



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 716 (as reported without amendment)
Sponsor: Senator Tom George
Committee: Health Policy

(as passed by the Senate)

Date Completed: 10-17-07

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, "authorized representative" 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.

Evidently, some health care providers have found the law unclear with regard to application of the RJA, and on the advice of legal counsel, have 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 has been suggested that terms in the definition of "authorized representative" should be subject to the RJA provisions 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 would amend the Medical Records Access Act to revise provisions authorizing various individuals to examine or obtain a person's medical record; and authorize certain individuals to obtain a deceased person's autopsy report.

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. 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.
- 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 any of the following:

- The deceased patient's spouse.
- The deceased patient's 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.)

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 would clarify 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 would eliminate the ambiguity and specifically authorize health care providers to furnish appropriate access to the records covered by the Act.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would 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.