



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: March 14, 2019

TO: Probate Judges
Circuit Judges
Probate Registers
Court Administrators

FROM: Robin Eagleson, Management Analyst

RE: 2018 Mental Health Code and EPIC Revisions Regarding Legally Incapacitated Individuals

Effective March 28, 2019, [Public Act 594 of 2018](#) and [Public Act 595 of 2018](#) amend the Estates and Protected Individuals Code (EPIC) and the Mental Health Code (MHC) to provide authority to guardians of legally incapacitated individuals to obtain mental health treatment for the ward. Highlights of the legislative amendments are as follows:

Estates and Protected Individuals Code (EPIC):

Powers and Duties of Guardian¹: The powers and duties of the guardian have been amended as follows:

- Allow for a guardian to consent to formal voluntary mental health treatment.
- A guardian does not have and shall not exercise the power to give consent or to approve inpatient hospitalization unless the court expressly grants the power in its order. If the ward objects or actively refuses the mental health treatment the guardian consented or approved, the guardian must file a petition under chapter 4 of the Mental Health Code to initiate involuntary mental health proceedings.
- The provision also references the user to the term “involuntary mental health treatment” as defined in the Mental Health Code.

¹ MCL 700.5314(c)

- A guardian has the authority to execute, reaffirm, and revoke a non-opioid directive form on behalf of a ward.²
- The provision was also amended to add that the execution of a non-opioid directive form does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.¹
- Adds to the guardian's annual reporting duties to report on mental health treatment that was received by the ward and report to the court whether the guardian has executed, reaffirmed, or revoked a non-opioid directive form on behalf of the ward in the past year.³

Mental Health Code (MHC):

- The statute was amended to provide a full or limited guardian the authority consent to mental health treatment or a patient advocate authorized by the individual to make mental health treatment decisions under EPIC.⁴
- Deletes the requirement of an application and allows the individual receiving treatment to execute a written consent for formal voluntary mental health treatment.⁵
- Allows for the full or limited guardian to execute a written consent to mental health treatment for the ward for formal voluntary mental health treatment.⁶
- The patient must be informed of their rights upon commencement of mental health treatment, including but not limited to, the right to object. The patient and the individual who executed the written consent must be provided the rights orally. Then the patient, the person who executed the consent, and one other individual indicated by the patient must receive copies of the written consent.⁷

For any questions, please contact me at trialcourtservices@courts.mi.gov or 517-373-5542.

² MCL 700.5314(f)

³ MCL 700.5314(j)(v) and (vii)

⁴ MCL 330.1100a; Chapter 4 of the Mental Health Code, MCL 330.1400-330.1497.

⁵ MCL 330.1415

⁶ *Id.*

⁷ MCL 330.1416