

Guardianship Reform Legislation

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Several new public acts came into effect in 2001 regarding guardianships. I still receive many questions about these and I thought it would be helpful to highlight some of the changes.

1) Guardianship/Conservatorship/Patient Advocates 2000 PA 312 – effective January 1, 2001:

- If the court becomes aware that an individual has executed a *Patient Advocate Designation* form pursuant to Section 5506, the court shall not provide the guardian any of the same powers held by the incapacitated individual's patient advocate. MCLA 700.5306(2).
- New Section 5306(5) - If an individual executes a *Patient Advocate Designation* form (per Section 5506) and subsequently becomes a legally incapacitated individual, the guardian shall not exercise any power or duty regarding making medical treatment decisions that the patient advocate is designated to make. Note, however, that the court may modify the guardianship's term to grant the guardian these powers if the court finds upon petition that the *Patient Advocate Designation* form was not executed in compliance with Section 5506 MCL 700.5306(5)
- New Section 700.5313(1) – If the court finds that the ward's property is in need of protection, the court shall order the guardian to furnish a bond or restrict its letters of guardianship as it finds necessary to protect the property.
- The conservator shall file an inventory within 56 days (please note change from EPIC requirement of 63 days). A copy of the inventory must be given to interested persons per court rule. MCLA 700.5417(1).
- New Section MCLA 700.5520 – A legally incapacitated individual whose guardian has the authority and responsibility to make medical treatment decisions cannot give/designate another the same authority.

- Annual Reports on Condition of Wards for adult guardianships must be served by the guardian on the ward and "interested persons" per court rule. MCLA 700.5314(e). [2000 PA 313 – effective January 1, 2001.]

2) Professional Guardian and Professional Conservatorship Legislation 2000 PA 463 – effective June 1, 2001:

- "Professional guardian" and "professional conservator" terms are created in the statute. They are defined as persons who provide guardianship/conservatorship services for a fee. MCLA 700.1106(q) and (r) deletes the requirement that only non-profit corporations incorporated under the Non-Profit Incorporation Act may be appointed as guardian/conservator. MCLA 700.5106(1).
- Requires that professional guardians establish and maintain a schedule of visitations with no more than three-month intervals between visits. MCLA 700.5106(5).
- Requires that a professional guardian ensure that there are "sufficient numbers of employees assigned to the care of the ward for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided." MCLA 700.5106(6).

3) Visitation With Ward - 2000 PA 467 Effective June 1, 2001:

- Mandates that a guardian of a legally incapacitated individual shall consult with the ward prior to making major decisions. MCLA 700.5314.
- Also requires that a legally incapacitated person's guardian shall visit with no longer than three-month intervals between visits. MCLA 700.5314(a).

Next month I will continue to go over some of the key points of the guardianship reform legislation for your information. Stay tuned!