

HOUSE BILL No. 5075

October 10, 2017, Introduced by Reps. Cole, Lucido, Kahle, Leutheuser, Miller, Brann, Victory, Marino, Noble and Runestad and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5306, 5311, and 5508 (MCL 700.5306, 700.5311, and 700.5508), section 5306 as amended by 2004 PA 532 and section 5508 as amended by 2008 PA 41.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 5306. (1) The court may appoint a guardian if the court
2 finds by clear and convincing evidence both that the individual for
3 whom a guardian is sought is an incapacitated individual and that
4 the appointment is necessary as a means of providing continuing
5 care and supervision of the incapacitated individual, with each
6 finding supported separately on the record. Alternately, the court
7 may dismiss the proceeding or enter another appropriate order.
8 (2) The court shall grant a guardian only those powers and

1 only for that period of time as is necessary to provide for the
2 demonstrated need of the incapacitated individual. The court shall
3 design the guardianship to encourage the development of maximum
4 self-reliance and independence in the individual. If the court is
5 aware that an individual has executed a patient advocate
6 designation under section 5506, the court shall not grant a
7 guardian any of the same powers that are held by the patient
8 advocate. A court order establishing a guardianship shall specify
9 any limitations on the guardian's powers and any time limits on the
10 guardianship.

11 (3) If the court finds by clear and convincing evidence that
12 an individual is incapacitated and lacks the capacity to do some,
13 but not all, of the tasks necessary to care for himself or herself,
14 the court may appoint a limited guardian to provide guardianship
15 services to the individual, but the court shall not appoint a full
16 guardian.

17 (4) If the court finds by clear and convincing evidence that
18 the individual is incapacitated and is totally without capacity to
19 care for himself or herself, the court shall specify that finding
20 of fact in an order and may appoint a full guardian.

21 (5) If an individual executed a patient advocate designation
22 under section 5506 before the time the court determines that he or
23 she became a legally incapacitated individual, a guardian does not
24 have and shall not exercise the power or duty of making medical or
25 mental health treatment decisions that the patient advocate is
26 designated to make. If, however, a petition for guardianship or for
27 modification under section 5310 alleges and the court finds **BY**

1 **CLEAR AND CONVINCING EVIDENCE** that the patient advocate designation
2 was not executed in compliance with section 5506, that the patient
3 advocate is not complying with the terms of the designation or with
4 the applicable provisions of sections 5506 to 5515, or that the
5 patient advocate is not acting consistent with the ward's best
6 interests, the court may **APPOINT A GUARDIAN OR** modify ~~the~~**A**
7 guardianship's terms to grant those powers to the guardian. **THE**
8 **COURT SHALL NOT APPOINT A TEMPORARY GUARDIAN UNDER SECTION 5312**
9 **WHILE CONSIDERING A PETITION UNDER THIS SUBSECTION. DURING THE**
10 **PENDENCY OF A PETITION UNDER THIS SUBSECTION, THE PATIENT ADVOCATE**
11 **OR PETITIONER SHALL NOT AUTHORIZE OR EFFECTUATE A MEDICAL TREATMENT**
12 **DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT. FOR THE**
13 **PURPOSES OF THIS SUBSECTION, THERE IS A REBUTTABLE PRESUMPTION THAT**
14 **THE WARD'S BEST INTERESTS INCLUDE THE WARD CONTINUING TO LIVE.**

15 Sec. 5311. (1) In a proceeding for the appointment or removal
16 of an incapacitated individual's guardian, other than the
17 appointment of a temporary guardian or temporary suspension of a
18 guardian, notice of hearing must be given to each of the following:

19 (a) The ward or the individual alleged to be incapacitated and
20 that individual's spouse, parents, and adult children.

21 (b) A person who is serving as the guardian or conservator or
22 who has the individual's care and custody.

23 (c) If known, a person named as attorney in fact under a
24 durable power of attorney **OR A PATIENT ADVOCATE DESIGNATED UNDER**
25 **SECTION 5506.**

26 (d) If no other person is notified under subdivision (a), (b),
27 or (c), at least 1 of the individual's closest adult relatives, if

1 any can be found.

2 (2) Notice must be served personally on the alleged
3 incapacitated individual. Notice to all other persons must be given
4 as prescribed by court rule. Waiver of notice by the individual
5 alleged to be incapacitated is not effective unless the individual
6 attends the hearing or a waiver of notice is confirmed in an
7 interview with the visitor.

8 (3) In a proceeding for a guardian's appointment under
9 sections 5303 and 5304, a copy of the petition must be attached to
10 the hearing notice, and the notice to the alleged incapacitated
11 individual must contain all of the following information:

12 (a) The nature, purpose, and legal effects of the appointment
13 of a guardian.

14 (b) The alleged incapacitated individual's rights in the
15 proceeding, including the right to appointed legal counsel.

16 Sec. 5508. (1) Except as provided under subsection ~~(3)~~, **(6)**,
17 the authority under a patient advocate designation is exercisable
18 by a patient advocate only when the patient is unable to
19 participate in medical treatment or, as applicable, mental health
20 treatment decisions. The patient's attending physician and another
21 physician or licensed psychologist shall determine upon examination
22 of the patient whether the patient is unable to participate in
23 medical treatment decisions, shall put the determination in
24 writing, shall make the determination part of the patient's medical
25 record, and shall review the determination not less than annually.
26 If the patient's religious beliefs prohibit an examination and this
27 is stated in the designation, the patient must indicate in the

1 designation how the determination under this subsection ~~shall~~**MUST**
2 be made. The determination of the patient's ability to make mental
3 health treatment decisions ~~shall~~**MUST** be made under section 5515.

4 (2) If a dispute arises as to whether the patient is unable to
5 participate in medical or mental health treatment decisions, a
6 petition may be filed with the court in the county in which the
7 patient resides or is located requesting the court's determination
8 as to whether the patient is unable to participate in decisions
9 regarding medical treatment or mental health treatment, as
10 applicable. If a petition is filed under this subsection, the court
11 shall appoint a guardian ad litem to represent the patient for the
12 purposes of this subsection. ~~The~~**SUBJECT TO SUBSECTION (4), THE**
13 court shall conduct a hearing on a petition under this subsection
14 as soon as possible and not later than 7 days after the court
15 receives the petition. As soon as possible and not later than 7
16 days after the hearing, the court shall determine whether or not
17 the patient is able to participate in decisions regarding medical
18 treatment or mental health treatment, as applicable. **DURING THE**
19 **PENDENCY OF A PETITION UNDER THIS SUBSECTION, THE PATIENT ADVOCATE**
20 **OR THE PETITIONER SHALL NOT AUTHORIZE OR IMPLEMENT A MEDICAL**
21 **TREATMENT DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING**
22 **TREATMENT.** If the court determines that the patient is unable to
23 participate in the decisions, the patient advocate's authority,
24 rights, and responsibilities are effective. If the court determines
25 that the patient is able to participate in the decisions, the
26 patient advocate's authority, rights, and responsibilities are not
27 effective.

1 (3) IF A DISPUTE ARISES AS TO WHETHER THE PATIENT ADVOCATE IS
2 COMPLYING WITH THE TERMS OF THE PATIENT ADVOCATE DESIGNATION OR
3 WITH THE APPLICABLE PROVISIONS OF SECTIONS 5506 TO 5515, OR WHETHER
4 THE PATIENT ADVOCATE IS ACTING CONSISTENT WITH THE PATIENT'S BEST
5 INTERESTS, A PETITION MAY BE FILED WITH THE COURT IN THE COUNTY IN
6 WHICH THE PATIENT RESIDES OR IS LOCATED REQUESTING THE COURT TO
7 DETERMINE WHETHER THE PATIENT ADVOCATE IS ACTING CONSISTENT WITH
8 HIS OR HER DESIGNATED AUTHORITY OR WITH THE PATIENT'S BEST
9 INTERESTS. IF THE PETITION IS FILED UNDER THIS SUBSECTION, THE
10 COURT SHALL APPOINT A GUARDIAN AD LITEM TO REPRESENT THE PATIENT
11 FOR THE PURPOSES OF THIS SUBSECTION. SUBJECT TO SUBSECTION (4), THE
12 COURT SHALL CONDUCT A HEARING ON A PETITION UNDER THIS SUBSECTION
13 AS SOON AS POSSIBLE AND NOT LATER THAN 7 DAYS AFTER THE COURT
14 RECEIVES THE PETITION. AS SOON AS POSSIBLE AND NOT LATER THAN 7
15 DAYS AFTER THE HEARING, THE COURT SHALL DETERMINE WHETHER OR NOT
16 THE PATIENT ADVOCATE IS ACTING CONSISTENT WITH HIS OR HER
17 DESIGNATED AUTHORITY OR WITH THE PATIENT'S BEST INTERESTS. DURING
18 THE PENDENCY OF THE PETITION UNDER THIS SUBSECTION, THE PATIENT
19 ADVOCATE OR A PETITIONER SHALL NOT AUTHORIZE OR IMPLEMENT A MEDICAL
20 TREATMENT DECISION TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
21 TREATMENT.

22 (4) THE COURT SHALL PROVIDE NOTICE OF HEARING UNDER A PETITION
23 FILED UNDER SUBSECTION (2) OR (3) TO EACH OF THE FOLLOWING:

24 (A) THE PATIENT AND THE PATIENT'S SPOUSE, PARENTS, AND ADULT
25 CHILDREN.

26 (B) A PERSON WHO HAS THE PATIENT'S CARE OR CUSTODY.

27 (C) IF KNOWN, A PERSON NAMED AS ATTORNEY IN FACT UNDER A

1 DURABLE POWER OF ATTORNEY.

2 (D) IF NO OTHER PERSON IS NOTIFIED UNDER SUBDIVISION (A), (B),
3 OR (C), AT LEAST 1 OF THE PATIENT'S CLOSEST ADULT RELATIVES, IF ANY
4 CAN BE FOUND.

5 (5) A NOTICE UNDER SUBSECTION (4) MUST BE SERVED PERSONALLY ON
6 THE PATIENT. NOTICE TO ALL OTHER PERSONS MUST BE GIVEN AS
7 PRESCRIBED BY COURT RULE.

8 (6) ~~(3) In the case of a~~ **FOR A** patient advocate designation
9 that authorizes a patient advocate to make an anatomical gift of
10 all or part of the patient's body, the patient advocate shall act
11 on the patient's behalf in accordance with part 101 of the public
12 health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so
13 only after the patient has been declared unable to participate in
14 medical treatment decisions as provided in subsection (1) or
15 declared dead by a licensed physician. The patient advocate's
16 authority to make an anatomical gift remains exercisable after the
17 patient's death.

18 (7) **FOR PURPOSES OF THIS SECTION, THERE IS A REBUTTABLE**
19 **PRESUMPTION THAT THE PATIENT'S BEST INTERESTS INCLUDE THE PATIENT**
20 **CONTINUING TO LIVE.**

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