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FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 3/3/03 HB _____

SHORT TITLE: Amend Uniform Health Care Decisions Act SB 714

ANALYST: Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates 578

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 714 amends the Uniform Health Care Decision Act to clarify who may act as surrogate and agent and their duties, requires that surrogates make specific efforts to determine the wishes and values of the principal for whom they act. The bill includes language to signal to a surrogate that they have the ability to consent to life-sustaining treatment. It also provides the principal a mechanism to voice who should evaluate them for capacity, 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 bill changes the age of a unemancipated 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 already established by statute. This amendment provides special consideration for persons with mental illness, developmental disability or other long-term disability to give instructions about advanced health care directives.
- Specific to 24-7A-5.C: The amendment contained in SB 714 expands who may provide surrogate services to include state funded guardianship services, protection and advocacy services pursuant to federal law.
- SB 714 revisions will support the patient and their interest and decisions regarding their healthcare. The bill elaborates on the duties of an “agent” when the agent is not familiar with the wishes and interests of an incapacitated individual but the agent must decide whether to provide or withhold consent for life-sustaining treatment. The agent would have to make a reasonable attempt to communicate to the individual, and if that were not possible make reasonable attempts to talk with other people who are familiar with the individual. The agent then would make a decision based on the individual’s best interests.
- SB 714 supports un-emancipated minors’ rights to participate in their own health care decisions, including the administration or withdrawing life-sustaining treatments. SB 714 further supports parents or guardians in having the authority to provide, withhold or withdraw life-sustaining treatment for the unemancipated minor.
- SB 714, in effect, the proposed expansion crosses a line previously established in law and allows those without blood relation or other 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) because it addresses circumstances where a surrogate may be in order (e.g. to represent the individual when the guardian contradicts the individuals wishes), no family member is available and an organization already familiar with the individual is willing to serve in this capacity. 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.

The surrogate provisions regarding non-family members are initiated only when family members identified in Section 24-7A-5B (2) are not available to act as a surrogate. The failsafe mechanism in SB 714 includes provisions to establish duties of a surrogate when the surrogate is not familiar with the individual for whom the surrogate will make a health care decision; and requires the surrogate to make reasonable efforts to talk to the individual before making a decision affecting their health care

PERFORMANCE IMPLICATIONS

SB 714 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 than pro-

bate 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 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 clarification portions of SB 714, including gender neutral language, statutory references, and “language clean-up” are helpful, but not critical. The portion regarding the role of the GAL, is helpful. The other additions/ clarifications are useful.

Section 3 of the Bill clarifies that a parent or an un-emancipated minor with capacity has the authority to consent to as well as withhold or withdraw life-sustaining treatment. This section supports decision making by the individual and/or families who provide most of the care for their special needs children.

Section 5 of the bill, relates to adults and is comparable to the provisions related to minors. It allows the adult to request that one of the health care professionals making a determination of capacity be someone already familiar with the person, if that professional is readily available and appropriately credentialed, and has training or expertise in the field of the individual’ disability (e.g. mental illness or developmental disabilities).

SB 714 would require that the two qualified health professionals evaluate the un-emancipated minor, and that the minor or a parent/guardian could request that one of these health care professionals be someone who is already knowledgeable about or experienced with the minor, if that professional is “reasonably available.”

Section 3 of SB 714 also corrects an inconsistency in the definition of “un-emancipated minor. The current definition only includes individuals under the age of 15; and as a result, minors between the ages of 15 and 17 are left in limbo.

AMENDMENTS

Add “ dated and time of day of execution of the advanced directive” to page 2, line13 af-

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ter 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/sb