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BILL ANALYSIS

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Senate Bill 1102 (Substitute S-1)
Sponsor: Senator Dale L. Shugars
Committee: Families, Mental Health and Human Services

Date Completed: 9-26-96

CONTENT

The bill would amend the Public Health Code to add Part 56A, to be known as the "Michigan Dignified Death Act", which would require that physicians inform terminally ill patients of alternative medical treatments, palliative care services, and their rights to designate a patient advocate, to have a court-appointed guardian, and to make an informed decision concerning medical treatment; require physicians to inform terminally ill patients that neither they nor any other individuals may assist a patient in committing suicide; require the Department of Community Health to publish a written summary of required information; and prohibit certain conduct by life and health insurers and benefits plans.

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, but is intended to be read in conjunction with the common 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.

"Patient" would mean an individual who was under the care of a physician. "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 including, but not limited to, palliative care treatment, or a procedure, medication, surgery, or diagnostic test that could be ordered, provided, or withheld or withdrawn by a health professional or a health facility under generally accepted standards of medical practice and that was not prohibited by law. "Physician" would refer to an individual licensed to practice medicine or osteopathic medicine and surgery. "Patient surrogate" would mean the parent or legal guardian of a patient who was a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who had a condition other than minority that prevented the patient from giving consent to medical treatment. "Terminal illness" would mean a disease or condition due to which, in a physician's opinion, a patient's death was anticipated within six months after the date of the physician's opinion.

The bill would require a physician who was recommending medical treatment for terminal illness to a patient who had been diagnosed as having a terminal illness to inform orally the patient, the patient's patient surrogate, or, if the patient had designated a patient advocate and were 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 would have to 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. The information required would 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 would not require disclosure of information beyond that required by the applicable standard of practice and beyond what a reasonably well qualified licensed physician would disclose.

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

-- If the patient had not designated a patient advocate, that the patient had a right to designate a patient advocate to make medical treatment decisions for the patient if he or she were 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, had the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's terminal illness.
-- That under Michigan law, the physician, another health professional, or any other individual could not assist the patient in committing suicide.
-- That the patient, the patient's patient surrogate, or the patient advocate, acting on behalf of the patient, could choose palliative care treatment including, but not limited to, pain management and hospice care.

If a disciplinary subcommittee found that a physician had failed to disclose the specified information to a patient, patient advocate, or patient's surrogate, the subcommittee would have to impose a reprimand and a fine.

The bill would require 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 effective date of the bill. The summary would have to be developed in consultation with appropriate professional and other organizations and would have to be drafted in nontechnical terms that a patient, patient surrogate, or patient advocate could easily understand. Further, the Department would have to make the summary available to physicians through the Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery. The boards would have to 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 the summary was published. If a physician gave a copy of the summary to a terminally ill patient, the patient's patient surrogate, or the patient advocate, he or she would be in full compliance with the additional disclosure requirement.

A physician could make available to a terminally ill patient, the patient's patient surrogate, or a patient advocate a form indicating that the patient, patient surrogate, or patient advocate had been given a copy of the standardized, written summary and had received the oral information. If a physician made such a form available, he or she would have to request the recipient to sign it, and would have to place a copy of the signed form in the patient's medical record. A patient, a patient surrogate, or a patient advocate who signed a form would be barred from subsequently bringing a civil action against the physician providing the information contained in the standardized, written summary based on failure to obtain informed consent, but only in regard to the information contained in the summary.

If a physician, as part of a medical treatment plan for a terminally ill patient, prescribed for the patient a controlled substance that was a narcotic drug included in Schedules 2 to 5 under Part 72 of the Public Health Code, the physician would be immune from administrative, civil, and criminal liability based on prescribing the controlled substance if all of the following were met:

-- The prescription was for a legitimate and professionally recognized therapeutic purpose.
-- The prescription conformed to the applicable standard of practice.
-- Prescribing the controlled substance was within the physician's scope of practice.
-- The physician held 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 could not do any of the following because a terminally ill patient, his or her surrogate, or his or her patient advocate had 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.
-- Limit the amount of coverage or benefits available to a terminally ill patient.
-- Charge the terminally ill 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 terminally ill patient.

The bill specifies that it would not:

-- Impair or supersede a legal right that a parent, a patient, an advocate, a legal guardian, or any other individual could 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, allow, permit, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

The bill would prohibit 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 was not in the best interests of the patient with the intent to benefit from the outcome of the medical treatment decision. A violation of this prohibition would be a felony, punishable by imprisonment for up to four years, a fine of up to $2,000, or both.

MCL 333.16221 et al. Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would require 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 could cost the Department as much as $10,000 for postage.

Additionally, the Department would be responsible for investigating any complaints of health providers who violated the bill. Although it is difficult to predict the actual number of complaints that could 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 would be no fiscal impact on the Department of Community Health.

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