Legislative Analysis

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MEDICAL GOOD-FAITH PROVISIONS ACT

Senate Bill 165 (Substitute H-2)
Sponsor: Sen. Jim Marleau
House Committee: Health Policy
Senate Committee: Health Policy

Complete to 5-21-13

A SUMMARY OF SENATE BILL 165 AS REPORTED BY COMMITTEE 5-14-13

The bill would require health facilities or agencies to provide, upon request, written information about their policies on the provision of life-sustaining treatment or nonbeneficial treatment within the institution.

Senate Bill 165 would add Part 204, entitled the Medical Good-Faith Provisions Act, to the Public Health Code (MCL 333.20401 and 333.20403). Upon a request by a patient or resident, or a prospective patient or resident, a health facility or agency would have to disclose in writing any policies related to a patient or resident or the services a patient or resident could receive involving life-sustaining treatment or nonbeneficial treatment within that facility or agency.

If the patient or resident, or prospective patient or resident, were a minor, the written policies would have to be provided to a parent or legal guardian.

Part 204 would not require a health facility or agency to establish or maintain a policy described above that is not already required by federal or state law on the bill's effective date. The bill would take effect 90 days after enactment.

FISCAL IMPACT:

The bill would have no significant impact on the Department of Licensing and Regulatory Affairs (LARA).

BRIEF DISCUSSION:

When a person enters a hospital, rehabilitation facility, or long-term care facility, it is generally expected by the patient and family that everything medically possible for the benefit of the patient will be done. However, the facility may believe that a patient may not benefit from some treatments. "Medical futility" refers to the concept that a proposed treatment or therapy should not be carried out because available data show that the treatment will not improve a patient's condition. An example could be encouraging a family to discontinue a ventilator for a loved one who is brain dead, or perhaps denying aggressive chemotherapy or hip replacement surgery for an elderly patient with advanced Alzheimer's Disease.

According to committee testimony, some families in Michigan have seen hospitals deny lifesaving medical procedures for children with significant birth defects. For example, one couple with a child with severe cognitive and physical impairments due to a rare chromosome defect experienced on several occasions medical procedures that would have improved their child's life being withheld, not mentioned, or even openly denied - some of which took place when the child was near death and needed emergency treatment. Only after several emotional confrontations did the family realize that the hospital had a policy of not treating children with their child's chromosome defect. Had the couple known sooner of the hospital's medical futility policy, they could have sought the needed treatments elsewhere and before the child had a medical crisis. Eventually they did find other facilities willing to provide the requested treatments, and today the child is said to be doing far better than many expected.

The bill would address the problem encountered by this family and others in similar situations by requiring a hospital or other health facility that had a policy about the provision of life-sustaining medical procedures, and/or procedures considered to be nonbeneficial to the patient, to provide a written copy of that policy upon request by a patient or caregiver. Currently, there is a trend within the healthcare industry to develop such policies, though the bill would not require a facility to do so. However, according to several online medical sites and recent articles in medical journals, a clear policy not only provides transparency to a patient or caregiver at the beginning of care, it also helps to preserve the patient-provider relationship. It enhances informed choice by a patient or caregiver as to which treatments may be viable and where to seek or not seek that treatment, while protecting providers from burnout and miscommunications that can result in unpleasant or highly emotional confrontations when the doctor or the facility appears to balk at the family's wishes to begin or continue a treatment the doctor or facility considers futile.

POSITIONS:

The following organizations testified or indicated support for the bill:

Right to Life of Michigan (4-30-13)
The Michigan Catholic Conference (5-14-15)
The Michigan Family Forum (4-30-13)
Michigan Consumers for Health Care (4-30-13)
International Council of Excellence (4-30-13)

The Health Care Association of Michigan is neutral on the bill. (4-30-13)

The Michigan Health & Hospital Association is neutral on the bill. (4-30-13)

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