

# HOUSE BILL No. 5153

October 19, 2017, Introduced by Reps. Canfield, Lucido, Hoadley, Brann, Leutheuser, Singh, McCready, Kahle, Inman and Zemke and referred to the Committee on Health Policy.

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), section 1106 as amended by 2009 PA 46 and section 5314 as amended by 2013 PA 157.

**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

1 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

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

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

8 (iv) A licensed master's social worker licensed under article  
9 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
10 333.18838.

11 (v) A physician's assistant licensed to practice in this state  
12 under article 15 of the public health code, 1978 PA 368, MCL  
13 333.16101 to 333.18838.

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

16 (b) "Michigan prudent investor rule" means the fiduciary  
17 investment and management rule prescribed by part 5 of this  
18 article.

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

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

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

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

27 **(G) "NONOPIOID DIRECTIVE FORM" MEANS THAT TERM AS DEFINED IN**

1 **SECTION 9145 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.9145.**

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

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

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

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

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

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

25 (N) ~~(m)~~—"Payor" means a trustee, insurer, business entity,  
26 employer, government, governmental subdivision or agency, or other  
27 person authorized or obligated by law or a governing instrument to

1 make payments.

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

3 (P) ~~(e)~~—"Personal representative" includes, but is not limited  
4 to, an executor, administrator, successor personal representative,  
5 and special personal representative, and any other person, other  
6 than a trustee of a trust subject to article VII, who performs  
7 substantially the same function under the law governing that  
8 person's status.

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

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

13 (S) ~~(r)~~—"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 (T) ~~(s)~~—"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 (U) ~~(t)~~—"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 (V) ~~(u)~~—"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           **(W)** ~~(v)~~—"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           **(X)** ~~(w)~~—"Protective proceeding" means a proceeding under the  
5 provisions of part 4 of article V.

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

17           (a) The custody of the person of the ward and the power to  
18 establish the ward's place of residence ~~within~~**IN** or ~~without~~  
19 **OUTSIDE** this state. The guardian shall visit the ward within 3  
20 months after the guardian's appointment and not less than once  
21 within 3 months after each previous visit. The guardian shall  
22 notify the court within 14 days of a change in the ward's place of  
23 residence or a change in 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 or other  
16 professional care, counsel, treatment, or service. The power of a  
17 guardian to execute a do-not-resuscitate order under subdivision

18 **(d) OR EXECUTE A NONOPIOID DIRECTIVE FORM UNDER SUBDIVISION (F)**  
19 does not affect or limit the power of a guardian to consent to a  
20 physician's order to withhold resuscitative measures in a hospital.

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

25 (i) Not more than 14 days before executing the do-not-  
26 resuscitate order, ~~the guardian~~ visits the ward and, if meaningful  
27 communication is possible, consults with the ward about executing

1 the do-not-resuscitate order.

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

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

9 (i) Visit the ward and, if meaningful communication is  
10 possible, consult with the ward about reaffirming the do-not-  
11 resuscitate order.

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

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

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

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

22 (ii) Receive money and tangible property deliverable to the  
23 ward and apply the money and property for the ward's support, care,  
24 and education. The guardian shall not use money from the ward's  
25 estate for room and board that the guardian or the guardian's  
26 spouse, parent, or child have furnished the ward unless a charge  
27 for the service is approved by court order made ~~upon~~ **ON** notice to

1 at least 1 of the ward's next of kin, if notice is possible. The  
2 guardian shall exercise care to conserve any excess for the ward's  
3 needs.

4 **(H)** ~~(g)~~ The guardian shall **DUTY TO** report the condition of the  
5 ward and the ward's estate that is subject to the guardian's  
6 possession or control, as required by the court, but not less often  
7 than annually. The guardian shall also serve the report required  
8 under this subdivision on the ward and interested persons as  
9 specified in the Michigan court rules. A report under this  
10 subdivision shall **MUST** contain all of the following:

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

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

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

16 (iv) Whether the guardian recommends a more suitable living  
17 arrangement for the ward.

18 (v) Medical treatment received by the ward.

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

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

25 **(viii)** ~~(vii)~~ Services received by the ward.

26 **(ix)** ~~(viii)~~ A list of the guardian's visits with, and  
27 activities on behalf of, the ward.



1           **(x)** ~~(ix)~~—A recommendation as to the need for continued  
2 guardianship.

3           **(I)** ~~(h)~~—If a conservator is appointed, the duty to pay to the  
4 conservator, for management as provided in this act, the amount of  
5 the ward's estate received by the guardian in excess of the amount  
6 the guardian expends for the ward's current support, care, and  
7 education. The guardian shall account to the conservator for the  
8 amount expended.

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

11           Enacting section 2. This amendatory act does not take effect  
12 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5152 (request no.  
13 02563'17 \*) of the 99th Legislature is enacted into law.