

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5153

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106 and 5314 (MCL 700.1106 and 700.5314), as
amended by 2017 PA 155.

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
9 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to

1 333.18838.

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

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

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

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

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

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

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

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

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

24 **(G) "NONOPIOID DIRECTIVE FORM" MEANS THAT TERM AS DEFINED IN**
25 **SECTION 9145 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.9145.**

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

1 (I) ~~(h)~~—"Organization" means a corporation, business trust,
2 estate, trust, partnership, limited liability company, association,
3 or joint venture; governmental subdivision, agency, or
4 instrumentality; public corporation; or another legal or commercial
5 entity.

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

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

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

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

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

26 (O) ~~(n)~~—"Person" means an individual or an organization.

27 (P) ~~(o)~~—"Personal representative" includes, but is not limited

1 to, an executor, administrator, successor personal representative,
2 and special personal representative, and any other person, other
3 than a trustee of a trust subject to article VII, who performs
4 substantially the same function under the law governing that
5 person's status.

6 (Q) ~~(p)~~—"Petition" means a written request to the court for an
7 order after notice.

8 (R) ~~(q)~~—"Physician orders for scope of treatment form" means
9 that term as defined in section 5674 of the public health code,
10 1978 PA 368, MCL 333.5674.

11 (S) ~~(r)~~—"Plenary guardian" means that term as defined in
12 section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

13 (T) ~~(s)~~—"Proceeding" includes an application and a petition,
14 and may be an action at law or a suit in equity. A proceeding may
15 be denominated a civil action under court rules.

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

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

25 (W) ~~(v)~~—"Property" means anything that may be the subject of
26 ownership, and includes both real and personal property or an
27 interest in real or personal property.

1 (X) ~~(w)~~—"Protected individual" means a minor or other
2 individual for whom a conservator has been appointed or other
3 protective order has been made as provided in part 4 of article V.

4 (Y) ~~(x)~~—"Protective proceeding" means a proceeding under the
5 provisions of part 4 of article V.

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

17 (a) The custody of the person of the ward and the power to
18 establish the ward's place of residence in or outside this state.
19 The guardian shall visit the ward within 3 months after the
20 guardian's appointment and not less than once within 3 months after
21 each previous visit. The guardian shall notify the court within 14
22 days of a change in the ward's place of residence or a change in
23 the guardian's place of residence.

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

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

14 (c) The power to give the consent or approval that is
15 necessary to enable the ward to receive medical, **MENTAL HEALTH**, or
16 other professional care, counsel, treatment, or service. **HOWEVER, A**
17 **GUARDIAN DOES NOT HAVE AND SHALL NOT EXERCISE THE POWER TO GIVE THE**
18 **CONSENT TO OR APPROVAL FOR INPATIENT HOSPITALIZATION UNLESS THE**
19 **COURT EXPRESSLY GRANTS THE POWER IN ITS ORDER. IF THE WARD OBJECTS**
20 **OR ACTIVELY REFUSES MENTAL HEALTH TREATMENT, THE GUARDIAN OR ANY**
21 **OTHER INTERESTED PERSON MUST FOLLOW THE PROCEDURES PROVIDED IN**
22 **CHAPTER 4 OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1400 TO**
23 **330.1490, TO PETITION THE COURT FOR AN ORDER TO PROVIDE INVOLUNTARY**
24 **MENTAL HEALTH TREATMENT.** The power of a guardian to execute a do-
25 not-resuscitate order under subdivision (d), **EXECUTE A NONOPIOID**
26 **DIRECTIVE FORM UNDER SUBDIVISION (F)**, or execute a physician orders
27 for scope of treatment form under subdivision ~~(f)~~—**(G)** does not

1 affect or limit the power of a guardian to consent to a physician's
2 order to withhold resuscitative measures in a hospital. **AS USED IN**
3 **THIS SUBDIVISION, "INVOLUNTARY MENTAL HEALTH TREATMENT" MEANS THAT**
4 **TERM AS DEFINED IN SECTION 400 OF THE MENTAL HEALTH CODE, 1974 PA**
5 **258, MCL 330.1400.**

6 (d) The power to execute, reaffirm, and revoke a do-not-
7 resuscitate order on behalf of a ward. However, a guardian shall
8 not execute a do-not-resuscitate order unless the guardian does all
9 of the following:

10 (i) Not more than 14 days before executing the do-not-
11 resuscitate order, visits the ward and, if meaningful communication
12 is possible, consults with the ward about executing the do-not-
13 resuscitate order.

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

17 (e) If a guardian executes a do-not-resuscitate order under
18 subdivision (d), not less than annually after the do-not-
19 resuscitate order is first executed, the duty to do all of the
20 following:

21 (i) Visit the ward and, if meaningful communication is
22 possible, consult with the ward about reaffirming the do-not-
23 resuscitate order.

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

27 **(F) THE POWER TO EXECUTE, REAFFIRM, AND REVOKE A NONOPIOID**

1 **DIRECTIVE FORM ON BEHALF OF A WARD.**

2 (G) ~~(F)~~—The power to execute, reaffirm, and revoke a physician
3 orders for scope of treatment form on behalf of a ward. However, a
4 guardian shall not execute a physician orders for scope of
5 treatment form unless the guardian does all of the following:

6 (i) Not more than 14 days before executing the physician
7 orders for scope of treatment form, visits the ward and, if
8 meaningful communication is possible, consults with the ward about
9 executing the physician orders for scope of treatment form.

10 (ii) Consults directly with the ward's attending physician as
11 to the specific medical indications that warrant the physician
12 orders for scope of treatment form.

13 (H) ~~(G)~~—If a guardian executes a physician orders for scope of
14 treatment form under subdivision ~~(F)~~, **(G)**, not less than annually
15 after the physician orders for scope of treatment is first
16 executed, the duty to do all of the following:

17 (i) Visit the ward and, if meaningful communication is
18 possible, consult with the ward about reaffirming the physician
19 orders for scope of treatment form.

20 (ii) Consult directly with the ward's attending physician as
21 to specific medical indications that may warrant reaffirming the
22 physician orders for scope of treatment form.

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

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

1 (ii) Receive money and tangible property deliverable to the
2 ward and apply the money and property for the ward's support, care,
3 and education. The guardian shall not use money from the ward's
4 estate for room and board that the guardian or the guardian's
5 spouse, parent, or child have furnished the ward unless a charge
6 for the service is approved by court order made on notice to at
7 least 1 of the ward's next of kin, if notice is possible. The
8 guardian shall exercise care to conserve any excess for the ward's
9 needs.

10 (J) ~~(i)~~—The duty to report the condition of the ward and the
11 ward's estate that is subject to the guardian's possession or
12 control, as required by the court, but not less often than
13 annually. The guardian shall also serve the report required under
14 this subdivision on the ward and interested persons as specified in
15 the Michigan court rules. A report under this subdivision must
16 contain all of the following:

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

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

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

22 (iv) Whether the guardian recommends a more suitable living
23 arrangement for the ward.

24 (v) Medical treatment, **INCLUDING MENTAL HEALTH TREATMENT**,
25 received by the ward.

26 (vi) Whether the guardian has executed, reaffirmed, or revoked
27 a do-not-resuscitate order on behalf of the ward during the past

1 year.

2 **(vii) WHETHER THE GUARDIAN HAS EXECUTED, REAFFIRMED, OR**
3 **REVOKED A NONOPIOID DIRECTIVE FORM ON BEHALF OF THE WARD DURING THE**
4 **PAST YEAR.**

5 **(viii)** ~~(vii)~~—Whether the guardian has executed, reaffirmed, or
6 revoked a physician orders for scope of treatment form on behalf of
7 the ward during the past year.

8 **(ix)** ~~(viii)~~—Services received by the ward.

9 **(x)** ~~(ix)~~—A list of the guardian's visits with, and activities
10 on behalf of, the ward.

11 **(xi)** ~~(x)~~—A recommendation as to the need for continued
12 guardianship.

13 **(K)** ~~(j)~~—If a conservator is appointed, the duty to pay to the
14 conservator, for management as provided in this act, the amount of
15 the ward's estate received by the guardian in excess of the amount
16 the guardian expends for the ward's current support, care, and
17 education. The guardian shall account to the conservator for the
18 amount expended.

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

21 Enacting section 2. This amendatory act does not take effect
22 unless House Bill No. 5152 of the 99th Legislature is enacted into
23 law.