

HOUSE BILL No. 5481

March 17, 2016, Introduced by Reps. Cox, Tedder, Webber, Lyons, Price, Callton, Graves, Glenn, Chatfield, Cochran, LaVoy and Canfield and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1106, 5303, 5305, and 5314 (MCL 700.1106, 700.5303, 700.5305, and 700.5314), section 1106 as amended by 2009 PA 46 and sections 5303, 5305, and 5314 as amended by 2013 PA 157.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

2 (a) "Mental health professional" means an individual who is
3 trained and experienced in the area of mental illness or
4 developmental disabilities and who is 1 of the following:

5 (i) A physician who is licensed to practice medicine or
6 osteopathic medicine and surgery in this state under article 15 of
7 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

8 (ii) A psychologist licensed to practice in this state under

1 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to
2 333.18838.

3 (iii) A registered professional nurse licensed to practice in
4 this state under article 15 of the public health code, 1978 PA 368,
5 MCL 333.16101 to 333.18838.

6 (iv) A licensed master's social worker licensed under article
7 15 of the public health code, 1978 PA 368, MCL 333.16101 to
8 333.18838.

9 (v) A physician's assistant licensed to practice in this state
10 under article 15 of the public health code, 1978 PA 368, MCL
11 333.16101 to 333.18838.

12 (vi) A licensed professional counselor licensed under part 181
13 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

14 (b) "Michigan prudent investor rule" means the fiduciary
15 investment and management rule prescribed by part 5 of this
16 article.

17 (c) "Minor" means an individual who is less than 18 years of
18 age.

19 (d) "Minor ward" means a minor for whom a guardian is
20 appointed solely because of minority.

21 (e) "Money" means legal tender or a note, draft, certificate
22 of deposit, stock, bond, check, or credit card.

23 (f) "Mortgage" means a conveyance, agreement, or arrangement
24 in which property is encumbered or used as security.

25 (g) "Nonresident decedent" means a decedent who was domiciled
26 in another jurisdiction at the time of his or her death.

27 (h) "Organization" means a corporation, business trust,

1 estate, trust, partnership, limited liability company, association,
2 or joint venture; governmental subdivision, agency, or
3 instrumentality; public corporation; or another legal or commercial
4 entity.

5 (i) "Parent" includes, but is not limited to, an individual
6 entitled to take, or who would be entitled to take, as a parent
7 under this act by intestate succession from a child who dies
8 without a will and whose relationship is in question. Parent does
9 not include an individual who is only a stepparent, foster parent,
10 or grandparent.

11 (j) "Partial guardian" means that term as defined in section
12 600 of the mental health code, 1974 PA 258, MCL 330.1600.

13 (k) "Patient advocate" means an individual designated to
14 exercise powers concerning another individual's care, custody, and
15 medical or mental health treatment or authorized to make an
16 anatomical gift on behalf of another individual, or both, as
17 provided in section 5506.

18 (l) "Patient advocate designation" means the written document
19 executed and with the effect as described in sections 5506 to 5515.

20 (m) "Payor" means a trustee, insurer, business entity,
21 employer, government, governmental subdivision or agency, or other
22 person authorized or obligated by law or a governing instrument to
23 make payments.

24 (n) "Person" means an individual or an organization.

25 (o) "Personal representative" includes, but is not limited to,
26 an executor, administrator, successor personal representative, and
27 special personal representative, and any other person, other than a

1 trustee of a trust subject to article VII, who performs
2 substantially the same function under the law governing that
3 person's status.

4 (p) "Petition" means a written request to the court for an
5 order after notice.

6 (Q) **"PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM" MEANS THAT**
7 **TERM AS DEFINED IN SECTION 5674 OF THE PUBLIC HEALTH CODE, 1978 PA**
8 **368, MCL 333.5674.**

9 (R) ~~(q)~~—"Plenary guardian" means that term as defined in
10 section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

11 (S) ~~(r)~~—"Proceeding" includes an application and a petition,
12 and may be an action at law or a suit in equity. A proceeding may
13 be denominated a civil action under court rules.

14 (T) ~~(s)~~—"Professional conservator" means a person that
15 provides conservatorship services for a fee. Professional
16 conservator does not include a person who is an individual who is
17 related to all but 2 of the protected individuals for whom he or
18 she is appointed as conservator.

19 (U) ~~(t)~~—"Professional guardian" means a person that provides
20 guardianship services for a fee. Professional guardian does not
21 include a person who is an individual who is related to all but 2
22 of the wards for whom he or she is appointed as guardian.

23 (V) ~~(u)~~—"Property" means anything that may be the subject of
24 ownership, and includes both real and personal property or an
25 interest in real or personal property.

26 (W) ~~(v)~~—"Protected individual" means a minor or other
27 individual for whom a conservator has been appointed or other

1 protective order has been made as provided in part 4 of article V.

2 (X) ~~(w)~~—"Protective proceeding" means a proceeding under the
3 provisions of part 4 of article V.

4 Sec. 5303. (1) An individual in his or her own behalf, or any
5 person interested in the individual's welfare, may petition for a
6 finding of incapacity and appointment of a guardian. The petition
7 ~~shall~~**MUST** contain specific facts about the individual's condition
8 and specific examples of the individual's recent conduct that
9 demonstrate the need for a guardian's appointment.

10 (2) Before a petition is filed under this section, the court
11 shall provide the person intending to file the petition with
12 written information that sets forth alternatives to appointment of
13 a full guardian, including, but not limited to, a limited guardian,
14 conservator, patient advocate designation, do-not-resuscitate
15 order, **PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM**, or durable
16 power of attorney with or without limitations on purpose,
17 authority, or time period, and an explanation of each alternative.

18 (3) Upon the filing of a petition under subsection (1), the
19 court shall set a date for hearing on the issue of incapacity.
20 Unless the allegedly incapacitated individual has legal counsel of
21 his or her own choice, the court shall appoint a guardian ad litem
22 to represent the person in the proceeding.

23 Sec. 5305. (1) The duties of a guardian ad litem appointed for
24 an individual alleged to be incapacitated include all of the
25 following:

26 (a) Personally visiting the individual.

27 (b) Explaining to the individual the nature, purpose, and

1 legal effects of a guardian's appointment.

2 (c) Explaining to the individual the hearing procedure and the
3 individual's rights in the hearing procedure, including, but not
4 limited to, all of the following:

5 (i) The right to contest the petition.

6 (ii) The right to request limits on the guardian's powers,
7 including a limitation on the guardian's power to execute a ~~ON~~

8 **BEHALF OF THE WARD EITHER OF THE FOLLOWING:**

9 **(A) A do-not-resuscitate order. ~~on behalf of the ward.~~**

10 **(B) A PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM.**

11 (iii) The right to object to a particular person being
12 appointed guardian.

13 (iv) The right to be present at the hearing.

14 (v) The right to be represented by legal counsel.

15 (vi) The right to have legal counsel appointed for the
16 individual if he or she is unable to afford legal counsel.

17 (d) Informing the individual that if a guardian is appointed,
18 the guardian may have the power to execute a do-not-resuscitate
19 order on behalf of the individual and, if meaningful communication
20 is possible, discern if the individual objects to having a do-not-
21 resuscitate order executed on his or her behalf.

22 **(E) INFORMING THE INDIVIDUAL THAT IF A GUARDIAN IS APPOINTED,**
23 **THE GUARDIAN MAY HAVE THE POWER TO EXECUTE A PHYSICIAN ORDERS FOR**
24 **SCOPE OF TREATMENT FORM ON BEHALF OF THE INDIVIDUAL AND, IF**
25 **MEANINGFUL COMMUNICATION IS POSSIBLE, DISCERN IF THE INDIVIDUAL**
26 **OBJECTS TO HAVING A PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM**
27 **EXECUTED ON HIS OR HER BEHALF.**

1 (F) ~~(e)~~—Informing the individual of the name of each person
2 known to be seeking appointment as guardian.

3 (G) ~~(f)~~—Asking the individual and the petitioner about the
4 amount of cash and property readily convertible into cash that is
5 in the individual's estate.

6 (H) ~~(g)~~ Making determinations, and informing the court of
7 those determinations, on all of the following:

8 (i) Whether there are 1 or more appropriate alternatives to
9 the appointment of a full guardian or whether 1 or more actions
10 should be taken in addition to the appointment of a guardian.
11 Before informing the court of his or her determination under this
12 subparagraph, the guardian ad litem shall consider the
13 appropriateness of at least each of the following as alternatives
14 or additional actions:

15 (A) Appointment of a limited guardian, including the specific
16 powers and limitation on those powers the guardian ad litem
17 believes appropriate.

18 (B) Appointment of a conservator or another protective order
19 under part 4 of this article. In the report informing the court of
20 the determinations under this subdivision, the guardian ad litem
21 shall include an estimate of the amount of cash and property
22 readily convertible into cash that is in the individual's estate.

23 (C) Execution of a patient advocate designation, do-not-
24 resuscitate order, **PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM**, or
25 durable power of attorney with or without limitations on purpose,
26 authority, or duration.

27 (ii) Whether a disagreement or dispute related to the

1 guardianship petition might be resolved through court ordered
2 mediation.

3 (iii) Whether the individual wishes to be present at the
4 hearing.

5 (iv) Whether the individual wishes to contest the petition.

6 (v) Whether the individual wishes limits placed on the
7 guardian's powers.

8 (vi) Whether the individual objects to having a do-not-
9 resuscitate order executed on his or her behalf.

10 (vii) **WHETHER THE INDIVIDUAL OBJECTS TO HAVING A PHYSICIAN**
11 **ORDERS FOR SCOPE OF TREATMENT FORM EXECUTED ON HIS OR HER BEHALF.**

12 (viii) ~~(vii)~~ Whether the individual objects to a particular
13 person being appointed guardian.

14 (2) The court shall not order compensation of the guardian ad
15 litem unless the guardian ad litem states on the record or in the
16 guardian ad litem's written report that he or she has complied with
17 subsection (1).

18 (3) If the individual alleged to be incapacitated wishes to
19 contest the petition, to have limits placed on the guardian's
20 powers, or to object to a particular person being appointed
21 guardian and if legal counsel has not been secured, the court shall
22 appoint legal counsel to represent the individual alleged to be
23 incapacitated. If the individual alleged to be incapacitated is
24 indigent, ~~the~~ **THIS** state shall bear the expense of legal counsel.

25 (4) If the individual alleged to be incapacitated requests
26 legal counsel or the guardian ad litem determines it is in the
27 individual's best interest to have legal counsel, and if legal

1 counsel has not been secured, the court shall appoint legal
2 counsel. If the individual alleged to be incapacitated is indigent,
3 ~~the~~**THIS** state shall bear the expense of legal counsel.

4 (5) If the individual alleged to be incapacitated has legal
5 counsel appointed under subsection (3) or (4), the appointment of a
6 guardian ad litem terminates.

7 Sec. 5314. ~~Whenever~~**IF** meaningful communication is possible, a
8 legally incapacitated individual's guardian shall consult with the
9 legally incapacitated individual before making a major decision
10 affecting the legally incapacitated individual. To the extent a
11 guardian of a legally incapacitated individual is granted powers by
12 the court under section 5306, the guardian is responsible for the
13 ward's care, custody, and control, but is not liable to third
14 persons ~~by reason~~**BECAUSE** of that responsibility for the ward's
15 acts. In particular and without qualifying the previous sentences,
16 a guardian has all of the following powers and duties, to the
17 extent granted by court order:

18 (a) The custody of the person of the ward and the power to
19 establish the ward's place of residence ~~within~~**IN** or ~~without~~
20 **OUTSIDE** this state. The guardian shall visit the ward within 3
21 months after the guardian's appointment and not less than once
22 within 3 months after each previous visit. The guardian shall
23 notify the court within 14 days of a change in the ward's place of
24 residence or a change in the guardian's place of residence.

25 (b) If entitled to custody of the ward, the duty to make
26 provision for the ward's care, comfort, and maintenance and, when
27 appropriate, arrange for the ward's training and education. The

1 guardian shall secure services to restore the ward to the best
2 possible state of mental and physical well-being so that the ward
3 can return to self-management at the earliest possible time.
4 Without regard to custodial rights of the ward's person, the
5 guardian shall take reasonable care of the ward's clothing,
6 furniture, vehicles, and other personal effects and commence a
7 protective proceeding if the ward's other property needs
8 protection. If a guardian commences a protective proceeding because
9 the guardian believes that it is in the ward's best interest to
10 sell or otherwise dispose of the ward's real property or interest
11 in real property, the court may appoint the guardian as special
12 conservator and authorize the special conservator to proceed under
13 section 5423(3). A guardian shall not otherwise sell the ward's
14 real property or interest in real property.

15 (c) The power to give the consent or approval that is
16 necessary to enable the ward to receive medical or other
17 professional care, counsel, treatment, or service. The power of a
18 guardian to execute a do-not-resuscitate order under subdivision

19 **(d) OR EXECUTE A PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM UNDER**
20 **SUBDIVISION (F)** does not affect or limit the power of a guardian to
21 consent to a physician's order to withhold resuscitative measures
22 in a hospital.

23 (d) The power ~~of a guardian~~ to execute, reaffirm, and revoke a
24 do-not-resuscitate order on behalf of a ward. ~~is subject to this~~
25 ~~subdivision.~~ **HOWEVER, A** guardian shall not execute a do-not-
26 resuscitate order unless the guardian does all of the following:

27 (i) Not more than 14 days before executing the do-not-

1 resuscitate order, ~~the guardian~~ visits the ward and, if meaningful
2 communication is possible, consults with the ward about executing
3 the do-not-resuscitate order.

4 (ii) ~~The guardian consults~~ **CONSULTS** directly with the ward's
5 attending physician as to the specific medical indications that
6 warrant the do-not-resuscitate order.

7 (e) If a guardian executes a do-not-resuscitate order under
8 subdivision (d), not less than annually after the do-not-
9 resuscitate order is first executed, the ~~guardian shall~~ **DUTY TO** do
10 all of the following:

11 (i) Visit the ward and, if meaningful communication is
12 possible, consult with the ward about reaffirming the do-not-
13 resuscitate order.

14 (ii) Consult directly with the ward's attending physician as
15 to specific medical indications that may warrant reaffirming the
16 do-not-resuscitate order.

17 **(F) THE POWER TO EXECUTE, REAFFIRM, AND REVOKE A PHYSICIAN**
18 **ORDERS FOR SCOPE OF TREATMENT FORM ON BEHALF OF A WARD. HOWEVER, A**
19 **GUARDIAN SHALL NOT EXECUTE A PHYSICIAN ORDERS FOR SCOPE OF**
20 **TREATMENT FORM UNLESS THE GUARDIAN DOES ALL OF THE FOLLOWING:**

21 (i) **NOT MORE THAN 14 DAYS BEFORE EXECUTING THE PHYSICIAN**
22 **ORDERS FOR SCOPE OF TREATMENT FORM, VISITS THE WARD AND, IF**
23 **MEANINGFUL COMMUNICATION IS POSSIBLE, CONSULTS WITH THE WARD ABOUT**
24 **EXECUTING THE PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM.**

25 (ii) **CONSULTS DIRECTLY WITH THE WARD'S ATTENDING PHYSICIAN AS**
26 **TO THE SPECIFIC MEDICAL INDICATIONS THAT WARRANT THE PHYSICIAN**
27 **ORDERS FOR SCOPE OF TREATMENT FORM.**

1 (G) IF A GUARDIAN EXECUTES A PHYSICIAN ORDERS FOR SCOPE OF
2 TREATMENT FORM UNDER SUBDIVISION (F), NOT LESS THAN ANNUALLY AFTER
3 THE PHYSICIAN ORDERS FOR SCOPE OF TREATMENT IS FIRST EXECUTED, THE
4 DUTY TO DO ALL OF THE FOLLOWING:

5 (i) VISIT THE WARD AND, IF MEANINGFUL COMMUNICATION IS
6 POSSIBLE, CONSULT WITH THE WARD ABOUT REAFFIRMING THE PHYSICIAN
7 ORDERS FOR SCOPE OF TREATMENT FORM.

8 (ii) CONSULT DIRECTLY WITH THE WARD'S ATTENDING PHYSICIAN AS
9 TO SPECIFIC MEDICAL INDICATIONS THAT MAY WARRANT REAFFIRMING THE
10 PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM.

11 (H) ~~(f)~~—If a conservator for the ward's estate is not
12 appointed, the power to do any of the following:

13 (i) Institute a proceeding to compel a person under a duty to
14 support the ward or to pay money for the ward's welfare to perform
15 that duty.

16 (ii) Receive money and tangible property deliverable to the
17 ward and apply the money and property for the ward's support, care,
18 and education. The guardian shall not use money from the ward's
19 estate for room and board that the guardian or the guardian's
20 spouse, parent, or child have furnished the ward unless a charge
21 for the service is approved by court order made ~~upon~~ **ON** notice to
22 at least 1 of the ward's next of kin, if notice is possible. The
23 guardian shall exercise care to conserve any excess for the ward's
24 needs.

25 (I) ~~(g)~~—The guardian shall **DUTY TO** report the condition of the
26 ward and the ward's estate that is subject to the guardian's
27 possession or control, as required by the court, but not less often

1 than annually. The guardian shall also serve the report required
2 under this subdivision on the ward and interested persons as
3 specified in the Michigan court rules. A report under this
4 subdivision ~~shall~~**MUST** contain all of the following:

5 (i) The ward's current mental, physical, and social condition.

6 (ii) Improvement or deterioration in the ward's mental,
7 physical, and social condition that occurred during the past year.

8 (iii) The ward's present living arrangement and changes in his
9 or her living arrangement that occurred during the past year.

10 (iv) Whether the guardian recommends a more suitable living
11 arrangement for the ward.

12 (v) Medical treatment received by the ward.

13 (vi) Whether the guardian has executed, reaffirmed, or revoked
14 a do-not-resuscitate order on behalf of the ward during the past
15 year.

16 (vii) **WHETHER THE GUARDIAN HAS EXECUTED, REAFFIRMED, OR**
17 **REVOKED A PHYSICIAN ORDERS FOR SCOPE OF TREATMENT FORM ON BEHALF OF**
18 **THE WARD DURING THE PAST YEAR.**

19 (viii) ~~(vii)~~—Services received by the ward.

20 (ix) ~~(viii)~~—A list of the guardian's visits with, and
21 activities on behalf of, the ward.

22 (x) ~~(ix)~~—A recommendation as to the need for continued
23 guardianship.

24 (J) ~~(h)~~—If a conservator is appointed, the duty to pay to the
25 conservator, for management as provided in this act, the amount of
26 the ward's estate received by the guardian in excess of the amount
27 the guardian expends for the ward's current support, care, and

1 education. The guardian shall account to the conservator for the
2 amount expended.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No. _____ or House Bill No. 5482 (request no.
7 03918'15) of the 98th Legislature is enacted into law.