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BILL ANALYSIS

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Senate Bill 1102 (as enrolled) **PUBLIC ACT 594 of 1996**
Sponsor: Senator Dale L. Shugars
Senate Committee: Families, Mental Health and Human Services
House Committee: Health Policy

Date Completed: 2-20-97

CONTENT

The bill creates the "Michigan Dignified Death Act" within the Public Health Code to require that physicians inform terminally ill patients of alternative medical treatments, including palliative care or hospice care, and their rights to designate a patient advocate and to make an informed decision concerning medical treatment; require the Department of Community Health to publish a written summary of required information; provide for civil and administrative immunity for physicians, under certain circumstances; and prohibit certain conduct by life and health insurers and benefits plans. (The bill will take effect on March 31, 1997.)

The bill contains the following legislative findings:

-- "That patients face a unique set of circumstances and decisions once they have been diagnosed as having a terminal illness."
-- "That published studies indicate that terminally ill patients fear that in end-of-life situations they could receive unwanted aggressive medical treatment."
-- "That terminally ill patients are often unaware of their legal rights, particularly with regard to controlling end-of-life decisions."
-- "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 terminal illness, and provide needed guidance to all involved in determining the appropriate variety and degree of medical intervention to be used."

Further, the bill provides that: "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 law. This act is intended to increase terminally ill patients' awareness of their right 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 terminally ill patients and health care providers to ensure that a terminally ill patient's final days are meaningful and dignified."

The bill defines "patient" as an individual who is under the care of a physician. "Patient advocate" means 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" means a treatment including, but not limited to, palliative care treatment, or a procedure, medication, surgery, diagnostic test, or hospice 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. "Physician" refers to an individual licensed to practice medicine or osteopathic medicine and surgery. "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. "Terminal illness" means a disease or condition due to which, in a physician's opinion, a patient's death is anticipated within six months after the date of the physician's opinion.

Under the bill, a physician who is recommending medical treatment for terminal illness to a patient who has been diagnosed as having a terminal illness must 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 about the recommended medical treatment for the terminal illness and about the alternatives to the recommended medical treatment for the terminal illness. The physician also must 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 and the procedures involved in the recommended and each alternative medical treatment. These requirements do not limit or modify the information concerning HIV testing and breast cancer treatment that physicians are required to provide to patients. The bill specifies that the physician's duty to inform a patient, patient surrogate, or patient advocate does not require disclosure of information beyond that required by the applicable standard of practice.

In addition to these disclosure requirements, beginning 120 days after the effective date of the bill, a physician who is recommending medical treatment for terminal illness to a patient who has been diagnosed as having a terminal illness must inform the patient, the patient's patient surrogate, or the patient advocate, orally and in writing, of all of the following:

-- 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 if he or she is not able to participate in his or her medical treatment decisions because of his or her medical condition.
-- That the patient, the patient's patient surrogate, or the 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 terminal illness.
-- That the patient, the patient's patient surrogate, or the patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

If a disciplinary subcommittee finds that a physician has failed to disclose the specified information to a patient, patient advocate, or patient surrogate, the subcommittee must impose a reprimand and a fine.

The bill requires the Department of Community Health to develop and publish a standardized, written summary containing all of the additional required information within 60 days after the bill's effective date. The summary must be developed in consultation with appropriate professional and other organizations and be drafted in nontechnical terms that a patient, patient surrogate, or patient advocate can easily understand. Further, the Department must make the summary available to physicians through the Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery. The boards must provide to each physician subject to the bill written notification of the requirements of the bill and the availability of the summary within 10 days after it is published. If a physician gives a copy of the summary to a terminally ill patient, the patient's patient surrogate, or the patient advocate, the physician will be in full compliance with the additional disclosure requirement.

A physician may make available to a terminally ill patient, or to the patient's patient surrogate or patient advocate a form indicating that the patient, patient surrogate, or patient advocate has been given a copy of the standardized, written summary and has received the oral information. If a physician makes such a form available, he or she must request the recipient to sign it, and must place a copy of the signed form in the patient's medical record. A patient, a patient surrogate, or a patient advocate who signs a form is barred from subsequently bringing a civil or administrative action against the physician providing the information orally and in writing based on failure to obtain informed consent.

If a physician, as part of a medical treatment plan for a terminally ill patient, prescribes for the patient a controlled substance that is a narcotic drug included in Schedules 2 to 5 under Part 72 of the Public Health Code, the physician will be 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 a terminal illness or

alleviate the patient's pain, or both, and all of the following are met:

-- The prescription is for a legitimate legal and professionally recognized therapeutic purpose.
-- Prescribing the controlled substance is within the physician's scope of practice.
-- The physician holds a valid license under Article 7 of the Public Health Code to prescribe controlled substances.

A life insurer, a health insurer, or a health care payment or benefits plan may not do any of the following because a terminally ill patient, his or her surrogate, or his or her patient advocate has made a decision to refuse or discontinue a medical treatment as a result of information received under the bill:

-- Refuse to provide or continue coverage or benefits to the terminally ill patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
-- Limit the amount of coverage or benefits available to a terminally ill patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.
-- Charge the terminally ill patient a different rate for coverage or benefits under an existing policy, certificate, or contract.
-- 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 terminally ill patient.

The bill specifies that it does not:

-- Impair or supersede a legal right that a parent, a patient, an advocate, a legal guardian, or any other individual may have to consent to or refuse medical treatment on behalf of another.
-- Create a presumption about a terminally ill 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 terminally ill patient's medical treatment decisions to consider all of 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.
-- Condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

The bill prohibits an individual from causing or attempting to cause a patient, patient surrogate, or patient advocate, by fraud or coercion, 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. "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 or is intended to deceive another so that he or she acts upon it to his or her legal injury. A violation of this prohibition is a felony, punishable by imprisonment for up to four years, a fine of up to $2,000, or both.

MCL 333.5651 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill requires the Department of Consumer and Industry Services to make the required written summary available to all physicians through their licensing boards. It is estimated that meeting this requirement might cost the Department as much as $10,000 for postage.

Additionally, the Department will be responsible for investigating any complaints of health providers who violate the bill. Although it is difficult to predict the actual number of complaints that may be filed, the Department estimates that an investigation of this type costs an average of $5,000 and can cost as much as $20,000 depending on the extent of the investigation.

There will be no fiscal impact on the Department of Community Health.

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