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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 293

Sponsor: Senator Frederick Dillingham

Committee: Human Resources and Senior Citizens

Date Completed: 4-18-89

SUMMARY OF SENATE BILL 293 as introduced 4-11-89:

The bill would add a new section to the Revised Probate Code to regulate a power of attorney that confers authority to make care, custody, and medical treatment decisions for the principal.

Further, the bill would amend the Code's current durable power of attorney section to provide that it would apply only to matters having to do with the estate or financial affairs of the principal (the person granting the power of attorney). In addition, the bill would make specific provision for the revocation of a power of attorney and would specify fiduciary duties for someone designated as an attorney in fact (granted a power of attorney) under this section. The bill would repeal a section saying that other powers of attorney are not revoked until the attorney in fact is notified of the death, disability, or incompetence of the principal. A more detailed description of the proposed section follows.

Designation of a Patient Advocate

An adult of sound mind could designate in writing any other adult, to be known as the patient advocate, to make care, custody, and medical treatment decisions for the person who made the designation. A designation would have to be signed by two witnesses, neither of whom could be the patient's spouse, immediate family member, heir, devisee, physician, or patient advocate, or an employee of an entity providing health care or health or life insurance to the patient. The witnesses would have to attest that the patient appeared to be of sound mind and under no duress, fraud, or undue influence. A designation could include a statement of the patient's desires on medical treatment, and could authorize the patient advocate to exercise one or more powers concerning the patient's medical treatment, care, and custody that the patient could have exercised on his or her own behalf. The designation and its acceptance by the proposed patient advocate would have to be filed with the probate court, which would immediately notify the patient and the patient advocate of various rights and responsibilities as prescribed by the bill. The designation would be made a part of the patient's health record.

A designation executed before the bill took effect would be valid but subject to the bill's provisions.

S.B. 239 (4-18-89)

Duties of a Patient Advocate

A patient advocate would have to act as a fiduciary in exercising his or her powers and observe the standards of care applicable to fiduciaries. He or she would have to take reasonable steps to follow the desires, instructions, or guidelines--whether oral or written--given by the patient/while he or she was able to participate in treatment decisions. A patient advocate could not delegate his or her powers to another individual without prior authorization from the patient.

Exercise of Authority

The authority under the designation could be exercised only during a period when the patient was unable to participate in medical treatment decisions. The patient's attending physician and another physician or licensed psychologist would have to make the determination that a patient was no longer able to participate in medical treatment decisions and would review this determination annually. A patient whose religious beliefs prohibited the necessary examination would indicate in the designation how the determination was to be made.

Revocation of a Designation

A patient could revoke a designation at any time and in any manner by which he or she was able to communicate that desire. If the revocation were not in writing, a witness would have to sign a written description of the circumstances of the revocation and notify the patient advocate if possible. (A revocation would be made a part of the patient's health records, and the physician or health facility would notify the patient advocate.)

The patient advocate could revoke his or her acceptance to the designation at any time and in any manner sufficient to communicate an intent to revoke.

Disputes

Disputes over whether a patient was unable to participate in a medical treatment decision or whether a patient advocate was failing to comply with the patient's desires or the bill would be resolved by the probate court.

Health Care Provider Responsibilities

A person providing or withholding treatment due to the decision of someone reasonably believed to be a patient advocate would be liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf. A care provider would not be bound by the instructions of a patient advocate who did not comply with the bill. A health care provider could not require a designation to be executed as a condition of medical treatment.

Marital Status

A designation executed before a patient's marriage would terminate upon the patient's marriage. A designation executed during marriage and naming the spouse as the patient advocate would terminate upon divorce unless the patient had executed a separate written designation naming a successor individual to serve as patient advocate.

Unborn Children

If a patient were pregnant, a patient advocate's decision to withhold or withdraw medical treatment would first have to be reviewed by the probate court if that decision would be detrimental to the embryo or fetus. The court would have to appoint a guardian ad litem to represent the best interests of the embryo or fetus, which would include its survival.

The bill would specifically prohibit patient advocates from making the decision to withhold or withdraw treatment for a patient who was the biological father of an unborn child without the approval of the probate court.

Deprivation of Nutrition

Patient advocates would be prohibited from exercising medical treatment decisions that would deprive the patient of nutrition and hydration if the purpose were to hasten the patient's death.

Insurance Matters

A life or health insurer would be prohibited from doing any of the following because of the implementation or refusal to implement a designation: refuse or limit coverage, charge a different rate, consider the terms of an existing policy to have been breached or modified, or invoke a suicide exclusion in a policy covering the patient.

Suicide, Homicide

The bill states that a designation executed under it could not condone, allow, permit, authorize, or approve suicide or homicide.

MCL 700.495 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have no fiscal impact on the State. Costs to local units of government would be due to the Probate court's increased workload and administrative duties.

These costs to local courts would result from new filing and notification requirements, appointment of guardians ad litem, and hearings to be conducted if certain circumstances outlined under this bill arose.

Fiscal Analyst: F. Sanchez

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.