any person may request a hearing~~ ^{unless the objector declines a hearing,} under the procedure specified in s. 54.64 (2).

54.64 Duration Review ^{of incompetency} and termination of guardianship; review. (1)

DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or ward, until terminated by the court, or as provided under sub. (3) or (4). Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.

(2) REVIEW AND MODIFICATION. (a) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such at any time after 180 days after any previous hearing under s. 54.44, or at any time if the court determines that exigent

to have the guardian discharged and a new guardian appointed, or to have the guardianship limited and specific rights restored. The petition may be filed

circumstances, including presentation of new evidence, require a review. If a petition for review is filed, the court shall conduct do all of the following:

INSERT
76A

1. Appoint a guardian ad litem.
2. Fix a time and place for hearing.
3. Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

4. Conduct a hearing at which the ward ~~shall be~~ is present and ~~shall have~~ has the right to a jury trial, if demanded. ~~The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.~~

(b) The ward has the right to counsel for purposes of the hearing under par. (a).
Notwithstanding any finding of incompetence for the ward, the ward may retain and contract for the payment of reasonable fees to an attorney, the selection of whom is subject to court approval, in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence.

The court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, the county of jurisdiction for the guardianship shall provide counsel at the county's expense.

(c) After a hearing under ~~sub. (4) par. (a)~~ par. (a) or on its own motion, a court may terminate or modify ~~a~~ the guardianship of an incompetent, including restoring certain of the ward's rights.

INSERT
76B

(3) ~~GUARDIANSHIP~~ TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

X

*income and assets,
or terminates the guardianship under
Sub. (2)(d)*

(a) The court adjudicates a ~~former~~ ward who was formerly found to be incompetent to be competent no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her property.

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

*****NOTE: What if the guardian changes residence from this state to another state?*

(c) A formerly minor ward attains his or her majority, unless the minor is incompetent age 18. *unless the guardianship was ordered on the grounds of incompetency*

*****NOTE: This provision changes current law (s. 880.26 (1) (a), stats.), which appears to continue a guardianship without other action when a minor, incompetent ward reaches age 18. Just to be sure, are you intending that an incompetent minor's guardianship of the person terminate when he or she reaches 18 and that the guardianship be re-petitioned, etc.?*

(d) A minor ward lawfully marries.

whose guardianship was not ordered on the grounds of incompetency

*****NOTE: What if the minor is incompetent? (See ****NOTE under par. (c)) I have changed this provision because of s. 54.46 (6).*

(e) The ward dies.

(4) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate ~~when~~ if any of the following occurs:

(a) The court adjudicates a ~~former~~ ward who was formerly found to be incompetent or a spendthrift to be no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her property.

income and assets

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

*****NOTE: What if the guardian changes residence from this state to another state?*

(c) A formerly minor ward attains his or her majority age 18.

unless the guardianship was ordered on the grounds of incompetency

*****NOTE: Please see the ****NOTE under s. 54.64 (3)(c).*

(d) A minor ward lawfully marries and the court approves the termination.

*****NOTE: Please see the ****NOTE under s. 54.64 (3)(d).*

whose guardianship was not ordered on the grounds of incompetency

INSERT 77

(e) A ward dies, except when the estate can be settled as provided by s. 880.28 54.66 (4).

****NOTE: Have I drafted this paragraph (renumbering and amending s. 880.26 (2) (d), stats.) as you wish? If s. 54.66 (4) applies, would the court just terminate the guardianship after the summary settlement, or do we need to provide specific authority for the court to do that?

(5) DEPLETED GUARDIANSHIPS GUARDIANSHIP (intro.) (When the If a court determines that

the estate) of the a ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate do one of the following:

income and assets

do not exceed the amount specified in s. 867.03 (1g)

(a) Terminate the guardianship and authorize order disposition of the remaining assets as provided by s. 880.04 (2) 54.12 (1). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Continue the guardianship, but waive requirements for a bond for the guardian and for accounting by the guardian.

wave or require an

INSERT 78

54.66 Final accounts. (1) SETTLEMENT OF ACCOUNTS RENDER FINAL ACCOUNT. Upon termination of If a court terminates a guardianship, or upon resignation, removal or death of a guardian, such resigns, is removed, or dies, the guardian or the guardian's personal representative shall forthwith promptly render the guardian's a final account to the court and to the former ward, the successor guardian, or the deceased ward's personal representative as the case may be. Upon approval of the

or special administrator

~~account and filing proper receipts the guardian shall be discharged and the guardian's bond released or special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the deceased ward's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the ward's estate.~~

(2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The guardian shall be required to render of a ward with a small estate, as specified in s. 54.62 (3) (a), need not file a final account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court. The guardian shall instead provide the court with a list of the ward's assets that remain at the time the guardianship terminates, including at the death of the ward.

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

under the procedures of s. 867.01

(4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving an estate ~~which~~ that can be settled summarily under s. 867.01, the court may approve ~~such~~ the settlement and distribution by the guardian, ~~without the necessity of~~ appointing a personal representative.

54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF COURT. The court that appointed the guardian shall have continuing jurisdiction over the guardian.

income or assets

(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's estate, constitutes cause for a remedy of the court under sub. (4):

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the ward or knowingly permitting others to do so.

(d) Engaging in self-dealing.

income, including

the ward's

(e) Failing to adequately provide for the personal needs of the ward from available estate assets and public benefits.

any available

(f) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.

(g) Failing to act in the best interests of the ward.

(h) Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.

(i) Failing to disclose that the guardian is listed under s. 146.40 (4g)(a) 2.

(i) Other than as provided in pars. (a) to (h), failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19, 54.20, 54.22, 54.25, and 54.62.

****NOTE: In LRB-0039/P1, my ****NOTE under this paragraph in part stated that, although the memo specified ss. 880.192 and 880.251, stats., as cross-references, they were not otherwise touched by the proposal. I now think that s. 880.192, stats., is duplicated by provisions in pars. (b), (d), and (e) and so is unnecessary; I have repealed it. Section 880.251, stats., seems pretty well, although not entirely, duplicated by sub. (2) and s. 54.18 (3); I have repealed it. Please review.

(3) PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10, ~~no~~ more than 60, days

nor

and shall order that ^{the petitioner provide} notice of the hearing be provided to the ward, the guardian, and any other persons as determined by the court. INSERT 81

****NOTE: The provider of notice is, I assume, specified in the order. Is "notice of the hearing" correct, or is there additional notice of the filing of the petition? Should any of this be under s. 54.38?

(4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion and after finding cause as specified in sub. (2), a court may do any of the following:

(a) Order the guardian to file an inventory or other report or account required of the guardian. or, if deceased, the ward's estate

(b) Require the guardian to reimburse ~~the estate~~ of the ward for losses incurred as the result of the guardian's breach of a duty to the ward.

(c) Impose a financial penalty on the guardian, including denial of compensation for the guardian.

(d) Remove the guardian.

(e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.

(5) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.

(6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), all of the following apply:

(a) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

(b) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. (2) may retain an attorney, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2).

^{55.195}
~~54.70~~ **Duties in of guardian ad litem for reviews.** In any review of a protective placement under s. 55.06 or of a protective ~~service~~ services order under s. 55.05, the guardian ad litem shall do all of the following:

except as provided in s. 55.19(2)

- (1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.
- (2) Provide the information under par. (a) sub. (1) to the ward in writing.
- (3) Secure Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.
- (4) Review the annual report and relevant reports on the ward's condition and placement.
- (5) Review the ward's condition, placement, and rights with the guardian.
- (6) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.
- (7) Provide a summary written report to the court.
- (8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.
- (9) Attend the hearing.

****NOTE: You asked why s. 54.70 (6m) (now renumbered s. 54.70 (7)) and (9m) (now renumbered s. 54.70 (9)) had had odd numbering. I've been unable to figure out why, but it doesn't seem to have been the result of an underlying problem.

54.72 Guardian compensation and reimbursement. A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

(1) COMPENSATION. (a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.
2. The fair market value of the service rendered.
3. Any conflict of interest of the guardian.
4. The availability of another to provide the services.
5. The value and nature of the ward's estate.
6. Whether the ward's basic needs are being met.
7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

Handwritten marks:
A scribble and an 'X' next to item 2.
A large circle around item 5 with handwritten text: "assets and income, including the sources of the ward's income".
An 'X' next to item 5.

income or assets

54.74 Compensation of guardian ad litem. ~~On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless~~ Unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8), the court shall order reasonable compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the ward's estate ~~if sufficient, or, if insufficient, by the county of venue.~~ If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to a private ~~attorneys~~ attorney under s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing all duties required under s. 54.40 (4) and for any other acts that are approved by the court and are reasonably necessary to promote the ward's best interests.

INSERT
84

SUBCHAPTER VI
VOLUNTARY PROCEEDINGS;
CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination. (1) Any adult resident who is unwilling or believes that he or she is unable properly to manage his or her ~~property~~ assets ~~or income~~ may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application, the court shall fix a time and place for hearing the application and may direct to whom, including presumptive adult heirs, and in what manner notice of the hearing shall be given. ~~(7) If an application for conservatorship is filed, the~~ to a potential recipient of the notice, unless the potential recipient has

waived

and, if applicable,
designate the
proposed standby conservator
as standby conservator

~~waived~~ receipt. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

assets
and
income

✓ ****NOTE: Should anyone in addition to presumptive heirs be specified in s. 54.76 (1)? (See distribution of notice under s. 54.76 (4).) Should any of this be in s. 54.38? Note that I did not draft "adult" — shouldn't all heirs receive notice (see, for example, s. 54.76 (4))?

and any proposed standby conservator
are

(2) At the ~~time of such hearing~~ for appointment of a conservator, the applicant shall be personally examined by the court and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the ~~nominee~~ nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

INSERT 85 A

(3) A conservator ~~shall have~~ has all the powers and duties of a guardian of the property of an incompetent person. ~~The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved estate. An individual whose estate is under conservatorship may make gifts of his or her estate, subject to approval of the conservator.~~

income and assets

****NOTE: Please review the gifting language carefully, in light of the actual factual situation and holding of *Zobel v. Fenendall*.

INSERT 85 B

(4) Any person, including an individual whose ~~estate~~ estate is under conservatorship, may apply to the court at any time for termination ~~thereof of the conservatorship~~. Upon ~~such receipt of the application~~, the court shall fix a time and place for hearing and may direct that 10 days' notice by mail be given to the person's individual's guardian of the person or agent under a power of attorney for healthcare, if any, the conservator, and the presumptive heirs of the applicant. Upon ~~such individual whose estate is under conservatorship~~. A potential recipient of the notice may waive its receipt. At the hearing, the court shall, unless it is clearly shown that the applicant individual whose estate is under conservatorship is incompetent, remove the

any
standby
conservator,

adult

are

income and assets

income and assets are

RESTORE TO PLAINTEXT

, however,

conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator ~~individual~~. If the court shall upon such hearing ~~determine~~ determines at the hearing that the person individual whose estate is administered by a conservator may be is incapable of handling his or her estate, the court shall order the conservatorship continued, or, if the applicant so desires and ~~the~~ a nominee is suitable, ~~the court may~~ appoint a successor conservator. A conservatorship may only be terminated under a hearing under this subsection.

income and assets

income and assets are

(5) Appointment of a conservator ~~shall not be~~ does not constitute evidence of the competency or incompetency of the individual person whose estate is being administered.

(6) The court that appointed the conservator shall have continuing jurisdiction over the conservator. Any of the following, if committed by a conservator with respect to a conservatee or the conservatee's estate, constitutes cause for a remedy of the conservator under sub. (7) (a) 5.:

assets or income

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the conservatee or knowingly permitting others to do

so.

(d) Engaging in self-dealing.

income, including

(e) Failing to adequately provide for the personal needs of the conservatee from the available ~~estate~~ assets and public benefits. any available

(f) Failing to act in the best interests of the conservatee.

***NOTE: Section 54.76 (6) does not contain all the elements for cause for removal of a guardian that are specified in s. 54.58 (2). Please review.

INSERT 86#

(7) (a) The powers of a conservator may not be terminated without a hearing and may not be terminated unless any of the following occur:

- 1. The court removes the conservator on the court's own motion or under sub. (4).
- 2. The court appoints a guardian for the individual whose ~~estate is~~ *assets and income are* conserved.
- 3. The individual whose ~~estate is~~ conserved dies.
- 4. The conservator or individual whose ~~estate is~~ conserved changes residence to another state.

~~****NOTE: Instead of drafting s. 54.76 (7) (a) 5. concerning the court's receipt of "notice from an interested person," I allowed anyone to file a petition under s. 54.76 (4). Please review.~~

- 5. The court finds cause, as specified in sub. (6), for removal of the conservator.

(b) If anyone objects to termination of the conservatorship and alleges that the individual whose ~~estate is~~ conserved is appropriate for appointment of a guardian, the court may stay the hearing under par. (a) for 14 days to permit any interested person to file a petition for guardianship. If no petition is filed, the court may terminate the conservatorship and may appoint a guardian ad litem for the individual.

~~****NOTE: I did not add the authority for the guardian ad litem to contact the county Adult Protective Services unit; statutory authorization is not needed for such an action.~~

(8) If a court terminates a conservatorship or a conservator resigns, is removed, or dies, the conservator or the conservator's personal representative shall promptly render a final account to the court and to the former conservatee, any guardian of the former conservatee, or any deceased conservatee's personal representative or special administrator, as appropriate. If the conservator dies and the conservator and the deceased conservatee's personal representative or special administrator are the same person, the deceased conservatee's personal representative or special

administrator shall give notice of the termination and rendering of the final account to all interested persons of the conservatee's estate.

~~***NOTE: This provision mirrors s. 54.66 (1). Please review.~~

INSERT 88A

346.06 (1) (L) To any person who has been declared incompetent under s. 54.25 (2) (c) 1. d. to apply for an operator's license.

343.31 (title) Revocation or suspension of licenses after certain convictions or declarations.

343.31 (2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d., if the person is otherwise qualified under this chapter to obtain an operator's license.

343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or (2x), all revocations or suspensions under this section shall be for a period of one year.

440.121 Credential denial, nonrenewal and revocation based on incompetency. (1) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a credential under chs. 440 to 480.

INSERT 88B

757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian

ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40[✓](1), an attorney shall have ~~completed any approved continuing legal education requirements~~ ^{complied} complied with SRC chapter 36

INSERT 89.

(END)

D-NOTE

Sections
aff'd ✓

REAL BILL

2003 - 2004 LEGISLATURE

-0027/1
LRB-0039/P2
DAK:ejc:ch&jf
kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RWF

Regen

1 **AN ACT to repeal** 50.06 (2) (am) 2. a., 50.06 (2) (am) 2. b., 880.01 (4), 880.01 (5),
2 880.01 (6) and (7), 880.01 (7m), 880.01 (8), 880.03, 880.07 (1m), 880.07 (4),
3 880.08 (1) (title), 880.08 (2), 880.08 (3) (title), 880.08 (3) (e), 880.09 (1) (title),
4 880.09 (3) (title), 880.09 (4), 880.09 (5), 880.09 (7) (title), 880.12, 880.125, 880.13
5 (3), 880.15 (1m), 880.15 (2), 880.173 (title), 880.173 (2), 880.175 (title), 880.19
6 (title), 880.19 (1) (title), 880.19 (2) (title), 880.19 (3) (title), 880.19 (4) (title),
7 880.19 (5) (title), 880.19 (5) (d), 880.191 (title), 880.192, 880.21, 880.22 (title),
8 880.22 (1) (title), 880.22 (2) (title), 880.23 (title), 880.24 (title), 880.24 (1), 880.25
9 (title), 880.251, 880.26 (title), 880.31 (title), 880.33 (2) (d), 880.33 (4m) and (4r),
10 880.34 (6), 880.38 (1) and 880.39 (title); **to renumber** 50.06 (title), 50.06 (2) (b),
11 50.06 (3) (a) to (g), 50.06 (5) (a) 1. to 3., 880.06 (title), 880.07 (1) (a), 880.07 (1)
12 (c), 880.07 (1) (e), 880.07 (1) (f), 880.07 (1) (g), 880.13 (title), 880.13 (2) (title),
13 880.15 (title), 880.17, 880.18 (title), 880.24 (3) (a) 1. to 3., 880.24 (3) (a) 4., 880.33
14 (2) (b), 880.331 (4) (intro.), 880.331 (5) (d) and 880.36 (title); **to renumber and**
15 **amend** 50.06 (1), 50.06 (2) (intro.), 50.06 (2) (a), 50.06 (2) (am) 1., 50.06 (2) (am)

1 2. (intro.), 50.06 (2) (c), 50.06 (3) (intro.), 50.06 (4), 50.06 (5) (a) (intro.), 50.06
2 (5) (b), 50.06 (6), 50.06 (7), 880.01 (1), 880.01 (2), 880.01 (3), 880.02, 880.04
3 (title), 880.04 (1), 880.04 (2), 880.04 (2m), 880.04 (3), 880.05, 880.06 (1), 880.06
4 (2), 880.07 (title), 880.07 (1) (intro.), 880.07 (1) (b), 880.07 (1) (d), 880.07 (1) (h),
5 880.07 (1) (i), 880.07 (1) (j), 880.07 (2), 880.08 (intro.), 880.08 (1), 880.08 (3) (am)
6 (intro.), 880.08 (3) (am) 1., 880.08 (3) (am) 2., 880.08 (3) (am) 3., 880.08 (3) (am)
7 4., 880.08 (4), 880.09 (intro.), 880.09 (1), 880.09 (2), 880.09 (3), 880.09 (6), 880.09
8 (7), 880.10, 880.13 (1), 880.13 (2) (a), 880.13 (2) (b), 880.14, 880.15 (1), 880.15
9 (1s), 880.15 (3), 880.173 (1), 880.175, 880.18, 880.19 (1), 880.19 (2) (a), 880.19
10 (2) (b), 880.19 (3), 880.19 (4) (a), 880.19 (4) (b), 880.19 (4) (c), 880.19 (5) (a),
11 880.19 (5) (b), 880.19 (5) (c), 880.19 (6), 880.191 (1), 880.215, 880.22 (1), 880.22
12 (2), 880.23, 880.24 (2), 880.24 (3) (title), 880.24 (3) (a) (intro.), 880.24 (3) (b),
13 880.245, 880.25 (1), 880.25 (2), 880.25 (3), 880.25 (4), 880.25 (5), 880.26 (1)
14 (intro.), 880.26 (1) (a), 880.26 (1) (b), 880.26 (1) (c), 880.26 (2) (intro.), 880.26 (2)
15 (a), 880.26 (2) (b), 880.26 (2) (c), 880.26 (2) (d), 880.26 (3), 880.27, 880.28, 880.31
16 (2), 880.31 (3), 880.31 (6), 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33
17 (2) (a) 3., 880.33 (2) (e), 880.33 (5), 880.33 (5m), 880.33 (7), 880.33 (8) (b),
18 880.331 (title), 880.331 (1), 880.331 (2), 880.331 (3), 880.331 (4) (a), 880.331 (4)
19 (b), 880.331 (4) (c), 880.331 (4) (d), 880.331 (4) (e), 880.331 (4) (f), 880.331 (5)
20 (intro.), 880.331 (5) (a), 880.331 (5) (b), 880.331 (5) (c), 880.331 (5) (e), 880.331
21 (5) (f), 880.331 (5) (g), 880.331 (6), 880.331 (7), 880.331 (8), 880.34 (title), 880.34
22 (1), 880.34 (4), 880.34 (5), 880.35, 880.36 (1), 880.36 (2), 880.38 (title), 880.38
23 (2), 880.38 (3) and 880.39; **to consolidate, renumber and amend** 880.31 (1)
24 and (7) and 880.31 (4) and (5); **to amend** 29.161, 29.164 (3) (e), 29.171 (1),
25 29.173 (1), 29.182 (4m), 29.184 (6) (c) 1r., 29.184 (6) (c) 2., 29.231 (1), 29.235 (1),

1 29.512 (1), 46.011 (intro.), 343.31 (title), 343.31 (3) (a) and 757.48 (1) (a); and
2 **to create** 29.024 (2u), chapter 54, 343.06 (1) (L), 343.31 (2x) and 440.121 of the
3 statutes; **relating to:** guardians and wards INSERT 3-3

Analysis by the Legislative Reference Bureau

INSERT ANAL This is a preliminary draft. An analysis will be provided in a subsequent version.

INSERT 3-4 ***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 29.024 (2u) of the statutes is created to read:

5 29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The
6 department shall revoke any license authorizing hunting issued to an individual for
7 whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d.
8 stating that the individual is incompetent to apply for a hunting license under this
9 chapter.

10 **SECTION 2.** 29.161 of the statutes is amended to read:

11 **29.161 Resident small game hunting license.** A resident small game
12 hunting license shall be issued subject to ~~s. ss.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the
13 department to any resident applying for this license. The resident small game
14 hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

15 **SECTION 3.** 29.164 (3) (e) of the statutes is amended to read:

16 29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a
17 notice of approval to those qualified applicants selected to receive a wild turkey
18 hunting license. A person who receives a notice of approval and who pays the fee in
19 the manner required by the department shall be issued a wild turkey hunting license
20 subject to ss. 29.024 and 54.25 (2) (c) 1. d.

SECTION 4

STRIKE PERIOD

1 SECTION 4. 29.171 (1) of the statutes is amended to read:

2 29.171 (1) A resident archer hunting license shall be issued subject to ~~s. ss.~~
3 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this
4 license.

5 SECTION 5. 29.173 (1) of the statutes is amended to read:

6 29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to
7 ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this
8 license.

9 SECTION 6. 29.182 (4m) of the statutes is amended to read:

10 29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred
11 under ~~par. (g) sub. (4) (g)~~, only one resident elk hunting license in his or her lifetime,
12 and the resident elk hunting license shall be valid for only one elk hunting season.
13 The issuance, or transfer under ~~par. (g) sub. (4) (g)~~, of the license to the person is
14 subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

15 SECTION 7. 29.184 (6) (c) 1r. of the statutes is amended to read:

16 29.184 (6) (c) 1r. The department shall issue a notice of approval to those
17 qualified applicants selected to receive a Class A bear license. A person who receives
18 a notice of approval and who pays the fees required for the license shall be issued the
19 license subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

20 SECTION 8. 29.184 (6) (c) 2. of the statutes is amended to read:

21 29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss.~~ 29.024
22 (2g) and 54.25 (2) (c) 1. d. by the department to any resident who applies for this
23 license.

24 SECTION 9. 29.231 (1) of the statutes is amended to read:

1 29.231 (1) A resident sports license shall be issued subject to ~~s. ss.~~ ss. 29.024 and
2 54.25 (2) (c) 1.[✓]d. by the department to any resident who applies for this license , and
3 a nonresident sports license shall be issued subject to s. 29.024 by the department
4 to any person who is not a resident and who applies for the license.

5 **SECTION 10.** 29.235 (1) of the statutes is amended to read:

6 29.235 (1) ISSUANCE. A resident conservation patron license shall be issued
7 subject to ~~s. ss.~~ ss. 29.024 and 54.25 (2) (c) 1.[✓]d. by the department to any resident 14
8 years old or older who applies for the license. A nonresident conservation patron
9 license shall be issued subject to s. 29.024 by the department to any person 14 years
10 old or older who is not a resident and who applies for the license.

11 **SECTION 11.** 29.512 (1) of the statutes is amended to read:

12 29.512 (1) No person may engage or be employed for any compensation or
13 reward to guide, direct or assist any other person in hunting, fishing or trapping
14 unless the person is issued a guide license by the department subject to ~~s. ss.~~ ss. 29.024
15 and 54.25 (2) (c) 1.[✓]d. No guide license for hunting or trapping may be issued to or
16 obtained by any person who is not a resident of this state. No guide license may be
17 issued to any person under the age of 18 years. The holder of a guide license shall
18 comply with all of the requirements of this chapter.

19 **SECTION 12.** 46.011 (intro.) of the statutes is amended to read:

20 **46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54[✓], 55 and 58:

21 **SECTION 13.** 50.06 (title) of the statutes is renumbered 54.50 (2) (title).

22 **SECTION 14.** 50.06 (1) of the statutes is renumbered 54.50 (2) (a) and amended
23 to read:

24 54.50 (2) (a) In this section subsection, notwithstanding s. 54.01 (10),
25 “incapacitated” means unable to receive and evaluate information effectively or to

INSERT 5-18

INSERT
5-20A

INSERT
5-20B

1 communicate decisions to such an extent that the individual ~~lacks the capacity is~~
2 unable to manage his or her health care decisions, including decisions about his or
3 her post-hospital care.

4 **SECTION 15.** 50.06 (2) (intro.) of the statutes is renumbered 54.50 (2) (b) (intro.)
5 and amended to read:

6 54.50 (2) (b) (intro.) An individual under ~~sub. (3) par. (c)~~ may consent to
7 admission, ~~directly from a hospital~~ to a facility, as defined in s. 50.01 (1m), of an
8 incapacitated individual who does not have a valid power of attorney for health care
9 and who has not been adjudicated incompetent under ch. 880 54, if all of the following
10 apply:

11 **SECTION 16.** 50.06 (2) (a) of the statutes is renumbered 54.50 (2) (b) 1. and
12 amended to read:

13 54.50 (2) (b) 1. No person who is listed under ~~sub. (3) par. (c)~~ in the same order
14 of priority as, or higher in priority than, the individual who is consenting to the
15 proposed admission disagrees with the proposed admission.

16 **SECTION 17.** 50.06 (2) (am) 1. of the statutes is renumbered 54.50 (2) (b) 2. a.
17 and amended to read:

18 54.50 (2) (b) 2. a. Except as provided in subd. 2. b., no person who is listed under
19 ~~sub. (3) par. (c)~~ and who resides with the incapacitated individual disagrees with the
20 proposed admission.

21 **SECTION 18.** 50.06 (2) (am) 2. (intro.) of the statutes is renumbered 54.50 (2)
22 (b) 2. b. and amended to read:

23 54.50 (2) (b) 2. b. Subdivision ~~1.~~ 2. a. does not apply if ~~any of the following~~
24 applies: the individual who is consenting to the proposed admission resides with or
25 is the spouse of the incapacitated individual.

1 **SECTION 19.** 50.06 (2) (am) 2. a. of the statutes is repealed.

2 **SECTION 20.** 50.06 (2) (am) 2. b. of the statutes is repealed.

3 **SECTION 21.** 50.06 (2) (b) of the statutes is renumbered 54.50 (2) (b) 3.

4 **SECTION 22.** 50.06 (2) (c) of the statutes is renumbered 54.50 (2) (b) 4. and
5 amended to read:

6 54.50 (2) (b) 4. A petition for guardianship for the individual under s. ~~880.07~~
7 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are
8 filed prior to the proposed admission.

9 **SECTION 23.** 50.06 (3) (intro.) of the statutes is renumbered 54.50 (2) (c) (intro.)
10 and amended to read:

11 54.50 (2) (c) (intro.) The following individuals, in the following order of priority,
12 may consent to an admission under ~~sub. (2) par. (b)~~:

13 **SECTION 24.** 50.06 (3) (a) to (g) of the statutes are renumbered 54.50 (2) (c) 1.
14 to 7.

15 **SECTION 25.** 50.06 (4) of the statutes is renumbered 54.50 (2) (d) and amended
16 to read:

17 54.50 (2) (d) A determination that an individual is incapacitated for purposes
18 of ~~sub. (2) par. (b)~~ shall be made by 2 physicians, ~~as defined in s. 448.01 (5)~~, or by one
19 physician and one licensed psychologist, ~~as defined in s. 455.01 (4)~~, who personally
20 examine the individual and sign a statement specifying that the individual is
21 incapacitated. Mere old age, eccentricity, or physical disability, either singly or
22 together, are insufficient to make a finding that an individual is incapacitated.
23 Neither of the individuals who make a finding that an individual is incapacitated
24 may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge
25 that he or she is entitled to or has a claim on any portion of the individual's estate.

1 A copy of the statement shall be included in the individual's records in the facility to
2 which he or she is admitted.

3 **SECTION 26.** 50.06 (5) (a) (intro.) of the statutes is renumbered 54.50 (2) (e) 1.
4 (intro.) and amended to read:

5 54.50 (2) (e) 1. (intro.) Except as provided in ~~par. (b) subd. 2.~~, an individual who
6 consents to an admission under this section subsection may, for the incapacitated
7 individual, make health care decisions to the same extent as a guardian of the person
8 may and authorize expenditures related to health care to the same extent as a
9 guardian of the estate may, until the earliest of the following:

10 **SECTION 27.** 50.06 (5) (a) 1. to 3. of the statutes are renumbered 54.50 (2) (e)
11 1. a. to c.

12 **SECTION 28.** 50.06 (5) (b) of the statutes is renumbered 54.50 (2) (e) 2. and
13 amended to read:

14 54.50 (2) (e) 2. An individual who consents to an admission under this section
15 subsection may not authorize expenditures related to health care if the incapacitated
16 individual has an agent under a durable power of attorney, ~~as defined in s. 243.07~~
17 ~~(1) (a)~~, who may authorize expenditures related to health care.

18 **SECTION 29.** 50.06 (6) of the statutes is renumbered 54.50 (2) (f) and amended
19 to read:

20 54.50 (2) (f) If the incapacitated individual is in the facility after 60 days after
21 admission and a guardian has not been appointed, the authority of the person who
22 consented to the admission to make decisions and, if ~~sub. (5) (a) par. (e) 1.~~ applies,
23 to authorize expenditures is extended for 30 days for the purpose of allowing the
24 facility to initiate discharge planning for the incapacitated individual.

1 **SECTION 30.** 50.06 (7) of the statutes is renumbered 54.50 (2) (g) and amended
2 to read:

3 54.50 (2) (g) An individual who consents to an admission under this section
4 subsection may request that an assessment be conducted for the incapacitated
5 individual under the long-term support community options program under s. 46.27
6 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is
7 available for the individual, a functional and financial screen to determine eligibility
8 for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the
9 incapacitated individual or if the incapacitated individual is about to be admitted on
10 a private pay basis, the individual who consents to the admission may waive the
11 requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated
12 individual is expected to become eligible for medical assistance within 6 months.

INSERT 9-12A ✓
INSERT 9-12B ✓
INSERT 9-12C ✓
15
INSERT 9-12D ✓
INSERT 9-12E ✓
INSERT 9-12F ✓
INSERT 9-12G ✓
INSERT 9-12H ✓
INSERT 9-12I ✓

13 **SECTION 31.** Chapter 54 of the statutes is created to read:

14 **CHAPTER 54**

15 **GUARDIANS AND WARDS** ^{HIPS} CONSERVATORSHIPS

****NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the title of ch. 54?

****NOTE: With respect to psychotropic medication, this is what I have done either in this redraft or previously in LRB-0039/P1:

- a. Repealed s. 880.01 (7m), stats. (the definition of "not competent to refuse psychotropic medication"), previously renumbered as s. 54.01 (11).
- b. Created s. 54.01 (18), a definition of "psychotropic medication," based on the Legislative Council draft WLC: 0220/P1.
- c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).
- d. Stricken reference to incompetence to refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).
- e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).
- f. Repealed s. 880.34 (6), stats., as does WLC: 0220/P1 (annual review, etc.)
- g. Added to s. 54.25 (2) (d) 2. a. language from WLC: 0220/P1 concerning voluntary receipt by a ward of mediation, including psychotropic medication, if the ward does not

protest, prohibiting the involuntary administration of psychotropic medication, defining "protest," and creating a best interest standard.

h. Repealed s. 880.33 (2) (d), stats. (hearing on petition).

Please see my Drafter's Note concerning this topic and its treatment in this draft.

SUBCHAPTER I

DEFINITIONS

54.01 Definitions. In this chapter:

Subchs. I to VI:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

****NOTE: I have in this revised definition removed "feeding," which seems unrelated to self care, and play, which seems redundant to "leisure."

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

INSERT 10-8

(4) "Degenerative brain disorder" means an individual's loss or dysfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

****NOTE: This is the definition (revised grammatically) from WLC: 0037/1. Does one provide for one's own custody?

(5) "Depository account" has the meaning given in s. 815.18 (2) (e).

(6) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

****NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07 (1) (a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

****NOTE: Note that I have not included your proposed definition of "evaluative capacity." Please see the ****NOTE under the definition of "incapacity."

(8) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

or to manage adequately his or her property or financial affairs

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(12) "Guardian of the person" means a guardian appointed to comply with the duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25

(2).

INSERT 11-3

(15) "Incapacity" means the inability of an individual effectively to receive and evaluate information or communicate a decision with respect to the exercise of a right or power.

to make or

***NOTE: On Betsy Abramson's advice, this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability," rather than "ability"); (2) I omitted "make [a decision]" because that seems redundant to "communicate a decision;" and (3) I omitted "decisionmaking," because that seems unnecessary (all powers of an individual would appear to require some form of decisionmaking). Note that this definition replaces use of the terms "incapacity," "functional capacity, and" "evaluative capacity" throughout the draft, except for the term "incapacity of the guardian," which has been changed to "inability of the guardian." This change particularly affects the following: 54.01 (21), 54.15 (4), 54.21 (6) (a) and (c), 54.52 (2), and 54.68 (2) (f). After studying the issue further, I did *not* change the term "incapacitated" as it is used in numerous places in s. 54.50 (2) (renumbered from s. 50.06, stats.); use of that term in that subsection is subject to the definition of the term in s. 54.50 (2) (a), which limits the individual lack of capacity to health care decisions; I would think that you would want to keep this limitation. Please review.

***NOTE: I have repealed the definition of "incompetent" that was amended under 03.0039/P1, because the new language proposed for s. 54.10 replaces the definition. I also have not drafted the definition of "individual found incompetent" that was proposed, because, where the term is used, reference to s. 54.10 can be added and the defined term is then unnecessary. See, for example, this treatment in s. 54.01 (7).

INSERT 11-6

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(17) "Interested person" means any of the following:

(a) For purposes of a petition for guardianship or protective placement, any of

the following:

~~***NOTE: Do you intend in this bill to amend ch. 55 to use this definition? Where?~~

1. The proposed ward, if he or she has attained 14 years of age.
2. The spouse or adult child of the proposed ward, or the parent of a proposed ward who is a minor.