

HOUSE BILL No. 4431

March 8, 2001, Introduced by Reps. Murphy, Rich Brown, Adamini, Whitmer, Zelenko, Bernero, Waters, Spade, Williams, Kolb, McConico, Phillips, Lockwood, Clarke, Clark, DeWeese, Woodward, Neumann and Dennis 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, 5506, 5507, and 5510 (MCL 700.1106,
700.5506, 700.5507, and 700.5510), section 1106 as amended by
2000 PA 463.

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 develop-
4 mental 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
7 of the public health code, 1978 PA 368, MCL 333.16101 to
8 333.18838.

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

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

7 (iv) A social worker registered as a certified social worker
8 under article 15 of the public health code, 1978 PA 368,
9 MCL 333.16101 to 333.18838.

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

13 (b) "Michigan prudent investor rule" means the fiduciary
14 investment and management rule prescribed by part 5 of this
15 article.

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

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

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

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

24 (g) "Nonresident decedent" means a decedent who was domi-
25 ciled in another jurisdiction at the time of his or her death.

26 (h) "Organization" means a corporation, business trust,
27 estate, trust, partnership, joint venture, association, limited

1 liability company, government, governmental subdivision or
2 agency, or another legal or commercial entity.

3 (i) "Parent" includes, but is not limited to, an individual
4 entitled to take, or who would be entitled to take, as a parent
5 under this act by intestate succession from a child who dies
6 without a will and whose relationship is in question. Parent
7 does not include an individual who is only a stepparent, foster
8 parent, or grandparent.

9 (j) "Patient advocate" means an individual designated to
10 exercise powers concerning another individual's care, custody,
11 and medical treatment OR AUTHORIZED TO MAKE AN ANATOMICAL GIFT ON
12 BEHALF OF ANOTHER INDIVIDUAL, OR BOTH, as provided in section
13 5506.

14 (k) "Patient advocate designation" means the written docu-
15 ment executed and with the effect as described in sections 5506
16 to 5512.

17 (l) "Payor" means a trustee, insurer, business entity,
18 employer, government, governmental subdivision or agency, or
19 other person authorized or obligated by law or a governing
20 instrument to make payments.

21 (m) "Person" means an individual or an organization.

22 (n) "Personal representative" includes, but is not limited
23 to, an executor, administrator, successor personal representa-
24 tive, and special personal representative, and any other person
25 who performs substantially the same function under the law gov-
26 erning that person's status.

1 (o) "Petition" means a written request to the court for an
2 order after notice.

3 (p) "Proceeding" includes an application and a petition, and
4 may be an action at law or a suit in equity. A proceeding may be
5 denominated a civil action under court rules.

6 (q) "Professional conservator" means a person that provides
7 conservatorship services for a fee. Professional conservator
8 does not include a person who is an individual who is related to
9 all but 2 of the protected individuals for whom he or she is
10 appointed as conservator.

11 (r) "Professional guardian" means a person that provides
12 guardianship services for a fee. Professional guardian does not
13 include a person who is an individual who is related to all but 2
14 of the wards for whom he or she is appointed as guardian.

15 (s) "Property" means anything that may be the subject of
16 ownership, and includes both real and personal property or an
17 interest in real or personal property.

18 (t) "Protected individual" means a minor or other individual
19 for whom a conservator has been appointed or other protective
20 order has been made as provided in part 4 of article V.

21 (u) "Protective proceeding" means a proceeding under the
22 provisions of part 4 of article V.

23 Sec. 5506. (1) An individual 18 years of age or older who
24 is of sound mind at the time ~~the~~ A PATIENT ADVOCATE designation
25 is made may designate in writing another individual who is 18
26 years of age or older to exercise powers concerning care,
27 custody, and medical treatment decisions for the individual

1 making the PATIENT ADVOCATE designation. AN INDIVIDUAL MAKING A
2 PATIENT ADVOCATE DESIGNATION UNDER THIS SUBSECTION MAY INCLUDE IN
3 THE PATIENT ADVOCATE DESIGNATION THE AUTHORITY FOR THE DESIGNATED
4 INDIVIDUAL TO MAKE AN ANATOMICAL GIFT OF ALL OR PART OF THE
5 INDIVIDUAL'S BODY IN ACCORDANCE WITH THIS ACT AND SECTION 10102
6 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.10102.

7 (2) For purposes of this section and sections 5507 to 5512,
8 an individual who is named in a PATIENT ADVOCATE designation to
9 exercise powers concerning care, custody, and medical treatment
10 decisions is known as a patient advocate and an individual who
11 makes a PATIENT ADVOCATE designation is known as a patient.

12 (3) ~~-(2)-~~ A PATIENT ADVOCATE designation under this section
13 must be in writing, signed, witnessed as provided in subsection
14 ~~-(3)-~~ (4), dated, executed voluntarily, and, before its implemen-
15 tation, made part of the patient's medical record with the
16 patient's attending physician and, if applicable, with the facil-
17 ity where the patient is located. The PATIENT ADVOCATE designa-
18 tion must include a statement that the authority conferred under
19 this section is exercisable only when the patient is unable to
20 participate in medical treatment decisions AND, IN THE CASE OF
21 THE AUTHORITY TO MAKE AN ANATOMICAL GIFT AS DESCRIBED IN
22 SUBSECTION (1), A STATEMENT THAT THE AUTHORITY IS EXERCISABLE
23 ONLY WHEN THE PATIENT IS DEAD OR WHEN THE PATIENT'S DEATH IS,
24 WITHIN REASONABLE MEDICAL JUDGMENT, IMMINENT AND INEVITABLE.

25 (4) ~~-(3)-~~ A PATIENT ADVOCATE designation under this section
26 must be executed in the presence of and signed by 2 witnesses. A
27 witness under this section shall not be the patient's spouse,

1 parent, child, grandchild, sibling, presumptive heir, known
2 devisee at the time of the witnessing, physician, or patient
3 advocate or an employee of a life or health insurance provider
4 for the patient, of a health facility that is treating the
5 patient, or of a home for the aged as defined in section 20106 of
6 the public health code, 1978 PA 368, MCL 333.20106, where the
7 patient resides. A witness shall not sign the PATIENT ADVOCATE
8 designation unless the patient appears to be of sound mind and
9 under no duress, fraud, or undue influence.

10 Sec. 5507. (1) A patient advocate designation may include a
11 statement of the patient's desires on care, custody, and medical
12 treatment. A PATIENT ADVOCATE DESIGNATION MAY ALSO INCLUDE A
13 STATEMENT OF THE PATIENT'S DESIRES ON THE MAKING OF AN ANATOMICAL
14 GIFT OF ALL OR PART OF THE PATIENT'S BODY UNDER PART 101 OF THE
15 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.10101 TO 333.10109. The
16 patient may authorize the patient advocate to exercise 1 or more
17 powers concerning the patient's care, custody, and medical treat-
18 ment OR CONCERNING THE MAKING OF AN ANATOMICAL GIFT that the
19 patient could have exercised on his or her own behalf.

20 (2) A patient may designate in the PATIENT ADVOCATE designa-
21 tion a successor individual as a patient advocate who may exer-
22 cise powers concerning care, custody, and medical treatment deci-
23 sions OR CONCERNING THE MAKING OF AN ANATOMICAL GIFT for the
24 patient if the first individual named as patient advocate does
25 not accept, is incapacitated, resigns, or is removed.

26 (3) Before a patient advocate designation is implemented, a
27 copy of the PATIENT ADVOCATE designation must be given to the

1 proposed patient advocate and must be given to a successor
2 patient advocate before the successor acts as patient advocate.
3 Before acting as a patient advocate, the proposed patient advo-
4 cate must sign an acceptance of the PATIENT ADVOCATE
5 designation.

6 (4) The acceptance of a designation as a patient advocate
7 must include substantially all of the following statements:

8 1. This PATIENT ADVOCATE designation is not effective
9 unless the patient is unable to participate in medical treatment
10 decisions. IF THIS PATIENT ADVOCATE DESIGNATION INCLUDES THE
11 AUTHORITY TO MAKE AN ANATOMICAL GIFT AS DESCRIBED IN
12 SECTION 5506, THE AUTHORITY IS NOT EFFECTIVE UNLESS THE PATIENT
13 IS DEAD OR THE PATIENT'S DEATH IS, WITHIN REASONABLE MEDICAL
14 JUDGMENT, IMMINENT AND INEVITABLE.

15 2. A patient advocate shall not exercise powers concerning
16 the patient's care, custody, and medical treatment that the
17 patient, if the patient were able to participate in the decision,
18 could not have exercised on his or her own behalf.

19 3. This PATIENT ADVOCATE designation cannot be used to make
20 a medical treatment decision to withhold or withdraw treatment
21 from a patient who is pregnant that would result in the pregnant
22 patient's death.

23 4. A patient advocate may make a decision to withhold or
24 withdraw treatment that would allow a patient to die only if the
25 patient has expressed in a clear and convincing manner that the
26 patient advocate is authorized to make such a decision, and that

1 the patient acknowledges that such a decision could or would
2 allow the patient's death.

3 5. A patient advocate shall not receive compensation for
4 the performance of his or her authority, rights, and responsibil-
5 ities, but a patient advocate may be reimbursed for actual and
6 necessary expenses incurred in the performance of his or her
7 authority, rights, and responsibilities.

8 6. A patient advocate shall act in accordance with the
9 standards of care applicable to fiduciaries when acting for the
10 patient and shall act consistent with the patient's best
11 interests. The known desires of the patient expressed or evi-
12 denced while the patient is able to participate in medical treat-
13 ment decisions are presumed to be in the patient's best
14 interests.

15 7. A patient may revoke his or her PATIENT ADVOCATE desig-
16 nation at any time and in any manner sufficient to communicate an
17 intent to revoke.

18 8. A patient advocate may revoke his or her acceptance ~~to~~
19 OF the PATIENT ADVOCATE designation at any time and in any manner
20 sufficient to communicate an intent to revoke.

21 9. A patient admitted to a health facility or agency has
22 the rights enumerated in section 20201 of the public health code,
23 1978 PA 368, MCL 333.20201.

24 Sec. 5510. (1) A patient advocate designation is revoked by
25 ~~any~~ 1 OR MORE of the following:

26 (a) The patient's death, EXCEPT THAT PART OF THE PATIENT
27 ADVOCATE DESIGNATION, IF ANY, THAT AUTHORIZES THE PATIENT

1 ADVOCATE TO MAKE AN ANATOMICAL GIFT OF ALL OR PART OF THE
2 DECEASED PATIENT'S BODY IN ACCORDANCE WITH THIS ACT AND
3 SECTION 10102 OF THE PUBLIC HEALTH CODE, 1978 PA 368,
4 MCL 333.10102.

5 (b) An order of removal by the probate court under
6 section 5511(4).

7 (c) The patient advocate's resignation or removal by the
8 court, unless a successor patient advocate has been designated.

9 (d) The patient's revocation of the PATIENT ADVOCATE
10 designation. Even if the patient is unable to participate in
11 medical treatment decisions, a patient may revoke a PATIENT
12 ADVOCATE designation at any time and in any manner by which he or
13 she is able to communicate an intent to revoke the PATIENT
14 ADVOCATE designation. If there is a dispute as to the intent of
15 the patient to revoke the PATIENT ADVOCATE designation, the court
16 may make a determination on the patient's intent to revoke the
17 PATIENT ADVOCATE designation. If the revocation is not in writ-
18 ing, an individual who witnesses a revocation of a PATIENT
19 ADVOCATE designation shall describe in writing the circumstances
20 of the revocation, must sign the writing, and shall notify, if
21 possible, the patient advocate of the revocation. If the
22 patient's physician or health facility has notice of the
23 patient's revocation of a PATIENT ADVOCATE designation, the phy-
24 sician or health facility shall note the revocation in the
25 patient's medical records and bedside chart and must notify the
26 patient advocate.

1 (e) A subsequent PATIENT ADVOCATE designation that revokes
2 the prior PATIENT ADVOCATE designation either expressly or by
3 inconsistency.

4 (f) The occurrence of a provision for revocation contained
5 in the PATIENT ADVOCATE designation.

6 (g) If a PATIENT ADVOCATE designation is executed during a
7 patient's marriage naming the patient's spouse as the patient
8 advocate, the PATIENT ADVOCATE designation is suspended during
9 the pendency of an action for separate maintenance, annulment, or
10 divorce and is revoked upon the entry of a judgment of separate
11 maintenance, annulment, or divorce, unless the patient has named
12 a successor individual to serve as a patient advocate. If a suc-
13 cessor patient advocate is named, that individual acts as the
14 patient advocate.

15 (2) The revocation of a patient advocate designation under
16 subsection (1) does not revoke or terminate the agency as to the
17 patient advocate or other person who acts in good faith under the
18 PATIENT ADVOCATE designation and without actual knowledge of the
19 revocation. Unless the action is otherwise invalid or unenforce-
20 able, an action taken without knowledge of the revocation binds
21 the patient and his or her heirs, devisees, and personal
22 representatives. A sworn statement executed by the patient advo-
23 cate stating that, at the time of doing an act in accordance with
24 the PATIENT ADVOCATE designation, he or she did not have actual
25 knowledge of the revocation of the PATIENT ADVOCATE designation
26 is, in the absence of fraud, conclusive proof that the patient

1 advocate did not have actual knowledge of the revocation at the
2 time of the act.

3 Enacting section 1. This amendatory act does not take
4 effect unless Senate Bill No. _____ or House Bill No. 4430
5 (request no. 01144'01) of the 91st Legislature is enacted into
6 law.