

SENATE BILL No. 869

September 24, 2009, Introduced by Senators BRATER, JACOBS, CLARK-COLEMAN, CLARKE, SCOTT, CHERRY, OLSHOVE, ANDERSON, SWITALSKI, BASHAM and THOMAS and referred to the Committee on Health Policy.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5314 (MCL 700.5314), as amended by 2000 PA 469.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5314. Whenever 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. Except as limited
5 under section 5306, a legally incapacitated individual's guardian
6 is responsible for the ward's care, custody, and control, but is
7 not liable to third persons by reason of that responsibility for
8 the ward's acts. In particular and without qualifying the previous
9 sentences, a guardian has all of the following powers and duties,
10 except as modified by court order:

1 (a) To the extent that it is consistent with the terms of an
2 order by a court of competent jurisdiction relating to the ward's
3 detention or commitment, the guardian is entitled to custody of the
4 person of the guardian's ward and may establish the ward's place of
5 residence within or without this state. A ward's guardian shall
6 visit the ward within 3 months after the guardian's appointment and
7 not less than once within 3 months after each previous visit. The
8 guardian must notify the court within 14 days of a change in the
9 ward's place of residence.

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

27 (c) A guardian may give the consent or approval that is

1 necessary to enable the ward to receive medical or other
2 professional care, counsel, treatment, or service, **INCLUDING**
3 **HOSPITALIZATION UNDER SECTION 415 OF THE MENTAL HEALTH CODE, 1974**
4 **PA 258, MCL 330.1415, OR MENTAL HEALTH OUTPATIENT CARE AND**
5 **TREATMENT RECOMMENDED BY A MENTAL HEALTH PROFESSIONAL.**

6 (d) If a conservator for the ward's estate is not appointed, a
7 guardian may do any of the following:

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

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

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

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

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

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

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

7 (v) Medical treatment received by the ward.

8 (vi) Services received by the ward.

9 (vii) A list of the guardian's visits with, and activities on
10 behalf of, the ward.

11 (viii) A recommendation as to the need for continued
12 guardianship.

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