F I S C A L I M P A C T R E P O R T

SPONSOR: Nava DATE TYPED: 2/17/03 HB

SHORT TITLE: Amend Uniform Health Care Decisions Act SB 578

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Relates to: NMSA, 1978 §32A-6-1 through §32A-6-22; NMSA, 1978, §45–5-201 through §45-5-212; NMSA, 1978 §24-10-1; NMSA, 1978, §28-6-1; and NMSA, §12-12A-3.

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

SB 578 creates a gender-neutral voice to the Uniform Health Care Decision Act, clarifies statutory references, specifically expands who may act as surrogates and requires that surrogates make specific efforts to determine the wishes and values of the principal for whom they act. Moreover, the bill includes language to signal to a surrogate that they have the ability to consent to life-sustaining treatment, provides the principal a mechanism to voice who should evaluate them for capacity, and requires that the health care professional evaluating capacity has training and expertise in mental illness or developmental disability provided that is the basis for asserting such incapacity. Finally, the legislation changes the age of a unemanciapted minor from 15 to 18 and provides duties for a Guardian ad Litem, if appointed, for court proceeding allowed by the Uniform Health Care Decision Act.

Significant Issues

The following comments were made by DOH:

- Specific to 24-7A-2.A: The right for disabled adults/emancipated minors to make advance health-care directives is established by statute and does not require the insertion of specific language to single out the specified population. This change only reduces the clarity of rights and responsibilities given a disabled adult or emancipated minor.

- Specific to 24-7A-5.C: Guardian and advocacy organizations, in addition to individuals would be allowed to provide surrogate services.

- SB 578 revisions will support the patient and their interest and decisions regarding their healthcare. State-funded guardians (Long Term Service arena) already have full decision-making authority. Protection and Advocacy agencies typically are not most knowledgeable of the patient and therefore should not have this capability.

- SB 578 supports unemancipated minors' rights to participate in their own health care decisions, including the administration or withdrawing life-sustaining treatments. SB 578 further supports parents or guardians in having the authority to provide, withhold or withdraw life-sustaining treatment for the unemancipated minor.

- SB 578, in effect, circumvents many of the safeguards built into the probate code through its expansion of who may serve as a surrogate. It further creates provisions, which appear to be internally inconsistent, specifically its proposed amendments to 24-7A-2 (A). While the process to set up a surrogacy may be more available to people and less restrictive than a probate code guardian, there will be less protections. The current Uniform Health Care Decisions Act codified a method of practice seen over centuries. If a family member was ill and in need of assistance, and could not voice their own wishes the family was consulted as the best means of achieving care for the person. The proposed expansion allows those without blood relation or close affinity to make important health care decisions without process, clear and measurable notice to families, and court monitoring of status (like the annual report to the court in a probate code guardianship). Further, it creates potential standing for corporate and organizational groups in matters that have traditionally and appropriately been left to families and those of close affinity.

PERFORMANCE IMPLICATIONS

SB 578 will provide a mechanism to assist patients/ clients in a less restrictive manner and may make it easier for families and other entities to act on behalf of an incapacitated person. The manner by which a surrogacy is put into place is less time consuming and burdensome then probate code guardians, but as pointed out by DOH, also establishes less checks and balances into the system when allowing corporate and other organizations involvement.

In the process of attaining a probate code guardianship, there are many considerations including civil process and procedure, higher cost, longer timelines, and more difficulty in "overturning" and restoring the rights of persons, if they regain capacity, such processes can impact staff time.

ADMINISTRATIVE IMPLICATIONS

Training will be necessary to be certain staff at health care facilities and programs is aware of the proposed amendments. Forms and other documents may have to be updated.

TECHNICAL ISSUES

On page 4, line 13, there are end quotes at the end of 24-7A-2 (G); On page 12, lines 21- 25, there is the use of the word, "individual", in language added as part of the amendment and throughout the rest of the document there appears to be an effort to end the use of that word; On page 12, line 23 there is reference to a person's guardian, without clarification of what type of guardian, and if a person had a guardian there may not be a need to determine capacity, for the purposes of the Uniform Health Care Decisions Act.

OTHER SUBSTANTIVE ISSUES

The proposed expansions of who may serve as surrogate would create fewer burdens, but in turn, would allow less protection and oversight. The expansion allows for non-family members, and those without close affinity, to have the authority to make health care decisions, absent any court review. The clarification portions of SB 578, including gender neutral language, statutory references, and "language clean-up" are helpful, according to DOH, but not critical. The portion regarding the role of the GAL, is helpful. The other additions/ clarifications are useful.

The added language on page 9, line 2 that would allow parents or guardians of un-emancipated minors to provide life-sustaining treatment, shows support for families who provide most of the care for their special needs children.

SB 578 would require that the two qualified health professionals evaluate the un-emancipated minor; a recommendation by DOH is that one is credentialed to properly assess mental status and level of functioning in un-emancipated minors.

The legislation works for the interests of both patients and caregivers, as maintained by HPC, specifying in advance that care providers are not duty-bound to exhaust all resources and means of treating an individual if that individual makes it clear it is not their desire to receive such care.

AMENDMENTS

On Page 9 "24-7A-6.1 DECISIONS FOR UNEMANCIPATED MINORS, Section D, line 20, change "another qualified health care professional" to specifically identify a licensed psychiatrist or psychologist who is credentialed to properly assess mental status and level of functioning.

DOH recommends taking out the expansion language in 24-7A-2 (A) of who may serve, as it is unclear and dubious.

Add " dated and time of day of execution of the advanced directive" to page 2, line13 after the word "signed."

Change "primary caregiver" on page3, line25 to "health-care provider" as per the definitions in 24-7A1.

Add "in writing" after "informing" on page5, line 1.

Change the wording of "adult child" on page5, line 15 to mean an individual who is the child of the person, but has attained the age of majority.

Add "dated and timed" after signed on page 8,line4.

Change "primary care physician" on page9, line 19 to "health care provider."

Change "primary physician on page12, line22 to "health care provider."

BD/prr:yr