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Senate Bill 716 (as enacted)
Sponsor: Senator Tom George
Senate Committee: Health Policy
House Committee: Health Policy

PUBLIC ACT 124 of 2008

Date Completed: 4-17-09

RATIONALE

Public Act 47 of 2004 created the Medical Records Access Act to regulate a patient's access to his or her medical records. The Act allows a patient or his or her authorized representative to examine or obtain his or her medical record. In the case of a deceased person, Public Act 47 defined "authorized representative" as "his or her personal representative or his or her heirs at law or the beneficiary of his or her life insurance policy, to the extent provided by section 2157 of the revised judicature act" (RJA). That section authorizes the heirs at law or insurance policy beneficiary of a deceased patient to waive his or her physician-patient privilege in contesting his or her will or claiming the insurance benefits. (Heirs at law typically include a surviving spouse and children.)

Evidently, some health care providers found the law unclear with regard to application of Section 2157 of the RJA, and on the advice of legal counsel, denied surviving spouses or children access to the deceased's autopsy report in order to avoid violating the Medical Records Access Act or the Federal Health Insurance Portability and Accountability Act (HIPAA) (which allows state privacy protections that are more restrictive than the Federal requirements). It was suggested that terms in the definition of "authorized representative" should be subject to Section 2157 of the RJA only in the case of the beneficiary of a life insurance policy, and that certain people should be specifically allowed to obtain a copy of a deceased person's autopsy report.

CONTENT

The bill amended the Medical Records Access Act to revise provisions authorizing various individuals to examine or obtain a deceased person's medical record; and authorize certain individuals to obtain a deceased person's autopsy report.

The bill took effect on May 9, 2008.

Under the Act, except as otherwise provided by law or regulation, a patient or his or her authorized representative has the right to examine or obtain the patient's medical record. Previously, the Act defined "authorized representative" as either of the following:

- A person empowered by the patient by explicit written authorization to act on the patient's behalf to gain access to, disclose, or consent to the disclosure of the patient's medical record, in accordance with the Act.
- If the patient was deceased, his or her personal representative or his or her heirs at law or the beneficiary of his or her life insurance policy, to the extent provided by Section 2157 of the Revised Judicature Act.

(That section prohibits a physician from disclosing patient information except as otherwise provided. If a patient has died, his or her heirs at law are considered to be the deceased patient's personal representatives for the purpose of waiving the physician-patient privilege in a contest over admitting the patient's will to probate.

Additionally, if a patient has died, the beneficiary of his or her life insurance policy, or his or her heirs at law, may waive the physician-patient privilege for the purpose of providing the necessary documentation to a life insurer in examining a claim for benefits.)

Under the bill, if the patient is deceased, or for the purpose of obtaining a copy of an autopsy report regarding a deceased patient, "authorized representative" means any of the following:

- His or her personal representative.
- His or her heirs at law, including his or her spouse.
- The beneficiary of his or her life insurance policy, to the extent provided by Section 2157 of the RJA.

MCL 333.26263

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 bill clarifies who is authorized to view or obtain a copy of a medical record, including an autopsy report. Hospitals must abide by a multitude of privacy protection regulations under HIPAA, the Medical Records Access Act, and rules promulgated under those Acts. Providers face significant penalties for a violation. The various privacy regulations do not always mesh, presenting health care providers with a dilemma regarding whether the release of certain information would constitute a violation. Additionally, providers sometimes must deal with people who misrepresent themselves in order to obtain and misuse the protected information. In such situations, some providers choose to err on the side of caution in interpreting the regulations and releasing information. Unfortunately, this can contribute to the suffering of family members who simply are trying to find out what led to the death of their loved one, and can create the impression that a hospital is trying to cover up negligence or error. In addition, autopsy records may reveal an inheritable condition that could be of concern to descendants. The bill eliminated the ambiguity by specifically authorizing

health care providers to furnish appropriate access to the records covered by the Act.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

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

Fiscal Analyst: David Fosdick

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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.