

# HOUSE BILL No. 5818

April 17, 2018, Introduced by Reps. Guerra, Vaupel and Kesto 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 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) or execute a physician  
11 orders for scope of treatment form under subdivision (f) does not  
12 affect or limit the power of a guardian to consent to a physician's  
13 order to withhold resuscitative measures in a hospital. **AS USED IN**  
14 **THIS SUBDIVISION, "INVOLUNTARY MENTAL HEALTH TREATMENT" MEANS THAT**  
15 **TERM AS DEFINED IN SECTION 400 OF THE MENTAL HEALTH CODE, 1974 PA**  
16 **258, MCL 330.1400.**

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

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

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

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

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

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

11 (f) The power to execute, reaffirm, and revoke a physician  
12 orders for scope of treatment form on behalf of a ward. However, a  
13 guardian shall not execute a physician orders for scope of  
14 treatment form unless the guardian does all of the following:

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

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

22 (g) If a guardian executes a physician orders for scope of  
23 treatment form under subdivision (f), not less than annually after  
24 the physician orders for scope of treatment is first executed, the  
25 duty to do all of the following:

26 (i) Visit the ward and, if meaningful communication is  
27 possible, consult with the ward about reaffirming the physician

1 orders for scope of treatment form.

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

5 (h) If a conservator for the ward's estate is not appointed,  
6 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 on notice to at  
16 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 (i) The duty to report the condition of the ward and the  
20 ward's estate that is subject to the guardian's possession or  
21 control, as required by the court, but not less often than  
22 annually. The guardian shall also serve the report required under  
23 this subdivision on the ward and interested persons as specified in  
24 the Michigan court rules. A report under this subdivision must  
25 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, **INCLUDING MENTAL HEALTH TREATMENT**,  
7 received by the ward.

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

11 (vii) Whether the guardian has executed, reaffirmed, or  
12 revoked a physician orders for scope of treatment form on behalf of  
13 the ward during the past year.

14 (viii) Services received by the ward.

15 (ix) A list of the guardian's visits with, and activities on  
16 behalf of, the ward.

17 (x) A recommendation as to the need for continued  
18 guardianship.

19 (j) If a conservator is appointed, the duty to pay to the  
20 conservator, for management as provided in this act, the amount of  
21 the ward's estate received by the guardian in excess of the amount  
22 the guardian expends for the ward's current support, care, and  
23 education. The guardian shall account to the conservator for the  
24 amount expended.

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

27 Enacting section 2. This amendatory act does not take effect

- 1 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5819 (request no.
- 2 03363'17 \*) of the 99th Legislature is enacted into law.