



**House  
Legislative  
Analysis  
Section**

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***A SUMMARY OF HOUSE BILL 4016 AS  
INTRODUCED 1-11-89***

The bill would amend the Revised Probate Code's present durable power of attorney section to provide that it would apply only to matters having to do with the estate or financial affairs of the principal. The bill would in addition make specific provision for the revocation of a power of attorney and would specify fiduciary duties for someone designated as an attorney in fact under this section. The bill would repeal a section saying that other powers of attorney are not revoked until the attorney in fact is notified of the death, disability, or incompetence of the principal.

The bill would add a new section to the code to regulate a power of attorney which confers authority over the person of the principal. A more detailed description follows.

**Designation of a Patient Advocate.** An adult of sound mind could designate in a written durable power of attorney any other adult, to be known as the patient advocate, to make care, custody, and medical treatment decisions for the person who made the designation. A designation would have to be signed by two witnesses, neither of whom could be the patient's spouse, immediate family member, heir, physician, patient advocate, or an employee of an entity providing health care or health or life insurance to the patient. The witnesses would have to attest that the patient appeared to be of sound mind and under no duress, fraud, or undue influence. A designation could include a statement of the patient's desires on medical treatment, and could authorize the patient advocate to exercise one or more powers concerning the patient's medical treatment, care and custody that the patient could have exercised on his or her own behalf. The designation and its acceptance by the proposed patient advocate would be filed with the probate court, which would immediately notify the patient and the patient advocate of various rights and responsibilities as prescribed by the bill. The designation would be made a part of the patient's health record.

**Duties of a Patient Advocate.** A patient advocate would act as a fiduciary in exercising his or her powers and would have to observe the standards of care applicable to fiduciaries. He or she would have to take reasonable steps to follow the desires, instructions, or guidelines — whether oral or written — given by the patient while he or she was able to participate in treatment decisions. A patient advocate could not delegate his or her powers to another individual without prior authorization from the patient.

**Exercise of Authority.** The authority under the designation could be exercised only during a period when the patient was unable to participate in medical treatment decisions. The patient's attending physician and another physician or licensed psychologist would make the determination that a patient was no longer able to participate in medical treatment decisions and would review this determination annually. A patient whose religious beliefs prohibited the necessary examination would indicate in the designation how the determination is to be made.

**AUTHORITY TO MAKE MEDICAL DECISIONS**

**House Bill 4016**

Sponsor: Rep. David C. Hollister

Committee: Judiciary

Complete to 2-6-89

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**Revocation of a Designation.** A patient could revoke a designation at any time and in any manner by which he or she was able to communicate that desire. If the revocation was not in writing, a witness would sign a written description of the circumstances of the revocation and would notify the patient advocate if possible. A revocation would be made a part of the patient's health records, and the physician or health facility would notify the patient advocate.

**Disputes.** Disputes over whether a patient was unable to participate in a medical treatment decision or whether a patient advocate was failing to comply with the patient's desires or the bill would be resolved by the probate court.

**Health care provider responsibilities.** A person providing or withholding treatment due to the decision of someone reasonably believed to be a patient advocate would be liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf. A care or treatment provider would be bound by sound medical practice and by the patient advocate's instructions if the advocate complied with the bill, but would not be bound by the instructions of a patient advocate who did not comply with the bill. A health care provider could not require a designation to be executed as a condition of medical treatment.

**Desired treatment.** A patient's "current desire" to have a specific medical treatment or life-extending care or custody provided would be binding on the patient advocate (if known by him or her), regardless of the then-ability or inability of the patient to participate in care, custody, or medical treatment decisions.

**Marital Status.** A designation executed before a patient's marriage would terminate upon the patient's marriage. A designation executed during marriage and naming the spouse as the patient advocate would terminate upon divorce unless the patient had executed a separate written designation naming a successor individual to serve as patient advocate.

**Pregnant women.** If a patient was pregnant, a patient advocate's decision to withhold or withdraw medical treatment would first be reviewed by the probate court if that decision would be detrimental to the embryo or fetus. The court would appoint a guardian ad litem to represent the best interests of the embryo or fetus.

**Insurance matters.** A life or health insurer would be prohibited from doing any of the following because of the implementation or refusal to implement a designation: refuse or limit coverage, charge a different rate, consider the terms of an existing policy to have been breached or modified, or invoke a suicide exclusion in a policy covering the patient.

**Existing designations.** A designation executed before the bill took effect would be valid but subject to the bill's provisions other than those prescribing procedures for witnessing.

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Suicide, Homicide. The bill would state that a designation executed under it could not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

Religious beliefs. The bill could not be considered to authorize or compel care, custody, or medical treatment decisions for a patient who chose to rely on spiritual means through prayer alone in accordance with a recognized method of healing.

MCL 700.495, 700.496, and 700.497