HOUSE BILL REPORT
HB 2318

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to shared decision making.

Brief Description: Concerning shared decision making.

Sponsors: Representatives Cody, Hinkle, Bailey and Jinkins.

Brief History:
Committee Activity:
Health Care & Wellness: 1/18/12, 1/26/12 [DPS].

Brief Summary of Substitute Bill

- Establishes alternative methods of certifying patient decision aids for purposes of establishing prima facie evidence of informed consent.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

Staff: Jim Morishima (786-7191).

Background:

A plaintiff can recover damages for health care in several ways, including when the injury resulted from health care to which the plaintiff did not consent. In order to prevail in an action based on lack of consent, a plaintiff must prove that:

- the provider failed to inform the patient of a material fact relating to the treatment;
- the patient consented to the treatment without being aware, or fully informed, of the material fact;
- a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of the material fact; and

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- the treatment in question proximately (i.e., foreseeably) caused injury to the patient.

In an action based on informed consent, it is prima facie evidence (evidence that will prevail unless rebutted by clear and convincing evidence) of informed consent that the patient or his or her representative signed an acknowledgement of shared decision making. The acknowledgement must include at least the following elements:

- a statement that the patient and the health care provider have engaged in shared decision making as an alternative means of meeting informed consent;
- a brief description of the services that the patient and provider have jointly agreed will be furnished;
- a statement that the patient understands the risk or seriousness of the disease or condition to be prevented or treated, the available treatment alternatives, and the risks, benefits, and uncertainties of the treatment alternatives;
- a statement certifying that the patient has had the opportunity to ask the provider questions, and to have the questions answered to the patient's satisfaction, and indicating the patient's intent to receive the services; and
- a brief description of the patient decision aid that was used by the patient and provider.

For purposes of establishing prima facie evidence of informed consent, "patient decision aid" is defined as a written, audio-visual, or online tool that provides a balanced presentation of the condition and treatment options, benefits, and harms. The patient decision aid must be certified by one or more national certifying organizations.

To date, patient decision aids are offered by a variety of organizations, including academic institutions and private companies. There are, however, no patient decision aids that have been certified by a national certifying organization.

Summary of Substitute Bill:

In order for a nationally certified patient decision aid to be used to establish prima facie evidence of informed consent, the certifying organization must be recognized by the Medical Director of the Health Care Authority (HCA).

Alternatively, a patient decision aid may be used to establish prima facie evidence of informed consent if it has been evaluated, based on the International Patient Decision Aid Standards, by an organization located in the United States or Canada and has a current overall score satisfactory to the Medical Director of the HCA. If there is no such organization in the United States or Canada, the Medical Director of the HCA may independently assess and certify the decision aid based on the International Patient Decision Aid Standards.

The HCA may charge an applicant a fee to defray the costs of the assessment and certification.

Substitute Bill Compared to Original Bill:

The substitute bill:

- requires a national certifying organization to be recognized by the Medical Director of the HCA;
- allows a patient decision aid to be used for purposes of establishing prima facie evidence of informed consent if it has been evaluated, based on the International Patient Decision Aid Standards, by an organization located in the United States or Canada and has a current overall score satisfactory to the Medical Director of the HCA;
- allows the Medical Director of the HCA to independently certify a patient decision aid only if there is no evaluating organization in the United States or Canada; and
- allows the HCA to charge a fee to defray the costs of the assessment and certification.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will encourage the use of patient decision aids.

(Opposed) None.

Persons Testifying: Amber Ulvenes, Group Health Cooperative.

Persons Signed In To Testify But Not Testifying: None.