

## **5. EPIC**

Protected Individuals in EPIC

Highlights of the Estates and Protected Individual's Code - Act 386 of 1998

Patient Advocate in EPIC

Voluntary Admission by Guardian in EPIC



## PROTECTED INDIVIDUALS

The Estates and Protected Individuals Code (EPIC) governs matters pertaining to the administration of estates of deceased and protected persons. The Probate Court has exclusive jurisdiction over these matters.

Protected individuals are persons who by reason of their age or physical impairment cannot manage their own affairs. A guardian may be required for an unmarried minor whose parents are deceased or whose parental rights to custody are terminated or suspended by circumstances or prior court order. A guardian may also be required for a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person. A guardian is a person who is given authority to exercise certain powers over a protected individual. Guardians are appointed by order of the court. A prospective guardian may be nominated by petition, by will, or other written document signed by the parent and at least two other witnesses.

If a protected individual has an estate that requires management, the protected individual may need a conservator. A conservator is a person appointed by the court to exercise powers over the assets of a protected individual. The same person may serve as both guardian and conservator, or two separate persons may be appointed.

A conservator may be appointed if the court finds that any of the following circumstances exist:

- ☛ A minor owns money or property that requires management or protection.
- ☛ A minor has or may have business affairs that may be jeopardized or prevented by the person's minority.
- ☛ Funds are needed for the person's support and education and that protection is necessary or desirable to obtain or provide funds.
- ☛ The court determines an individual is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; the person has property which will be wasted or dissipated unless proper management is provided; funds are needed

for the support, care, and welfare of the person or those entitled to be supported by the person.

When a minor's estate is under \$5000, a conservator is **not needed**. The following persons may receive up to \$5000 per year for the support and education of the minor without being appointed conservator:

- ✔ The minor's parent;
- ✔ The person having care and custody of the minor under court order;
- ✔ The person with whom the minor resides; or
- ✔ The guardian of the minor

Any interested person can petition the court for a guardian or conservator of a protected individual, and:

- ✔ A minor 14 years of age or older may nominate his or her own guardian or petition for appointment of a conservator;
- ✔ An adult person may petition for appointment of a guardian or conservator for himself or herself;
- ✔ A person who is interested in the person's estate, affairs, or welfare including his or her parent, guardian or custodian may petition for appointment of a conservator;
- ✔ A person who may be adversely affected by lack of the effective management of the protected persons property or affairs may petition for appointment of a conservator.

A limited guardianship of a minor may be established only upon the consent of the custodial parent. A limited guardianship grants full custody of the child to the limited guardian, except the guardian may not consent to adoption or marriage. At any time the parent or limited guardian may withdraw their consent by filing the necessary documents with the court. The court must discharge the guardianship but may require a hearing prior to doing so. The court reviews limited guardianships annually for children under 6 years of age.

A guardian must file a written report annually showing the wards condition, the condition of the ward's estate subject to the guardians possession, any medical or psychiatric treatment or care to which the ward was subjected during the report period and what reason, if any exists, for continuation of the guardianship. There is a form provided by the Probate Court to satisfy this obligation.

A conservator must:

- ☞ Within 56 days of appointment file a complete inventory of the ward's assets;
- ☞ Provide a copy of the inventory to an adult ward; or
- ☞ Provide a copy of the inventory to a minor's parent or guardians.
- ☞ Annually file with the court an itemized accounting of all expenditures, disbursements, and property remaining in his/her hands and in what form.

Failure of the conservator to file an inventory or annual account will result in suspension of the conservator's powers.

Since these legal proceedings can substantially affect the protected person's rights as well as subject the fiduciary to personal liability, it is advisable to seek consultation with an attorney prior to instituting action.



# HIGHLIGHTS of the ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC)

## Act 386 of 1998 (700.1101 —700.8.102)

ACT to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts.

1098, At 386 Eff. Apr. 1, 2000 .

### CONTENTS

#### ARTICLE I: DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

Sec.11105(a) "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use , of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions. [LIP]

Developmentally disabled person [DDP] and guardianship provisions covered under Chapter 6 of the MHC

#### ARTICLE II: INTESTACY, WILLS, AND DONATIVE TRANSFERS

#### ARTICLE III: PROBATE OF WILLS AND ADMINISTRATION

#### ARTICLE IV: FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

#### ARTICLE V: PROTECTION OF INDIVIDUAL UNDER DISABILITY AND HIS OR HER PROPERTY

Part 3 → Guardians of Incapacitated Individuals

History → Probate Code - Full Guardian if LIP

Guardianship Reform Act - Full or limited guardianship of LIP

EPIC - Looks at alternatives to guardian

#### **Sec.5302**

Venue for guardianship proceeding is in the place where the incapacitated individual resides or is present. If admitted to institution by court order, venue is in the county in which that court is located.

#### **Sec 5303 [as amended by SB1389]**

(2) Person who intends to file petition for guardianship shall be provided by the court written information on alternatives to appointment of a full guardian, e.g. limited guardian, conservator, DPA, DNR declaration, or DPOA and an explanation of each.

**Sec 5304 (4)**

Alleged IP entitled to be present at the hearing in person, to see and hear all evidence. All practical steps need to be taken to ensure presence, including moving hearing site.

**Sec. 5306 [as amended by 2000 PA 312/HB 5919]**

(2)...If court aware of DPA, shall not grant same authorities to guardian

(3)... Court may appoint limited guardian if person has capacity to do some of the tasks necessary to care for him/herself, but shall not appoint a full guardian. (5) If person has executed a patient advocate designation under 5506 before person is determined legally incapacitated, guardian does not have and shall not exercise the power or duty of making medical treatment decisions that the patient advocate is designated to make....

**Sec: 5313 [As amended by HB 5919]**

(1)...Court shall not appoint as guardian a public or private agency that financially benefits from directly providing housing, medical, mental health, or social services to the LIP.

**Sec: 5520** A legally incapacitated individual who has a guardian with responsibility for making medical treatment decisions cannot then designate another individual to make medical treatment decisions for the LIP.

*Conversely and logically, if guardian does not have authority to make medical treatment decisions, LIP can do a DPA.*

**Part 5 -DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE**

**Sec. 5506 -18 years of age or older**

- Of sound mind
- Must be in writing and signed
- Witnessed as to person being of sound mind
- Must be dated
- Must be voluntary.

**Sec. 5507 - Patient advocate must sign acceptance of designation**

(4) 4. Decision to withhold or withdraw treatment

6. Known desires of patient expressed while person was able to participate in medical treatment decisions presumed to be in person's best interest.



(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2003, Act 63, Imd. Eff. July 22, 2003 ;-- Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005 ;-- Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008

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**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5506 Designation of patient advocate; "community mental health services program or hospital" defined.**

Sec. 5506.

(1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2) For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3) A patient advocate designation under this section must be in writing, signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4) A patient advocate designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

**History:** 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2003, Act 63, Imd. Eff. July 22, 2003 ;-- Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005 ;-- Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008

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**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5314 Powers and duties of guardian.**

Sec. 5314. If meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons because of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the physician orders for scope of treatment form.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) Services received by the ward.

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

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

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

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 313, Eff. Jan. 1, 2001;—Am. 2000, Act 467, Eff. June 1, 2001;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014;—Am. 2017, Act 155, Eff. Feb. 6, 2018;—Am. 2018, Act 555, Eff. Mar. 28, 2019;—Am. 2018, Act 594, Eff. Mar. 28, 2019.

**Compiler's note:** In subdivision (h), the reference to "subdivision (f)" evidently should be "subdivision (g)."

**Popular name:** EPIC