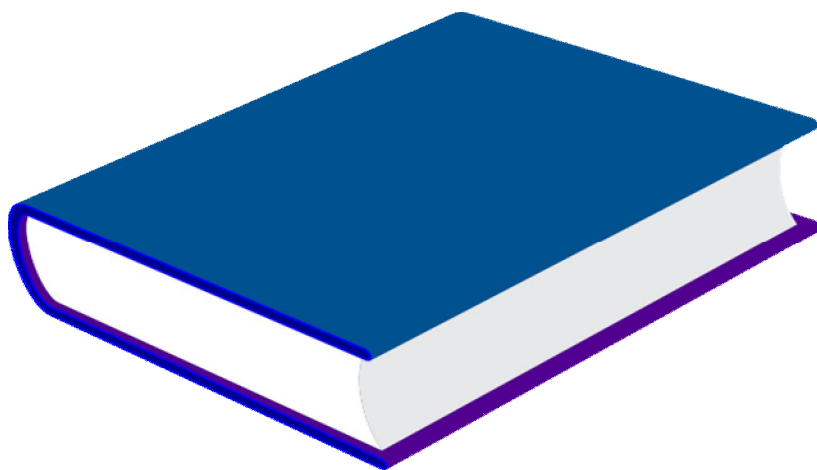


# **Changes and Choices**

## **Surrogate Decision-Making For Health Care in Michigan**



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# **Surrogate Decision-Making For Health Care**

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## **Introduction**

The law has long been clear that an adult who is able to give informed consent to medical treatment ó who understands her or his condition, treatment options, intended effects and possible side effects of these choices ó has sole right and authority to make those decisions.

Residency in a nursing home, being a patient in a hospital, or being a client of a hospice or mental health provider does not diminish these rights. Although these materials focus on nursing home residents, much of the information is applicable in other health care settings.

The law concerning who has authority to make medical decisions if an adult lacks the ability to do so has evolved over the years through new laws and court decisions.

The process has been episodic, non-comprehensive, and incomplete. The state of the law today can be compared to a jigsaw puzzle with some pieces missing and other pieces not fitting well with one another.

The situation is understandably confusing to patients, to long-term care residents, to family members, to health care providers, to long-term care ombudsman and to state officials charged with overseeing the quality of nursing home care.

For a number of years, surveyors cited nursing homes if every resident did not have either an advance directive or a guardian. However, this was a misinterpretation of the law, with adverse consequences for residents and for nursing homes. The law provides it is a resident's choice whether to sign an advance directive. Guardianship is only appropriate if a resident is unable to make informed choices about his or her care, and guardianship is necessary.

Nursing home staff, hospital staff and other providers can be under the misimpression that a patient advocate has authority immediately upon the signing of an advance directive, or that a guardianship preempts almost all rights of a resident.

It is one aim of these materials to clarify this broad area of the law, which we term surrogate decision-making. As we pursue clarification, we acknowledge the law is still unsettled in some important respects. We have endeavored to point these areas out in the document.

A second aim is to provide resources to nursing homes they can use to help fulfill federally mandated responsibilities to educate staff; to provide community education; and to assist willing residents to complete an advance directive.

It must be noted the Centers for Medicare and Medicaid Services recently published changes to surveyor guidance for F-tag 155 (advance directives) and F-tag 309 (quality of care ó review of resident at or approaching end of life),

These changes do not alter state law regarding who can make health decisions for an individual who becomes unable to make them her or himself. Indeed, the new language underscores the importance of properly recognizing those who are so empowered.

The subject of these materials is health care decision-making. There are different laws and different mechanisms for decision-making concerning an individual's property and financial affairs.

The text is in three parts: Advance Directives, Family Involvement Decision-Making, and Guardianship. Information on voluntary and involuntary psychiatric hospitalization is beyond the scope of this paper.

For ease of reading, the information is presented in a question-and-answer format. Citations are to Michigan law (MCL); federal statute (42 USC) or federal regulation (42 CFR).

These materials may be useful to nursing home administrators, social workers, directors of nursing, and admissions personnel; and to nursing home surveyors in the Bureau of Health Care Services, Michigan Department of Licensing and Regulatory Affairs.

The text may also be of interest to adult foster care homes, homes for the aged, community mental health staff, adult services workers, hospital social workers, probate courts, advocates, and lawyers unfamiliar with this area of law.

In reviewing the particulars of the law, it is important to keep in mind the grand purpose of this statutory and regulatory scheme concerning surrogate decision-making: to honor the wishes, values and dignity of the individual.

It is also important to recognize there can be an unfortunate chasm between the law as it is written, and the law as it is practiced.

Readers might want to consult the following additional resources:

***Advance Directives: Planning for Medical Care in the Event of Loss of Decision-Making Ability.*** The booklet, which has questions-and-answers, and fill-in-the-blank forms, is Appendix B to this paper, and is accessible on-line at [www.michigan.gov/ltc](http://www.michigan.gov/ltc).

In addition to English, the booklet is available in Spanish, Arabic, Chinese, Korean, German and Italian. The Elder Law and Disability Rights Section of the State Bar of Michigan has been instrumental in increasing access to advance directives.

***Advance Directive for Mental Health Care*** is available on-line in three languages: English, Spanish and Arabic. [www.michigan.gov/mdch/0,4612,7-132-2941\\_4868\\_41752---,00.html](http://www.michigan.gov/mdch/0,4612,7-132-2941_4868_41752---,00.html).

***Federal and State Regulation of Nursing Homes***, edited by Bradley Geller, is a compendium of applicable statutes, regulations, rules, and guidance for nursing home surveyors. It is available in electronic form by contacting the editor at [law\\_and\\_aging@yahoo.com](mailto:law_and_aging@yahoo.com).

The Michigan State Long Term Care Ombudsman Program has over 50 *Fact Sheets* on issues relevant to residents and recipients of long term care services. An index of *Fact Sheets* surrounding advance directives and guardianship is Appendix A. Some of these can be found at [www.michigan.gov/ltc](http://www.michigan.gov/ltc).

***Changes and Choices*** was coined by Irene Kazieczo for a videotape series on law and aging she produced in 1981. Irene was Michigan's long time expert in mental health and aging. In is in her memory this work is dedicated. A deep debt of gratitude to Sarah Slocum, without whose support this project would not have success.

B.G.





## Part 1

# Advance Directives

### **1. What is an advance directive?**

An advance directive is a signed and witnessed document in which an individual voluntarily provides input or direction concerning future medical care decisions, and/or appoints a surrogate decision-maker, in the event the individual becomes unable to participate in these decisions.

### **2. Are there different types of advance directives?**

**Yes.** This statement focuses on the most prevalent type of advance directive, a "durable power of attorney for health care." This type of document is also known as a "health care proxy," or a "patient advocate designation."

### **3. What is a durable power of attorney for health care?**

A durable power of attorney for health care is a document whereby an individual voluntarily chooses another person to "exercise powers concerning care, custody, and medical or mental health treatment" for her or him, during any time she or he is "unable to participate in medical treatment decisions." MCL 700.5506 *et seq.*

### **4. When was the law passed providing for legally binding durable powers of attorney for health care in Michigan?**

The law was passed in December 1990, after 14 years of effort by State Representative David Hollister.

**5. What is a nursing home’s obligation concerning advance directives for a new resident?**

Under the Federal Patient Self-Determination Act, a nursing home which participates in Medicare or Medicaid must give written information to a new resident about the resident’s right under Michigan law to make decisions about her or his medical care, and the right to sign an advance directive. 42 USC 1395cc(f)(1)((A)(i); 42 USC 1396a(w)(1)(A)(i); 42CFR 489.102(a)(1); 42 CFR 483.10(b)(8).

**6. What if an incoming resident does not have the capacity to understand this information?**

If an adult individual is incapacitated at the time of admission or at the start of care and is unable to receive information (due to the incapacitating conditions or a mental disorder) or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The provider is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

42 CFR 489.102(e).

**7. Must a nursing home help a resident toward having an advance directive?**

**Yes.** A nursing home has a responsibility to offer assistance if a resident wishes to execute one or more directive(s). CMS Surveyor Guidance to F Tag 155, p. 4.

During a periodic survey, surveyors must interview staff to determine how staff helps the resident or legal representative document treatment choices and formulate an advance directive. CMS Surveyor Guidance Investigative Protocol for 42 CFR 483.10(B)(4) and (8).

**8. Can a nursing home provide educational materials about advance directives to an applicant or resident?**

**Yes.**

**9. What about making fill-in-the-blanks forms available?**

A nursing home can inform a resident about options for completing an advance directive, including how to obtain fill-in-the-blanks forms.

**10. Is there a standard form for a durable power of attorney for health care?**

**No.** There are a number of forms available from different organizations. An individual can instead have a lawyer draft the document. A hand-written document can be valid if properly signed and witnessed, though there is a risk of completing the document incorrectly.

If a nursing home makes fill-in-the-blank forms available, the home should ensure residents are aware there is no standard form, and that residents have options, including using a different form or consulting a lawyer.

**11. What is one example of a fill-in-the blanks form?**

The booklet, *"Advance Directives: Planning for Medical Care in the Event of Loss of Decision-Making Ability,"* contains a form. The booklet is Appendix B to this paper.

**12. Can a nursing home require an applicant or a resident to have an advance directive?**

**No.** It is an individual's choice whether to have an advance directive. A nursing home cannot condition admission or continued stay on a resident having or not having an advance directive. 42 USC 1395cc(f)(1)(C); 42 USC 1996a(w)(1)(C); 42 CFR 489.102(a)(3); MCL 700.5512(2)

**13. How does a nursing home know if an incoming resident already has an advance directive?**

The nursing home must determine whether an incoming resident has an advance directive. The nursing home should ask the resident, or if the resident is unable to understand, should ask family or other surrogate.

**14. What is the obligation of the nursing home if an incoming resident already has an advance directive?**

The nursing home has an obligation to make an advance directive a prominent part of the resident's medical record. 42 USC 1395cc(f)(1)(B); 42 USC 1396a(w)(1)(B). 42 CFR 489.102(a)(2). This is true for a new resident or a long-term resident.

**15. Can a nursing home require an incoming resident to replace an advance directive with a new advance directive?**

**No.**

A health care provider shall not require a patient advocate designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical or mental health treatment. MCL 700.5512(2).

**16. Is there a statewide site where a durable power of health care can be filed?**

**Yes.** Through legislation passed in 2012, The Michigan Department of Community Health is contracting with Gift of Life of Michigan, an organ donation agency, to establish a statewide registry for durable powers of attorney for health care. MCL 333.10301.

Participation is voluntary on the part of the individual, and it is free. Nursing homes will have electronic access to this information at no cost.

**17. What is the registry named?**

The registry is named Peace of Mind.

**18. How can a resident obtain further information about the registry?**

If an individual has access to the internet, she or he can go to [www.mipeaceofmind.org](http://www.mipeaceofmind.org).

A resident can also call, toll, free, 1-800-482-4881.

**19. How can an individual register her or his durable power of attorney for health care?**

Registration is available electronically or by mailing the advance directive to Peace of Mind, 3861 Research Park Drive, Ann Arbor, MI 48108. A cover sheet will be available to include with the mailing.

**20. When will nursing homes and other health providers have electronic access to the registry?**

Health care providers will have access in late 2014.

**21. Can an individual also include in a durable power of attorney for health care wishes concerning future medical treatment?**

Yes, an individual has a choice whether to include general wishes, specific wishes or no wishes at all. MCL 700.5507(1).

**22. Who is able to have a durable power of attorney?**

An individual must be 18 years old or older, and of sound mind. MCL 700.5506. In this context, sound mind means the individual realizes he is giving another person authority to make health care decisions if she or he cannot, and she or he knowingly chooses this person.

**23. What are the execution requirements of a valid durable power of attorney for healthcare?**

The document must be signed by the individual, and witnessed by two persons. Nursing home staff members are among those prohibited from serving as a witness for a resident.

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 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. MCL 700.5506(4).

**24. Does the document have to be notarized?**

**No.** There is neither a requirement nor suggestion in the law that the document be notarized.

**25. What is the person designated in a durable power of attorney for health care called?**

The person is called a "patient advocate." MCL 700.5506(2).

**26. Does an individual appoint one person to serve as patient advocate?**

Under the statute as it is designed, an individual chooses one person to serve as patient advocate at any one time. The relevant section of the statute reads,

An individual 18 years old 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 to exercise powers concerning care,

custody and medical or mental health treatment decisions for the individual making the patient advocate designation. MCL 700.5506(1).

**27. How do others approach this issue?**

Appointment of one person as patient advocate is presented in the booklet distributed by state legislators beginning in 1991, and distributed today as part of the legislative publication, *Peace of Mind*. The same approach was used in a 1991 booklet jointly published by the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Health and Hospital Association and the State Bar of Michigan.

Some lawyers argue an individual can appoint joint patient advocates.

**28. Can an individual name a second person to serve if the first person later cannot serve or be located?**

Yes. An individual can appoint one person as patient advocate, and a second person to serve as patient advocate if the first person named as patient advocate does not accept, is incapacitated, resigns or is removed. MCL 700.5507(2).

The second person is commonly known as a "successor patient advocate."

**29. Can a patient advocate delegate her or his powers to another person not named in the document?**

A patient advocate or successor patient advocate does not have power to delegate her or his powers without prior authorization from the individual.

**30. Does a patient advocate have authority to make decisions immediately upon the individual signing the durable power of attorney?**

No. This is a misconception as serious as it is popular. The law provides

í the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health decisions. MCL 700.5508(1).

**31. Will a nursing home be evaluated on this standard?**

**Yes.** One criterion for compliance with 42 CFR 483.10(b)(4) and (8) is if the nursing facility has -

documented when the resident is determined not to have decision-making capacity and **therefore** decision-making is transferred to the health care agent or legal representative.

CMS Surveyors Guidance, Appendix PP to State Operations Manual, Revisions to F Tag 155, Transmittals dated September 27, 2012 and March 18, 2013, p. 13. (emphasis added)

**32. What rights does an individual retain immediately upon signing a durable power of attorney for health care?**

Upon signing a durable power of attorney for health care, the individual retains the right to make medical care and personal care decisions for herself or himself just as before.

**33. Can an individual give a patient advocate immediate access to medical records?**

**Yes.** Indeed, the document might explicitly reference HIPAA, and serve as a release under that statute.

**34. What must occur before a patient advocate has authority to act for the individual?**

First, the patient advocate must be given a copy of the document. Second, the patient advocate must sign an "acceptance," a document whereby the person agrees to properly undertake her or his duties. MCL 700.5507(3).



**35. Is there standard language for the acceptance?**

The general language of the acceptance is set forth in law. “The acceptance of a designation as a patient advocate must include substantially all the following statements. The statements are set forth MCL 700.5507(4), and are included in Appendix B.

**36. When does the patient advocate have to sign the acceptance?**

The patient advocate can sign the acceptance when the individual signs the durable power of attorney for health care, or at a later time.

The statute provides, “Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.” MCL 700.5507(3).

**37. What else must occur before a patient advocate has authority to act?**

A patient advocate only has authority to act when the individual is “unable to participate in medical treatment decisions.” MCL 700.5508(1).

**38. Who determines whether the individual has become unable to participate in medical treatment decisions?**

The individual’s attending physician, and a second physician or licensed psychologist make that determination. MCL 700.5508(1).

**39. Must the attending physician and the other physician or psychologist examine the individual before making the determination?**

Yes. MCL 700.5508(1). They need not conduct the examination at the same time as one another.

**40. What must the physicians or the physician and psychologist do upon making their determination?**

The physicians or psychologist must put their determination in writing, make the writing part of the resident's medical record, and review the determination at least once a year. MCL 700.5508(1).

**41. How is a durable power of attorney described after the physicians or physician and psychologist have made their determination?**

If the individual is deemed unable to participate in medical treatment decisions, popular expressions are that the durable power of attorney for health care has been "triggered," or "activated."

**42. Is there a standard form for the physicians or psychologist to use?**

No. It is up to the nursing home to develop a form for this purpose.

**43. Are the two physicians or physician and psychologist determining the individual is incompetent?**

No. Only a court, after notice and a hearing, can determine an individual is "incapacitated" in a legal sense. MCL 700.1105(a); MCL 700.5306(1).

**44. What is the duty of a patient advocate?**

A patient advocate has a duty to take reasonable steps to follow the desires and instructions of the individual, whether expressed in the document or orally in the past. MCL 700.5509(b).

**45. What powers can an individual give her or his patient advocate?**

The patient may authorize the patient advocate to make 1 or more powers concerning the patient's care, custody, medical treatment, mental health

treatment, the making of an anatomical gift if the patient could have exercised on his or her own behalf. MCL 700.5507(1)

**46. Can an individual give a patient advocate power to withhold or withdraw life-sustaining care?**

**Yes.** To do so, the individual must explicitly state in the document, or sign a statement in the document, that she or he is giving the patient advocate that power. MCL 700.5509(1)(e).

**47. What treatments could a patient advocate withhold or withdraw if given this authority?**

Examples include resuscitation, antibiotics, respirator care surgery and tube feeding. A patient advocate could also opt for hospice care. MCL 5509(1)(f).

**48. Can a patient advocate determine which relatives can visit or speak with a resident?**

**No.** The rights of a resident to speak on the telephone and to have visitors of his or her choice are well established in federal and state law.

A nursing home must if permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident. 42 USC Sec. 1396r(c)(3)(B).

See also, MCL 333.21763.

**49. What are the sources of residents' rights?**

Both federal and state law establish rights of nursing home residents. Many of these rights can be found at 42 USC sec. 1395i-3(c); 42 USC sec. 1396r(c); and MCL 333.20201.

**50. What happens if an individual regains the ability to participate in medical treatment decisions?**

If an individual regains the ability to participate in medical treatment decisions, the authority of the patient advocate is suspended for as long as the individual remains able to participate. MCL 700.5509(2).

**51. Who determines an individual has regained the ability to participate in medical treatment decisions?**

The law is silent on this issue. One might assume the attending physician can make this determination.

**52. What happens if the individual again loses the ability to participate in medical treatment decisions?**

The determination an individual has once again become unable to participate in medical treatment must be made by two physicians or a physician and psychologist. MCL 700.5509(2)

**53. Is there any time limit after which a durable power of attorney is not valid?**

No. The only exception is if the document, itself, states a time limit.

**54. How often must the physicians or physician and psychologist review their determination?**

If the individual has been determined to be unable to participate in treatment decisions, the attending physician and second physician or psychologist are to review the determination at least once a year. MCL 700.5508(1).

**55. Can an individual revoke a durable power of attorney for health care?**

**Yes.** MCL 700.5510(d)

**56. Does a revocation need to be in writing?**

**No.** The law explicitly allows a revocation that is not in writing. MCL 700.5510(d).

**57. Can an individual revoke a designation even after two physicians have determined that she or he is unable to participate in treatment decisions?**

**Yes.**

The law reads,

“ even if the individual is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke it. MCL 700.5510

**58. Can an individual partially revoke a durable power of attorney for health care?**

In effect, yes. Even if an individual is unable to participate in medical treatment decisions, she or he can express a desire to receive specific life - extending procedures, and those wishes are binding on the patient advocate. MCL 700.5511(1)

**59. What is a nursing home’s obligation if a resident revokes a durable power of attorney for health care?**

If a nursing home administrator or staff member witnesses a revocation that is not in writing, that person must describe the circumstances in writing, and sign it. MCL 700.5510(1)(d).

The nursing home or physician must then note the revocation in the resident's medical records and bedside chart, and attempt to contact the patient advocate. MCL 700.5501(1)(d).

**60. Can a resident sign a new durable power of attorney after revoking one?**

Yes, if the resident is of sound mind.

The individual must understand she or he is giving another person authority to make medical treatment decisions, and know whom she or he is designating as patient advocate.

**61. What if a resident has more than one document?**

The most recent, validly signed document should be followed if there is any inconsistency between the two documents. MCL 700.5510(1)(e).

**62. Does a patient advocate have any authority after the death of the individual?**

Only to the extent the durable power of attorney for health care empowers the patient advocate to make an organ or body donation. MCL 700.5510(1)(d).

**63. What if a dispute arises concerning a durable power of attorney for health care?**

The following disputes can be resolved through petition to the probate court:

- 1) Whether or not an individual is able to participate in medical treatment decisions. MCL 700.5508(2).

- 2) Whether or not an individual has revoked a durable power of attorney for health care. MCL 700.5510(1)(d)
  
- 3) Whether or not the patient advocate is acting consistent with the individual's wishes and otherwise consistent with the individual's best interests. MCL 700.5511(5).

**64. Does a nursing home have an obligation to honor a durable power of attorney for health care?**

**Yes.**

If a durable power of attorney for health care is properly signed and witnessed, if a proper determination has been made the resident is unable to participate in medical treatment decisions, if the patient advocate is acting in the resident's best interest, and if the directions of the patient advocate are within sound medical practice, a nursing home or other health care provider is obligated to follow those directions. MCL 700.5511(3).

**65. How will a surveyor evaluate compliance with this obligation?**

When a surveyor does a record review, he or she must determine -

whether any treatments or interventions have been ordered (e.g., unplanned hospitalizations or placement of a feeding tube) that are inconsistent with the resident's documented acceptance or refusal of treatment or with any advance directive.

CMS Surveyors Guidance, Appendix PP to State Operations Manual, Revisions to F Tag 155, Transmittals dated September 27, 2012 and March 18, 2013, p. 12.

To comply with 42 CFR 483.10(b)(4) and (8), the facility must have -

monitored the care and services given to the resident to ensure they are consistent with the resident's documented choices and goals. *Ibid*, p.14

**66. Can a nursing home or a physician be successfully sued for following the instructions of a patient advocate?**

If a health care provider reasonably believes the patient advocate has authority to make a decision, the health care provider has the same liability as if the individual had made the decision herself or himself. MCL 700.5511(2).

**67. What else does law require of nursing homes?**

A nursing home has an obligation to provide for education of staff and the community on issues concerning advance directives. 42 USC 1395cc(f)(1)(E); 42 USC 1396a(w)(1)(E).

A nursing home must-

Provide for community education regarding issues concerning advance directives that may include material required in paragraph (a)(1) of this section, either directly or in concert with other providers and organizations. Separate community education materials may be developed and used, at the discretion of providers. The same written materials do not have to be provided in all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. A provider must be able to document its community education efforts. 42 CFR 489.102(6).

**68. May a nursing home or other health care provider use the materials in this paper?**

Yes. Health care providers can use these materials if they wish.

**69. Are there advance directives other than a durable power of attorney for health care?**

Yes. There are several types of advance directive. One type is a living will.



**70. What is a living will?**

In a living will, an individual states her or his wishes for medical care in the future, in the event she or he becomes terminally ill and not able to participate in treatment decisions.

An individual does not appoint a patient advocate in a living will.

**71. Does Michigan have a living will statute?**

No. Although 47 states have statutes making living wills legally binding, Michigan does not have such a law.

**72. Have efforts been made to pass a living will law in Michigan?**

Yes. The first effort was HB 4176, introduced by State Representative Perry Bullard in 1987. The bill was named the "Michigan Medical Self-Determination Act," a title coined by Daniel Sharp and drafter Bradley Geller to avoid confusion between a living will and a last will and testament.

The phrase morphed into the "Patient Self-Determination Act," a federal law sponsored by Michigan Congressman Sander Levin, codified at 42 USC 1395cc(f); 42 USC 1396a(w).

**73. Can an individual still have a living will?**

Yes. The document can provide good evidence of the wishes of an individual. This may be particularly important for an individual who has outlived close friends and relatives, and has no one to appoint as a patient advocate.

**74. Are there relevant court cases?**

The Michigan Supreme Court has suggested individuals may have a common law right to have a living will honored:

Among the factors identified as important in defining clear and convincing evidence, the predominant factor is "a prior directive in which the patient addresses the situations in which the patient would prefer that medical intervention cease." Cantor, *Legal Frontiers of Death and Dying*, ch.3, p 64. Optimally, the prior directive would be expressed in a living will, patient advocate designation, or durable power of attorney. While a written directive would provide the most concrete evidence of the patient's decisions, and we strongly urge all persons to create such a directive, we do not preclude consideration of oral statements, made under the proper circumstances.

In re Martin, 450 Mich 204, 227 (1995).

**75. What is an “advance directive for mental health care?”**

This is a third type of advance directive.

An individual can sign an advance directive limited to mental health treatment decisions, including inpatient hospitalization.

**76. How are a durable power of attorney for health care and a mental health advance directive similar?**

Each document provides for the appointment of a patient advocate to act when an individual is unable to participate in treatment decisions

**77. What is one difference between the two types of documents?**

In an advance directive for mental health care, the determination of inability to participate in mental health decisions must be made by a physician and a mental health professional. MCL 700.5515(2).

In the document, the individual can choose the physician or mental health professional, or both.

**78. Are there other differences?**

**Yes.**

In an advance directive for mental health care, the individual can provide for a 30-day cooling-off period, whereby the patient advocate retains authority to make decisions for 30 days after a revocation. MCL 700.5515(d).

A mental health professional need not comply with a provision of the document if the life of the individual or another person is in danger. MCL 700.5511(4)(e).

**79. How specific can an individual be in a mental health advance directive?**

An individual may wish to be quite specific in her or his mental health advance directive. She or he might specify the psychiatric hospital to which she or he wants to go, indicate a choice of treating psychiatrist, and list effective medications and dosage.

**80. Can an individual include wishes for mental health care within a more general durable power of attorney for health care?**

**Yes,** if the individual so chooses.

**81. Can individual have both a mental health advance directive and a general durable power of attorney for health care?**

**Yes.** The individual can choose one person to be patient advocate for mental health issues and a different person to be patient advocate for all other medical decisions.

**82. Is there further information available about mental health advance directives?**

One source is the booklet, *Advance Directive For Mental Health Care*, with questions-and-answers and a fill-in-the-blanks form, written under the

auspices of Irene Kaziezko, then Bureau Director, Community Mental Health Services, Michigan Department of Community Health.

**83. Where can one obtain this booklet?**

The booklet is available on-line in English, Spanish and Arabic at -  
[https://www.michigan.gov/mdch/0,4612,7-132-2941\\_4868\\_41752---,00.html](https://www.michigan.gov/mdch/0,4612,7-132-2941_4868_41752---,00.html)

**84. Is there a fourth type of advance directive?**

Yes. An individual can sign a form stating that if breathing and heartbeat stop, she or he wants no efforts made at cardiopulmonary resuscitation (CPR).

**85. What is this form called?**

The form is known as a "do-not-resuscitate order."

**86. Does Michigan have a law making this document binding?**

Yes. The law was passed in 1996, as Public Act No. 193, amended in 2004, as Public Act No. 552, and amended in 2013.

**87. How did the law come about?**

A bill entitled, "Michigan Do-Not-Resuscitate Procedure Act" was introduced by State Representative Perry Bullard in 1989. The bill was prompted by concerns expressed by EMS agencies that their staff had a legal duty to attempt resuscitation in an individual's home, even if clear the individual did not want it.

No state had a law on this subject at the time. The bill, drafted by Bradley Geller, was based on the Hennepin County Protocol, in use in Minneapolis, Minnesota.

**88. In what settings is the document applicable?**

This document was initially intended for individuals living at home or assisted living, and was not applicable in a nursing home or hospital setting.

Due to amendments passed in 2013, do-not-resuscitate orders under the Act are applicable in nursing homes, effective February, 2014.

**89. Can a nursing home or other health care provider require an applicant, a resident or a patient to have a do-not resuscitate order?**

**No.**

A person or organization shall not require the execution of an order as a condition for insurance coverage, admittance to a health care facility, receiving health care benefits or services, or any other reason. MCL 333.1064.

The Centers for Medicare & Medicaid Services takes a consistent position: a nursing home can not have a facility-wide no CPR policy. CMS Memorandum to State Survey Agency Directors, S&C: 14-01-NH, October 1, 2013.

**90. Are there standard forms?**

Yes, unlike other types of advance directives, the law provides standard forms. One form is for individuals who have a physician. A second form is for individuals, such as Christian Scientists, who do not utilize physicians.

Both forms are included in the advance directives booklet, Appendix B.

**91. Is it helpful to have a DNR order if an individual already has a durable power of attorney or living will?**

**Yes.** if the individual does not want resuscitation attempted.

A durable power of attorney for health care and a living will only take effect when an individual is unable to participate in treatment decisions. If an individual is competent until the moment the heart and breathing stop, these documents will have never taken effect.

**92. Can a patient advocate sign a do-not-resuscitate order instead of the individual?**

Yes, If the patient advocate has authority, he or she can sign. This has been clear since the law was initially passed.

A patient advocate of an individual who is 18 years of age or older may execute a do-not-resuscitate order on behalf of that individual. MCL 333.1053.

**93. Can a guardian sign a do-not-resuscitate order instead of the individual?**

Yes, in some circumstances. In appointing a guardian under the Estates and Individuals Code, a court can grant a guardian this authority. The order must also be signed by the individual's attending physician for it to be effective.

**94. How does one know whether a particular guardian has this authority?**

Ideally, the probate court will indicate this on the guardian's letters of guardianship.

**95. What happens if an individual has a do-not-resuscitate declaration?**

If medical personnel are aware an individual has a do-not-resuscitate order, they will check the individual for signs of breathing and heartbeat. If there are no signs, no CPR efforts will be attempted.

For an individual at home, it is important her or his do-not-resuscitate order be in plain sight.

**96. Does an individual have the option of wearing a bracelet indicating her or her wish not to resuscitate?**

Yes. MCL 333.1057.

**97. If individual has a do-not-resuscitate order, does it reflect her or his wishes concerning other types of life-sustaining treatment?**

**No.**

This act does not create a presumption concerning the intent of a person executing an order to consent to or refuse medical treatment in circumstances other than the cessation of both spontaneous circulation and respiration. MCL 333.1066 (2).

**98. Can an individual revoke a do-not-resuscitate order under the Act?**

**Yes,** regardless of whether the order was signed by the individual, by the patient advocate or by the guardian.

A declarant may revoke an order executed by himself or herself or executed on his or her behalf at any time and in any manner by which he or she is able to communicate his or her intent to revoke the order. MCL 333.1060(1).

**99. Is there another type of do-not-resuscitate order?**

**Yes.** A do-not-resuscitate order in a hospital setting is a notation in the medical chart of a patient.

The notation is made by a physician at the request of the hospital patient, a patient advocate (if the patient advocate has been given authority to withhold life-sustaining treatment), or other person with legal authority. A physician has no authority to make this decision on her or his own.





## Part 2

### Family Involvement in Decision-Making

#### **100. What is a general family consent law?**

A general family consent law provides that if an individual is not able to participate in a medical treatment decisions, and does not have a patient advocate or guardian, a family member can make the decision for the individual.

#### **101. Which family member can make the decision?**

A general family consent statute sets forth a priority for family members: first, the spouse; second an adult child or children; third, parents; fourth, siblings.

#### **102. Does Michigan have a general family consent statute?**

No, Michigan is not among the states that have such a law.

#### **103. Has a general family consent statute been considered by the Michigan legislature?**

Yes. The first time was in 1992, House Bill 5553, known as the "Medical Treatment Decisions Act." The bill was introduced by State Representative Perry Bullard and 20 co-sponsors.

A revised version was introduced in 1997 as Senate Bill 67, by Senator Chris Dingell and five co-sponsors. Neither bill became law.

**104. Is there more information about the bill as introduced?**

**Yes.** For a discussion of the proposed law, see Geller, B., *Medical Treatment Decisions: Back to the Future?* Michigan Bar Journal, Volume 72, No.1:28, January, 1993.

**105. Are there any laws in Michigan that involve family members in the medical treatment decision process?**

The position of the State Long Term Care Ombudsman Program is there are two relevant laws. Not all lawyers agree with the following commentary:

Many states, Michigan included, also have consent laws that allow next of kin to make limited decisions in limited circumstances. (In a footnote to this statement, the author cites MCL 333.5651 *et seq.* and MCL 400.66h.)

Brigman, C. *“The Accidental Patient Advocate.”* Michigan Probate and Estate Planning Journal 28:8, Summer, 2009.

**106. What is the first law?**

The Michigan Social Welfare Act provides, in part,

If the person for whom surgical or medical treatment is recommended is not of sound mind, or is not in a condition to make decisions for himself, the written consent of such person’s nearest relative, or legally appointed guardian, or person standing in loco parentis, shall be secured before such medical or surgical treatment is given. MCL 400.66h

The entire text of this section of the law is Appendix D. The Social Welfare Act included provisions applicable to hospitals and provisions applicable to county medical care facilities. These facilities were nursing homes primarily for older persons. They were explicitly authorized to provide medical treatment and minor surgery. See 1954 PA No. 125, which added MCL 400.58a.

**107. When was the law passed?**

Section 400.66h of the Social Welfare Act was passed as part of 1957 P.A. No. 286. Two other provisions of the 1957 law affected funding of county medical care facilities.

**108. How might this law be relevant?**

Michigan's Medicaid provisions are set forth in the Social Welfare Act. The provision cited above thus applies to nursing home residents and others enrolled in Medicaid, the State Long Term Care Ombudsman Program believes.

The law is only applicable if the individual cannot participate in the decision, does not have a patient advocate and does not have a guardian with power to make the decision.

**109. Which family member has priority under this statute?**

The term "nearest relative" is not defined.

**110. What if a nursing home believes a family member is not acting in the best interests of the resident?**

If the nursing home believes the family member is not acting in the best interests of the resident, the nursing home can petition the probate court for appointment of a guardian.

**111. How does a nursing home determine an individual is not in a condition to make a decision?**

The statute provides no guidance.

A "mini-mental exam" is not adequate. A mere diagnosis, such as closed head injury or dementia, or a label such as "mentally ill," is also not sufficient. And the test is not whether the resident agrees with the physician or family on a course of treatment.

**112. What, then, is best?**

One approach is to rely on the opinion of the attending physician and one other physician or psychologist, who would document their determination in the resident's medical record. This parallels the determination under a durable power of attorney for health care.

**113. Where could a nursing home go wrong?**

It is critically important that a nursing home not turn to a family member for a final decision if the resident is still able to participate in the treatment decision.

**114. What is the second law?**

The Michigan Dignified Death Act, MCL 333.5652 *et seq.*, sets forth certain responsibilities for a physician who diagnoses an individual as terminally ill.

**115. When did the law go into effect?**

The law was passed as P.A. 1996, No. 594, and went into effect March 31, 1997. The Act was subsequently amended in 2000, 2001 and 2004. The entire Act, as amended, is Appendix E.

**116. What is a major responsibility of the physician under the law?**

If the physician is recommending treatment, the physician must provide information to the patient on the recommended course of treatment and alternatives to that treatment. MCL 333.5654.

**117. What other information must the physician provide?**

... a physician who has diagnosed a patient as having a reduced life expectancy due to an advanced illness and is recommending medical

treatment for the patient shall, both orally and in writing, inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate, of all of the following:

í

(b) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, has the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's reduced life expectancy due to advanced illness.

(c) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

(d) That the patient or the patient's surrogate or patient advocate acting on behalf of the patient may choose adequate and appropriate pain and symptom management as a basic and essential element of medical treatment.

MCL 333.5655.

#### **118. What if the patient is unable to give consent to medical treatment?**

The law provides that the same information described above be provided to the patient's *patient advocate* or the *patient surrogate*.

#### **119. What is a patient advocate?**

A patient advocate is the person appointed by an individual to make medical decisions if the individual cannot participate. The appointment is made through a durable power of attorney for health care, as discussed in Part 1. MCL 700.5506 *et seq.*

**120. How does this law define patient surrogate?**

"Patient surrogate" means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment.  
MCL 333.5653(g)

**121. Does the statute give family the right to make decisions in addition to receiving information from the physician about treatment options?**

Lawyers disagree on the answer to this question.

**122. How does the Michigan Department of Community Health describe the law?**

A brochure entitled, *Michigan Dignified Death Act*, published by the Michigan Department of Community Health in July 2003, states, in part,

If you do not name an advocate, your doctor may let a patient surrogate make decisions for you. A court can also name a surrogate. A surrogate may be member of your immediate family or next of kin.

**123. What if the resident is not terminally ill and not enrolled in Medicaid?**

In such case, there is no statutory authority for a nursing home to rely on a family member to be involved in the decision-making process for a resident who cannot participate in that decision.

**124. Might a spouse have a common law right to authorize or refuse treatment for her or his spouse?**

An attorney has opined -

Michigan law can likely be interpreted to support the right of an incapacitated patient's spouse to make decisions on the patient's behalf, as several Michigan cases have held that a spouse may have authority to

act for the other spouse even in the absence of court authorization.  
(citations omitted)

Trainer, T. “*An Update on Medical Decision-Making at the End of Life.*” Michigan Bar Journal, Volume 72, No.1:34, 37, January, 1993.

This article was written before *In re Martin*, 450 Mich 204 (1995). In that case, the Michigan Supreme Court held that a spouse who was guardian could not withdraw life-sustaining treatment from her husband who was not terminally ill, absent clear and convincing evidence of her husband's wishes for the particular circumstances in which he found himself.

### **125. What about customs?**

There are customs whereby a family member authorizes treatment in circumstances when an individual cannot make decisions for herself or himself. These customs are likely followed often in outpatient, nursing home and hospital settings.





### Part 3

## Guardianship

#### **126. Is there one guardianship system for all adults?**

**No.** Provisions in the Estates and Individuals Code apply to all adults except adults with an alleged developmental disability. MCL 700.5301 *et seq.*

Provisions in the Mental Health Code apply only to adults with an alleged developmental disability. MCL 330.1600, *et seq.* The definition of "developmental disability" is Appendix F.

#### **127. Is there a choice of which system to use?**

No. If an individual is alleged to have a developmental disability, a probate court must use provisions of the Mental Health Code. *In re Neal*, 230 Mich App 723 (1998); *lv den*, 459 Mich 890.

#### **128. Are the provisions of the two laws the same?**

No. Although both types of guardianship are handled by the probate court, there are significant differences in procedure and terminology.

#### **129. What are some of the differences?**

A proceeding under the Mental Health Code requires a psychosocial evaluation known as a "12 report." All respondents have a lawyer appointed to represent them. A partial guardianship lasts for a maximum of 5 years unless a new proceeding is initiated.

Information in these materials focuses on guardianships brought under the Estates and Individuals Code.

**130. What is a *guardian*?**

A guardian is a person or company appointed by a probate court to make decisions for an individual if there is clear and convincing evidence both that the individual is unable to make informed decisions about her or his care, **and** that guardianship is necessary. MCL 700.5306(1).

**131. What is an *informed decision*?**

The term is not defined in the law. Generally, if an individual understands the choices she or he can make, and understands the risks of each choice, she or is making an informed decision.

Prior to 1989, the law referred to an inability to make "responsible decisions." The term was changed in the law because guardianship is **not** appropriate merely because family or health care provider believe an individual is not making the best or safest decision.

**132. Is guardianship appropriate merely because an individual has one or more physical disabilities?**

**No.** An individual with physical incapacity as severe as quadriplegia can have mental capacity to make informed decisions.

**133. How many adults in Michigan have a guardian?**

According to statistics published by the State Court Administrative Office, 54,410 adults had a guardian at the end of 2012.

**134. How many of these adults live in a nursing home or in another licensed long term care setting?**

The Michigan Long Term Care Ombudsman is not aware of any data on this question.

**135. Have there been efforts to reduce unnecessary guardianships?**

**Yes.** This was one of the goals of the Michigan Guardianship Reform Act, 1988 Public Act 398, sponsored by State Representative Perry Bullard. For a discussion of that law, see Geller, B. *The Long and Winding Road: Guardianship Reform in Michigan*, Elder Law Journal, Volume 1:No. 2, 1983.

See also, *Michigan Guardianship Reform Act Handbook*, written by Bradley Geller and first published by the Michigan House of Representatives in 1990. The volume was a procedural manual for lawyers and judges, setting forth changes in the law, with consequent amendments to court rules, court forms and jury instructions.

**136. Has the Judiciary considered the issue?**

**Yes.** The Michigan Supreme Court convened a task force in February, 1997.

Early on, the Task Force identified four sub-goals as integral to achieving the main goal of improving the guardianship and conservatorship system in Michigan:

(1) Reduction in the use of guardianships and conservatorships

....

*Michigan Supreme Court Task Force on Guardianships and Conservatorships Final Report*, page 2. For the 11 unanimous recommendations of the Task Force, see pages 6-8

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/gdntaskrpt.pdf>

**137. Was there mention of nursing homes in the Task Force Report?**

**Yes.**

Part of the reason why hospitals and nursing homes might unduly suggest or require the appointment of a guardian or conservator may be a perception on these institutions' part that the 1987 federal Nursing Home Reform Amendments (NHRA) force them to do so. This perception may be encouraged by the explanation of the 1990 regulations implementing

the NHRA included in a 1991 letter from the Bureau of Health Systems  
í Ibid, page 6, footnote 33

**138. Has there been call to effect the Supreme Court Task Force recommendations?**

**Yes.**

**Implement Recommendations of the 1998 Michigan Task Force on Guardianship and Conservatorships.**

í

Not all the recommendations of this report have been implemented. Some of the recommendations of this 1998 Task Force involve how to reduce unnecessary petitions for guardians and conservatorships, other recommendations address how to reduce unnecessary appointments of guardians and conservators í .

*The Governor's Task Force on Elder Abuse, Final Report*, August, 2006, Recommendation 2-4, p. 14-15.

[www.michigan.gov/documents/miseniors/GovTaskForce\\_186155\\_7.pdf](http://www.michigan.gov/documents/miseniors/GovTaskForce_186155_7.pdf)

**139. Did the Governors Task Force on Elder Abuse lead to guardianship legislation?**

**Yes.** For a description of the latest changes in guardianship law, see Wood, Erica. *State Adult Guardianship Legislation: Directions of Reform, 2012*, American Bar Association Commission on Law and Aging.

[www.americanbar.org/groups/law\\_aging.html](http://www.americanbar.org/groups/law_aging.html)

**140. What is the difference between a guardian and a *conservator*?**

A conservator is a person appointed by a probate court for an individual who cannot manage his or her money or property effectively. MCL 700.5401(3).

An individual can have a guardian, or a conservator or both. The guardian and conservator can be the same person, or different persons, depending on circumstances.

**141. Can a court give a guardian power to handle an individual's money if a conservator is not appointed?**

Yes. MCL 700.5314(d)(ii).

**142. Is there a source for further information about the role of a conservator?**

Yes. One can read the publication, *Handbook for Conservators of Adults*, 7th edition, 2012 by Bradley Geller. The initial edition was supported by a grant from the Michigan Bar Foundation.

Contact [law\\_and\\_aging@yahoo.com](mailto:law_and_aging@yahoo.com) for an electronic copy.

**143. If an individual has a durable power of attorney for health care, is guardianship necessary?**

Rarely. If a patient advocate under a durable power of attorney for health care is performing her or his duties and the document was executed properly, a court cannot give a guardian power to make decisions delegated in the durable power of attorney.

If the court is aware that an individual has executed a patient advocate designation, the court **shall not** grant a guardian the same powers that are held by the patient advocate. MCL 700.5306(2). (emphasis added)

**144. What if a court appoints a guardian because the court is unaware a durable power of attorney for health care exists?**

In such circumstances, the patient advocate and not the guardian has authority to make medical decisions.

If an individual executed a patient advocate designation under section 5506 before the time the court determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical or mental health decisions that the patient advocate is designated to make.

MCL 700.5306(5).

**145. Does every resident who does not have a patient advocate need a guardian?**

**No.** This is a long-standing and common misunderstanding.

The decision to have a patient advocate is voluntary, MCL 700.5506(3), and a guardian is only appropriate if an individual is incapacitated and guardianship is necessary, MCL 700.5306(1)

A nursing home should never be cited because a resident who is able to participate in medical decisions has neither a patient advocate nor a guardian.

**146. Who can apply for guardianship?**

An individual her or himself, or anyone interested in the welfare of the individual can petition for guardianship, if the petitioner believes guardianship is appropriate. MCL 700.5303(1).

**147. Can a nursing home petition for guardianship for a resident?**

**Yes.** But,

A nursing home employee may request the appointment of a guardian for an individual applicant or patient only if the nursing home employee reasonably believes that the individual meets the legal requirements for the appointment of a guardian. MCL 333.21766(10)

This provision was initially included in House Bill 5085, introduced by State Representative Perry Bullard in 1991. It was drafted by the author in response to a Washtenaw County nursing home bringing over 70 guardianship petitions

in the same day; a petition for every resident in the home.

**148. What must happen before a person files a petition for guardianship?**

The probate court must give a potential petitioner written information on alternatives to appointment of a full guardian. MCL 700.5303(2).

**149. What happens upon a petition for guardian being filed with the court?**

Court staff set a date for a court hearing. MCL 700.5303(3). The time between petition and hearing can be two weeks or more, depending on the court's caseload.

**150. Can a judge appoint a guardian before a hearing is held and the respondent receives notice?**

**No, never.**

**151. What else happens upon a petition being filed?**

Court staff will send a *guardian ad litem* to the nursing home to talk with the resident before the hearing date, unless the resident already has a lawyer. MCL 700.5303(3).

Under the Mental Health Code, the court will immediately appoint a lawyer for the respondent.

**152. Does the guardian ad litem have any power to make decisions for the resident?**

**No.** The roles of the guardian ad litem are to provide information and to investigate.

**153. What will the guardian ad litem talk to the resident about?**

The guardian ad litem will explain guardianship, rights the individual has in the process, and ask if the resident objects to guardianship or to the individual seeking guardianship. MCL 700.5305.

**154. Must the guardian ad litem provide written material to the resident?**

**Yes.** Under a law passed in 2012, the guardian ad litem must hand the respondent written information explaining the rights the individual has. MCL 5306a(2). A guardian ad litem has long had the obligation to orally explain these rights to the respondent. MCL 700.5305.

The type of information the guardian ad litem must convey is shown in the pamphlet, *Your Rights in the Guardianship Process*, Appendix D.

**155. What else must the guardian ad litem do?**

Among other duties, the guardian ad litem must consider alternatives to guardianship, determine if mediation is appropriate, and gauge whether the individual has sufficient resources to merit consideration of conservatorship.

The guardian ad litem might call the petitioner and family members, review the medical record, and talk with staff.

**156. What does the guardian ad litem do after completing her or his investigation?**

In most courts, the guardian ad litem will make a written report to the court before the hearing.

**157. What will be included in the report?**

The contents of the report differ according to the findings of the guardian ad litem.



**158. What if the resident does not want a guardian?**

If the individual does not want a guardian, objects to the person nominated as guardian, wants limits on the guardian's powers, or requests a lawyer, the guardian ad litem reports only this to the judge.

In these circumstances, the judge is obligated to appoint a lawyer to represent the individual. MCL 700.5305(3), (4).

**159. What happens to the guardian ad litem if a lawyer is appointed?**

At that point, the role of the guardian ad litem ends, and she or he no longer participates in the process. MCL 700.5305(5).

**160. How is the report different if the individual does not object to guardianship?**

If the individual does not object to guardianship or to the individual seeking appointment as guardian, and does not request limits on the guardian's powers, the guardian ad litem report will include findings and recommendations to the judge.

**161. What subjects will the report cover?**

In the report, the guardian ad litem will advise the judge whether there are alternatives to guardianship, whether guardianship is appropriate, what powers the guardian should have, who should serve as guardian, and whether mediation should be considered if there is a family dispute MCL 700.5305(e).

The guardian ad litem report will also address the individual's wishes regarding resuscitation if the event the individual's breathing and heartbeat cease.

**162. Is there more information available about the roles of a guardian ad litem and appointed counsel?**

**Yes.** You can obtain the publication, *Manual for Guardians Ad Litem and Appointed Counsel in Adult Guardianship and Conservatorship Proceedings*, 7<sup>th</sup> edition, 2014, by Bradley Geller.

Contact law\_and\_aging@yahoo.com for an electronic copy.

**163. Can a resident hire a lawyer of his or her choice, if the lawyer is willing?**

**Yes.** MCL 700.5306a(1)(d).

**164. Does the individual have the right to attend the court hearing?**

**Yes.** MCL 5304(4).

The guardian ad litem should ask if the resident wants to be at the hearing, and if so, determine what accommodations the individual might need. These could include a wheelchair, an assistive listening device or an interpreter.

**165. What is the court's obligation if the resident wishes to attend the hearing?**

If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site. MCL 700.5304(4).

**166. Does a nursing home have an obligation to transport a resident to court?**

**Yes.** If the resident is enrolled in Medicaid and wishes to attend the hearing but has no transportation, the nursing home has an obligation to arrange transport:

Where needed services are not covered by the Medicaid State plan, nursing facilities are still required to attempt to obtain these services. For example, if a resident requires transportation services that are not covered under a Medicaid state plan, the facility is required to arrange these services. This could be achieved, for example, through obtaining volunteer assistance.

The type of conditions to which the facility should respond with social services by staff or referral include, among several others:

- *Presence of legal or financial problems*

State Operations Manual, Appendix PP: Guidance to Surveyors for Long Term Care Section Facilities, Interpretive Guidelines to 42 CFR 483.15(g)(1) (emphasis added)

**167. If the judge determines the individual meets the standards for appointment of a guardian, who has priority to serve?**

Assuming the individual does not already have a guardian appointed in another state, first priority is a person chosen by the individual now, or nominated by the individual in the past, if that person is suitable and willing to serve. MCLA 700.5313(2).

This has long been the law, but was underscored in legislation passed recently. 2012 Public Act No. 545.

**168. What if the individual does not choose or has not nominated a person to serve?**

Second priority is a family member suitable and willing to serve. MCL 700.5313(3).

Family disagreement about who should serve can be referred to mediation by the judge. Michigan Court Rule 5.143.

**169. In what circumstances can a court appoint a professional guardian?**

**Only** if the individual does not make a viable choice and there are no family members suitable and willing to serve is the judge permitted to appoint a professional guardian. MCL 700.5106(2). The court also must find the appointment of a professional guardian is in the individual's best interests. MCL 700.5106((2)(a).

**170. Are professional guardians licensed, certified or registered?**

**No.** For the more than 300 professional guardians in Michigan, there are no education, training or other qualifications required.

**171. Have there been serious issues with some professional guardians?**

**Yes**, both in Michigan and in others states. One issue has been financial exploitation. See, e.g., *Report of John Chase, Jr. on Guardian, Inc of Wayne County*, January 1999. Guardian, Inc. of Wayne County had been appointed guardian for more than 600 individuals.

An electronic copy of the report is available by contacting law\_and\_aging@yahoo.com.

**172. Is there a limit to the number of individuals for whom a professional guardian is responsible?**

**No.** Some professional guardians are responsible for 200 or 300 individuals. The law does state ó

A professional guardian í shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided. MCL 700.5106(6).

**173. How did this requirement come about?**

Several provisions of the law related to professional guardians were added by 2000 Public Act No. 46. The bill as introduced, SB 863, provided for specific staffing requirements and other measures in response to the Chase Report. Details are available at the legislature's website, [www.michigan.gov](http://www.michigan.gov).

**174. Have issues other than financial exploitation been raised?**

Yes. Other issues include lack of individualized decisions and placing the convenience of the guardian over the welfare of the individual.

**175. Can a nursing home give a professional guardian access to medical records of residents who do not have a guardian?**

No. This is a serious violation of a resident's rights under federal and state law. 42CFR Parts 160 and 164; 42 USC 1396r(c)(1)(A)(iii); MCL 333.20175(1); MCL 333.20201(2)(b).

**176. Can a nursing home or a staff person of a nursing home serve as guardian for a resident?**

No. MCL 333.21767

**177. Can a nursing home pay a guardian to have an individual reside in its nursing home?**

No. Such payments constitute a felony, punishable by 4 years in prison, a \$30,000 fine, or both. MCL 333.21792(1).

**178. What role can a nursing home play concerning the appointment of professional guardians?**

If a nursing home is petitioning for guardianship, and nominating a professional guardian as appropriate, the home should be sure the person,

partnership or agency has an unsullied reputation and can well handle the duties of a guardian.

**179. Can a judge appoint more than one person as guardian?**

**Yes.** The persons appointed are known as *co-guardians*.

**180. Can each guardian make a decision independently?**

Ideally, the *letters of guardianship* issued by the court will indicate whether the co-guardians must act together or can act independently.

**181. Do all guardians have the same powers?**

**No.**

The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated person. The court shall design the guardianship to encourage the development of maximum self-reliance and independence of the individual. MCL 700.5306(2).

The applicable section in the Mental Health Code mirrors EPIC. MCL 330.1602(1).

**182. What is a guardian with fewer than all powers that can be granted called?**

The person is called a *limited guardian*. MCL 700.5306(3). Under the Mental Health Code, the person is called a "partial guardian."

**183. How does a nursing home know whether an individual is a full guardian or a limited guardian?**

The nursing home should ask for the person's letters of guardianship, and keep a copy on file. The letters of guardianship will reflect the court *order*, in

which the judge will set forth the powers of the guardian, or set forth limits on the guardian's powers.

**184. Does an individual maintain some rights under guardianship?**

**Yes.** First, a guardian only has powers to the extent granted by the court. For example, a limited guardian might not have the power to make some medical treatment decisions, or have the power to determine where the individual lives.

**185. What about an individual with a guardian under the Mental Health Code?**

Under the Mental Health, Code an individual with a partial guardian retains all legal and civil rights except those the court specifically grants to the partial guardian or designates as legal disabilities. MCL 330.1620(2).

**186. What about a resident's right to have visitors?**

An individual does not cease to be his or her own person because of guardianship.

Federal law provides,

A nursing home must permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident. 42 USC Sec. 1396r(c)(3)(B).

See also, MCL 333.21763.

Unless the letters of guardianship are to the contrary, a resident retains the right to have visitors of her or his choice, to use the telephone privately, to practice her or his religion, and to enjoy many of the other rights set forth in federal and state law.

**187. What are some general responsibilities of a guardian?**

A guardian is required to make decisions in the individual's best interests, and to arrange appropriate medical and social services to restore the individual to the best possible physical and mental well-being. MCL 700.5314.

The provision in the Mental Health Code is MCL 330.1602.

**188. Are there other general responsibilities?**

Yes. A guardian has the responsibility to see that rights of the resident to dignity and good care are respected by a nursing home. Federal law provides guardians have the right to assert the rights of residents. 42 USC sec, 1395i-3(c)(1)(C); 42 USC sec.1396r(c)(1)(C).

**189. Can a guardian call the State Long Term Care Ombudsman Program to assist in having a resident's rights respected?**

Yes. The toll-free telephone number is 1-(866) 485-9393.

**190. Must a guardian remain in contact with the individual?**

Yes. A guardian is required to visit the individual at least every three months.

In addition,

Whenever 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. MCL 700.5314. (emphasis added)

**191. What are a guardian's general responsibilities to the probate court?**

A guardian also has a duty to report to the court once a year concerning the condition of the individual, and to account to the court for any money in the guardian's control. MCL 700.5314(e).



The guardian also has a responsibility to inform the court of a change in her or his residence, and a change in the individual's residence. MCL 700.5314(a).

**192. Does a nursing home have access to a guardian's annual report?**

Yes. The report is a public record, and the nursing home or other health care provider can obtain it from the probate court.

**193. Is there court oversight of guardianships in addition to the court reviewing the annual report?**

Yes. The court must appoint a person to visit the individual under guardianship, determine whether the guardian is performing her or his duties, and recommend to the court whether there should be any change in the guardianship. Michigan Court Rule 5.408.

**194. How often must a court do this?**

Periodic review must occur one year after the guardian is appointed, and every three years thereafter. MCL 700.5309.

**195. Is there a time limit on guardianship?**

Under the Estates and Individuals Code, there is no time limit unless a termination date is included in the court order.

Under the Mental Health Code, a partial guardianship can last no more than 5 years. At that point a new petition for guardianship must be brought, if appropriate. MCL 330.1626.

**196. Can a nursing home request a guardian sign a nursing home admissions contract?**

**Yes.** Under the Estates and Individuals Code, if the guardian has authority to determine where an individual lives, she or he can sign the admissions contract. MCL 700.5314(a), (d)(ii).

**197. In signing the contract, to what is the guardian agreeing?**

The guardian is agreeing to use the individual's funds the guardian controls to pay the nursing home bill.

The guardian is not agreeing to be a guarantor using her or his own funds. Requiring that would violate both state and federal law:

With respect to admissions practices, a nursing home must í (ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in the facility. 42 USC sec.1396r(c)(5)(A).

See also, MCL 333.21765a. This state prohibition was initiated in House Bill 5085, introduced by State Representative Perry Bullard in 1991.

**198. Does a guardian under the Mental Health Code have the same power to sign an admissions contract?**

**No.** A guardian for an individual with a developmental disability must request explicit court authority in order to put the individual in a facility. MCL 330.1623.

**199. Can a guardian complete and sign an application for Medicaid?**

**Yes.** Form DHS -1171, page S.

A guardian has a responsibility to submit an application for a resident who is, or will soon be, eligible for Medicaid, to prevent an involuntary transfer for non-payment of the nursing home bill.

**200. Does a guardian have the responsibility to pay the resident's patient pay amount?**

Yes, if the guardian has control of the individual's income.

**201. Can a guardian move a resident to another nursing home?**

Yes, if the guardian has authority to determine where the individual resides. The guardian should determine whether it is generally in the best interests of the resident to move. The convenience of the guardian should never be an overriding factor.

**202. Does the nursing home have any obligation if the guardian decides to move the resident?**

**Yes.**

A nursing home must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. 42 USC sec. 1396r(c)(2)(C)

The obligation of nursing homes to reduce transfer trauma was established as settlement of a federal lawsuit, *Barton v. Califano* (E.D. Mich) in 1979. The settlement was negotiated by Susan Hartman and Bradley Geller, attorneys with Legal Services of Southeastern Michigan.

**203. Does a guardian have access to a resident's or patient's medical records?**

**Yes,** if the guardian's powers include authority to make medical decisions.

**204. Can a guardian with powers over medical treatment choose an attending physician and specialists for a resident?**

**Yes.**

**205. What is the general scope of a guardian’s authority over medical decisions?**

Generally, a guardian may give consent or approval that is necessary to enable the ward to receive medical or professional care, counsel, treatment, or service. MCL 700.5314(c).

This includes physical examinations, wound care, medications, surgery, dental care, eye care, physical therapy, occupational therapy and speech therapy among other treatments.

**206. Are there exceptions to the general scope of authority?**

Yes. For instance, a guardian cannot authorize electroconvulsive treatment (ECT) unless the guardian has explicit authority from the court to do so, and two psychiatrists deem it appropriate. MCL 330.1717.

**207. Can a guardian authorize psychotropic medication for a resident?**

Yes.

It is critical the guardian consult with the physician prescribing the medication about the dose, the intended effects and side effects of any medication. The guardian can refuse a suggested medication.

The more information the guardian has, the better. For instance, recent reports have discussed the danger of psychotropic medication intended to treat schizophrenia being prescribed for dementia.

**208. Can a guardian approve inpatient mental health treatment?**

A full guardian has the power to admit the resident as a *formal voluntary patient* if the resident assents. MCL 330.1415. This term is not defined in Michigan law. At the very least it means a guardian cannot admit an individual as a voluntary patient if the individual expresses an objection.

If the individual does object, the guardian must seek a *commitment order* from the probate court. MCL 330.1423 *et seq.*

**209. What if an individual has neither a guardian nor a patient advocate?**

Despite behaviors exhibited by a resident, a nursing home can not arrange for in-patient psychiatric treatment without authority from the resident, a legal representative of the resident, or a commitment proceeding.

**210. Does a guardian have the right to sign a do-not-resuscitate order?**

A court can grant this authority to a guardian appointed under the Estates and Protected Individuals Code. The individual's attending physician must also sign the form.

**211. How does one know whether a particular guardian has this authority?**

Ideally, the probate court will address the issue in the court order, reflected in the letters of guardianship.

**212. If a guardian signs a do-not-resuscitate order, can the resident revoke it?**

**Yes.** The resident can revoke a do-not-resuscitate order, regardless of who has signed it.

**213. What about the power to withhold other life-sustaining treatment?**

Judges differ about the authority of a guardian to withhold or withdraw other life-sustaining treatment, such as respirator, tube feeding, or antibiotics; and the power to authorize hospice care.

Some judges might consider whether the individual is terminally ill, or if there is clear and convincing evidence of the individual's wishes. See *In re Martin*, cited earlier.

**214. Does it matter whether the guardian is a family member or a professional guardian?**

To some judges, family members have greater discretion in making end-of-life decisions without having to return to court.

**215. What if the nursing home or the guardian is unsure of the guardian's powers?**

A guardian has the right to return to court to seek specific authority from the judge to make a particular decision. A nursing home or other health care provider can request a guardian do so, or can itself, petition the court.

**216. Who provides information during the nursing home's annual assessment of the resident?**

Residents should be the primary source of information for resident assessment items. Should the resident not be able to participate in the assessment, the resident's family, significant other, and guardian or legally authorized representative should be consulted.

Center for Medicare and Medicaid Services, *RAI Version 3.0 Manual*, page 3-4.

**217. Does this apply to Section Q, "Participation in Assessment and Goal-Setting?"**

**Yes.**

Residents should be asked about inviting family members, significant others, and/or guardian/legally authorized representative to participate, and if they [the residents] desire that they [other individuals] be involved in the assessment process. *Ibid*, page Q-1.

Having a guardian should not create a presumption that the resident is not able to comprehend and communicate their wishes." *Ibid*, page Q-5.

**218. What if an individual answers question Q-0500 in the affirmative?**

If an individual answers "yes" to the question, "Do you want to talk to someone about the possibility of leaving the facility and returning to live and receive services in the community?" the nursing home should start the process toward referral to a waiver agent.

**219. Can a guardian prevent the referral?**

CMS has answered that question informally:

A referral to the local contact agency should be made if the resident wishes, even if they have a legal guardian, durable power of attorney for health care or a legally authorized representative, in accordance with state law.

MDS 3.0 Section Q Implementation Questions and Answers, from Informing LTC Choice Conference and E-mails, September 22, 2010

**220. Can a guardian prevent a resident from moving to the community?**

If the guardian has power to determine where the individual lives, the guardian will need to approve a transition to the community.

A guardian must consult with resident before making this decision, and must consider her or his duty to obtain services to restore the individual to the degree of self-care possible.

**221. What information does a guardian need to evaluate the feasibility of a resident moving from the nursing home?**

A guardian should be fully informed of programs available to eligible individuals, such as home and community based waiver services, home help services, and aid and attendance benefits through the Veterans Administration.

**222. Where can a guardian obtain this information?**

A guardian can contact the local Area Agency on Aging, a local waiver agent, the county office of the Department of Human Services, and the Veterans Administration, respectively.

**223. Is there further information available about the duties of a guardian to the individual and to the court?**

Yes. The publication, *Handbook for Guardians of Adults*, 10<sup>th</sup> edition, 2014, written by Bradley Geller, is available online.

[www.eatoncounty.org/courts/probate-court](http://www.eatoncounty.org/courts/probate-court).

**224. If the nursing home believes a guardian is not performing his or her duties, what can be done?**

If a guardian doesn't visit the resident, or return telephone calls from the nursing home, or pay the patient pay amount each month; if the guardian unduly restricts the rights of the resident or otherwise doesn't act in the resident's best interests, the nursing home can petition the probate court and request a new guardian be appointed. MCL 700.5310(2).

The nursing home has this right whether the guardian is a family member or a professional.

**225. What court form would a nursing home use?**

The court form is called a *Petition to Terminate/Modify Guardianship*, PC 675. The form is Appendix E.

**226. What if the nursing home or other health care provider believes a guardian is abusing or exploiting a resident?**

Nursing home are mandatory reporters and should immediately call **Adult Protective Services**, at **1-(855) 444-3911** and report the suspected activity.



A nursing home should also file a report with the Bureau of Health Systems, and consider petitioning the probate court for appointment of a new guardian.

**227. What if the adult services worker believes the program has no role in nursing homes?**

If the county adult services worker at the Michigan Department of Human Services is not responsive, the administrator should call the state manager of adult services in Lansing.

**228. Does a resident have the right to request the court modify or terminate the guardianship?**

Yes. The resident can always petition the court or write the judge a letter. Neither the guardian nor the nursing home can interfere in any way with this request. MCL 700.5310(2).

**229. Are there any court fees if the resident asks for a modification or termination of a guardianship?**

No. MCL 600.880b(3).

**230. Why might a resident request action from the probate court?**

The individual might have needed a guardian because of a stroke or closed head injury. She or he may have recovered sufficiently to want to make her or his own decisions.

**231. Why else might a resident request action from the probate court?**

For instance, if the resident wishes to move to the community but the guardian objects, the resident can go to court to request a modification of the guardianship.

The individual might be unhappy with other decisions of the guardian and want a different guardian or further limits on the guardian's powers. Or the guardian may never be visiting, or never asking for input from the individual when required by law.

**232. Can a resident hire a lawyer to represent her or him in this process?**

**Yes.** An individual always has the right to hire a lawyer in seeking to contest, modify or terminate a guardianship. MCL 700.5310(4); MCL 700.5306a(1)(d).

If the individual seeks a modification or termination but does not have a lawyer, the court must appoint immediately a lawyer for her or him.

**233. What happens upon the court receiving a petition or letter?**

The court will schedule a hearing and follow a process similar to that for an initial petition for guardianship. The individual has all the same rights in the process. MCL 700.5310(3), (4). Many of these rights are set forth in *Your Rights in the Guardianship Process*, Appendix D.

**234. How does a guardian get paid?**

If a resident is enrolled in Medicaid, the guardian can charge a maximum of \$60.00 per month. This amount is deducted from the resident's patient pay amount, and Medicaid pays the nursing home the additional \$60.00. Bridges Eligibility Manual (BEM) 546, Post-Eligibility Patient Pay Amounts, p. 7.

**235. What if a resident is not enrolled in Medicaid?**

The guardian can fix her or his fees, which are subject to approval each year by the probate court. Michigan Court Rules 5.313(F).

**236. When do the powers of a guardian end?**

The powers of a guardian generally end upon the death of the resident.  
MCL 700.5308.

**237. What if a nursing home or other health care provider has questions about guardianship?**

A nursing home can telephone the probate court, though the court is not permitted to provide legal advice.

If court staff are unable to answer a question, they may be able to refer the caller to an agency that can answer it.



## **APPENDIX A**

### **MICHIGAN LONG TERM CARE OMBUDSMAN PROGRAM INDEX OF PERTINENT FACT SHEETS**

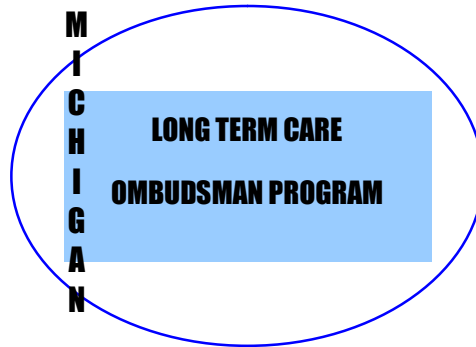
1. Advance Directives
2. Federal Patient Self-Determination Act
3. Do-Not-Resuscitate Orders
4. Roles in Making Decisions for Another Adult
5. Alternatives to Contemporaneous Decision-Making
6. Surrogate Decision-Making: Citations to Statutes
7. Revocation of an Advance Directive
8. When Faced with Guardianship
9. Your Rights in the Guardianship Process
10. Guardianship and Nursing Home Residency:  
    What Rights Does a Resident Retain?
11. Modifying a Guardianship
12. Mediation in Care-Giving Disputes
13. Community Dispute Resolution Programs



**APPENDIX B**

# Advance Directives

*Planning for Medical Care in the Event of  
Loss of Decision-Making Ability*



Bradley Geller

Michigan Center for Law and Aging





# Advance Directives

## *Planning for Medical Care in the Event of Loss of Decision-Making Ability*

- É Durable Power of Attorney for Health Care
- Living Will
- Do-Not-Resuscitate Order
- Declaration of Anatomical Gift

02/2014



## Foreword

We all value the right to make decisions for ourselves. Whether we term this autonomy, liberty or independence, it is central to our concept of dignity.

One important area in which we exercise independence is in choosing the medical treatment we receive. Few would deny a competent adult has the right to consent to or refuse particular medical treatments or medically related services.

Unfortunately, due to illness or injury, we may not remain able to participate in treatment decisions. Such disability may be temporary or permanent.

No one likes to consider the possibility of becoming unable to make decisions. It is easy to put off thinking about that happening, and what treatment we would like in those circumstances.

As difficult as it is to confront these issues, by doing so we can help ensure our wishes are honored in the future.

Once you determine your wishes, the process of planning is relatively simple and inexpensive or free. This pamphlet contains information on advance directives to assist you. The fill-in-the-blanks forms at the end of the pamphlet are but one option should you choose to proceed.



# Questions and Answers About Advance Directives

## A. Introduction

### **What is an *advance directive*?**

An advance directive is a written document in which you specify what type of medical care you want in the future, or who you want to make decisions for you, should you lose the ability to make decisions for yourself.

### **Why is there a need for advance directives?**

Years ago, most individuals died in their own homes. Today, there is greater chance of dying in a hospital or nursing home.

Expanding technology has increased the treatment choices we face, and improved public health has increased life expectancy. Decisions may have to be made concerning our care at a time we can no longer communicate our wishes.

### **What are the advantages of having an advance directive?**

We each have our own values, wishes and goals. Having an advance directive provides you some assurance your personal wishes concerning medical and mental treatment will be honored at a time when you are not able to express them. Having an advance directive may also prevent the need for a guardianship imposed through the probate court.

**Must I have an advance directive?**

No. The decision to have an advance directive is purely voluntary. No family member, hospital or insurance company can force you to have one, or dictate what the document should say if you decide to write one.

A hospital or nursing home or hospice organization cannot deny you service because you do or don't have an advance directive.

**Are there different types of advance directives?**

Yes. Three types are a durable power of attorney for health care, a living will, and a do-not-resuscitate declaration.

There is also a declaration of anatomical gift, to take effect when you die.

**Can I have more than one type of advance directive?**

Yes. You may choose to have any number of advance directives, or to have none at all.

**B. Durable Power of Attorney For Health Care**

***What is a durable power of attorney for health care?***

A durable power of attorney for health care, also known as a health care proxy or a patient advocate designation, is a document in which you appoint another individual to make medical treatment and related personal care decisions for you when you can no longer make them for yourself.

You can, in addition, choose to give your patient advocate power to make decisions concerning mental health care you may need.

Finally, you can empower your patient advocate to donate specific organs or your entire body upon your death.

**Is a durable power of attorney for health care legally binding?**

Yes.

**Who is eligible to have a durable power of attorney for health care?**

You must be at least 18 years old, and you must understand you are giving another person power to make certain decisions for you should you become unable to make them.

**Is there a required form for a durable power of attorney for health care?**

No. You may choose to use the sample form in this pamphlet. There are a number of organizations that provide different, free forms.

Make sure in completing any document you type or print clearly.

**Must I use a fill-in-the-blanks form?**

No. You may write out your own document or have a lawyer draft a document for you. Using the form in this pamphlet is one option you have.

**What is the person to whom I give decision-making power called?**

That person is known as your *patient advocate*.

**When can the patient advocate act in my behalf?**

Your patient advocate can make decisions for you only when you become unable to participate in medical treatment decisions yourself. Until that time, you make your own decisions directly.

If you choose to give your patient advocate power to make decisions about mental health treatment, your patient advocate can only act if you cannot give informed consent to mental health treatment.

**How might I become unable to participate in medical or mental health decisions?**

You might have a temporary loss of ability to make or communicate decisions if, for example, you had a stroke or were knocked unconscious in a car accident. You might suffer permanent loss through a degenerative condition, such as dementia.

You might become unable to make mental health decisions if a condition such as severe depression or schizophrenia affected your mood or thought process.

**Who determines I am no longer able to participate in these decisions?**

The doctor responsible for your care and one other doctor or psychologist who examines you will make that determination in the case of medical decisions.

After examining you, a doctor and a mental health professional (physician, psychologist, registered nurse or masters-level social worker) must



each make the determination in respect to mental health treatment. You may in the document choose the doctor and mental health professional you wish to make this determination.

### **What if my religious beliefs prohibit an examination by a doctor?**

You should state in your durable power of attorney document your religious beliefs prohibit an examination by a doctor, and how you want it determined you are unable to participate in health care decisions.

### **What powers can I give a patient advocate?**

You can give a patient advocate power to make those personal care decisions you normally make for yourself. For example, you can give your patient advocate power to consent to or refuse medical treatment for you; arrange for mental health treatment, home health care or adult day care; or admit you to a hospital, nursing home or home for the aged.

You can also authorize your patient advocate to make a gift of your organs or body, to be effective upon your death.

### **Will my patient advocate have power to handle my financial affairs?**

You can give your patient advocate power to arrange for medical and personal care services, and to pay for those services using your funds. Your patient advocate will not have general power to handle all your property and finances.

If you wish another person to handle all your property and financial affairs should you become incapacitated, you could seek a lawyer's help to draft a *durable power of attorney for finances* or a *living trust*.

**Can I give my patient advocate the right to withhold or withdraw treatment that would allow me to die?**

Yes, but you must express in a clear and convincing manner the patient advocate is authorized to make such decisions, and you must acknowledge these decisions could or would allow your death.

**Can I authorize my patient advocate to decide to withhold or withdraw food and water administered through tubes?**

Yes.

If you want to give you patient advocate this authority, you can describe in the document the specific circumstances in which he or she can act - terminal illness, and permanent unconsciousness, for example.

**Can I give my patient advocate authority to sign a Do-Not-Resuscitate Order?**

Yes.

**Do I have the right in the document to express other wishes?**

Yes. You might, for example express your wishes concerning other types of care you want during terminal illness. You could also express a desire not to be placed in a nursing home and a desire to die at home. Your patient advocate has a duty to try to follow your wishes.

**What are my options about mental health care?**

First, you have a choice whether or not to give your patient advocate any powers concerning mental health care.

If you choose to give your patient advocate powers concerning mental health care, you should specify clearly which powers he or she can exercise. Some powers to consider are outpatient treatment, hospitalization, administration of psychotropic medication, and electro-convulsive therapy (ECT).

You can also provide greater detail - what hospital you prefer and what medications you want or don't want, for instance.

### **What are my options concerning organ donation?**

You can choose whether or not to give your patient advocate this power.

If you wish your patient advocate to have this power, you can specify which organs you want donated, or whether your whole body is to be donated. You can specify where or to whom you wish your organs donated.

### **Is there an alternative to using a durable power of attorney for health care to arrange for organ donation?**

Yes. You can complete the separate form in this booklet, *Declaration of Anatomical Gift*.

If you state your wishes both in the durable power of attorney and in the declaration of anatomical gift, make sure your wishes are the same in both documents.

### **Is it important to express my specific wishes in an advance directive?**

Your wishes cannot be followed if no one is aware of them. It can also be a burden for your advocate to make a decision for you without guidance. If you have specific desires, make these clear to your patient advocate in talking to him or her. Also consider including these wishes in the document.

### **What is the duty of my patient advocate?**

Your patient advocate has a duty to take reasonable steps to follow your desires and instructions, oral and written, expressed while you were able to participate.

### **Are there exceptions?**

A mental health professional can refuse to honor your wishes concerning a specific mental health treatment, location or professional, if there is a psychiatric emergency endangering your life or the life of another person.

### **What if I don't ever express any specific wishes concerning medical treatment?**

Your patient advocate must act in your best interests.

### **Will a hospital or nursing home allow my patient advocate to review my records?**

Yes. A patient has the right to inspect and copy his or her hospital or nursing home records. Your patient advocate has the same right you have, once you are unable to participate in treatment decisions.

The form in this pamphlet allows a patient advocate to have access to your medical records at any time after you appoint him or her.

### **Whom can I appoint as patient advocate?**

Any person age 18 or older is eligible; you can appoint your spouse, an adult child, a friend or other individual. You should choose someone you trust, who can handle the responsibility, and who is willing to serve.

You should speak with the individual you propose to name as patient advocate before you complete and sign the document, to ensure she or he is willing to serve.

**Can I appoint a second person to serve as patient advocate in case the first person is unable to serve?**

Yes. It is a good idea to do so.

There is no provision in law providing for more than one person to serve at the same time.

**What must I do to have a valid durable power of attorney for health care?**

The declaration must be in writing, signed by you, and witnessed by two adults.

There are restrictions on who can be a witness. You need witnesses who are not family members, not your doctor or proposed patient advocate, not an employee of a health facility or program where you are a patient or client.

**What does a patient advocate need to do before acting in my behalf?**

Before the patient advocate can act, he or she must sign an *acceptance*. This can be done at the time you complete the document or at a later time. The general language of the acceptance is set forth in law.

**Once I sign a durable power of attorney, may I change my mind?**

Yes. Regardless of your physical or mental condition, you can revoke or cancel the durable power of attorney by indicating in any way the document does not reflect your current wishes.

**What if two physicians have determined I can no longer participate in treatment decisions?**

You maintain the right to revoke the document even if two doctors have found you are unable to participate in treatment decisions.

**Can I change my mind without revoking the document?**

Yes. Any spoken wish to have a specific life-extending treatment provided must be honored at the time by a patient advocate, even if the wish contradicts a written directive.

**Are there different rules for mental health treatment regarding revocation?**

Yes. You can choose in the document to waive your right to immediately revoke the durable power of attorney insofar as mental health treatment.

In the document you can specify any period up to 30 days after you communicate your intent to revoke, during which your patient advocate is still authorized to make decisions for you.

**If I revoke my durable power of attorney for health care, can I sign a new one?**

Yes, if you are of sound mind.

You may want to name a different patient advocate or alter the expression of your wishes. If you sign a new document, destroy the old one and all copies.

**Can my patient advocate refuse to act in my behalf?**

Yes. A patient advocate can revoke his or her Acceptance at any time. If so, your named successor would become patient advocate.

**What if there is a dispute when my patient advocate is making decisions for me?**

If an interested person disputes whether the patient advocate is acting in your best interests, or has the authority to act in your behalf, the interested person may petition the local probate court to resolve the dispute.

**What if I regain the ability to participate in medical or mental health decisions?**

The powers of your patient advocate are suspended during the time you are able to participate in decisions, and he or she will have no power to make those decisions for you.

**Who decides whether I have regained the ability to participate in medical decisions?**

The statute is silent on the issue. It is likely the determination of an attending physician or a psychologist is sufficient.

**Is there a statewide registry of durable powers of attorney for health care?**

Yes. You have the right to voluntarily have your durable power of attorney for health care on a statewide registry. Health care providers will have immediate access to your information.

**How do I register my durable power of attorney?**

You can submit your durable power of attorney electronically or through regular mail. If through regular mail, the original will be returned to you.

**Is there any cost?**

No. The registry is free to both you and to health care providers.

**Who operates the registry?**

The registry is operated by Gift of Life Michigan, under contract from the Michigan Department of Community Health. For more information, visit [www.mipeaceofmind.org](http://www.mipeaceofmind.org), or call 1-(800) 482-4881.

**If my durable power of attorney is registered, can I still revoke it?**

Yes. You maintain the right to revoke the document at any time by notifying the registry.

**What if I have no one to appoint as a patient advocate?**

You can still choose to complete a living will or a do-not-resuscitate order, or both.



## **C. Living Will**

### **What is a *living will*?**

A living will is a written document in which you inform doctors, family members and others what type of medical care you wish to receive should you become terminally ill or permanently unconscious.

### **When will a living will take effect?**

A living will only takes effect after a doctor diagnoses you as terminally ill or permanently unconscious and determines you are unable to make or communicate decisions about your care.

### **How is a living will different from a durable power of attorney for health care?**

Although there can be overlap, the focus of a durable power is on *who* makes the decision; the focus of a living will is on *what* the decision should be.

A living will is limited to care during terminal illness or permanent unconsciousness, while a patient advocate may also have authority in circumstances of temporary disability.

### **Are there advantages to each type?**

A durable power of attorney for health care may be more flexible because your patient advocate can respond to unexpected circumstances, but a living will might be honored without the presence of a third person making the actual decision.

### **What might a living will say?**

You might express your wishes in general terms - "Do whatever is necessary for my comfort, but nothing further." Or, "I authorize all measures be taken to prolong my life."

You might instead state whether or not you wish specific medical interventions, such as a respirator, cardiopulmonary resuscitation (CPR), surgery, antibiotic medication, and blood transfusions. You could authorize experimental or non-traditional treatment.

Whichever approach you choose, you should express your wishes concerning food and water administered through tubes.

### **Is a living will legally binding on health care providers?**

Although 47 states have statutes giving living wills legal force, Michigan has not passed such a law. However, based on a Michigan court decision, there is an argument living wills are binding in this state. No one, however, can provide absolute assurance your wishes will be honored.

### **Is it worth having a living will?**

Yes, in some circumstances. It is particularly important to have a living will if you don't have a durable power of attorney for health care. Your wishes cannot be honored if they are not known.

### **Can I have both a durable power of attorney for health care and a living will?**

Yes. Your patient advocate can read your living will as an expression of your wishes. The living will might also be valuable if your patient advocate were unavailable when a decision needed to be made.

If you have both documents, make sure your wishes expressed in the documents are consistent.

**What are the requirements for a living will?**

Since there is no state law, there are no formal requirements. But it is strongly recommended the document be entitled, "Living Will;" be dated; signed by you; and signed by two witnesses who are not family members.

**D. Do-Not-Resuscitate Order**

**What is a *do-not-resuscitate order*?**

A do-not-resuscitate order (DNR order) is a written document in which you express your wish that if your breathing and heartbeat cease, you do not want anyone to attempt to resuscitate you.

**Must I sign a DNR order?**

No.

**For whom might such a document be particularly useful?**

For example, a hospice patient who is home to die as peacefully as possible or a nursing home resident might wish to consider signing a DNR order.

**Must I be terminally ill before signing a DNR order?**

No. For example, you may be in good health but still not want to be resuscitated should your heart and lungs fail.

**Are such documents legally binding?**

Yes. A Michigan law provides these documents are valid in settings *other* than hospitals.

**Are there standard forms for a DNR order?**

Yes. One form provides spaces for your doctor to sign, for you to sign, and for two witnesses to sign.

There is an alternate form for individuals who have religious beliefs against using doctors. Both forms are included in this booklet.

**Can my patient advocate sign the form instead of me?**

If your patient advocate has authority, he or she can sign the form instead of you. Your doctor would also sign.

**If I have a guardian, can the guardian sign a DNR order for me?**

A court can grant a guardian power to sign a DNR order. Upon a petition for guardianship being filed, one responsibility of the guardian *ad litem* is to ask you if you object to a guardian having this power.

**Does my guardian have to speak with me before signing a DNR order?**

Yes, unless you are unable to communicate your wishes. In any circumstance your doctor would also have to sign the document.

**Do I have the right to revoke a DNR order?**

Yes. Whether you have signed the DNR order, or your patient advocate has signed it, or your guardian has signed it, you always have the right to revoke it.

**How do I revoke a DNR order?**

You can communicate your wishes to a health care provider or you can tear up the document if you have signed it.

**Is it necessary to have a DNR order if I have a durable power of attorney or living will?**

Perhaps. A durable power of attorney for health care and a living will only take effect when you are unable to participate in treatment decisions. If you are competent until the moment your heart and breathing stop, these documents will never take effect.

**What else can be done to prevent unwanted resuscitation?**

If you are home, ask your relatives in advance not to call 9-1-1 or the police if your breathing should stop. If you are under the care of a registered nurse, she or he has the authority to pronounce death.

### **What about when I am in a hospital?**

These facilities can set their own policies about resuscitation. Upon admission or afterward, you should express your wishes on this issue and ask that these wishes be reflected on your medical chart.

## **E. General Information**

### **In general, what should I do before completing an advance directive?**

Take your time; these are difficult decisions. Think about what treatment you would like under various circumstances in the future. Consider whom you might choose as your patient advocate, and make sure that person is willing to serve.

Discuss the issue with family members. Talk with your minister, rabbi, priest or other spiritual leader if you feel it would be helpful.

### **Should I also talk with my doctor?**

Yes! Bring the subject up with your doctor. Have a discussion about the benefits and burdens of various types of treatment. Express at least your general wishes and make sure the doctor is comfortable with carrying them out.

### **Are there issues to which I should give particular attention?**

Yes. Many people have strong feelings about the administration of food and water. If you become unable to swallow, nutrients can be supplied by a tube down your throat, a tube surgically placed into your stomach, or intravenously. Consider in what circumstances, if any, you wish such procedures withheld or withdrawn.

**What should I do with an advance directive after it is signed?**

Give the original durable power of attorney for health care to your patient advocate (or at least make sure she or he knows where it is). Give a photostatic copy to your doctor and keep a copy yourself. Let people know whom you have chosen as your patient advocate.

Decide whether you want to register your durable power of attorney with the statewide registry. If so, contact them as explained earlier in this booklet.

**What will the doctor do with the copy of my durable power of attorney?**

She or he will make the document part of your medical record.

**What about a living will?**

Keep the original of a living will. Give a copy to family members who are close to you, a friend and your doctor. Keep a list of these people.

**What about a do-not-resuscitate order?**

Always keep the order with you , in plain sight, while you are at home.. Give a copy to family members who might be with you at your death.

You have the option of wearing a DNR bracelet.

**Should I bring a copy of my advance directive(s) with me if I go in the hospital a nursing home?**

Yes, definitely.

.

**After I sign one or more advance directives, should I continue to discuss the issue of my care?**

Yes. Sit down with the person you have chosen as patient advocate. The clearer picture he or she has of your wishes, the better. If some time has passed since you signed the document, discuss the issue again.

It is almost always a good idea for you to make relatives and friends aware of your desires.

**When I should review an advance directive?**

Since medical technology is constantly changing, and since there may be changes in your outlook, it would be wise to review your advance directives once a year. Upon review, you can decide to keep the document, write a new one, or have no advance directive at all.

If you decide to keep the advance directive, you can put your initials and the date on the bottom.

**What should I do if I write a new advance directive?**

Whether you choose a different person to be your patient advocate or alter your wishes for care, try to get back copies of the old document and destroy them. Contact the statewide registry if you have registered the document

Distribute copies of the new document.

**What are the responsibilities of health care facilities?**

Hospitals, nursing homes, hospice organizations and home health agencies receiving federal funds have an obligation to inform incoming patients, clients or



residents of their rights to consent to or refuse treatment, including the right to have advance directives.

A health care facility cannot force you to sign an advance directive, or refuse to care for you if you have signed one.

### **Will the hospital or nursing home honor my advance directive?**

If given an advance directive, the hospital or nursing home must make it part of your medical record.

If the facility has no reason to question the document's authenticity, has evidence you are no longer able to participate in treatment decisions, and believes a patient advocate is acting consistent with your wishes, the facility has a responsibility to comply.

Be aware even though you have an advance directive, there is no absolute assurance your wishes will be honored.

### **What if I decide not to have an advance directive?**

Decisions would still have to be made for you should you become unable to make them. Sometimes, a doctor or hospital will accept a spouse or child as an informal decision-maker. In some situations, a family member has some role by law. At other times a guardianship proceeding will have to be initiated in probate court.



# DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, \_\_\_\_\_, am of

(Print or type your full name)

sound mind and I voluntarily make this designation.

## APPOINTMENT OF PATIENT ADVOCATE

I designate \_\_\_\_\_, my \_\_\_\_\_  
(Insert name of patient advocate) (Spouse, child, friend í )

living at \_\_\_\_\_

(Address and telephone number of patient advocate)

as my patient advocate. If my first choice cannot serve, I designate

\_\_\_\_\_, my \_\_\_\_\_,  
(Name of successor patient advocate) (Spouse, child, friend ... )

living at \_\_\_\_\_

(Address and telephone number of successor patient advocate)

to serve as my patient advocate.

My patient advocate or successor patient advocate must sign an acceptance before he or she can act. I have discussed this appointment with the individuals I have designated as patient advocate and successor patient advocate.

## **GENERAL POWERS**

My patient advocate or successor patient advocate shall have power to make care, custody and medical treatment decisions for me if my attending physician and another physician or licensed psychologist determine I am unable to participate in medical treatment decisions.

In making decisions, my patient advocate shall try to follow my previously expressed wishes, whether I have stated them orally, in a living will, or in this designation.

My patient advocate has authority to consent to or refuse treatment on my behalf, to arrange medical and personal services for me, including admission to a hospital or nursing care facility, and to pay for such services with my funds.

My patient advocate shall have access to any of my medical records to which I have a right, immediately upon signing an Acceptance. This shall serve as a release under the Health Insurance Portability and Accountability Act.

Immediately upon signing an Acceptance, my patient advocate shall have access to my birth certificate and other legal documents needed to apply for Medicare, Medicaid, and other government programs.

**POWER REGARDING LIFE-SUSTAINING TREATMENT**

(OPTIONAL)

I expressly authorize my patient advocate to make decisions to withhold or withdraw treatment which would allow me to die, and I acknowledge such decisions could or would allow my death. My patient advocate can sign a do-not-resuscitate declaration for me. My patient advocate can refuse food and water administered to me through tubes.

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(Sign your name if you wish to give your patient advocate this authority)

## POWER REGARDING MENTAL HEALTH TREATMENT

(OPTIONAL)

I expressly authorize my patient advocate to make decisions concerning the following treatments if a physician and a mental health professional determine I cannot give informed consent for mental health care:

(check one or more consistent with your wishes)

outpatient therapy

my admission as a formal voluntary patient to a hospital to receive inpatient mental health services. I have the right to give three days notice of my intent to leave the hospital.

my admission to a hospital to receive inpatient mental health services

psychotropic medication

electro-convulsive therapy (ECT)

I give up my right to have a revocation effective immediately. If I revoke my designation, the revocation is effective 30 days from the date I communicate my intent to revoke. Even if I choose this option, I still have the right to give three days notice of my intent to leave a hospital if I am a formal voluntary patient.

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(Sign your name if you wish to give your patient advocate this authority)

## POWER REGARDING ORGAN DONATION

(OPTIONAL)

I expressly authorize my patient advocate to make a gift of the following

(check any that reflect your wishes)

any needed organs or body parts for the purposes of transplantation, therapy, medical research or education

only the following listed organs or body parts for the purposes of transplantation, therapy, medical research or education:

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my entire body for anatomical study

(optional) I wish my gift to go to -

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(Insert name of doctor, hospital, school, organ bank or individual)

The gift is effective upon my death. Unlike other powers I give to my patient advocate, this power remains after my death.

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(Sign your name if you wish to give your patient advocate this authority)





I may change my mind at any time by communicating in any manner that this designation does not reflect my wishes or that I do not want my patient advocate to have authority to make decisions for me.

It is my intent no one involved in my care shall be liable for honoring my wishes as expressed in this designation or for following the directions of my patient advocate.

Photocopies of this document can be relied upon as though they were originals.

**SIGNATURE**

I sign this document voluntarily, and I understand its purpose.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

(Your signature)

\_\_\_\_\_  
(Your address and telephone number)

**STATEMENT REGARDING WITNESSES**

I have chosen two adult witnesses who are not named in my will; who are not my spouse, parent, child, grandchild, brother or sister; who are not my physician or my patient advocate; who are not an employee of my life or health insurance company, an employee of a home for the aged where I reside, an employee of community mental health program providing me services or an employee at the health care facility where I am now.

**STATEMENT AND SIGNATURE OF WITNESSES**

We sign below as witnesses. This declaration was signed in our presence. The declarant appears to be of sound mind, and to be making this designation voluntarily, without duress, fraud or undue influence.

\_\_\_\_\_  
(Print name) (Signature of witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Print name) (Signature of witness)

\_\_\_\_\_  
(Address)

## ACCEPTANCE BY PATIENT ADVOCATE

**(1) This designation shall not become effective** unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.

**(2) A patient advocate shall not exercise powers** concerning the patient's care, custody and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised in his or her own behalf.

**(3) This designation cannot be used** to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

**(4) A patient advocate may make a decision** to withhold or withdraw treatment which would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

**(5) A patient advocate shall not receive compensation** for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

**(6) A patient advocate shall act in accordance** with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.

**(7) A patient may revoke his or her designation** at any time or in any manner sufficient to communicate an intent to revoke.

**(8) A patient may waive his or her right to revoke** the patient advocate designation as to the power to make mental health treatment decisions, and if such waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

**(9) A patient advocate may revoke his or her acceptance** to the designation at any time and in any manner sufficient to communicate an intent to revoke.

**(10) A patient admitted to a health facility or agency has the rights** enumerated in Section 20201 of the Public Health Code, Act No. 368 of the Public Acts of 1978, Being Section 333.20201 of the Michigan Compiled Laws.

I, \_\_\_\_\_ understand the above

(Name of patient advocate)

conditions and I accept the designation as patient advocate or successor patient advocate for \_\_\_\_\_, who signed a

(Name of patient)

durable power of attorney for health care on the following date: \_\_\_\_\_

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

(Signature of patient advocate)

\_\_\_\_\_  
(Signature of successor patient advocate)

# Living Will

I, \_\_\_\_\_ am  
of sound mind, and I voluntarily make this declaration.

If I become terminally ill or permanently unconscious as determined by my doctor and at least one other doctor, and if I am unable to participate in decisions regarding my medical care, I intend this declaration to be honored as the expression of my legal right to authorize or refuse medical treatment.

My desires concerning medical treatment are -

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(attach additional sheets if you wish)

My family, the medical facility, and any doctors, nurses and other medical personnel involved in my care shall have no civil or criminal liability for following my wishes as expressed in this declaration.



# **DO-NOT-RESUSCITATE ORDER**

This do-not-resuscitate order is issued by \_\_\_\_\_,  
(Type or print physician's name)

attending physician for \_\_\_\_\_.  
(Type or print declarant's or ward's name)

Use the appropriate consent section below, A. or B. or C.

## **A. DECLARANT CONSENT**

I have discussed my health status with my physician named above. I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order will remain in effect until it is revoked as provided by law.

Being of sound mind, I voluntarily execute this order, and I understand its full import.

\_\_\_\_\_  
(Declarant's signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of person who signed for declarant,  
if applicable)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print full name)

## **B. PATIENT ADVOCATE CONSENT**

I authorize that in the event the declarant's heart and breathing should stop, no person shall attempt to resuscitate the declarant. I understand the full import of this order and assume responsibility for its execution.

This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Patient advocate's signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print patient advocate's name)

## **C. GUARDIAN CONSENT**

I authorize that in the event the ward's heart and breathing should stop, no person shall attempt to resuscitate the ward. I understand the full import of this order and assume responsibility for its execution.

This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Guardian's signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print guardian's name)



**PHYSICIAN'S SIGNATURE**

\_\_\_\_\_  
(Physician's signature) (Date)

\_\_\_\_\_  
(Type or print physician's full name)

**ATTESTATION OF WITNESSES**

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) received an identification bracelet.

\_\_\_\_\_  
(Witness signature) (Date)

\_\_\_\_\_  
(Type or print witness's name)

\_\_\_\_\_  
(Witness signature) (Date)

\_\_\_\_\_  
(Type or print witness's name)

**THIS FORM WAS PREPARED PURSUANT TO, AND IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT**



# **DO-NOT-RESUSCITATE ORDER**

Use the appropriate consent section below, A or B.

## **A. DECLARANT CONSENT**

I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order is effective until it is revoked as provided by law.

Being of sound mind, I voluntarily execute this order, and I understand its full import.

\_\_\_\_\_  
(Declarant's signature) (Date)

\_\_\_\_\_  
(Signature of person who signed for declarant, if applicable) (Date)

\_\_\_\_\_  
(Type or print full name)

## **B. PATIENT ADVOCATE CONSENT**

I authorize that in the event the declarant's heart and breathing should stop, no person shall attempt to resuscitate the declarant. I understand the full import of this order and assume responsibility for its execution.

This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Patient advocate's signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print patient advocate's name)

### ATTESTATION OF WITNESSES

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) received an identification bracelet.

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print witness's name)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or print witness's name)

**THIS FORM WAS PREPARED PURSUANT TO, AND IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT**

# Declaration of Anatomical Gift

I, \_\_\_\_\_, am of sound mind, and I voluntarily make this declaration. In the hope I may help others, I make the following anatomical gift to take effect upon my death: (You may check any one box, or both boxes A and C)

A. Any needed organs or body parts for the purposes of transplantation, therapy, medical research or education.

B. Only the following listed organs or body parts for the purposes of transplantation, therapy, medical research or education: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

C. My entire body for anatomical study.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

(Your Signature)

\_\_\_\_\_  
(Address)

## OPTIONAL

I wish my gift to go to \_\_\_\_\_.

(Insert name of doctor, hospital, school, organ bank or individual)

I wish to have my body at my funeral:    \_\_\_ yes    \_\_\_ no

**STATEMENT OF WITNESSES**

This declaration was signed in our presence by the declarant or at his or her direction. We sign below as witnesses in the presence of the declarant.

\_\_\_\_\_  
(Print Name) (Signature of Witness)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Print Name) (Signature of Witness)

\_\_\_\_\_  
(Address)

## **Appendix C**

### **Selected Michigan Statutes Related to Advance Directives and Surrogate Decision-Making for Health Care**

#### **1. Durable Power of Attorney for Health Care**

Estates and Protected Individuals Code MCL 700. 5506, *et seq.*

#### **2. Do-Not-Resuscitate Procedures Act**

MCL 333.1051, *et seq.*

#### **3. Michigan Social Welfare Act**

MCL 400.66h

#### **4. Michigan Dignified Death Act.**

Michigan Public Health Code, MCL 333.5651, *et seq.*

#### **5. Guardianship for Incapacitated Adults**

Estates and Protected Individuals Code, MCL 700.5301, *et seq.*

#### **6. Guardianship for Adults with a Developmental Disability**

Michigan Mental Health Code, MCL 330.1100a; 330.1600, *et seq.*





# **DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

## **Estates and Protected Individuals Code**

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

(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.

#### **700.5507 Patient advocate designation; statement; acceptance.**

(1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of 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. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of 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 that the patient could have exercised on his or her own behalf.

(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(3) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

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

1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.

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

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

4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

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

6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.

7. A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

9. A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

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

**700.5508 Determination of advocate's authority to act.**

(1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

(3) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

**700.5509 Authority and responsibilities of patient advocate; suspension.**

(1) An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.

(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.

(c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(d) The designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

(e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(f) A patient advocate may choose to have the patient placed under hospice care.

(g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

(h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415, if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as

applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under section 5508 or 5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

#### **700.5510 Revocation of patient advocate designation.**

- (1) A patient advocate designation is revoked by 1 or more of the following:
  - (a) The patient's death, except that part of the patient advocate designation, if any, that authorizes the patient advocate to make an anatomical gift of all or part of the deceased patient's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.
  - (b) An order of removal by the probate court under section 5511(5).
  - (c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been designated.
  - (d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. If the revocation is not in writing, an individual who witnesses a revocation of a patient advocate designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician, mental health professional, or health facility has notice of the patient's revocation of a patient advocate designation, the physician, mental health professional, or health facility shall note the revocation in the patient's records and bedside chart and shall notify the patient advocate.
  - (e) A subsequent patient advocate designation that revokes the prior patient advocate designation either expressly or by inconsistency.
  - (f) The occurrence of a provision for revocation contained in the patient advocate designation.
  - (g) If a patient advocate designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the patient advocate designation is suspended

during the pendency of an action for separate maintenance, annulment, or divorce and is revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate. If a successor patient advocate is named, that individual acts as the patient advocate.

(2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the patient advocate designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the patient advocate designation, he or she did not have actual knowledge of the revocation of the patient advocate designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

**700.5511 Binding effect; liability of provider; exception; dispute.**

(1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

(4) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental

health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:

(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.

(b) The treatment requested is not reasonably available.

(c) Compliance is not consistent with applicable law.

(d) Compliance is not consistent with court-ordered treatment.

(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

(5) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

#### **700.5512 Restrictions.**

(1) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

(2) A health care provider shall not require a patient advocate designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical or mental health treatment.

(3) A life or health insurer shall not do any of the following because of the execution or implementation of a patient advocate designation or because of the failure or refusal to execute or implement such a designation:

(a) Refuse to provide or continue coverage to the patient.

(b) Limit the amount of coverage available to a patient.

(c) Charge a patient a different rate.



(d) Consider the terms of an existing policy of life or health insurance to have been breached or modified.

(e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(4) A patient advocate designation shall not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

(5) Except as provided in subsections (2) and (3), sections 5506 to 5515 only apply to or affect an individual who has executed a patient advocate designation or an individual acting for or on behalf of another individual who has executed a patient advocate designation.

(6) Nothing in sections 5506 to 5515 shall be considered to authorize or compel care, custody, or medical or mental health treatment decisions for a patient who objects on religious grounds.

(7) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but is subject to section 5506(1) and sections 5507 to 5515; must be in writing, signed, witnessed or notarized, dated, and executed voluntarily; and, before its implementation, must be made part of the patient's medical or, as applicable, mental health treatment record.

**700.5515 Revocation of patient advocate designation; waiver; exercise of power by patient advocate; conditions.**

(1) A patient may waive the right to revoke a patient advocate designation as to the power to exercise mental health treatment decisions by making the waiver as part of the document containing the designation. However, mental health treatment provided to a patient who has communicated his or her intent to revoke a designation in which the patient has waived his or her right to revoke shall not continue for more than 30 consecutive days, and the waiver does not affect the patient's rights under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate may exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certify, in writing and after examination of the patient, that the patient is unable to give informed consent to mental health treatment. The patient may, in the document containing the patient advocate designation, designate a physician, a mental health practitioner, or both, to make the determination under this subsection. If a physician or mental health practitioner designated by the patient is unable or unwilling to conduct the examination

and make the determination required by this subsection within a reasonable time, the examination and determination shall be made by another physician or mental health practitioner, as applicable.

**700.5520 Guardian making medical or mental health decisions; designation of another individual prohibited.**

A legally incapacitated individual who has a guardian with responsibility for making medical or mental health treatment decisions cannot then designate another individual to make medical or mental health treatment decisions for the legally incapacitated individual.

# MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT

## **333.1051 Short title.**

This act shall be known and may be cited as the "Michigan do-not-resuscitate procedure act".

## **333.1052. Definitions.**

As used in this act:

(a) "Actual notice" includes the physical presentation of an order, a revocation of an order, or other written document authorized under this act from or on behalf of a declarant.

(b) "Attending physician" means the physician who has primary responsibility for the treatment and care of a declarant.

(c) "Declarant" means an individual who has executed a do-not-resuscitate order on his or her own behalf or on whose behalf a do-not-resuscitate order has been executed as provided in this act.

(d) "Delegatee" means an individual to whom a physician has delegated the authority to perform 1 or more selected acts, tasks, or functions under section 16215 of the public health code, MCL 333.16215.

(e) "Do-not-resuscitate identification bracelet" or "identification bracelet" means a wrist bracelet that meets the requirements of section 7 and that is worn by a declarant while a do-not-resuscitate order is in effect.

(f) "Do-not-resuscitate order" or "order" means a document executed under this act directing that, if an individual suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated.

(g) "Emergency medical technician" means that term as defined in section 20904 of the public health code, MCL 333.20904.

(h) "Emergency medical technician specialist" means that term as defined in section 20904 of the public health code, MCL 333.20904.

(i) "Guardian" means that term as defined in section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104.

(j) "Hospital" means that term as defined in section 20106 of the public health code, MCL 333.20106.

(k) "Medical first responder" means that term as defined in section 20906 of the public health code, MCL 333.20906.

(l) "Nurse" means an individual licensed or otherwise authorized to engage in the practice of nursing or practice of nursing as a licensed practical nurse under part 172 of the public health code, MCL 333.17201 to 333.17242.

(m) "Organization" means a company, corporation, firm, partnership, association, trust, or other business entity or a governmental agency.

(n) "Paramedic" means that term as defined in section 20908 of the public health code, MCL 333.20908.

(o) "Patient advocate" means an individual designated to make medical treatment decisions for a patient under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(p) "Physician" means an individual licensed or otherwise authorized to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, MCL 333.16101 to 333.18838.

(q) "Public health code" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(r) "Vital sign" means a pulse or evidence of respiration.

(s) "Ward" means that term as defined in section 1108 of the estates and protected individuals code, 1998 PA 386, MCL 700.1108.

**333.1053. Execution of order; authorized persons; form; printed or typed names; signatures; witness; identification bracelet; possession; access.**

(1) Subject to section 5, an individual who is 18 years of age or older and of sound mind may execute a do-not-resuscitate order on his or her own behalf. A patient advocate of an individual who is 18 years of age or older may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section shall be on a form described in section 4. The order shall be dated and executed voluntarily and signed by each of the following persons:

(a) The declarant, the declarant's patient advocate, or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant.

(b) The declarant's attending physician.

(c) Two witnesses 18 years of age or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.

(3) The names of all signatories shall be printed or typed below the corresponding signatures. A witness shall not sign an order unless the declarant or the declarant's patient advocate appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

(4) At any time after an order is signed and witnessed, the declarant, the declarant's patient advocate, or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.

(5) A declarant or patient advocate who executes an order under this section shall maintain possession of the order and shall have the order accessible within the declarant's place of residence or other setting outside of a hospital.

**333.1053. Execution of order by guardian on behalf of ward; form; signatures; printed or typed names; witness; identification bracelet; possession; access..**

(1) A guardian with the power to execute a do-not-resuscitate order under section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314, may execute a do-not-resuscitate order on behalf of a ward after complying with section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.

(2) An order executed under this section shall be on a form described in section 4. The order shall be dated and executed voluntarily and signed by each of the following individuals:

(a) The guardian.

(b) The ward's attending physician.

(c) Two witnesses 18 years of age or older, at least 1 of whom is not the ward's spouse, parent, child, grandchild, sibling, or presumptive heir.

(3) The names of all signatories shall be printed or typed below the corresponding signatures. A witness shall not sign an order unless the guardian appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

(4) At any time after an order is signed and witnessed, the guardian, the attending physician or his or her delegatee, or an individual designated by the guardian may apply an identification bracelet to the ward's wrist.

(5) A guardian who executes an order under this section shall maintain possession of the order and shall have the order accessible within the ward's place of residence or other setting outside of a hospital or, if applicable, provide a copy of the order to the administrator of a facility in which the ward is a patient or resident or to the administrator's designee.

**333.1054. Execution of order; form; language.**

A do-not-resuscitate order executed under section 3 or 3a shall include, but is not limited to, the following language, and shall be in substantially the following form:

"DO-NOT-RESUSCITATE ORDER

This do-not-resuscitate order is issued by

\_\_\_\_\_, attending physician for

\_\_\_\_\_.

(Type or print declarant's or ward's name)

Use the appropriate consent section below:

**A. DECLARANT CONSENT**

I have discussed my health status with my physician named above. I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order will remain in effect until it is revoked as provided by law.

Being of sound mind, I voluntarily execute this order, and

I understand its full import.

\_\_\_\_\_  
(Declarant's signature) (Date)

\_\_\_\_\_  
(Signature of person who signed for (Date)  
declarant, if applicable)

\_\_\_\_\_  
(Type or print full name)

**B. PATIENT ADVOCATE CONSENT**

I authorize that in the event the declarant's heart and breathing should stop, no person shall attempt to resuscitate the declarant. I understand the full import of this order and assume responsibility for its execution. This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Patient advocate's signature) (Date)

\_\_\_\_\_  
(Type or print patient advocate's name)

**C. GUARDIAN CONSENT**

I authorize that in the event the ward's heart and breathing should stop, no person shall attempt to resuscitate the ward. I understand the full import of this order and assume responsibility for its execution. This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Guardian's signature) (Date)

\_\_\_\_\_  
(Type or print guardian's name)

\_\_\_\_\_  
(Physician's signature) (Date)

\_\_\_\_\_  
(Type or print physician's full name)

**ATTESTATION OF WITNESSES**

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the declarant has (has not) received an identification bracelet.

\_\_\_\_\_  
(Witness signature) (Date) (Witness signature) (Date)

\_\_\_\_\_  
(Type or print witness's name) (Type or print witness's name)

**THIS FORM WAS PREPARED PURSUANT TO, AND IS IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT."**

**333.1055. Persons depending on spiritual means through prayer for healing; execution of order; form; signatures; printed or typed names; witness; identification bracelet; possession; access.**

(1) An individual who is 18 years of age or older, of sound mind, and an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing may execute a do-not-resuscitate order on his or her own behalf. A patient advocate of an individual who is 18 years of age or older and an adherent of a church or religious denomination whose members depend upon spiritual means through prayer alone for healing may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section shall be on a form described in section 6. The order shall be dated and executed voluntarily and signed by each of the following persons:

(a) The declarant, the declarant's patient advocate, or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant.

(b) Two witnesses 18 years of age or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.

(3) The names of all signatories shall be printed or typed below the corresponding signatures. A witness shall not sign an order unless the declarant or the declarant's patient advocate appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

(4) At any time after an order is signed and witnessed, the declarant, the declarant's patient advocate, or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.

(5) A declarant or patient advocate who executes an order under this section shall maintain possession of the order and shall have the order accessible within the declarant's place of residence or other setting outside of a hospital.

**333.1056. Execution of order under MCL 333.1055; form.**

A do-not-resuscitate order executed for an adherent of a church or religious denomination under section 5 shall include, but is not limited to, the following language, and shall be in substantially the following form:



**"DO-NOT-RESUSCITATE ORDER**

Use the appropriate consent section below:

**A. DECLARANT CONSENT**

I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order will remain in effect until it is revoked as provided by law.

Being of sound mind, I voluntarily execute this order, and I understand its full import.

\_\_\_\_\_  
(Declarant's signature) (Date)

\_\_\_\_\_  
(Type or print declarant's full name)

\_\_\_\_\_  
(Signature of person who signed for (Date)  
declarant, if applicable)

\_\_\_\_\_  
(Type or print full name)

**B. PATIENT ADVOCATE CONSENT**

I authorize that in the event the declarant's heart and breathing should stop, no person shall attempt to resuscitate the declarant. I understand the full import of this order and assume responsibility for its execution. This order will remain in effect until it is revoked as provided by law.

\_\_\_\_\_  
(Patient advocate's signature) (Date)

\_\_\_\_\_  
(Type or print patient advocate's name)

**ATTESTATION OF WITNESSES**

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence.

Upon executing this order, the declarant has (has not) received an identification bracelet.

\_\_\_\_\_  
(Witness signature) (Date) (Witness signature) (Date)

\_\_\_\_\_  
(Type or print witness's name) (Type or print witness's name)

**THIS FORM WAS PREPARED PURSUANT TO, AND IS IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT."**

### **333.1057 Identification bracelet.**

(1) A do-not-resuscitate identification bracelet shall possess features that make it clearly recognizable as a do-not-resuscitate identification bracelet including, but not limited to, all of the following:

(a) The identification bracelet shall be imprinted with the words "DO-NOT-RESUSCITATE ORDER", the name and address of the declarant, and the name and telephone number of the declarant's attending physician, if any.

(b) The words required under subdivision (a) shall be printed in a type size and style that is as easily read as practicable, given the size of the identification bracelet.

(2) An individual shall not apply a do-not-resuscitate identification bracelet to another individual unless he or she knows that the other individual is a declarant. An individual who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.

### **333.1058. Copy of order as permanent medical record.**

An attending physician who signs a declarant's do-not-resuscitate order under section 3 or 3a shall immediately obtain a copy or a duplicate of the executed order and make that copy or duplicate part of the declarant's permanent medical record.

### **333.1059. Petition for review of order.**

If a person interested in the welfare of the declarant has reason to believe that an order has been executed contrary to the wishes of the declarant or, if the declarant is a ward, contrary to the wishes or best interests of the ward, the person may petition the probate court to have the order and the conditions of its execution reviewed. If the probate court finds that an order has been executed contrary to the wishes of the declarant or, if the declarant is a ward, contrary to the wishes or best interests of the ward, the probate court shall issue an injunction voiding the effectiveness of the order and prohibiting compliance with the order.

### **333.1060. Revocation of order.**

(1) A declarant may revoke an order executed by himself or herself or executed on his or her behalf at any time and in any manner by which he or she is able to communicate his or her intent to revoke the order. If the declarant's revocation is not in writing, an individual who observes the declarant's revocation of the order shall describe the

circumstances of the revocation in writing, sign the writing, and deliver the writing to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or the administrator's designee. A patient advocate or guardian may revoke an order on behalf of a declarant at any time by issuing the revocation in writing and provide actual notice of the revocation by delivering the written revocation to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or the administrator's designee. Upon revocation, the declarant, patient advocate, guardian, or attending physician or his or her delegatee who has actual notice of a revocation of an order under this section shall do all of the following:

(a) Write "void" on all pages of the order.

(b) If applicable, remove the declarant's do-not-resuscitate identification bracelet.

(2) A physician or his or her delegatee who receives actual notice of a revocation of an order shall immediately make the revocation, including, if available, the written description of the circumstances of the revocation required by subsection (1), part of the declarant's permanent medical record. The administrator of a facility or his or her designee who receives actual notice of a revocation of an order of a declarant who is a patient or resident of the facility shall immediately make the revocation part of the patient's or resident's permanent medical record.

(3) A revocation of an order under this section is binding upon another person at the time that other person receives actual notice of the revocation.

### **333.1061. Determination by health professional.**

(1) One or more of the following health professionals who arrive at a declarant's location outside of a hospital shall determine if the declarant has 1 or more vital signs, whether or not the health professional views or has actual notice of an order that is alleged to have been executed by the declarant or other person authorized to execute an order on the declarant's behalf:

(a) A paramedic.

(b) An emergency medical technician.

(c) An emergency medical technician specialist.

(d) A physician.

(e) A nurse.

(f) A medical first responder.

(g) A respiratory therapist.

(2) If the health professional determines under subsection (1) that the declarant has no vital signs, and if the health professional determines that the declarant is wearing a do-not-resuscitate identification bracelet or has actual notice of a do-not-resuscitate order for the declarant, he or she shall not attempt to resuscitate the declarant.

**333.1062. Immunity from civil or criminal liability.**

A person or organization is not subject to civil or criminal liability for withholding resuscitative procedures from a declarant in accordance with this act.

**333.1063. Immunity from civil or criminal liability; conditions.**

A person or organization is not subject to civil or criminal liability for either of the following:

(a) Attempting to resuscitate an individual who has executed a do-not-resuscitate order or on whose behalf an order has been executed, if the person or organization has no actual notice of the order.

(b) Failing to resuscitate an individual who has revoked a do-not-resuscitate order or on whose behalf a do-not-resuscitate order has been revoked, if the person or organization does not receive actual notice of the revocation.

**333.1064. Requirement to execute order prohibited.**

A person or organization shall not require the execution of an order as a condition for insurance coverage, admittance to a health care facility, receiving health care benefits or services, or any other reason.

**333.1065. Life insurer; prohibited acts.**

A life insurer shall not do any of the following because of the execution or implementation of an order:

- (a) Refuse to provide or continue coverage to the declarant.
- (b) Charge the declarant a higher premium.
- (c) Offer a declarant different policy terms because the declarant has executed an order.
- (d) Consider the terms of an existing policy of life insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the declarant.

**333.1066. Legal rights not impaired or superseded; presumptions.**

(1) The provisions of this act are cumulative and do not impair or supersede a legal right that an individual may have to consent to or refuse medical treatment for himself or herself or that a parent, guardian, or other individual may have to consent to or refuse medical treatment on behalf of another.

(2) This act does not create a presumption concerning the intent of a person executing an order to consent to or refuse medical treatment in circumstances other than the cessation of both spontaneous circulation and respiration.

(3) This act does not create a presumption concerning the intent of an individual who has not executed an order to consent to or refuse any type of medical treatment.

**333.1067. Effective date.**

This act shall take effect August 1, 1996.



## THE SOCIAL WELFARE ACT

### **400.66h Hospitalization; consent to surgical operation, medical treatment; first aid.**

Nothing in this act shall be construed as empowering any physician or surgeon, or any officer or representative of the state or county departments of social welfare, in carrying out the provisions of this act, to compel any person, either child or adult, to undergo a surgical operation, or to accept any form of medical treatment contrary to the wishes of said person. If the person for whom surgical or medical treatment is recommended is not of sound mind, or is not in a condition to make decisions for himself, the written consent of such person's nearest relative, or legally appointed guardian, or person standing in loco parentis, shall be secured before such medical or surgical treatment is given. This provision is not intended to prevent temporary first aid from being given in case of an accident or sudden acute illness where the consent of those concerned cannot be immediately obtained.

**History:** Add. 1957, Act 286, Imd. Eff. June 13, 1957





# MICHIGAN DIGNIFIED DEATH ACT

## Public Health Code

### **333.5651 Short title of part.**

This part shall be known and may be cited as the "Michigan dignified death act".

### **333.5652 Legislative findings; Michigan dignified death act.**

(1) The legislature finds all of the following:

(a) That patients face a unique set of circumstances and decisions once they have been diagnosed as having a reduced life expectancy due to advanced illness.

(b) That published studies indicate that patients with reduced life expectancy due to advanced illnesses fear that in end-of-life situations they could receive unwanted aggressive medical treatment.

(c) That patients with reduced life expectancy due to advanced illnesses are often unaware of their legal rights, particularly with regard to controlling end-of-life decisions.

(d) That the free flow of information among health care providers, patients, and patients' families can give patients and their families a sense of control over their lives, ease the stress involved in coping with a reduced life expectancy due to advanced illness, and provide needed guidance to all involved in determining the appropriate variety and degree of medical intervention to be used.

(e) That health care providers should be encouraged to initiate discussions with their patients regarding advance medical directives during initial consultations, annual examinations, and hospitalizations, at diagnosis of a chronic illness, and when a patient transfers from 1 health care setting to another.

(2) In affirmation of the tradition in this state recognizing the integrity of patients and their desire for a humane and dignified death, the Michigan legislature enacts the "Michigan dignified death act". In doing so, the legislature recognizes that a well-considered body of common law exists detailing the relationship between health care providers and their patients. This act is not intended to abrogate any part of that common law. This act is intended to increase awareness of the right of a patient who

has a reduced life expectancy due to advanced illness to make decisions to receive, continue, discontinue, or refuse medical treatment. It is hoped that by doing so, the legislature will encourage better communication between patients with reduced life expectancy due to advanced illnesses and health care providers to ensure that the patient's final days are meaningful and dignified.

### **333.5653 Definitions.**

(1) As used in this part:

(a) "Advanced illness", except as otherwise provided in this subdivision, means a medical or surgical condition with significant functional impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation, the time course of which may or may not be determinable through reasonable medical prognostication. For purposes of section 5655(b) only, "advanced illness" has the same general meaning as "terminal illness" has in the medical community.

(b) "Health facility" means a health facility or agency licensed under article 17.

(c) "Hospice" means that term as defined in section 20106.

(d) "Medical treatment" means a treatment including, but not limited to, palliative care treatment, or a procedure, medication, surgery, a diagnostic test, or a hospice plan of care that may be ordered, provided, or withheld or withdrawn by a health professional or a health facility under generally accepted standards of medical practice and that is not prohibited by law.

(e) "Patient" means an individual who is under the care of a physician.

(f) "Patient advocate" means that term as described and used in sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(g) "Patient surrogate" means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment.

(h) "Physician" means that term as defined in section 17001 or 17501.

(2) Article 1 contains general definitions and principles of construction applicable to all articles in this code.

**333.5654 Recommended medical treatment for advanced illness; duty of physician to inform orally; limitation or modification of disclosed information.**

(1) A physician who has diagnosed a patient as having a reduced life expectancy due to an advanced illness and is recommending medical treatment for the patient shall do all of the following:

(a) Orally inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate acting on behalf of the patient in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515, about the recommended medical treatment and about alternatives to the recommended medical treatment.

(b) Orally inform the patient, patient surrogate, or patient advocate about the advantages, disadvantages, and risks of the recommended medical treatment and of each alternative medical treatment described in subdivision (a) and about the procedures involved.

(2) A physician's duty to inform a patient, patient surrogate, or patient advocate under subsection (1) does not require the disclosure of information beyond that required by the applicable standard of practice.

(3) Subsection (1) does not limit or modify the information required to be disclosed under sections 5133(2) and 17013(1).

**333.5655 Recommended medical treatment for advanced illness; duty of physician to inform orally and in writing; requirements.**

In addition to the requirements of section 5654, a physician who has diagnosed a patient as having a reduced life expectancy due to an advanced illness and is recommending medical treatment for the patient shall, both orally and in writing, inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate, of all of the following:

(a) If the patient has not designated a patient advocate, that the patient has the option of designating a patient advocate to make medical treatment decisions for the patient in the event the patient is not able to participate in his or her medical treatment decisions because of his or her medical condition.

(b) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, has the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's reduced life expectancy due to advanced illness.

(c) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

(d) That the patient or the patient's surrogate or patient advocate acting on behalf of the patient may choose adequate and appropriate pain and symptom management as a basic and essential element of medical treatment.

**333.5656 Updated standardized written summary; development; publication; contents; availability to physicians.**

(1) By July 1, 2002, the department of community health shall develop and publish an updated standardized, written summary that contains all of the information required under section 5655.

(2) The department shall develop the updated standardized, written summary in consultation with appropriate professional and other organizations. The department shall draft the summary in nontechnical terms that a patient, patient surrogate, or patient advocate can easily understand.

(3) The department shall make the updated standardized, written summary described in subsection (1) available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery created in article 15. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing each physician subject to this part of the requirements of this part and the availability of the updated standardized, written summary within 10 days after the updated standardized, written summary is published.

**333.5657 Availability of form to patient, patient surrogate, or patient advocate; compliance with MCL 333.5656; placement of signed form in patient's medical record; signed form as bar to civil or administrative action.**

(1) If a physician gives a copy of the standardized, written summary developed and published before July 1, 2002 or a copy of the updated standardized, written summary made available under section 5656 to a patient with reduced life expectancy due to advanced illness, to the patient's patient surrogate, or to the patient advocate, the physician is in full compliance with the requirements of section 5655.

(2) A physician may make available to a patient with reduced life expectancy due to advanced illness, to the patient's patient surrogate, or to the patient advocate a form indicating that the patient, patient surrogate, or patient advocate has been given a copy of the standardized, written summary developed and published under section 5656 before July 1, 2002 or a copy of the updated standardized, written summary developed and published under section 5656 on or after July 1, 2002 and received the oral information required under section 5654. If a physician makes such a form available to a patient, to the patient's patient surrogate, or to the patient advocate, the physician shall request that the patient, patient's patient surrogate, or patient advocate sign the form and shall place a copy of the signed form in the patient's medical record.

(3) A patient, a patient's patient surrogate, or a patient advocate who signs a form under subsection (2) is barred from subsequently bringing a civil or administrative action against the physician for providing the information orally and in writing under section 5655 based on failure to obtain informed consent.

**333.5658 Prescription of controlled substance; immunity from administrative and civil liability.**

A physician who, as part of a medical treatment plan for a patient with reduced life expectancy due to advanced illness, prescribes for that patient a controlled substance that is included in schedules 2 to 5 under part 72 and that is a narcotic drug is immune from administrative and civil liability based on prescribing the controlled substance if the prescription is given in good faith and with the intention to treat a patient with reduced life expectancy due to advanced illness or alleviate the patient's pain, or both, and all of the following are met:

(a) The prescription is for a legitimate legal and professionally recognized therapeutic purpose.

(b) Prescribing the controlled substance is within the scope of practice of the physician.

(c) The physician holds a valid license under article 7 to prescribe controlled substances.

**333.5659 Life insurer, health insurer, or health care payment or benefits plan; prohibited acts.**

A life insurer, a health insurer, or a health care payment or benefits plan shall not do 1 or more of the following because a patient with reduced life expectancy due to advanced illness, the patient's patient surrogate, or the patient advocate has made a decision to refuse or discontinue a medical treatment as a result of information received

as required under this part:

- (a) Refuse to provide or continue coverage or benefits to the patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
- (b) Limit the amount of coverage or benefits available to the patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
- (c) Charge the patient a different rate for coverage or benefits under an existing policy, certificate, or contract.
- (d) Consider the terms of an existing policy, certificate, or contract to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy, certificate, or contract covering the patient.

**333.5660 Scope of part; limitation.**

This part does not do the following:

- (a) Impair or supersede a legal right a parent, patient, patient advocate, legal guardian, or other individual may have to consent to or refuse medical treatment on behalf of another.
- (b) Create a presumption about the desire of a patient who has reduced life expectancy due to advanced illness to receive or refuse medical treatment, regardless of the ability of the patient to participate in medical treatment decisions.
- (c) Limit the ability of a court making a determination about a decision of a patient who has reduced life expectancy due to advanced illness to take into consideration all of the following state interests:
  - (i) The preservation of life.
  - (ii) The prevention of suicide.
  - (iii) The protection of innocent third parties.
  - (iv) The preservation of the integrity of the medical profession.
- (d) Condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

**333.5661 Fraud resulting in death of patient; violation as felony; penalty.**

(1) An individual shall not, by fraud, cause or attempt to cause a patient, patient surrogate, or patient advocate to make a medical treatment decision that results in the death of the patient with the intent to benefit financially from the outcome of the medical treatment decision. As used in this subsection, "fraud" means a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, that deceives and is intended to deceive another so that he or she acts upon it to his or her legal injury.

(2) An individual who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.





# **GUARDIANS OF INCAPACITATED INDIVIDUALS**

## **Estates and Protected Individuals Code**

### **700.5301 Appointment of guardian for incapacitated person by will or other writing.**

(1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

(4) Upon the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument or a testamentary nominating instrument made by a testator who is not deceased, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317.

#### **700.5301a Application procedure for guardian appointed in another state**

(1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing a proof of service of the notice with court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section the guardianship continues unless a court in this state enters an order removing the guardian.

#### **700.5302 Guardianship proceedings; venue.**

The venue for a guardianship proceeding for an incapacitated individual is in the place where the incapacitated individual resides or is present. If the incapacitated individual is admitted to an institution by order of a court of competent jurisdiction, venue is also in the county in which that court is located.

**700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.**

(1) An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian. The petition shall contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

(2) Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

(3) Upon the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.

**700.5304 Evaluation and report; hearing.**

(1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303. A report prepared as provided in this subsection shall not be made a part of the proceeding's public record, but shall be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at his or her own expense or, if indigent, at the expense of the state. Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable.

(3) A report prepared under this section shall contain all of the following:

(a) A detailed description of the individual's physical or psychological infirmities.

- (b) An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.
  - (c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.
  - (d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.
  - (e) The signatures of all individuals who performed the evaluations upon which the report is based.
- (4) The individual alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon the individual's condition. If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site.
- (5) The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury.
- (6) The issue of incapacity may be determined at a closed hearing without a jury if requested by the individual alleged to be incapacitated or that individual's legal counsel.

**700.5305 Duties of guardian ad litem.; compensation; legal counsel**

- (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:
- (a) Personally visiting the individual.
  - (b) Explaining to the individual the nature, purpose, and legal effects of a guardian's appointment.
  - (c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, all of the following:
    - (i) The right to contest the petition.
    - (ii) The right to request limits on the guardian's powers, including a limitation on the

guardian's power to execute a do-not-resuscitate order on behalf of the ward.

(iii) The right to object to a particular person being appointed guardian.

(iv) The right to be present at the hearing.

(v) The right to be represented by legal counsel.

(vi) The right to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(e) Informing the individual of the name of each person known to be seeking appointment as guardian.

(f) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.

(g) Making determinations, and informing the court of those determinations, on all of the following:

(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

(C) Execution of a patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

- (iii) Whether the individual wishes to be present at the hearing.
  - (iv) Whether the individual wishes to contest the petition.
  - (v) Whether the individual wishes limits placed on the guardian's powers.
  - (vi) Whether the individual objects to having a do-not-resuscitate order executed on his or her behalf.
  - (vii) Whether the individual objects to a particular person being appointed guardian.
- (2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).
- (3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.
- (4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.
- (5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.

**700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation.**

(1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

(2) The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual. If the court is aware that an individual has executed a patient advocate designation under section 5506, the court shall not grant a guardian any of the same powers that are held by the patient advocate. A court order establishing a guardianship shall specify any limitations on the guardian's powers and any time limits on the guardianship.

(3) If the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian.

(4) If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian.

(5) If an individual executed a patient advocate designation under section 5506 before the time the court determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical or mental health treatment decisions that the patient advocate is designated to make. If, however, a petition for guardianship or for modification under section 5310 alleges and the court finds that the patient advocate designation was not executed in compliance with section 5506, that the patient advocate is not complying with the terms of the designation or with the applicable provisions of sections 5506 to 5515, or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to grant those powers to the guardian.

**700.5306a Rights of individual for whom guardian is sought or appointed; form.**

(1) An individual for whom a guardian is sought or has been appointed under section 5306 has all of the following rights:

(a) To object to the appointment of a successor guardian by will or other writing, as provided in section 5301.

(b) To have the guardianship proceeding commenced and conducted in the place where the individual resides or is present or, if the individual is admitted to an institution by a court, in the county in which the court is located, as provided in section 5302.

- (c) To petition on his or her own behalf for the appointment of a guardian, as provided in section 5303.
- (d) To have legal counsel of his or her own choice represent him or her on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305.
- (e) If he or she is not represented by legal counsel, to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.
- (f) To an independent evaluation of his or her capacity by a physician or mental health professional, at public expense if he or she is indigent, as provided in section 5304.
- (g) To be present at the hearing on the petition to appoint a guardian and to have all practical steps taken to ensure this, including, if necessary, moving the hearing site, as provided by section 5304.
- (h) To see or hear all the evidence presented in the hearing on the petition to appoint a guardian, as provided in section 5304.
- (i) To present evidence and cross-examine witnesses in the hearing on the petition to appoint a guardian, as provided in section 5304.
- (j) To a trial by jury on the petition to appoint a guardian, as provided in section 5304.
- (k) To a closed hearing on the petition to appoint a guardian, as provided in section 5304.
- (l) If a guardian ad litem is appointed, to be personally visited by the guardian ad litem, as provided in section 5305.
- (m) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the nature, purpose, and legal effects of a guardian's appointment, as provided in section 5305.
- (n) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the individual's rights in the hearing procedure, as provided in section 5305.
- (o) If a guardian ad litem is appointed, to be informed by the guardian ad litem of the right to contest the petition, to request limits on the guardian's powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed if the individual is unable to afford legal counsel, as provided in section 5305.



- (p) To be informed of the name of each person known to be seeking appointment as guardian, including, if a guardian ad litem is appointed, to be informed of the names by the guardian ad litem as provided in section 5305.
- (q) To require that proof of incapacity and the need for a guardian be proven by clear and convincing evidence, as provided in section 5306.
- (r) To the limitation of the powers and period of time of a guardianship to only the amount and time that is necessary, as provided in section 5306.
- (s) To a guardianship designed to encourage the development of maximum self-reliance and independence as provided in section 5306.
- (t) To prevent the grant of powers to a guardian if those powers are already held by a valid patient advocate, as provided in section 5306.
- (u) To periodic review of the guardianship by the court, including the right to a hearing and the appointment of an attorney if issues arise upon the review of the guardianship, as provided in section 5309.
- (v) To, at any time, seek modification or termination of the guardianship by informal letter to the judge, as provided in section 5310.
- (w) To a hearing within 28 days of requesting a review, modification, or termination of the guardianship, as provided in section 5310.
- (x) To the same rights on a petition for modification or termination of the guardianship including the appointment of a visitor as apply to a petition for appointment of a guardian, as provided in section 5310.
- (y) To personal notice of a petition for appointment or removal of a guardian, as provided in section 5311.
- (z) To written notice of the nature, purpose, and legal effects of the appointment of a guardian, as provided in section 5311.
- (aa) To choose the person who will serve as guardian, if the chosen person is suitable and willing to serve, as provided in section 5313.
- (bb) To consult with the guardian about major decisions affecting the individual, if meaningful conversation is possible, as provided in section 5314.
- (cc) To quarterly visits by the guardian, as provided in section 5314.

(dd) To have the guardian notify the court within 14 days of a change in the individual's residence, as provided in section 5314.

(ee) To have the guardian secure services to restore the individual to the best possible state of mental and physical well-being so that the individual can return to self-management at the earliest possible time, as provided in section 5314.

(ff) To have the guardian take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects, as provided in section 5314.

(2) A guardian ad litem shall inform the ward in writing of his or her rights enumerated in this section. The state court administrative office and the office of services to the aging created in section 5 of the older Michigianians act, 1981 PA 180, MCL 400.585, shall promulgate a form to be used to give the written notice under this section, which shall include space for the court to include information on how to contact the court or other relevant personnel with respect to the rights enumerated in this section.

#### **700.5307 Jurisdiction over guardian.**

By accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address as listed in the court records and to his or her address as then known to the petitioner.

#### **700.5308 Termination of guardian's authority and responsibility.**

The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5310. Testamentary appointment of a guardian under an unprobated will or a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

#### **700.5309 Review of guardianship.**

The court shall review a guardianship not later than 1 year after the guardian's appointment and not later than every 3 years after each review.

**700.5310 Resignation or removal of guardian.**

(1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

(2) The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

(3) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, shall not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

**700.5311 Appointment or removal of guardian; notice of hearing.**

(1) In a proceeding for the appointment or removal of an incapacitated individual's guardian, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing must be given to each of the following:

(a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.

(b) A person who is serving as the guardian or conservator or who has the individual's care and custody.

(c) If known, a person named as attorney in fact under a durable power of attorney.

(d) If no other person is notified under subdivision (a), (b), or (c), at least 1 of the individual's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated individual. Notice to all other persons must be given as prescribed by court rule. Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor.

(3) In a proceeding for a guardian's appointment under sections 5303 and 5304, a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

(a) The nature, purpose, and legal effects of the appointment of a guardian.

(b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel.

#### **700.5312 Court exercise of power of guardian; temporary guardian.**

(1) If an individual does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the court shall provide notice to the individual alleged to be incapacitated and shall hold a hearing. Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court. A hearing with notice as provided in section 5311 shall be held within 28 days after the court has acted under this subsection.

(2) If an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally incapacitated individual for a specified period not to exceed 6 months.

(3) A temporary guardian is entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make reports as the court requires. In other respects, the provisions of this act concerning guardians apply to temporary guardians.

### **700.5313 Guardian; qualifications.**

(1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(3) If there is no person chosen, nominated or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

#### **700.5314. Powers and duties of guardian.**

Whenever 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 by reason 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 within or without 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 or other professional care, counsel, treatment, or service. The power of a guardian to execute a do-not-resuscitate order under subdivision (d) does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.

(d) The power of a guardian to execute, reaffirm, and revoke a do-not-resuscitate order on behalf of a ward is subject to this subdivision. 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, the guardian visits the ward and, if meaningful communication is possible, consults with the ward about executing the do-not-resuscitate order.

(ii) The guardian 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 guardian shall 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) 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 upon 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.

(g) The guardian shall 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 shall 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 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) Services received by the ward.

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

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

(h) 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.

**700.5315. Payments for care of ward; claims at death.**

(1) To the extent granted by the court under section 5306, the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to a third person or institution for the ward's care and maintenance.

(2) If a ward dies while under guardianship and a conservator has not been appointed for the ward's estate and if the guardian has possession of money of the deceased ward, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or any other claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of the claim and may provide in the order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the ward's estate.



### **700.5316 Partial management of property by ward.**

To encourage self-reliance and independence in a legally incapacitated individual, the court may authorize the individual to function without the consent or supervision of the individual's guardian or conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

### **700.5317 Guardianship proceedings; concurrent jurisdiction.**

(1) The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed.

(2) If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward. After this determination is made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report must be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons.

### **700.5318 Third person dealing with guardian.**

If a third person is dealing with a guardian or is assisting a guardian in the conduct of a transaction, the third person may assume the existence of trust powers and their proper exercise by the guardian without inquiry. The third person is not bound to inquire whether the guardian may act or is properly exercising the power. Unless the third person has actual knowledge that the guardian is exceeding the guardian's powers or improperly exercising them, a third person is fully protected in dealing with the guardian as if the guardian possessed and properly exercised the powers the guardian purports to exercise. A third person is not bound to assume the proper application of estate assets paid or delivered to the guardian. This section does not apply to a third person dealing with a limited guardian.

**700.5319 Appointment of conservator or protective order; report of amount of additional cash or property.**

(1) If the court determines that financial protection is required for the ward, the court may order the guardian to petition for the appointment of a conservator or for another protective order under part 4 of this article in relation to the ward's estate.

(2) If a conservator has not been appointed for a ward's estate and the guardian determines that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the guardian ad litem and reported to the court, the guardian shall report the amount of the additional cash or property to the court.

# **GUARDIANSHIP FOR AN ADULT WITH A DEVELOPMENTAL DISABILITY**

## **Mental Health Code**

### **330.1100a Definitions; A to E.**

(1) "Abilities" means the qualities, skills, and competencies of an individual that reflect the individual's talents and acquired proficiencies.

...

(3) "Adaptive skills" means skills in 1 or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- (d) Social skills.
- (e) Community use.
- (f) Self-direction.
- (g) Health and safety.
- (h) Functional academics.
- (i) Leisure.
- (j) Work.

(4) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

...

(16) "Community mental health authority" means a separate legal public governmental entity created under section 205 to operate as a community mental health services program.

(17) "Community mental health organization" means a community mental health services program that is organized under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(18) "Community mental health services program" means a program operated under chapter 2 as a county community mental health agency, a community mental health authority, or a community mental health organization.

(19) "Consent" means a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

(20) "County community mental health agency" means an official county or multicounty agency created under section 210 that operates as a community mental health services program and that has not elected to become a community mental health authority or a community mental health organization.

(21) "Department" means the department of community health.

(22) "Department-designated community mental health entity" means the community mental health authority, community mental health organization, community mental health services program, county community mental health agency, or community mental health regional entity designated by the department to represent a region of community mental health authorities, community mental health organizations, community mental health services programs, or county community mental health agencies.

(23) "Dependent living setting" means all of the following:

(a) An adult foster care facility.

(b) A nursing home licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) A home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(25) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

(ii) Is manifested before the individual is 22 years old.

(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

(29) "Emergency situation" means a situation in which an individual is experiencing a serious mental illness or a developmental disability, or a minor is experiencing a serious emotional disturbance, and 1 of the following applies:

(a) The individual can reasonably be expected within the near future to physically injure himself, herself, or another individual, either intentionally or unintentionally.

(b) The individual is unable to provide himself or herself food, clothing, or shelter or to attend to basic physical activities such as eating, toileting, bathing, grooming, dressing, or ambulating, and this inability may lead in the near future to harm to the individual or to another individual.

(c) The individual's judgment is so impaired that he or she is unable to understand the need for treatment and, in the opinion of the mental health professional, his or her continued behavior as a result of the mental illness, developmental disability, or emotional disturbance can reasonably be expected in the near future to result in physical harm to the individual or to another individual.

### **330.1600 Definitions.**

As used in this chapter, unless the context requires otherwise:

(a) "Facility" means all of the following that regularly admit individuals with developmental disability and provide residential and other services:

(i) A facility as defined in section 100b.

(ii) A child caring institution, a boarding school, a convalescent home, a nursing home or home for the aged, or a community residential program.

(b) "Court" means the probate court or the court with responsibility with regard to mental health services for the county of residence of an individual with developmental disability, or for the county in which the individual was found if a county of residence cannot be determined.

(c) "Interested person or entity" means an adult relative or friend of the respondent, an official or representative of a public or private agency, corporation, or association concerned with the individual's welfare, or any other person found suitable by the court.

(d) "Plenary guardian" means a guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both.

(e) "Partial guardian" means a guardian who possesses fewer than all of the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specifically enumerated by court order.

(f) "Respondent" means the individual who is the subject of a petition for guardianship filed under this chapter.

### **330.1602 Guardianship; use; design; limitation; partial guardianship.**

(1) Guardianship for individuals with developmental disability shall be utilized only as is necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation, and abuse; shall take into account the individual's abilities; shall be designed to encourage the development of maximum self-reliance and independence in the individual; and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations.

(2) If the court determines that some form of guardianship is necessary, partial

guardianship is the preferred form of guardianship for an individual with a developmental disability.

**330.1604 Jurisdiction; provisions applicable to appointment of guardian.**

(1) The court has jurisdiction over guardianship proceedings for developmentally disabled persons.

(2) An appointment of a guardian for a developmentally disabled person shall be made only under this chapter, except that a guardian may be appointed for a minor where appropriate under sections 5201 to 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5219.

**330.1607 Court as guardian; appointment of temporary guardian; hearing; rights and privileges of respondent.**

(1) A court, upon filing of a petition for guardianship under this chapter and before the appointment of a plenary or partial guardian, or pending an appeal or action in relation to the appointment, under emergency circumstances and if necessary for the welfare or protection of an individual with a developmental disability, may temporarily exercise the powers of a guardian over an individual with a developmental disability, or may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order.

(2) If the court, under subsection (1), exercises the powers of a guardian or appoints a temporary guardian before the appointment of a plenary or partial guardian, a hearing on the petition for guardianship shall be held within 14 days, or at a time fixed under section 614, whichever is earlier.

(3) If the court, under subsection (1), exercises the powers of a guardian or appoints a temporary guardian pending an appeal or action in relation to the appointment of a guardian under this chapter, a hearing shall be held within 14 days to determine whether the individual is in need of the services of a guardian for the individual's welfare or protection during the pendency of the appeal or action. If the court determines by clear and convincing evidence that a need exists, the court may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order and whose authority shall expire upon resolution of the appeal or action.

(4) At a hearing held under either subsection (2) or (3), a respondent shall have all the rights and privileges otherwise available to an individual subject to proceedings under this chapter.

**330.1609 Petition for appointment of guardian; filing; contents.**

(1) A petition for the appointment of a guardian for an individual who is developmentally disabled may be filed by an interested person or entity or by the individual. The petition shall set forth the following:

- (a) The relationship and interest of the petitioner.
- (b) The name, date of birth, and place of residence of the respondent.
- (c) The facts and reasons for the need for guardianship.
- (d) The names and addresses of the individual's current guardian, and the respondent's presumptive heirs.
- (e) The name and address of the person with whom, or the facility in which, the respondent is residing.
- (f) A description and approximation of the value of the respondent's estate including an estimate of the individual's anticipated yearly income and the source of the income.
- (g) The name, address, and age of the proposed guardian and if the proposed guardian is a current provider of services to the developmentally disabled.
- (h) A factual description of the nature and extent of the respondent's developmental disability.

**330.1612 Petition for appointment of guardian; accompanying report; psychological tests; evaluations; availability of report.**

(1) The petition for the appointment of a guardian for an individual who has a developmental disability shall be accompanied by a report that contains all of the following:

- (a) A description of the nature and type of the respondent's developmental disability.
- (b) Current evaluations of the respondent's mental, physical, social, and educational condition, adaptive behavior, and social skills. These evaluations shall take into account the individual's abilities.
- (c) An opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and a specific statement of the reasons for the guardianship.



(d) A recommendation as to the most appropriate rehabilitation plan and living arrangement for the individual and the reasons for the recommendation.

(e) The signatures of all individuals who performed the evaluations upon which the report is based. One of the individuals shall be a physician or psychologist who, by training or experience, is competent in evaluating individuals with developmental disabilities.

(f) A listing of all psychotropic medications, plus all other medications the respondent is receiving on a continuous basis, the dosage of the medications, and a description of the impact upon the respondent's mental, physical and educational conditions, adaptive behavior, and social skills.

(2) Psychological tests upon which an evaluation of the respondent's mental condition have been based may be performed up to 1 year before the filing of the petition.

(3) If a report does not accompany the petition, the court shall order appropriate evaluations to be performed by qualified individuals who may be employees of the state, the county, the community mental health services program, or the court. The court may order payment for evaluations of respondents by a public agency that treats or serves the developmentally disabled. State compensation for evaluations paid for by public mental health agencies shall be determined under sections 302 to 310, and sections 800 to 842. Compensation for an evaluation shall be in an amount that is reasonable and based upon time and expenses. The report shall be prepared and filed with the court not less than 10 days before the hearing.

(4) A report prepared under this section shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court to which the proceedings may be appealed, to the respondent, the petitioner, their attorneys, and to other individuals the court directs.

### **330.1614 Hearings; date and place; notice.**

(1) Upon the filing of a petition, the court shall fix a date and a place for a hearing to be held within 30 days after the filing date of the petition.

(2) Hearings may be held either within or without the county in which the court has its principal office, and in quarters as the court directs, including a facility or other convenient place.

(3) Notice of the time and place of the hearing shall be given to the petitioner, to the respondent, to the respondent's presumptive heirs, to the preparer of the report or

another appropriate person who performed an evaluation, to the director of any facility in which the respondent may be residing, to the respondent's guardian ad litem if one has been appointed, and to the respondent's legal counsel.

**330.1615 Right to legal counsel; appointment of counsel; preferred counsel; compensation of appointed counsel.**

- (1) A respondent is entitled to be represented by legal counsel.
- (2) Unless an appearance has been entered on behalf of the respondent, the court, within 48 hours of its receipt of a petition together with the other documents required by section 612, shall appoint counsel to represent the respondent. Counsel may be appointed from a system or organization that provides legal counsel to indigents, or that has been established for the purpose of providing representation in the proceedings governed by this chapter.
- (3) If the respondent prefers counsel other than the counsel appointed, if preferred counsel agrees to accept the appointment, and the court is notified of the preference by the respondent or preferred counsel, the court shall replace the initially appointed counsel with preferred counsel.
- (4) If the respondent is indigent, the court shall compensate appointed counsel from court funds in an amount which is reasonable and based upon time and expenses.
- (5) The supreme court by court rule may establish the compensation to be paid for counsel of indigents and may require that counsel be appointed from a system or organization that serves developmentally disabled or indigent people.

**330.1616 Guardian ad litem.**

If, after a petition has been filed, the court determines that the respondent requires a person to represent his or her best interests and to assist legal counsel, the court shall appoint an interested person or entity to act as guardian ad litem for the respondent.

**330.1617 Right to jury; evidence; witnesses; closing hearing to public; presence of respondent; testimony of person who prepared report or performed evaluation; independent evaluation.**

- (1) A respondent in a guardianship proceeding conducted pursuant to this chapter may demand that a jury decide any issue or issues of fact. A jury shall consist of 6 persons to be chosen in the same manner as provided in the probate court rules.

(2) A respondent in a guardianship proceeding conducted pursuant to this chapter shall have the right to present evidence, and to confront and cross-examine all witnesses.

(3) The hearing may be closed to the public on the request of the respondent or the respondent's legal counsel.

(4) The respondent shall be present at all proceedings conducted pursuant to this chapter. However, the respondent's presence may be excused by the court only on a showing, supported by an affidavit signed by a physician or psychologist who has recently examined the respondent, that the respondent's attendance would subject him or her to serious risk of physical or emotional harm.

(5) A guardian shall not be appointed under this section unless the person who prepared the report or at least 1 of the persons who performed an evaluation serving in part as basis for the report testifies in person in court.

(6) The respondent has the right, at his or her own expense, or if the respondent is indigent, at the expense of the state, to secure an independent evaluation. Compensation for an independent evaluation at public expense shall be in an amount which is reasonable and based upon time and expenses and approved by the court.

### **330.1618 Hearing; powers and duties of court.**

(1) The court, at a hearing convened under this chapter for the appointment of a guardian, shall do all of the following:

(a) Inquire into the nature and extent of the general intellectual functioning of the respondent asserted to need a guardian.

(b) Determine the extent of the impairment in the respondent's adaptive behavior.

(c) Determine the respondent's capacity to care for himself or herself by making and communicating responsible decisions concerning his or her person.

(d) Determine the capacity of the respondent to manage his or her estate and financial affairs.

(e) Determine the appropriateness of the proposed living arrangements of the respondent and determine whether or not it is the least restrictive setting suited to the respondent's condition.

(f) If the respondent is residing in a facility, the court shall specifically determine the

appropriateness of the living arrangement and determine whether or not it is the least restrictive suited to the respondent's condition.

(2) The court shall make findings of fact on the record regarding the matters specified in subsection (1).

(3) If it is determined that the respondent possesses the capacity to care for himself or herself and the respondent's estate, the court shall dismiss the petition.

(4) If it is found by clear and convincing evidence that the respondent is developmentally disabled and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or the respondent's estate, the court may appoint a partial guardian to provide guardianship services to the respondent, but the court shall not appoint a plenary guardian.

(5) If it is found by clear and convincing evidence that the respondent is developmentally disabled and is totally without capacity to care for himself or herself or the respondent's estate, the court shall specify that finding of fact in any order and may appoint a plenary guardian of the person or of the estate or both for the respondent.

**330.1620 Contents of court order establishing partial guardianship; legal and civil rights; effect of appointment of partial guardian.**

(1) A court order establishing partial guardianship shall contain findings of fact, shall define the powers and duties of the partial guardian so as to permit the individual with a developmental disability to care for himself or herself and his or her property commensurate with his or her ability to do so, and shall specify all legal disabilities to which the individual is subject.

(2) An individual with a developmental disability for whom a partial guardian has been appointed retains all legal and civil rights except those that have by court order been designated as legal disabilities or that have been specifically granted to the partial guardian by the court.

(3) The appointment of a partial guardian under this chapter does not constitute a finding of legal incompetence or incapacity except in those areas specified by the court.

**330.1623 Placement of individual with developmental disability in facility; appropriateness of placement; appropriate treatment and residential programs; reports from public agencies.**

(1) A guardian, whether plenary or partial, appointed under this chapter shall not have the power, unless specified by court order, to place an individual with a developmental disability in a facility.

(2) Before authorizing the placement of a respondent in a facility, the court shall inquire into and determine the appropriateness of the placement.

(3) Before authorizing a guardian to make application to place an individual with a developmental disability in a facility, the court shall determine, in conjunction with the appropriate community mental health services program, whether the placement offers appropriate treatment and residential programs to meet the needs of the respondent and whether there is a less restrictive treatment and residential program available. In ordering a placement, the court shall give preference to an available less restrictive treatment and residential program provided that it is adequate and appropriate to meet the respondent's needs. The court or counsel may request reports from public agencies on the suitability of a particular placement for a respondent.

**330.1626 Duration of term of guardianship; new petition for guardianship.**

(1) Before the appointment of a guardian, the court shall consider the duration of the term of guardianship. The duration of the term shall be indicated in a court order.

(2) A partial guardian shall not be appointed for a term greater than 5 years.

(3) At the expiration of the term of guardianship a new petition for guardianship may be filed pursuant to this chapter.

**330.1628 Qualifications of guardian; preference.**

(1) The court may appoint as guardian of an individual with a developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with a developmental disability. The court shall not appoint the department of mental health as guardian or any other agency, public or private, that is directly providing services to the individual, unless no other suitable individual or agency can be identified. In such instances, guardianship by the provider shall only continue until such time as a more suitable individual or agency can be appointed.

(2) Before the appointment, the court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed guardian, and any preference indicated shall be given due consideration.

**330.1629 Routine or emergency medical treatment or surgery or extraordinary procedures; liability of guardian.**

(1) A guardian, temporary guardian, plenary, partial, or standby guardian shall not be liable for civil damages by reason of authorizing routine or emergency medical treatment or surgery or extraordinary procedures when previously ordered by the court for his or her ward if the guardian acted after medical consultation with the ward's physician, acted in good faith, was not negligent, and acted within the limits established for the guardian by the court.

(2) A guardian, temporary guardian, plenary, partial, or standby guardian who has been authorized by the court to give medical consent, shall not be liable by reason of his or her authorization for injury to the ward resulting from the negligence or other acts of a third person.

(3) Routine medical services do not include extraordinary procedures. Extraordinary procedures includes, but is not limited to, sterilization, including vasectomy, abortion, organ transplants from the ward to another person, and experimental treatment.

**330.1631 Guardian; duties; filing, contents, and review of report.**

(1) To the extent ordered by the court, the plenary guardian of the person shall have and a partial guardian of the person may have among others the following duties:

(a) Custody of the ward.

(b) The duty to make provision from the ward's estate or other sources, for the ward's care, comfort, and maintenance.

(c) The duty to make a reasonable effort to secure for the ward training, education, medical, and psychological services, and social and vocational opportunity as are appropriate and as will assist the ward in the development of maximum self-reliance and independence.

(2) The guardian of the person, plenary or partial, shall file with the court at intervals indicated by the court, but not less often than annually, a report which shall contain statements indicating:

- (a) The individual's current mental, physical, and social condition.
  - (b) The individual's present living arrangement and a description and the address of every residence where the individual lived during the reporting period and the length of stay at each residence.
  - (c) An assessment of the adequacy and appropriateness for the ward of treatment and residential programs in the ward's current residence and a statement on whether the ward will continue to live at the current residence or whether the guardian recommends a more suitable alternative residence.
  - (d) A summary of the medical, educational, vocational, and other professional services given to the individual.
  - (e) A resume of the guardian's visits with and activities on behalf of the individual.
  - (f) A recommendation as to the need for continued guardianship.
  - (g) A statement signed by the standby guardian, if any have been appointed, that the standby guardian continues to be willing to serve in the event of the death, incapacity, or resignation of the guardian.
  - (h) An accounting of all financial transactions made by the guardian involving the ward's estate.
  - (i) Other information requested by the court or useful in the opinion of the guardian.
- (3) For the purpose of filing this report pursuant to subsection (2), the guardian shall be given access to information, reports and records from facilities, a community mental health board or agency, court staff, a public or private entity or agency, or a suitable person that are necessary for the guardian to perform his or her duties.
- (4) The court shall review the report required in subsection (2) and take whatever action it considers necessary.

### **330.1632 Guardian as fiduciary.**

Whenever the court appoints a plenary guardian of the estate or a partial guardian with powers or duties respecting real or personal property, that guardian shall be considered a fiduciary for the purposes of the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.

**330.1634 Notice of right to dismiss guardian or modify guardianship order; procedures.**

At the time of the appointment of a guardian, the court shall make a reasonable effort to verbally inform the individual of the individual's right pursuant to section 637 to request at a later date his or her guardian's dismissal or a modification of the guardianship order, and a written statement shall be served upon the ward indicating his or her rights pursuant to section 637 and specifying the procedures to be followed in petitioning the court.

**330.1637 Discharge or modification order; petition; hearing; order.**

(1) A guardian for an individual with a developmental disability or the individual's estate who was appointed before the effective date of this act under former chapter 3 of Act No. 288 of the Public Acts of 1939 or a guardian appointed under this chapter may be discharged, or have his or her duties modified, when the individual's capacity to perform the tasks necessary for the care of his or her person or the management of his or her estate have changed so as to warrant modification or discharge. The individual with a developmental disability, the individual's guardian, or any interested person on his or her behalf may petition the court for a discharge or modification order under this section.

(2) A request under subsection (1), if made by the individual with a developmental disability, may be communicated to the court by any means, including oral communication or informal letter. Upon receipt of the communication the court shall appoint a suitable person who may, but need not be, an employee of the state, county, community mental health services program, or court, to prepare and file with the court a petition reflecting the communication.

(3) The court, upon receipt of a petition filed under this section, shall conduct a hearing. At the hearing, the individual shall have all of the rights indicated in sections 615 and 617.

(4) Upon conclusion of the hearing, the court shall enter a written order setting forth the factual basis for its findings and may do any of the following:

- (a) Dismiss the petition.
- (b) Remove the guardian and dissolve the guardianship order.
- (c) Remove the guardian and appoint a successor.
- (d) Modify the original guardianship order.



(e) Make any other order that the court considers appropriate and in the interests of the individual with a developmental disability.

### **330.1640 Standby guardian.**

(1) At a hearing convened pursuant to this chapter the court may designate 1 or more standby guardians whose appointment shall become effective without further proceedings immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian.

(2) The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall notify the court.

(3) In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian.

### **330.1642 Testamentary guardian.**

(1) The surviving parent of a minor with a developmental disability for whom a guardian has not been appointed may by will appoint a testamentary guardian. The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the parent. A testamentary guardian possesses the powers of a parent, and shall serve subject to the court's power to reduce the scope of guardianship authority or to dismiss a guardian. The appointment shall terminate when the minor attains 18 years of age, or the guardian is dismissed, whichever occurs first. Upon assuming office, the testamentary guardian shall notify the court in which the decedent's will is to be probated.

(2) A parent who has been appointed guardian of his or her minor or adult child with a developmental disability may by will, except in the event that a standby guardian has been designated, appoint a testamentary guardian. The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the initially appointed guardian. The testamentary guardian possesses the powers of the initially appointed guardian, shall be entitled to receive upon request a copy of a court order creating or modifying the initial guardianship, and shall serve subject to the power of the court that appointed the initial guardian to reduce the scope of

guardianship authority or to dismiss a guardian. In the event that the court probating decedent's will does not have jurisdiction over the testamentary guardian except if the court finds the will to be invalid, the appointment shall be nullified. Upon assuming office, the testamentary guardian shall notify the probate court that appointed the initial guardian and the probate court in which the will is subject to probate.

**330.1644 Termination of guardianship; legal and civil rights; applicability of section to termination by term expiration and court order.**

Upon termination of a guardianship, the developmentally disabled person regains all legal and civil rights that had been designated as legal disabilities or specifically granted to the guardian. This section applies to termination by expiration of the term of a guardianship and termination by court order under section 637(4)(b).

**Appendix D**

**YOUR RIGHTS IN THE  
GUARDIANSHIP PROCESS**

**INFORMATION PRESENTED BY THE MICHIGAN CENTER  
FOR LAW AND AGING**

## **Introduction**

### **Why am I receiving this pamphlet?**

You are being provided this information because someone has asked the probate court to appoint a guardian for you, or because you already have a guardian.

You have a number of rights to help ensure you only have a guardian if you need one.

### **What is a guardian?**

A guardian is a person or company appointed by a probate court to make decisions for you if there is convincing evidence you are unable to make informed decisions for yourself.

A guardian can only be appointed if necessary to provide for your care.

### **What decisions can a guardian make for me?**

A judge can give a guardian power to decide where you live, to make medical treatment decisions for you, to arrange services and to decide how your money is spent.

### **Do I lose rights if a guardian is appointed?**

Yes. For instance, if a guardian is given power to decide where you live, you lose the right to make that decision for yourself.

## **Do all guardians have the same powers?**

No. For example, a judge could grant a guardian power to make medical decisions for you, but not the power to decide where you live or to handle your money.

## **What are some responsibilities of a guardian if one is appointed for me?**

Your guardian is required to visit you at least every three months, and to talk with you before making major decisions.

Your guardian is required to make decisions in your best interests, and to arrange appropriate medical, housing and social services so you can regain as much self-care as is possible.

## **The Guardianship Petition**

### **How is a guardian appointed?**

The first step is that someone interested in your welfare files a petition in probate court.

At the same time you are receiving this pamphlet, you are being given a copy of the petition.

### **What is the purpose of the petition?**

The petition sets forth information why the petitioner believes you need a guardian.

## **What happens upon a petition for guardianship being filed with the court?**

Court staff set a date for a court hearing. The hearing may be very soon or a few weeks away.

The judge cannot appoint a guardian for you without a hearing.

## **The Guardian Ad Litem**

### **What else happens upon a petition being filed?**

Court staff will send a person to your home to talk with you before the hearing date. This person, known as a guardian ad litem, is the person who handed you this pamphlet.

The guardian ad litem has no power to make decisions for you, only to collect information.

### **What will the guardian ad litem talk to me about?**

The guardian ad litem will explain guardianship and your rights in the process.

If you do not object to guardianship, the guardian ad litem will provide information to the judge whether guardianship is appropriate and about who should serve as guardian.

## **Your Rights**

### **Can I choose the person to be my guardian?**

Yes, you have this right. Tell the guardian ad litem of your choice.

### **Do I have the right to attend the court hearing?**

Yes, you always have the right to be at the hearing.

Tell the guardian ad litem if you want to attend the court hearing. Tell the guardian ad litem if you need transportation to get to the hearing, and if you need any help such as a wheelchair, a special hearing device or an interpreter in the courtroom.

### **What if I have signed a durable power of attorney for health care in the past?**

Make sure you make the guardian ad litem aware of the document. Give him or a copy of the document if you have one.

### **If I do not want a guardian, what do I do?**

It is very important you tell the guardian ad litem if you do not want a guardian, or if you do not want a particular person to serve as guardian, or if you want the guardian's powers limited in any way.

## **What will the guardian ad litem do then?**

By law, the guardian ad litem must report your wishes to the court, and court staff must appoint a lawyer to represent you. This will not cost you any money.

## **Hiring a Lawyer**

### **Can I hire my own lawyer instead of having the court appoint a lawyer?**

Yes. You also always have the right to hire a lawyer.

### **What is the role of my lawyer?**

Whether the lawyer is court appointed or chosen by you, your lawyer must strongly argue for your wishes, regardless of what anyone else thinks is best for you.

### **Do I have the right to get a professional evaluation of my ability to make decisions?**

Yes. You can choose a doctor, psychologist, nurse or social worker to do the evaluation. If you cannot afford the cost of the evaluation, the court will pay for it.



## **The Court Hearing**

### **What is the purpose of the court hearing?**

The person who filed the petition must present evidence and prove that you cannot make informed decisions for yourself, and that guardianship is necessary to meet your needs.

### **What if I disagree with the evidence presented?**

You or your lawyer have a right to dispute any evidence presented, and you or your lawyer has a right to present witnesses and other evidence on your behalf.

If you have asked for a professional evaluation, you can decide whether to present the results to the judge.

### **Who decides whether I need a guardian?**

The judge will usually make the decision whether there is clear and convincing evidence you cannot make informed decisions over one or more areas of your life. The judge will also determine whether guardianship is necessary to meet your needs.

If you have exercised your right to have a jury trial, the jury will decide those questions.

### **Who decides what powers the guardian will have?**

The judge or jury will also determine what powers the guardian will have, based on your needs.

**What if the judge or jury decides I need a guardian, but I disagree?**

You have a right to appeal the decision to the Circuit Court.

**How do I know what powers my guardian has?**

The court order signed by the judge, and the letters of guardianship given to the guardian, must show the powers the guardian has.

You can ask court staff or the guardian for a copy of the letters of guardianship.

### **After a Guardian is Appointed**

**If I have a guardian, do I lose all my rights?**

No. For example, generally you maintain the right to speak your mind, to practice your religion and to see family and friends of your choice.

**If a guardian is given authority to make medical treatment decisions for me, are there limits in the types of decisions the guardian can make?**

Yes. For instance, a guardian does not have authority to hospitalize you for mental health treatment unless you assent.

A guardian can only authorize electroconvulsive therapy (ECT) if your guardian is given that authority and two psychiatrists agree it is appropriate.

### **Can a guardian sign a do-not-resuscitate order?**

The judge can give a guardian this power. It is important you tell the guardian ad litem and the court about whether you wish to be resuscitated if your breathing and heart stop.

### **Can a guardian withhold or withdraw treatments such as a feeding tube or respirator?**

The law does not adequately address the powers of a guardian concerning end-of-life care. Judges disagree whether, and in what circumstances, a guardian can withhold or withdraw treatment that is keeping you alive.

### **How can I know whether my guardian has such power?**

It is best to ask the judge to specify in the court order and letters of guardianship whether the guardian has this power, and in what circumstances.

### **If I object to a guardian's decisions, what can I do?**

You can write a letter to the probate judge, or you can file a petition with the court. There is no cost. You can ask the judge to

-

- End the guardianship, or
- Limit the guardian's powers, or
- Name another person as guardian.

### **Can I hire a lawyer to represent me?**

Yes. You do not lose that right just because you have a guardian.

If you do not hire a lawyer, request the judge appoint one for you. The judge is required to do so.

### **Will there be another court hearing?**

Yes. You have all the same rights you had during the first hearing.

### **What if I have questions about guardianship?**

You can telephone the probate court.

Court staff can provide information such as rights you have under the law, the name of your guardian ad litem or lawyer, and the date of your court hearing.

### **What if court staff are unable to answer my questions?**

If staff are unable to answer a question, they may be able to refer you to a person or agency that can answer it.

**What is the name and phone number of the probate court?**





<b>STATE OF MICHIGAN</b> <b>PROBATE COURT</b> <b>COUNTY</b> <b>CIRCUIT COURT - FAMILY DIVISION</b>	<b>PETITION TO TERMINATE OR MODIFY</b> <input type="checkbox"/> <b>GUARDIANSHIP</b> <input type="checkbox"/> <b>CONSERVATORSHIP</b>	<b>FILE NO.</b>
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In the matter/estate of \_\_\_\_\_

Court ORI	Date of birth	Race	Sex	Current address of individual
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- I am interested in this matter as \_\_\_\_\_ .  
State your relationship/interest
- The interested persons, addresses, and their representatives are identical to those appearing on the initial petition except as follows: (for each person whose address changed, list the name and new address; attach separate sheet if necessary)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I REQUEST** that the court:

- Terminate the guardianship/conservatorship.  
 Accept the guardian's/conservator's resignation.  
 Remove the guardian/conservator who    has    has not   been suspended.

**Appoint** \_\_\_\_\_ Address \_\_\_\_\_  
Name (type or print) Telephone no.

City, state, zip \_\_\_\_\_

as successor guardian/conservator.

- Appoint a temporary guardian/conservator pending appointment of a successor.

**Appoint** \_\_\_\_\_ Address \_\_\_\_\_  
Name (type or print) Telephone no.

City, state, zip \_\_\_\_\_

as standby/successor standby guardian under MCL 330.1640.

Modify the powers of the guardian/conservator as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only





### About the Author

Bradley Geller began a career in law and aging in 1973. As a law student he worked on an OEO-funded model project through the Council of Elders in Boston.

In 1976-1977, he served as counsel to the Age Discrimination Study conducted by the U.S. Commission on Civil Rights. The national study examined discrimination in programs and activities receiving federal financial assistance.

In developing a legal services project for older adults in a three county area in Michigan in 1978 - 1980, he represented individuals facing guardianship. He wrote a client-oriented pamphlet on guardianship, which became a chapter in his 1982 book, *Changes and Choices: Legal Rights of Older Adults*. State legislators have distributed more than 500,000 copies of the book to constituents.

As counsel to the Michigan House Judiciary Committee, he drafted the Michigan Guardianship Reform Act of 1988 and designed project Joshua, detailing changes in court forms, court rules and jury instructions. He participated in drafting statutes creating the durable power of attorney for health care, the do-not-resuscitate procedures act, and the Michigan Statutory Will, while creating a legislative agenda for older adults.

Serving as counsel to the Washtenaw County Probate County for ten years, he managed the adult guardianship and conservator system, and initiated Project Dignity. The project's goals were the promotion of alternatives to full guardianship; the education of guardians, conservators and guardians ad litem; the use of mediation; and the creation of a volunteer guardianship program. Most recently, he was an assistant state long term care ombudsman.

Mr. Geller has participated on the Michigan Probate Rules Committee, the Probate Forms Committee and the Michigan Law Revision Commission. He envisioned and was a member of the Michigan Supreme Court Task Force on Guardianship and Conservatorship.

Throughout the years, he has pursued legislative, investigative and educational efforts to improve the structure and functioning of the guardianship system, and to create and publicize alternatives to guardianship.

