

SENATE BILL NO. 798

February 19, 2020, Introduced by Senators MACDONALD, WOJNO, RUNESTAD, LUCIDO and BULLOCK and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 5314 (MCL 700.5314), as amended by 2018 PA 594.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5314. **(1)** If meaningful communication is possible, a
2 legally incapacitated individual's guardian shall consult with the
3 legally incapacitated individual before making a major decision
4 affecting the legally incapacitated individual. ~~To~~**Subject to**
5 **subsection (2), to** the extent a guardian of a legally incapacitated
6 individual is granted powers by the court under section 5306, the

1 guardian is responsible for the ward's care, custody, and control,
2 but is not liable to third persons because of that responsibility
3 for the ward's acts. In particular and without qualifying the
4 previous sentences, a guardian has all of the following powers and
5 duties, to the extent granted by court order:

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

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

1 (c) The power to give the consent or approval that is
2 necessary to enable the ward to receive medical, mental health, or
3 other professional care, counsel, treatment, or service. However, a
4 guardian does not have and shall not exercise the power to give the
5 consent to or approval for inpatient hospitalization unless the
6 court expressly grants the power in its order. If the ward objects
7 or actively refuses mental health treatment, the guardian or any
8 other interested person must follow the procedures provided in
9 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
10 330.1490, to petition the court for an order to provide involuntary
11 mental health treatment. The power of a guardian to execute a do-
12 not-resuscitate order under subdivision (d), execute a nonopioid
13 directive form under subdivision (f), or execute a physician orders
14 for scope of treatment form under subdivision (g) does not affect
15 or limit the power of a guardian to consent to a physician's order
16 to withhold resuscitative measures in a hospital. As used in this
17 subdivision, "involuntary mental health treatment" means that term
18 as defined in section 400 of the mental health code, 1974 PA 258,
19 MCL 330.1400.

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

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

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

12 (f) The power to execute, reaffirm, and revoke a nonopioid
13 directive form on behalf of a ward.

14 (g) 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 orders
19 for scope of treatment form, visits the ward and, if meaningful
20 communication is possible, consults with the ward about executing
21 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) If a guardian executes a physician orders for scope of
26 treatment form under subdivision ~~(f)~~, **(g)**, not less than annually
27 after the physician orders for scope of treatment is first
28 executed, the duty to do all of the following:

29 (i) Visit the ward and, if meaningful communication is

1 possible, consult with the ward about reaffirming the physician
2 orders for scope of treatment form.

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

6 (i) If a conservator for the ward's estate is not appointed,
7 the power to do any of the following:

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

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

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

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

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

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

3 (iv) Whether the guardian recommends a more suitable living
4 arrangement for the ward.

5 (v) Medical treatment, including mental health treatment,
6 received by the ward.

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

10 (vii) Whether the guardian has executed, reaffirmed, or revoked
11 a nonopioid directive form on behalf of the ward during the past
12 year.

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

16 (ix) Services received by the ward.

17 (x) A list of the guardian's visits with, and activities on
18 behalf of, the ward.

19 (xi) A recommendation as to the need for continued
20 guardianship.

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

27 **(2) A guardian of a legally incapacitated individual shall not**
28 **restrict the ability of the legally incapacitated individual to**

1 communicate, visit, or interact with a person, unless any of the
2 following apply:

3 (a) The ward expressed in a valid power of attorney, patient
4 advocate designation, or any other writing or communication that
5 the ward does not wish to communicate, visit, or interact with the
6 person.

7 (b) The court, through a specific order, finds by clear and
8 convincing evidence that the restrictions are necessary because
9 interaction with the person poses a risk of physical,
10 psychological, or financial harm to the ward.

11 (c) A personal protection order or other court order outside
12 of a guardianship is in effect that limits contact between the ward
13 and the person.

14 (d) Subject to subsection (3), both of the following apply:

15 (i) The guardian has good cause to believe restriction is
16 necessary because interaction with the person poses a risk of
17 physical, psychological, or financial harm to the ward.

18 (ii) Within 7 days after the guardian restricts the ward's
19 ability to communicate, visit, or interact with the person, the
20 guardian sends the person, court, and health facility or agency, or
21 licensed adult foster care facility, where the ward resides written
22 notice, on a form created by the state court administrative office,
23 specifically identifying each reason for the restrictions and why
24 less restrictive options were not reasonably available.

25 (3) Failure of the guardian to provide the form as specified
26 in subsection (2)(d) lifts the restriction and may subject the
27 guardian to removal under section 5310.

28 (4) An individual who has been restricted from interacting
29 with a ward may petition for the restriction to be removed. The

1 court shall not order the restriction to remain in place unless it
2 is shown by clear and convincing evidence that both of the
3 following apply:

4 (a) The restriction is necessary because interaction with the
5 individual poses a risk of physical, psychological, or financial
6 harm to the ward.

7 (b) A less restrictive option is not reasonably available.

8 (5) As used in this section:

9 (a) "Adult foster care facility" means that term as defined in
10 section 3 of the adult foster care facility licensing act, 1979 PA
11 218, MCL 400.703.

12 (b) "Health facility or agency" means that term as defined in
13 section 20106 of the public health code, 1978 PA 368, MCL
14 333.20106.

15 (c) "Personal protection order" means a personal protection
16 order issued under section 2950 or 2950a of the revised judicature
17 act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.