

Legislative Analysis



PATIENT ADVOCATE AUTHORITY

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5075 as introduced

Sponsor: Rep. Triston Cole

Committee: Families, Children, and Seniors

Complete to 11-7-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 5075 would amend the Estates and Protected Individuals Code (EPIC) to allow the court to make a determination as to whether a patient is unable to participate in medical or mental health treatment decisions, whether a patient advocate is not complying with the terms of the patient advocate designation, or whether a patient advocate is not acting consistent with the patient's or ward's best interests.

The bill would prohibit a patient advocate from making a decision to withhold or withdraw life-sustaining medical treatment from the patient or ward under certain circumstances. The bill would establish, as a rebuttable presumption for certain proceedings, that a patient's or ward's best interests include his or her continuing to live.

DETAILED SUMMARY:

Currently, the court may modify the terms of a guardianship to include the powers of a patient advocate if a petition alleges, and the court finds, that a patient advocate designation was not properly executed or that a patient advocate is not acting consistent with either his or her designated authority or the patient's or ward's best interests.

House Bill 5075 would add a "by clear and convincing evidence" standard to the court's determination on the petition, and would also allow the appointment of a guardian in these cases, in addition to the modification of a guardianship's terms.

The bill would also prohibit a patient advocate from making a decision to withhold or withdraw life-sustaining medical treatment from the patient or ward while a petition described above is pending. The bill would establish, as a rebuttable presumption for these proceedings, that a patient's or ward's best interests include his or her continuing to live.

The authority of a patient advocate designation is exercisable only when the patient is unable to participate in medical or mental health treatment decisions. Under current law, if a dispute arises as to whether a patient is so unable, a petition may be filed requesting the court to make a determination on the question.

House Bill 5075 would prohibit both the patient advocate and the petitioner from authorizing or implementing a decision to withhold or withdraw life-sustaining treatment from the patient while such a petition is pending before the court.

Under the bill, if a dispute arises regarding whether the patient advocate is complying with the terms of the patient advocate designation or is acting consistent with the patient's best interests,

a petition could be filed requesting the court to make a determination on the question. The court would have to appoint a temporary guardian ad litem to represent the patient and conduct a hearing no later than 7 days after receipt of the petition. The court would also have 7 days after the hearing to make its determination.

The bill would prohibit both the patient advocate and the petitioner from authorizing or implementing a decision to withhold or withdraw life-sustaining treatment from the patient while such a petition is pending before the court.

Under the bill, for a hearing to determine whether the patient is unable to participate in medical or mental health decisions, or for a hearing to determine whether the patient advocate is acting consistent with his or her authority or the patient's best interests, notice of hearing would be given to each of the following:

- The patient and his or her spouse, parents, and adult children.
- A person who has the patient's care and custody.
- If known, a person named as attorney-in-fact under a durable power of attorney.
- If no other person is notified, as least one of the patient's closest adult relative, if any can be found.

For purposes of the findings and hearings described above, the bill would establish, as a rebuttable presumption, that a patient's best interests include his or her continuing to live.

The bill would also add patient advocates to the list of those to whom notice of hearing must be given in a proceeding for the appointment or removal of an incapacitated individual's guardian.

The bill would take effect 90 days after being enacted into law.

Proposed MCL 700.5306, et al.

FISCAL IMPACT:

House Bill 5075 could result in increased costs for local court funding units. Costs would depend on how provisions of the bill affect court caseloads and associated administrative costs. More specifically, costs would depend on the number of disputes and subsequent petitions filed requesting courts to determine whether patient advocates are acting consistent with their authority or with patients' best interests.

Legislative Analyst: E. Best
Fiscal Analyst: Robin Risko

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