

AUTOPSY REPORTS: ALLOW SPOUSES TO RECEIVE

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Senate Bill 716 (Substitute H-1)

Sponsor: Sen. Tom George

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (4-15-08)

BRIEF SUMMARY: The bill would revise the definition of "authorized representative" in regards to receiving autopsy reports so as to include the spouse of a deceased patient.

FISCAL IMPACT: The bill has no state or local fiscal implications.

THE APPARENT PROBLEM:

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 a written copy of the patient's medical record. In the case of a deceased person, however, an apparent ambiguity in the meaning of "authorized representative" has led some hospitals to interpret the provision in such a way as to deny a deceased patient's spouse or children access to the autopsy report, even in cases in which the spouse or child approved the request for the autopsy.

Under the statute, "authorized representative" - as it relates to a deceased person - means "his or her personal representative or his or her heirs at law [surviving spouse or children] or the beneficiary of his or her life insurance policy, to the extent provided by..." a section of the Revised Judicature Act (RJA) that 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. Apparently, some hospitals have interpreted this provision as meaning that a person appointed as a personal representative can receive a copy of the autopsy report, but that heirs at law (spouses and children) can only receive the autopsy report if the report is necessary for a will contest or if he or she is a life insurance beneficiary and the report is needed to facilitate payment of the insurance benefit. The result has been that some family members have been denied access to autopsy reports of their loved ones by some hospitals. In order to receive a written copy of the autopsy report, they have had to petition a court for appointment as an authorized representative, at a cost of several hundred dollars.

Legislation has been offered to revise the current language to clarify that spouses and children of a deceased patient may receive an autopsy report without having to be appointed by a court as a personal representative.

THE CONTENT OF THE BILL:

The bill would revise the definition of "authorized representative" contained in the Medical Records Access Act (MCL 333.26263). Currently, the act grants the right, except as otherwise provided by law or regulation, to a patient or his or her authorized representative to examine or obtain the patient's medical record. The act defines "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 is 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 were deceased, "authorized representative" would mean any of the following:

- His or her personal representative.
- His or her heirs at law, including, but not limited to, his or her spouse.
- The beneficiary of his or her life insurance policy, to the extent provided by Section 2157 of the RJA.

Also, under the bill, for the purpose of obtaining a copy of an autopsy report regarding a deceased patient, "authorized representative" would include, but not be limited to, any of the following:

- The deceased patient's heirs at law, including, but not limited to, the spouse of the deceased.
- The deceased patient's personal representative.
- The beneficiary of the deceased patient's life insurance policy, to the extent provided by Section 2157 of the RJA.

HOUSE COMMITTEE ACTION:

The substitute adopted by the committee revised the list of who would be eligible under the bill to receive a copy of the autopsy report. The Senate-passed version would have allowed the following to obtain an autopsy report:

- The deceased patient's spouse or personal representative.
- The person who consented to the autopsy pursuant to Section 2855 of the Public Health Code, or pursuant to a valid durable power of attorney issued in Michigan or another state. (Under Section 2855 of the Public Health Code, an autopsy may not be performed upon the body of a deceased individual except by a physician who has been granted written consent by the person with authority over the burial or disposition of the body under the Estates and Protected Individuals Code.)

ARGUMENTS:

For:

In at least two incidents in the bill sponsor's district, a widower was denied access to his wife's autopsy report because the hospital did not consider him an authorized representative under a provision of the Medical Records Access Act. In both cases, the men had authorized the autopsies, but were denied written copies until they hired lawyers, filed for court appointment as an authorized representative, and received that authorization - an unnecessary expenditure of time and money considering that other hospitals in the state have released autopsy reports to family members.

In defense of hospitals, the Michigan Health and Hospital Association (MHA) points out that hospitals are governed by the federal Health Insurance Portability and Accountability Act (HIPPA) in addition to the state Medical Records Access Act, both of which include provisions regarding access to autopsy reports. A facility that does not comply with either of these acts may face severe penalties for violating privacy rights. Reading together the two acts' provisions regarding the release of autopsy reports, especially with regard to the application of the Revised Judicature Act provision, has led to differing interpretations among hospitals. Further, according to the MHA, at least one state court has held that the next of kin and other heirs do not have the same rights as the personal representative to access private medical records, unless there had been prior written permission given by the patient before his or her death, or unless it was for the purpose of contesting a will or receiving insurance settlements.

The bill, therefore, would solve the dilemma faced by hospitals and families of the deceased by clarifying the circumstances under which an autopsy report could be released to surviving family members.

POSITIONS:

In a memo to members of the Senate Health Policy Committee dated 5-20-07, the Michigan Health and Hospital Association stated that it may be appropriate "to seek further clarification of state law to provide better guidance to health care providers, families, and the courts."

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