

HOUSE BILL No. 4384

March 9, 1999, Introduced by Reps. Martinez, Brater, Schauer, LaForge, Dennis, Baird, Bogardus, Jacobs and Minore and referred to the Committee on Health Policy.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 5506, 5507, and 5510 (MCL 700.1106,
700.5506, 700.5507, and 700.5510).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

2 (a) "Michigan prudent investor rule" means the fiduciary
3 investment and management rule prescribed by part 5 of this
4 article.

5 (b) "Minor" means an individual who is less than 18 years of
6 age.

7 (c) "Minor ward" means a minor for whom a guardian is
8 appointed solely because of minority.

9 (d) "Mortgage" means a conveyance, agreement, or arrangement
10 in which property is encumbered or used as security.

1 (e) "Nonresident decedent" means a decedent who was
2 domiciled in another jurisdiction at the time of his or her
3 death.

4 (f) "Organization" means a corporation, business trust,
5 estate, trust, partnership, joint venture, association, limited
6 liability company, government, governmental subdivision or
7 agency, or another legal or commercial entity.

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

14 (h) "Patient advocate" means an individual designated to
15 exercise powers concerning another individual's care, custody,
16 and medical treatment OR GIVEN THE AUTHORITY TO MAKE AN ANATOM-
17 ICAL GIFT ON BEHALF OF ANOTHER INDIVIDUAL, OR BOTH, as provided
18 in section 5506.

19 (i) "Patient advocate designation" means the written docu-
20 ment executed and with the effect as described in sections 5506
21 to 5512.

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

26 (k) "Person" means an individual, partnership, corporation,
27 association, governmental entity, or other legal entity.

1 (1) "Personal representative" includes, but is not limited
2 to, an executor, administrator, successor personal representa-
3 tive, and special personal representative, and any other person
4 who performs substantially the same function under the law gov-
5 erning that person's status.

6 (m) "Petition" means a written request to the court for an
7 order after notice.

8 (n) "Proceeding" includes an application and a petition, and
9 may be an action at law or a suit in equity. A proceeding may be
10 denominated a civil action under court rules.

11 (o) "Property" means anything that may be the subject of
12 ownership, and includes both real and personal property or an
13 interest in real or personal property.

14 (p) "Protected individual" means a minor or other individual
15 for whom a conservator has been appointed or other protective
16 order has been made as provided in part 4 of article V.

17 (q) "Protective proceeding" means a proceeding under the
18 provisions of part 4 of article V.

19 Sec. 5506. (1) An individual 18 years of age or older who
20 is of sound mind at the time the designation is made may desig-
21 nate in writing another individual who is 18 years of age or
22 older to exercise powers concerning care, custody, and medical
23 treatment decisions for the individual making the designation.
24 AN INDIVIDUAL MAKING A DESIGNATION UNDER THIS SUBSECTION MAY
25 INCLUDE IN THE DESIGNATION THE AUTHORITY TO MAKE AN ANATOMICAL
26 GIFT OF ALL OR PART OF THE INDIVIDUAL'S BODY UNDER

1 SECTION 10102(2) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
2 MCL 333.10102.

3 (2) For purposes of this section and sections 5507 to 5512,
4 an individual who is named in a designation to exercise powers
5 concerning care, custody, and medical treatment decisions is
6 known as a patient advocate and an individual who makes a desig-
7 nation is known as a patient.

8 (3) ~~-(2)-~~ A designation under this section must be in writ-
9 ing, signed, witnessed as provided in subsection ~~-(3)-~~ (4),
10 dated, executed voluntarily, and, before its implementation, made
11 part of the patient's medical record with the patient's attending
12 physician and, if applicable, with the facility where the patient
13 is located. The designation must include a statement that the
14 authority conferred under this section is exercisable only when
15 the patient is unable to participate in medical treatment deci-
16 sions AND, IN THE CASE OF THE AUTHORITY TO MAKE AN ANATOMICAL
17 GIFT AS DESCRIBED IN SUBSECTION (1), A STATEMENT THAT THE AUTHOR-
18 ITY IS EXERCISABLE ONLY WHEN THE PATIENT IS DEAD OR WHEN THE
19 PATIENT'S DEATH IS, WITHIN REASONABLE MEDICAL JUDGMENT, IMMINENT
20 AND INEVITABLE.

21 (4) ~~-(3)-~~ A designation under this section must be executed
22 in the presence of and signed by 2 witnesses. A witness under
23 this section shall not be the patient's spouse, parent, child,
24 grandchild, sibling, presumptive heir, known devisee at the time
25 of the witnessing, physician, or patient advocate or an employee
26 of a life or health insurance provider for the patient, of a
27 health facility that is treating the patient, or of a home for

1 the aged as defined in section 20106 of the public health code,
2 1978 PA 368, MCL 333.20106, where the patient resides. A witness
3 shall not sign the designation unless the patient appears to be
4 of sound mind and under no duress, fraud, or undue influence.

5 Sec. 5507. (1) A patient advocate designation may include a
6 statement of the patient's desires on care, custody, and medical
7 treatment. A PATIENT ADVOCATE DESIGNATION MAY ALSO INCLUDE A
8 STATEMENT OF THE PATIENT'S DESIRES ON THE MAKING OF AN ANATOMICAL
9 GIFT OF ALL OR PART OF THE PATIENT'S BODY UNDER PART 101 OF THE
10 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.10101 TO 333.10109. The
11 patient may authorize the patient advocate to exercise 1 or more
12 powers concerning the patient's care, custody, and medical treat-
13 ment OR CONCERNING THE MAKING OF AN ANATOMICAL GIFT that the
14 patient could have exercised on his or her own behalf.

15 (2) A patient may designate in the designation a successor
16 individual as a patient advocate who may exercise powers concern-
17 ing care, custody, and medical treatment decisions OR CONCERNING
18 THE MAKING OF AN ANATOMICAL GIFT for the patient if the first
19 individual named as patient advocate does not accept, is incapac-
20 itated, resigns, or is removed.

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

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

3 1. This designation is not effective unless the patient is
4 unable to participate in medical treatment decisions. IF THIS
5 DESIGNATION INCLUDES THE AUTHORITY TO MAKE AN ANATOMICAL GIFT AS
6 DESCRIBED IN SECTION 5506(1), THE AUTHORITY IS NOT EFFECTIVE
7 UNLESS THE PATIENT IS DEAD OR THE PATIENT'S DEATH IS, WITHIN REA-
8 SONABLE MEDICAL JUDGMENT, IMMINENT AND INEVITABLE.

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

13 3. This designation cannot be used to make a medical treat-
14 ment decision to withhold or withdraw treatment from a patient
15 who is pregnant that would result in the pregnant patient's
16 death.

17 4. A patient advocate may make a decision to withhold or
18 withdraw treatment that would allow a patient to die only if the
19 patient has expressed in a clear and convincing manner that the
20 patient advocate is authorized to make such a decision, and that
21 the patient acknowledges that such a decision could or would
22 allow the patient's death.

23 5. A patient advocate shall not receive compensation for
24 the performance of his or her authority, rights, and responsibil-
25 ities, but a patient advocate may be reimbursed for actual and
26 necessary expenses incurred in the performance of his or her
27 authority, rights, and responsibilities.

1 6. A patient advocate shall act in accordance with the
2 standards of care applicable to fiduciaries when acting for the
3 patient and shall act consistent with the patient's best
4 interests. The known desires of the patient expressed or evi-
5 denced while the patient is able to participate in medical treat-
6 ment decisions are presumed to be in the patient's best
7 interests.

8 7. A patient may revoke his or her designation OF A PATIENT
9 ADVOCATE at any time and in any manner sufficient to communicate
10 an intent to revoke.

11 8. A patient advocate may revoke his or her acceptance to
12 the designation AS A PATIENT ADVOCATE at any time and in any
13 manner sufficient to communicate an intent to revoke.

14 9. A patient admitted to a health facility or agency has
15 the rights enumerated in section 20201 of the public health code,
16 1978 PA 368, MCL 333.20201.

17 Sec. 5510. (1) A patient advocate designation is revoked by
18 ~~any~~ 1 OR MORE of the following:

19 (a) The patient's death, EXCEPT THAT PART OF THE DESIGNA-
20 TION, IF ANY, THAT AUTHORIZES THE PATIENT ADVOCATE TO MAKE AN
21 ANATOMICAL GIFT OF ALL OR PART OF THE DECEASED PATIENT'S BODY
22 UNDER SECTION 10102(2) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
23 MCL 333.10102.

24 (b) An order of removal by the probate court under
25 section 5511(4).

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

1 (d) The patient's revocation of the designation. Even if
2 the patient is unable to participate in medical treatment deci-
3 sions, a patient may revoke a designation at any time and in any
4 manner by which he or she is able to communicate an intent to
5 revoke the designation. If there is a dispute as to the intent
6 of the patient to revoke the designation, the court may make a
7 determination on the patient's intent to revoke the designation.
8 If the revocation is not in writing, an individual who witnesses
9 a revocation of a designation shall describe in writing the cir-
10 cumstances of the revocation, must sign the writing, and shall
11 notify, if possible, the patient advocate of the revocation. If
12 the patient's physician or health facility has notice of the
13 patient's revocation of a designation, the physician or health
14 facility shall note the revocation in the patient's medical
15 records and bedside chart and must notify the patient advocate.

16 (e) A subsequent designation that revokes the prior designa-
17 tion either expressly or by inconsistency.

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

20 (g) If a designation is executed during a patient's marriage
21 naming the patient's spouse as the patient advocate, the designa-
22 tion is suspended during the pendency of an action for separate
23 maintenance, annulment, or divorce and is revoked upon the entry
24 of a judgment of separate maintenance, annulment, or divorce,
25 unless the patient has named a successor individual to serve as a
26 patient advocate. If a successor patient advocate is named, that
27 individual acts as the patient advocate.

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

14 Enacting section 1. This amendatory act does not take
15 effect unless Senate Bill No. _____ or House Bill No. _____
16 (request no. 00706'99) of the 90th Legislature is enacted into
17 law.