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**BILL ANALYSIS**

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Senate Bill 980 (as introduced 4-24-96)  
Sponsor: Senator Dale L. Shugars  
Committee: Families, Mental Health and Human Services

Date Completed: 5-8-96

**CONTENT**

The bill would create the “Michigan Dignified Death Act” to provide for the rights of patients and patient advocates to direct medical treatment; to require that certain information be given in order for a medical treatment decision to qualify as informed; to provide immunity for health care professionals and health facilities and agencies that complied in good faith with patient requests concerning medical treatment; to specify criminal penalties for knowingly causing a patient or his or her advocate to make a medical decision that would harm the patient; and to prohibit certain conduct by life and health insurers and benefits plans.

The bill contains the following legislative findings:

- “That communication between health care providers and patients and patients’ families is an essential ingredient to medical treatment.”
- “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 severe illness, and provide needed guidance to health care providers in determining the appropriate variety and degree of medical intervention to be used in a given case.”
- “That communication among health care providers, patients, and patients’ families is the foundation of the legal doctrine of informed consent whereby patients ultimately choose the nature and extent of medical care they will receive as a knowing partner, rather than a passive recipient, of the healing process.”

Further, the bill provides that:

In affirmation of the tradition in this state recognizing the integrity of patients undergoing medical treatment and their families, 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 the common law, but is intended to be read in conjunction with the common law. This act is intended to state plainly the right of patients receiving health care, and of surrogates acting on their behalf, to make informed decisions to receive, continue, discontinue, or refuse medical treatment. It is hoped that by doing so, the legislature will encourage the clear understanding of the rights

patients receiving health care enjoy in choosing medical treatment, and that the legislature will cooperate with the health professions to insure the good health of the people of the state of Michigan.

The bill states that a patient, or a patient advocate acting on behalf of the patient in accordance with the Revised Probate Code, would have the right to make an informed decision regarding the receipt, continuation, discontinuation, and refusal of medical treatment. "Patient" would mean an individual who was under the care of a health care professional or a health facility or agency, but would not include an individual who was less than 18 years of age. "Patient advocate" would mean that term as defined in the Revised Probate Code, which specifies that "...a person who is named in a designation to exercise powers concerning care, custody, and medical treatment decisions shall be known as a patient advocate". "Medical treatment" would mean a treatment, procedure, medication, surgery, or diagnostic test that could be provided by a health care professional or a health facility or agency under generally accepted standards of medical practice and that was not prohibited by law.

The bill specifies that a decision to receive, continue, refuse, or discontinue medical treatment would be informed only if the patient or patient advocate first had been offered, and either had accepted or refused, all of the following information:

- A diagnosis or, if a diagnosis were not possible, a description of the patient's medical condition for which medical treatment was being prescribed.
- An explanation of the various medical treatment options available to the patient and a prognosis of outcome for each medical treatment option, including medical treatments that might not be reimbursed by the patient's health care payment or benefits plan.
- A prognosis, if one or more of the medical treatment options presented were refused by the patient or by his or her patient advocate.

The information required by the bill would be in addition to, and would not modify, the information required under sections of the Public Health Code that pertain to HIV testing (MCL 333.5133 and 333.9123), breast cancer treatment (MCL 333.17013), and abortion (MCL 333.17015).

A licensed or registered health care professional or a licensed health facility or agency that complied in good faith with the request of a patient or a patient advocate to withhold or discontinue medical treatment in accordance with the bill would not be criminally or civilly liable for the effects on the patient's life or health resulting from the withholding or discontinuing of the medical treatment.

If a person who had an interest in a patient's well-being had reason to believe that the patient either was unable to make a medical treatment decision or was making a medical treatment decision as a result of fraud or duress, the person could file a petition with the probate court in the county where the patient resided or was found requesting the probate court's determination as to the patient's ability to make freely an informed medical treatment decision. This provision would be in addition to, and would not modify, the ability of the probate court to determine a patient's ability to participate in medical treatment decisions or to determine whether a patient advocate was acting in the best interest of the patient under the Revised Probate Code.

A person who knowingly caused or attempted to cause, by fraud or duress, a patient or a patient advocate to make a medical treatment decision refusing or discontinuing medical treatment with the intent to harm the patient or endanger the patient's life, would be guilty of a felony punishable by up to four years in prison, a fine of up to \$2,000, or both. Intentionally withholding information

from a patient about the patient's diagnosis, medical treatment options, or prognosis would constitute fraud, unless the information were withheld because the patient's attending physician determined that giving the patient such information was medically contraindicated as documented by the attending physician in the patient's medical record.

A life insurer, a health insurer, or a health care payment or benefits plan could not do any of the following because a patient had made a decision to refuse or discontinue a medical treatment:

- Refuse to provide or continue coverage or benefits to the patient.
- Limit the amount of coverage or benefits available to a patient.
- Charge the patient a different rate.
- Consider the terms of an existing policy, certificate, or contract to have been breached or modified.
- Invoke a suicide or intentional death exemption or exclusion in a policy, certificate, or contract covering the patient.

The bill specifies that it would not:

- Impair or supersede a legal right that a parent, a patient advocate, a guardian, or any other individual could have to consent to or refuse medical treatment on behalf of another.
- Create a presumption about a patient's desire to receive or refuse medical treatment, regardless of the ability of the patient to participate in medical treatment decisions.
- Limit the ability of a court making a determination about a patient's medical treatment decisions to consider the following State interests: the preservation of life, the prevention of suicide, the protection of innocent third parties, and the preservation of the integrity of the medical profession.
- Authorize suicide, assisted suicide, mercy killing, or euthanasia.

Legislative Analyst: L. Burghardt

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. The new felony created in the bill could result in increased costs for arresting, prosecuting, and sanctioning violators. While there are no data currently available on the number of individuals who might violate the bill's provisions, the number is not expected to be significant.

Fiscal Analyst: M. Hansen

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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.