

FINAL BILL REPORT

ESHB 2318

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Synopsis as Enacted

Brief Description: Concerning shared decision making.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Hinkle, Bailey and Jinkins).

House Committee on Health Care & Wellness
Senate Committee on Health & Long-Term Care

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
- 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

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- 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.

The International Patient Decision Aid Standards Collaboration is a group of international stakeholders convened to establish quality criteria for patient decision aids. The group's International Patient Decision Aid Standards evaluate patient decision aids based on content, development process, and effectiveness.

Summary:

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.

It is clarified that a patient decision aid may address any medical condition, including abortion.

Votes on Final Passage:

House	98	0
Senate	46	2

Effective: June 7, 2012