

Act No. 312
Public Acts of 1990
Approved by the Governor
December 18, 1990
Filed with the Secretary of State
December 19, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Hollister, Jondahl, Gubow, Stabenow, Emerson, Power, Kilpatrick, Leland, Murphy, Hunter, Brown, Johnson and Honigman
Reps. Allen, Alley, Bandstra, Banks, Barns, Bartnik, Bender, Bennane, Bennett, Berman, Bryant, Perry Bullard, Willis Bullard, Clack, Crandall, DeBeaussaert, DeMars, Dolan, Dunaskiss, Emmons, Fitzgerald, Gagliardi, Gire, Gnodtke, Harrison, Hillegonds, Hood, Keith, Knight, Kosteva, Krause, Kulchitsky, Law, London, Martin, Maynard, Middaugh, Munsell, Niederstadt, Ostling, Oxender, Palamara, Pitoniak, Profit, Randall, Rocca, Scott, Sparks, Stacey, Strand, Trim, Van Regenmorter, Wallace, Wartner and Webb named co-sponsors

ENROLLED HOUSE BILL No. 4016

AN ACT to amend Act No. 642 of the Public Acts of 1978, entitled as amended "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts, and powers of attorney; to prescribe penalties and liabilities; and to repeal certain acts and parts of acts," as amended, being sections 700.1 to 700.993 of the Michigan Compiled Laws, by adding section 496.

The People of the State of Michigan enact:

Section 1. Act No. 642 of the Public Acts of 1978, as amended, being sections 700.1 to 700.993 of the Michigan Compiled Laws, is amended by adding section 496 to read as follows:

Sec. 496. (1) A person 18 years of age or older who is of sound mind at the time a designation is made may designate in writing a person who is 18 years of age or older to exercise powers concerning care, custody, and medical treatment decisions for the person who made the designation. For purposes of this section, a person who is named in a designation to exercise powers concerning care, custody, and medical treatment decisions shall be known as a patient advocate and a person who makes a designation shall be known as a patient.

(2) A designation shall be in writing, signed, witnessed pursuant to subsection (3), dated, executed voluntarily, and before its implementation shall be made part of the patient's medical record with the patient's attending physician and, if applicable, with the facility where the patient is located. The designation shall include a statement that the authority conferred under this section shall be exercisable only when the patient is unable to participate in medical treatment decisions.

(3) A designation shall be executed in the presence of and signed by 2 witnesses. The witnesses shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, patient advocate, an employee of a life or health insurance provider for the patient, an employee of a health facility that is treating the patient, or an employee of a home for the aged as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws, where the patient resides. A witness shall not sign the designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(4) A designation may include a statement of the patient's desires on care, custody, and medical treatment. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, and medical treatment, that the patient could have exercised on his or her own behalf.

(5) A patient may designate in the designation a successor individual as a patient advocate who may exercise powers concerning care, custody, and medical treatment decisions for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(6) Before its implementation a copy of the designation shall be given to the proposed patient advocate and shall be given to a successor patient advocate prior to the successor acting as patient advocate. Before acting as a patient advocate, the proposed patient advocate shall sign an acceptance to the designation.

(7) The acceptance to a designation as a patient advocate shall contain the following:

“(a) This designation shall not become effective unless the patient is unable to participate in medical treatment decisions.

(b) A patient advocate shall not exercise powers concerning the patient’s care, custody, and medical treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(c) This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient’s death.

(d) A patient advocate may make a decision to withhold or withdraw treatment which would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient’s death.

(e) A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

(f) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient’s best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical treatment decisions are presumed to be in the patient’s best interests.

(g) A patient may revoke his or her designation at any time and in any manner sufficient to communicate an intent to revoke.

(h) A patient advocate may revoke his or her acceptance to the designation at any time and in any manner sufficient to communicate an intent to revoke.

(i) A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20201 of the Michigan Compiled Laws.”

(8) The authority under a designation executed under this section shall be exercisable by a patient advocate only when the patient is unable to participate in medical treatment decisions. The patient’s attending physician and another physician or licensed psychologist shall determine upon examination of the patient when the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient’s medical record, and shall review the determination not less than annually. If the patient’s religious beliefs prohibit an examination and this is stated in the designation, the patient shall indicate in the designation how it shall be determined when the patient advocate shall exercise powers concerning decisions on behalf of the patient. If a dispute arises as to whether the patient is unable to participate in medical treatment decisions, a petition may be filed with the probate court in the county in which the patient resides or is found requesting the court’s determination as to whether the patient is unable to participate in medical treatment decisions. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and within 7 days of the court’s receipt of the petition. As soon as possible and within 7 days after the hearing, the court shall determine whether or not the patient is able to participate in medical treatment decisions. If the court determines that the patient is unable to participate in medical treatment decisions, the patient advocate’s authority, rights, and responsibilities shall become effective. If the court determines that the patient is able to participate in medical treatment decisions, the patient advocate’s authority, rights, and responsibilities shall not become effective.

(9) An individual designated as a patient advocate under this section shall have the following authority, rights, responsibilities, and limitations:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.

(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in care, custody, or medical treatment decisions, whether given orally or as written in the designation.

(c) A patient advocate shall not exercise powers concerning the patient’s care, custody, and medical treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(d) This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient’s death.

(e) A patient advocate may make a decision to withhold or withdraw treatment which would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(f) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

(10) A designation executed under this section is suspended when the patient regains the ability to participate in medical treatment decisions. The suspension is effective as long as the patient is able to participate in medical treatment decisions. If the patient subsequently is determined under subsection (8) to be unable to participate in medical treatment decisions, the patient advocate's authority, rights, responsibilities, and limitations shall again become effective.

(11) A designation executed under this section is revoked by any of the following:

(a) The death of the patient.

(b) An order of dissolution by the probate court under subsection (16).

(c) Resignation of the patient advocate or removal of the patient advocate by the probate court, unless a successor patient advocate has been designated.

(d) Revocation of the designation by the patient. Even if the patient is unable to participate in medical treatment decisions, a patient may revoke a designation at any time and in any manner by which he or she is able to communicate an intent to revoke the designation. If there is a dispute as to the intent of the patient to revoke the designation, the probate court may make a determination on the intent of the patient to revoke the designation. If the revocation is not in writing, a person who witnesses a revocation of a designation shall describe in writing the circumstances of the revocation, shall sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician or health facility has notice of the patient's revocation of a designation, the physician or health facility shall note the revocation in the patient's medical records and bedside chart, and shall notify the patient advocate.

(e) A subsequent designation that revokes the prior designation either expressly or by inconsistency.

(f) The occurrence of a provision for revocation contained in the designation.

(g) If a designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the designation shall be suspended during the pendency of an action for separate maintenance, annulment, or divorce and shall be revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate. If a successor patient advocate is named, that individual shall act as the patient advocate.

(12) The revocation of a designation of a patient advocate under subsection (11) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the designation and without actual knowledge of the revocation. An action taken without knowledge of the revocation, unless the action is otherwise invalid or unenforceable, binds the patient and his or her heirs, devisees, and personal representatives. An affidavit executed by the patient advocate stating that he or she did not have at the time of doing an act pursuant to the designation actual knowledge of the revocation of the designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at that time of the revocation.

(13) A current desire by a patient, irrespective of a previous expressed or evidenced desire, to have provided, and not withheld or withdrawn, a specific life extending care, custody, or medical treatment shall be binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the competency of the patient.

(14) A person providing, performing, withholding, or withdrawing care, custody, or medical treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation, is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(15) A person providing care, custody, or medical treatment to a patient is bound by sound medical practice and by the instructions of a patient advocate if the patient advocate complies with this section, and is not bound by the instructions of a patient advocate if the patient advocate does not comply with this section.

(16) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests, or is otherwise not complying with this section, a petition may be filed with the probate court in the county in which the patient resides or is found requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

(17) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

(18) A health care provider shall not require a designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical treatment.

(19) A life or health insurer shall not do any of the following because of the execution or implementation of a designation or because of the failure or refusal to execute or implement a designation:

- (a) Refuse to provide or continue coverage to the patient.
- (b) Limit the amount of coverage available to a patient.
- (c) Charge a patient a different rate.
- (d) Consider the terms of an existing policy of life or health insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(20) A designation executed under this section shall not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

(21) Except as provided in subsections (18) and (19), this section shall only apply to or affect a person who has executed a designation. This section shall only apply to or affect a person acting for or on behalf of another person who has executed a designation.

(22) Nothing in this section shall be considered to authorize or compel care, custody, or medical treatment decisions for a patient who objects on religious grounds.

(23) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but shall be subject to subsection (1) and subsections (4) through (23), shall be in writing, signed, witnessed or notarized, dated, executed voluntarily, and before its implementation shall be made part of the patient's medical record.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.