Senate Fiscal Agency
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SFA BILL ANALYSIS

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Senate Bill 660 (as passed by the Senate)
Senate Bill 661 (Substitute S-1 as passed by the Senate)
Senate Bill 662 (Substitute S-1 as passed by the Senate)
Senate Bill 664 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Shirley Johnson (Senate Bill 660)
Senator Mike Goschka (Senate Bill 661)
Senator Dale L. Shugars (Senate Bill 662)
Senator Bev Hammerstrom (Senate Bill 664)
Committee: Health Policy

Date Completed: 12-3-01

RATIONALE

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. Governor Engler charged the 12-member Commission with recommending methods to remove barriers to pain management, increasing citizen access to end-of-life care, and evaluating and improving end-of-life curricula for health care professionals.

In August 2001, the Commission released its findings. Included in the report was a conclusion that "the management of patient pain and symptoms is inadequate in Michigan. Michigan citizens therefore endure undue suffering, which affects their end-of-life care. The evidence supporting this consensus comes from many sources and perspectives... Michigan citizens deserve good pain management."

To target this, the Commission recommended that the term "intractable pain", which refers to pain that is difficult to assuage, be deleted or revised to "pain" in all statutes; presumably, all pain can be brought to acceptable levels with modern medicine. The Commission also recommended that the State ensure that patients are made aware of their rights to both adequate pain management and palliative and hospice care, by placing these clauses in the "patient bill of rights", which was created in 1998 under Public Act 88, and is included in the Public Health Code.

CONTENT

The bills would amend several acts to delete references to "intractable" pain and, in some cases, refer instead to pain and symptom management; and add a patient's right to adequate pain and symptom management to the patient bill of rights. Senate Bills 660 and 664 (S-1) would amend the Public Health Code, Senate Bill 661 (S-1) would amend the Nonprofit Health Care Corporation Reform Act, and Senate Bill 662 (S-1) would amend the Insurance Code.

Senate Bill 660

Under the Public Health Code, an Advisory Committee on Pain and Symptom Management is created within the Department of Community Health (DCH). The Code prescribes the membership of the committee, including several professionals with training in the treatment of intractable pain. These include a registered professional nurse, a dentist, a pharmacist, and a physician's assistant. Under the bill, these individuals would have to have training in pain and symptom management, instead of intractable pain.

The Code also requires the Department of Consumer and Industry Services, in consultation with the DCH, to develop, publish, and distribute an informational booklet on intractable pain. The bill, instead, would require a booklet on pain and symptom management.

In addition, the Code contains a number of legislative findings, including findings that the treatment of intractable pain is an appropriate issue for the Legislature to consider, and that the citizens of the State would be well served by the enactment of legislation that provides more and better information to health care consumers regarding the medical treatment of intractable pain, health care coverage and benefits for the treatment of intractable pain, and the education of health professionals in pain and symptom management. Additional findings state that the use of controlled substances is appropriate in the medical treatment of certain forms of intractable pain, and that some patients in this State with intractable pain are unable to obtain from their health care providers sufficient pain relief through the prescription of controlled substances. The bill would retain these findings but delete the term "intractable".

Further, the Code contains a legislative statement that the official prescription form program was created to prevent the abuse and diversion of Schedule 2 controlled substances and not to prevent or inhibit the legitimate, medically recognized use of those controlled substances to treat "patients with cases of intractable" pain. The bill would delete the quoted language. The Code also states that it is the intent of the Legislature to permit and facilitate adequate treatment for intractable pain by licensed health professionals. The bill would delete the term "intractable".

Senate Bills 661 (S-1) & 662 (S-1)

The Nonprofit Health Care Corporation Reform Act requires Blue Cross and Blue Shield of Michigan (BCBSM) to give subscribers a form that describes the terms and conditions of the corporation's certificate. The Insurance Code also requires health insurers to give insureds a form that describes the terms and conditions of the insurers' policies and certificates. Both forms must describe, among other things, how the covered benefits apply in the evaluation and treatment of intractable pain.

The Act and the Code also require BCBSM and health insurers to provide upon request to members or insureds under prudent purchaser agreements, the professional credentials of participating health professionals, including those who are board certified in pain medicine and the evaluation and treatment of intractable pain. The bills would delete the term "intractable" from these provisions. Further, the bills state that these proposed changes could not to be construed as creating a new mandated benefit for any coverages issued under either the Nonprofit Health Care Corporation Reform Act or the Insurance Code.

Senate Bill 664 (S-1)

The bill would amend the Public Health Code to add a provision to the patient bill of rights entitling patients or residents to adequate pain and symptom management, as a basic and essential element of their medical treatment.

Currently, all health facilities are required to post, in a public place, a policy describing the rights and responsibilities of patients or residents admitted to the health facility or agency. The rights include the right to appropriate care, regardless of race, religion, disability, etc.; the right to information about their medical condition and treatment; confidential treatment of personal and medical records; freedom from mental or physical abuse; and the right to refuse treatment, among others. In the case of a nursing home patient, these rights can be exercised by the patient's representative.

Further, the bill specifically would require the attending physician at a nursing home or home for the aged to document patient discharges and transfers. Currently, this documentation is required, but the personnel who must complete it is not specified.

MCL 333.16204a-333.16204d (S.B. 660)
550.1402a (S.B. 661)
500.2212a (S.B. 662)
333.20201 (S.B. 664)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument:
The word "intractable", as defined by the third edition of the *American College Dictionary*, means "difficult to alleviate, remedy, or cure". To many people, the word connotes a notion of agony, of a pain that will not yield, even to opiates. Studies show that patients are reluctant to catagorize their pain as

intractable. As a result, medical professionals have developed other methods to gauge pain. Asking a patient to rate his or her discomfort on a scale of 1-10, for example, provides a clearer indication of *that patient's* pain at *that moment*. Merely asking the patient if his or her pain is intractable implies that there is an objective standard for pain and that the pain must be unbearable.

Use of the term "intractable pain" can result in patients' underreporting their pain, which in turn can result in physicians' and nurses' undertreating it. With proper treatment, no pain should be intractable. Michigan statutes and the patient bill of rights should reflect this.

Opposing Argument

The Commission recommended that the term "palliative and hospice care" be placed, along with pain and symptom management, in the patient bill of rights, as the original version of Senate Bill 664 proposed to do. Omitting reference to hospice and palliative care may perpetuate societal prejudices against this essential component of end-of-life care and fail to extend adequate care to patients.

"Palliative care" means comfort care and uses treatments that reduce physical suffering. Hospice care encompasses palliative care and often includes spiritual and emotional support. Placing both terms in the patient bill of rights could change the belief that hospice care is for those who have "given up". It seems that this belief is in part responsible for the underutilization of hospice, according to the American Cancer Society. Death is a part of life, yet americans tend to deny the reality of death and attempt to fight it until the end. All people with terminal illness should have, as a basic right, access to reduced physical and emotional suffering.

Significantly, hospice care has been an entitlement for any Medicare and Medicaid patient since 1983 and 1985, respectively. This underscores the Federal government's commitment to providing adequate end-of-life care to the nation's citizens; it is time the State did the same.

Response: Including palliative and hospice care in the patient bill of rights would create a broad requirement and could pose liability problems for insurance providers and/or hospitals. If for some reason a patient were not eligible for hospice care, for example, an insurance company could be sued. Further, broad language entitling patients to hospice care could be interpreted as mandating all hospitals to provide it, which is not economically feasible for many small or rural hospitals.

Legislative Analyst: C. Layman

FISCAL IMPACT

Senate Bill 660

The bill would have no fiscal impact on State or local government.

Senate Bills 661 (S-1) & 662 (S-1)

Because the bills simply would revise the type of information that must be contained in an insurance certificate, as opposed to mandating specific services, the bills should not have any fiscal impact on State or local government.

Senate Bill 664 (S-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: D. Patterson
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