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PATIENT ADVOCATE MAY CHOOSE HOSPICE CARE

House Bill 4358 (Substitute H-1) First Analysis (4-22-99)

Sponsor: Rep. Gerald Law
Committee: Senior Health, Security and Retirement

THE APPARENT PROBLEM:

Since 1990, Michigan law has specifically recognized the right of a person to formally designate another adult to act as a patient advocate for the person making the designation. The provisions in the statute were intended to provide an option for people to exercise so that their preferences with regard to medical decisions could be observed even if they were unable to communicate them. A patient advocate is authorized under statute to exercise powers concerning care, custody, and medical treatment decisions for the person making the designation (the "patient"). A patient advocate is required to act in the best interest of the patient. The law allows a patient advocate to make a decision to withhold or withdraw treatment that would allow the patient to die, but only if the patient had expressed in a clear and convincing manner that the patient advocate was authorized to make such a decision.

Some have noted that although the current law allows for the exercise of authority to withdraw treatment that would lead to a patient's death, it does not mention the possibility of hospice care. It is noted that many people already take advantage of hospice care, which is a type of care that places an emphasis on relieving the symptoms and effects of a terminal disease, and not on prolonging life. Such care is undertaken when acute, curative medical care can no longer offer hope of recovery. Hospice care is generally available to patients having a life expectancy of six months or less, and includes services to assist the patient's family in providing primary care.

It has been proposed that the legislature emphasize the availability of hospice care by amending the patient advocate provisions to specifically allow an advocate to place a patient in hospice care.

THE CONTENT OF THE BILL:

The bill would amend the Estates and Protected Individuals Code to modify provisions relating to the authority of a person designated as a patient advocate. The bill would provide that a patient advocate could choose to have the patient placed under hospice care. The bill would take effect April 1, 2000.

(The section of law that the bill would amend is part of a general recodification of the Revised Probate Code, Public Act 386 of 1998, which will take effect April 1, 2000. The patient advocate provisions originate from Public Act 312 of 1990, which amended the Revised Probate Code [MCL 700.496] to allow a person to designate another as a patient advocate, with authority to exercise powers concerning care, custody, and medical treatment decisions for the person making the designation.)

MCL 700.5509

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for state or local government. (4-21-99)

ARGUMENTS:

For:

The bill would specifically allow patient advocates to authorize hospice care for the person on whose behalf they are acting. Although this option is already being exercised, and the legislation may not be necessary from a legal standpoint, it would have the effect of making a statement on behalf of promoting hospice care, and could be especially effective to helping to make this option more widely known. Hospice care is

a life-affirming alternative for those faced with the difficulty of terminal illness; it provides a wide array of support services for patients and their families, and may be provided either in the patient's own home or in a free-standing, specialized facility.

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Against:

Some have expressed concern that the bill may create a conflict with another section of the patient advocate provisions, which prohibits the withdrawal of treatment for a patient who is pregnant. If hospice care is chosen, would that have the effect of leading to such a patient's death, in contradiction with the original intent of the statute?

Response:

It has been noted that the likely interpretation of the interplay of two subsections of law would lead a court to emphasize the more specific prohibition against withdrawal of treatment for a pregnant patient over the more general authorization to place a patient in hospice care. It is noted, also, that hospice care is a form of treatment, i.e., palliative care rather than curative care, and it does not mean the withdrawal of treatment.

POSITIONS:

The Michigan Hospice Organization supports the bill.
(4-21-99)

Analyst: D. Martens

■ 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.