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700.5506 Designation of patient advocate; "community mental health services program or hospital" defined.

Sec. 5506. (1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2) For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3) A patient advocate designation under this section must be in writing, signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4) A patient advocate designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5507 Patient advocate designation; statement; acceptance.

Sec. 5507. (1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift that the patient could have exercised on his or her own behalf.

(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate

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who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(3) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

(4) The acceptance of a designation as a patient advocate must include substantially all of the following statements:

1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.

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

3. This patient advocate 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.

4. A patient advocate may make a decision to withhold or withdraw treatment that 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.

5. 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.

6. 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 or mental health treatment decisions are presumed to be in the patient's best interests.

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

8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

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

10. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5508 Determination of advocate's authority to act.

Sec. 5508. (1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether 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 must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. 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

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subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

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

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5509 Authority and responsibilities of patient advocate; suspension.

Sec. 5509. (1) An individual designated as a patient advocate has 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 decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, 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 or mental health 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) The 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 that 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 may choose to have the patient placed under hospice care.

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

(h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415, if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under section 5508 or 5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 1999, Act 52, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5510 Revocation of patient advocate designation.

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Sec. 5510. (1) A patient advocate designation is revoked by 1 or more of the following:

(a) The patient's death, except that part of the patient advocate designation, if any, that authorizes the patient advocate to make an anatomical gift of all or part of the deceased patient's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(b) An order of removal by the probate court under section 5511(5).

(c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been designated.

(d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. If the revocation is not in writing, an individual who witnesses a revocation of a patient advocate designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician, mental health professional, or health facility has notice of the patient's revocation of a patient advocate designation, the physician, mental health professional, or health facility shall note the revocation in the patient's records and bedside chart and shall notify the patient advocate.

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

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

(g) If a patient advocate designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the patient advocate designation is suspended during the pendency of an action for separate maintenance, annulment, or divorce and is 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 acts as the patient advocate.

(2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the patient advocate designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the patient advocate designation, he or she did not have actual knowledge of the revocation of the patient advocate designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5511 Binding effect; liability of provider; exception; dispute.

Sec. 5511. (1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is 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 patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health 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.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

(4) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:

(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted

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community practice standards of treatment.

(b) The treatment requested is not reasonably available.

(c) Compliance is not consistent with applicable law.

(d) Compliance is not consistent with court-ordered treatment.

(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

(5) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5512 Restrictions.

Sec. 5512. (1) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

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

(3) A life or health insurer shall not do any of the following because of the execution or implementation of a patient advocate designation or because of the failure or refusal to execute or implement such 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.

(4) A patient advocate designation shall not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

(5) Except as provided in subsections (2) and (3), sections 5506 to 5515 only apply to or affect an individual who has executed a patient advocate designation or an individual acting for or on behalf of another individual who has executed a patient advocate designation.

(6) Nothing in sections 5506 to 5515 shall be considered to authorize or compel care, custody, or medical or mental health treatment decisions for a patient who objects on religious grounds.

(7) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but is subject to section 5506(1) and sections 5507 to 5515; must be in writing, signed, witnessed or notarized, dated, and executed voluntarily; and, before its implementation, must be made part of the patient's medical or, as applicable, mental health treatment record.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

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