House
Legislative
Analysis
Section

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END OF LIFE CARE

Senate Bill 826 as passed by the Senate
Sponsor: Sen. Bev Hammerstrom

Senate Bill 827 as passed by the Senate
Sponsor: Sen. Dale L. Shugars

Senate Bill 828 as passed by the Senate
Sponsor: Sen. Alan Sanborn

House Committee: Health Policy
Senate Committee: Health Policy
First Analysis (12-12-01)

THE APPARENT PROBLEM:

The Michigan Commission on End of Life Care was formed under Executive Order 1999-4 to examine state policies on pain management and care of the dying. The governor charged the commission with recommending methods to remove barriers to pain management and increasing public awareness of, and access to, end-of-life care. In August 2001, the commission released its findings in a report to the governor. Among other things, the commission reported that: (1) the management of patient pain and symptoms is inadequate in the state; (2) state residents have insufficient information about, and do not exercise, available decision-making tools; and (3) state residents lack awareness about certain options for treatment, especially hospice and palliative care, and thus underutilize available services.

As partial responses to the first two findings, the commission recommended specifically that: (1) "the legislature amend all statutes to eliminate the use of the term 'intractable pain' or amend it to read 'pain' as appropriate"; and (2) driver's licenses and other identification cards "clearly denote when a person has executed a do-not-resuscitate order and whether a person has an advance directive (and where it can be found)". Legislation has been introduced that would enact these two specific recommendations as well as require a nursing home to notify prospective patients of the availability or lack of availability of hospice care on its premises.

THE CONTENT OF THE BILLS:

Senate Bills 826 – 828 deal with end-of-life care issues generally and are similar to House Bills 5256, 5260, and 5266, as passed by the House earlier this year.

Senate Bill 826. Part 217 of the Public Health Code provides for the licensing and regulation of nursing homes. Among other things, the code requires a nursing home to execute a written contract with an applicant or patient at the time an individual is admitted to a nursing home and at the expiration of the term of a previous contract. Alternatively, a nursing home may execute a written contract with the applicant's or the patient's guardian or legal representative who is authorized by law to have access to those portions of the patient's or applicant's income or assets available to pay for nursing home care. Senate Bill 826 would amend this part of the code (MCL 333.21766) to add a requirement that a nursing home notify applicants or patients of the availability of hospice care in the nursing home before executing the written contract. The bill would take effect on July 1, 2002.

Specifically, the bill would require that the nursing home provide written notification to a patient or applicant or his or her guardian or legal representative of the availability or lack of availability of hospice care in the nursing home. The written notice would have to be provided in a specific paragraph located in the written contract, and that paragraph would have to be signed or initialed by the applicant, patient, guardian, or representative before the execution of the written contract.

Currently, the written contract must specify the term of the contract and the services, and charges for services, to be provided under the contract, among other things. The bill would state that the contract's specification of services (and charges for services) to be provided under the contract had to indicate the availability of hospice or other special care.

"Hospice" would mean "a health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis."

Senate Bill 827. Article 7 of the Public Health Code regulates controlled substances and, among other things, provides for an "official prescription form program," commonly referred to as the "OPP." Senate Bill 827 would amend the Public Health Code (MCL 333.7401, 333.7403, 333.7407, and 333.7521) to eliminate various references to the official prescription form, the OPP and androgenic anabolic steroids in Article 7. Senate Bill 827 is tie-barred to House Bills 5260 - 5262, which would eliminate the OPP altogether and would require the establishment of an electronic monitoring system for dispensed controlled substances.

More specifically, the bill would amend the Public Health Code to remove criminal penalties regarding the creation, delivery, or possession of an official prescription form. Currently the code provides that a person who manufactures, creates, delivers, or possesses with intent to manufacture, create, or deliver an official prescription form, or counterfeit official prescription form, is guilty of a felony punishable by imprisonment for up to 20 years, a fine of up to $25,000, or both. The bill would delete this provision, but retain a provision that makes it a felony, punishable by up to seven years' imprisonment, up to a $5,000 fine, or both, to manufacture, create, or deliver (or possess with intent to manufacture, create, or deliver) a prescription form or counterfeit prescription form.

Further, the code provides that a person who knowingly or intentionally possesses an official prescription form (unless obtained in a valid manner from a practitioner) is guilty of a felony punishable by imprisonment for up to one year, a fine of up to $2,000, or both. The bill would delete this provision, but retain a provision that makes it a misdemeanor, punishable by imprisonment for up to one year, a fine of up to $1,000, or both, to possess a prescription form knowingly or intentionally (unless it was validly obtained).

Part 177 of the Public Health Code, which deals with pharmacy practice and drug control, declares that the use, possession or delivery of androgenic anabolic steroids and counterfeit androgenic anabolic steroids is illegal and provides for various sanctions for violations. Article 7 also contains various references specific to androgenic anabolic steroids. The bill would repeal the relevant section of Part 177, as of the bill's effective date, and eliminate Article 7's references to androgenic anabolic steroids.

The bill's changes—except for the repeal—would take effect when the department promulgated the rules for the electronic monitoring system *and* the secretary of state received written notice from the director of CIS that the system was operational. The notice to the secretary of state would have to include a statement that CIS was able to receive data from at least 80 percent of those required to report and was able to respond to requests for data from persons authorized to make such requests and to review and utilize the data.

Senate Bill 828. Public Act 222 of 1972 allows an individual who does not have a valid operator's or chauffeur's license to apply for a state personal identification card, whose form is prescribed by the secretary of state. Currently, the act specifies that an applicant must pay the secretary of state a $6 fee for each original or renewal state identification card plus a $1 service fee. However, the $1 service fee is scheduled to be eliminated on January 1, 2002.

Senate Bill 828 would amend the law (MCL 28.292) to require that the secretary of state designate a space on the card where the applicant could place a sticker or decal of a uniform size—determined by the secretary of state—to indicate that the cardholder carried a *separate* emergency medical information card. The sticker or decal could also be used to indicate that the cardholder had designated one or more patient advocates, in accordance with the Estates and Protected Individuals Code. Any person, hospital, school, medical group, or association interested in assisting in implementing the emergency medical information card could provide the sticker or decal, but the sticker or decal would have to meet the secretary of state's specifications. The (separate) emergency medical information card could contain certain information pertinent to the cardholder's indication of willingness to have his or her name placed on the organ donor registry as well as information concerning his or her patient advocate designation. It could also contain other emergency medical information or an indication as to where the cardholder had stored or registered emergency medical information. The bill would also eliminate the January 1, 2002 "sunset date" for the $1 service fee for the state identification card; thus, the $1 itself would become a permanent addition to the $6 fee for the original or renewal card.

BACKGROUND INFORMATION:

Senate Bill 826 is almost identical to the House-passed version of House Bill 5256. House Bill 5256, however, would require that the written (nursing home) contract specify the ability of the patient or the patient's guardian or legal representative to void the contract under specific circumstances. (As introduced House Bill 5256 would have specified that a patient, or the patient's guardian or representative, could render a nursing home contract void if the nursing home failed to provide written notification of the availability or lack of availability of hospice care.)

Senate Bill 827 would amend several sections of the Public Health Code that would be amended by House Bill 5260, as passed by the House. The changes proposed in Senate Bill 827 are identical to the changes proposed in the relevant sections of House Bill 5260.

Senate Bill 828 would make changes identical to the changes proposed in House Bill 5266, as passed by the House.

For more detail on the background of these bills see the House Legislative Analysis Section's analysis of House Bills 5148 and 5255-5266, dated 11-16-01.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that Senate Bills 826 and 827 would have no fiscal impact on the state or on local units of government. (12-11-01)

According to the Senate Fiscal Agency, Senate Bill 826 would have no fiscal impact on state or local government. (11-29-01)

The Senate Fiscal Agency reports that the Department of Corrections (DOC) Statistical Report, in both 1998 and 1999, states that only one offender was convicted of violating or attempting to violate MCL 333.7401 with regard to manufacturing, creating, delivering (or possessing with the intent to manufacture, create, or deliver) an official prescription form. If one assumes that as in previous years, one offender would commit this offense but instead would be convicted for violating this section without the distinction of an "official" prescription form, and would receive the maximum sentence, which would be seven years rather than 20, then the state would save $286,000. The maximum penal fine also would be $5,000, instead of $25,000, which would decrease the amount of funds available for libraries. The DOC Statistical Report also says that no offenders in 1998 and 1999 were convicted for violating MCL 333.7403 with regard to possessing either an official prescription form or a prescription form. The bill would eliminate the distinction between the two offenses, leaving a single offense punishable as a misdemeanor with a maximum fine of $1,000, which would shift the responsibility for incarceration and probation costs from the state to local units of government and decrease the amount of funds for libraries. (11-30-01)

According to the House Fiscal Agency, Senate Bill 828 would require a one-time reformatting of the state personal identification card, costing no more than $10,000. By continuing to charge the $1.00 service fee, the bill would result in an increase in state revenues of approximately $250,000 annually, though the fiscal year 2002 increase would only be approximately $187,500. (12-11-01)

ARGUMENTS:

For:

Senate Bill 826 would require nursing homes to notify prospective patients of the availability of hospice care at the nursing home. Nursing homes have an obligation to keep patients—whether present or prospective—apprised of end of life care issues and options. Many patients who are nearing the end of the life do not take advantage of hospice care early enough for such care to make a significant difference in their "quality of life." Part of the problem arises from the fact that Medicare patients, for instance, are only eligible for hospice care coverage if they are certified as terminally ill and as having a life expectancy of less than six months, and doctors may be hesitant to diagnose a patient as having such a short life expectancy. (Blue Cross and Blue Shield of Michigan and Medicaid have similar time specifications, though they allow for extensions.) Still, a major problem is that patients simply do not know enough about hospice care. People entering nursing homes should be encouraged to become more knowledgeable about end of life care options and issues, and the availability of hospice care could be a significant factor in a patient's decision about whether to enter a specific nursing home. Also, a patient who knows that hospice care is an available option and a doctor who knows that a patient knows about hospice care may find it easier to broach the subject of end of life care issues.

Response:

It is extremely important that nursing homes inform applicants and patients of the availability of hospice care, and in addition to encouraging thinking ahead and facilitating discussion of options, the bill should provide some strong protection for nursing home patients who are not informed that hospice care is unavailable.

For:

Senate Bill 827 reflects the elimination of the official prescription form program (OPP) proposed by House Bill 5260. For a full discussion of the arguments for and against doing so, consult the House Legislative Analysis Section's analysis of House Bills 5148 and 5255-5266, dated 11-16-01. Regarding the proposed elimination of references specific to androgenic anabolic steroids, certain anabolic steroids are now included on the list of schedule 3 drugs provided in an administrative rule, R 338.3122, promulgated by the Department of Community Health. Other anabolic steroids are excluded from schedule 3 or excluded from the schedules altogether, as set forth in the rule. The bill would allow the department the flexibility to determine which substances are to be treated as controlled substances and which are not.

For:

Senate Bill 828 would authorize the application of stickers or decals to a state personal identification card to indicate that the cardholder held an emergency medical information card or had made certain provisions for end of life care. Terminating curative care for a patient is extremely difficult to justify absent a clear indication from a patient (or authorized representative) that the patient supports such action. Despite their sincere wishes to respect patients' preferences, medical personnel—particularly those providing emergency health care services—consistently report difficulty determining whether their patients have exercised certain options that would help clarify what their wishes are, where medical information and other information pertaining to their wishes can be found, and who is authorized to speak on their behalf. An advance directive, designated advocate, or do-not-resuscitate order is only effective if it is readily accessible. A state personal ID card is a logical place for an individual to be allowed to indicate that he or she holds an emergency medical information card or has made certain other provisions for the end of life. Just giving people the option to do so could encourage them to think about such issues. Moreover, medical personnel would know that the ID card could provide such information and would thus look for such a card when treating an individual who is unconscious or legally incompetent. This would help ensure that a patient's wishes were followed.

Moreover, permanently adding the $1 service fee to the $6 state ID card fee would allow the secretary of state's office to cost-effectively maintain the digital ID card program. Without the additional dollar per card, the office is concerned that it would have to eliminate the use of digital photos and bar codes.

Response:

One unintended consequence of allowing people to indicate on a driver's license or a state ID card that they carried an emergency medical information card or had made certain provisions for end of life care may be that medical personnel who do not look for or find the card, for whatever reason, could be held liable for forgetting or failing to do so. While everyone agrees that it makes sense to make such information as accessible as possible, medical personnel are already under a great deal of pressure in situations where patients are unconscious or legally incompetent, and it would be wrong to contribute to this pressure.

POSITIONS:

There are no positions on the bills.

Analyst: J. Caver

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.