

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5818**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 order:

2 (a) The custody of the person of the ward and the power to
3 establish the ward's place of residence in or outside this state.
4 The guardian shall visit the ward within 3 months after the
5 guardian's appointment and not less than once within 3 months after
6 each previous visit. The guardian shall notify the court within 14
7 days of a change in the ward's place of residence or a change in
8 the guardian's place of residence.

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

26 (c) The power to give the consent or approval that is
27 necessary to enable the ward to receive medical, **MENTAL HEALTH**, or

1 other professional care, counsel, treatment, or service. **HOWEVER, A**
2 **GUARDIAN DOES NOT HAVE AND SHALL NOT EXERCISE THE POWER TO GIVE THE**
3 **CONSENT TO OR APPROVAL FOR INPATIENT HOSPITALIZATION UNLESS THE**
4 **COURT EXPRESSLY GRANTS THE POWER IN ITS ORDER. IF THE WARD OBJECTS**
5 **OR ACTIVELY REFUSES MENTAL HEALTH TREATMENT, THE GUARDIAN OR ANY**
6 **OTHER INTERESTED PERSON MUST FOLLOW THE PROCEDURES PROVIDED IN**
7 **CHAPTER 4 OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1400 TO**
8 **330.1490, TO PETITION THE COURT FOR AN ORDER TO PROVIDE INVOLUNTARY**
9 **MENTAL HEALTH TREATMENT.** The power of a guardian to execute a do-
10 not-resuscitate order under subdivision (d), **EXECUTE A NONOPIOID**
11 **DIRECTIVE FORM UNDER SUBDIVISION (F),** or execute a physician orders
12 for scope of treatment form under subdivision ~~(f)~~ **(G)** does not
13 affect or limit the power of a guardian to consent to a physician's
14 order to withhold resuscitative measures in a hospital. **AS USED IN**
15 **THIS SUBDIVISION, "INVOLUNTARY MENTAL HEALTH TREATMENT" MEANS THAT**
16 **TERM AS DEFINED IN SECTION 400 OF THE MENTAL HEALTH CODE, 1974 PA**
17 **258, MCL 330.1400.**

18 (d) The power to execute, reaffirm, and revoke a do-not-
19 resuscitate order on behalf of a ward. However, a guardian shall
20 not execute a do-not-resuscitate order unless the guardian does all
21 of the following:

22 (i) Not more than 14 days before executing the do-not-
23 resuscitate order, visits the ward and, if meaningful communication
24 is possible, consults with the ward about executing the do-not-
25 resuscitate order.

26 (ii) Consults directly with the ward's attending physician as
27 to the specific medical indications that warrant the do-not-

1 resuscitate order.

2 (e) If a guardian executes a do-not-resuscitate order under
3 subdivision (d), not less than annually after the do-not-
4 resuscitate order is first executed, the duty to do all of the
5 following:

6 (i) Visit the ward and, if meaningful communication is
7 possible, consult with the ward about reaffirming the do-not-
8 resuscitate order.

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

12 **(F) THE POWER TO EXECUTE, REAFFIRM, AND REVOKE A NONOPIOID**
13 **DIRECTIVE FORM ON BEHALF OF A WARD.**

14 **(G)** ~~(f)~~—The power to execute, reaffirm, and revoke a physician
15 orders for scope of treatment form on behalf of a ward. However, a
16 guardian shall not execute a physician orders for scope of
17 treatment form unless the guardian does all of the following:

18 (i) Not more than 14 days before executing the physician
19 orders for scope of treatment form, visits the ward and, if
20 meaningful communication is possible, consults with the ward about
21 executing the physician orders for scope of treatment form.

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

25 **(H)** ~~(g)~~—If a guardian executes a physician orders for scope of
26 treatment form under subdivision (f), not less than annually after
27 the physician orders for scope of treatment is first executed, the

1 duty to do all of the following:

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

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

8 **(I)** ~~(h)~~—If a conservator for the ward's estate is not
9 appointed, the power to do any of the following:

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

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

22 **(J)** ~~(i)~~—The duty to report the condition of the ward and the
23 ward's estate that is subject to the guardian's possession or
24 control, as required by the court, but not less often than
25 annually. The guardian shall also serve the report required under
26 this subdivision on the ward and interested persons as specified in
27 the Michigan court rules. A report under this subdivision must

1 contain all of the following:

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

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

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

7 (iv) Whether the guardian recommends a more suitable living
8 arrangement for the ward.

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

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

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

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

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

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

23 **(xi)** ~~(x)~~ A recommendation as to the need for continued
24 guardianship.

25 **(K)** ~~(j)~~ If a conservator is appointed, the duty to pay to the
26 conservator, for management as provided in this act, the amount of
27 the ward's estate received by the guardian in excess of the amount

1 the guardian expends for the ward's current support, care, and
2 education. The guardian shall account to the conservator for the
3 amount expended.

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

6 Enacting section 2. This amendatory act does not take effect
7 unless both of the following bills of the 99th Legislature are
8 enacted into law:

9 (a) House Bill No. 5152.

10 (b) House Bill No. 5819.