

HOUSE BILL No. 5037

September 27, 2017, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5314 (MCL 700.5314), as amended by 2013 PA 157.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (a) The custody of the person of the ward and the power to
2 establish the ward's place of residence ~~within~~**IN** or ~~without~~
3 **OUTSIDE** this state. The guardian shall visit the ward within 3
4 months after the guardian's appointment and not less than once
5 within 3 months after each previous visit. The guardian shall
6 notify the court within 14 days of a change in the ward's place of
7 residence or a change in the guardian's place of residence.

8 (b) If entitled to custody of the ward, the duty to make
9 provision for the ward's care, comfort, and maintenance and, when
10 appropriate, arrange for the ward's training and education. The
11 guardian shall secure services to restore the ward to the best
12 possible state of mental and physical well-being so that the ward
13 can return to self-management at the earliest possible time.
14 Without regard to custodial rights of the ward's person, the
15 guardian shall take reasonable care of the ward's clothing,
16 furniture, vehicles, and other personal effects and commence a
17 protective proceeding if the ward's other property needs
18 protection. If a guardian commences a protective proceeding because
19 the guardian believes that it is in the ward's best interest to
20 sell or otherwise dispose of the ward's real property or interest
21 in real property, the court may appoint the guardian as special
22 conservator and authorize the special conservator to proceed under
23 section 5423(3). A guardian shall not otherwise sell the ward's
24 real property or interest in real property.

25 (c) The power to give the consent or approval that is
26 necessary to enable the ward to receive medical or other
27 professional care, counsel, treatment, or service. The power of a

1 guardian to execute a do-not-resuscitate order under subdivision
2 (d) does not affect or limit the power of a guardian to consent to
3 a physician's order to withhold resuscitative measures in a
4 hospital.

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

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

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

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

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

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

26 **(F) THE POWER TO IMPLANT A SUBCUTANEOUS TRACKING DEVICE WITH**
27 **THE WARD. AS USED IN THIS SUBDIVISION:**

1 (i) "SUBCUTANEOUS" MEANS EXISTING, PERFORMED, OR INTRODUCED
2 UNDER OR ON THE SKIN.

3 (ii) "TRACKING DEVICE" MEANS AN ITEM, APPLICATION, OR PRODUCT
4 THAT IS PASSIVELY OR ACTIVELY CAPABLE OF TRANSMITTING LOCATION.

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

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

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

19 (H) ~~(g)~~—The ~~guardian shall~~**DUTY TO** report the condition of the
20 ward and the ward's estate that is subject to the guardian's
21 possession or control, as required by the court, but not less often
22 than annually. The guardian shall also serve the report required
23 under this subdivision on the ward and interested persons as
24 specified in the Michigan court rules. A report under this
25 subdivision ~~shall~~**MUST** contain all of the following:

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

27 (ii) Improvement or deterioration in the ward's mental,

1 physical, and social condition that occurred during the past year.

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

4 (iv) Whether the guardian recommends a more suitable living
5 arrangement for the ward.

6 (v) Medical treatment received by the ward.

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

10 (vii) Services received by the ward.

11 (viii) A list of the guardian's visits with, and activities on
12 behalf of, the ward.

13 (ix) A recommendation as to the need for continued
14 guardianship.

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

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