

## **Health Care & Wellness Committee**

### **HB 2318**

**Brief Description:** Concerning shared decision making.

**Sponsors:** Representatives Cody, Hinkle, Bailey and Jinkins.

#### **Brief Summary of Bill**

- Allows the Medical Director of the Health Care Authority to certify a patient decision aid for purposes of establishing *prima facie* evidence of informed consent.

**Hearing Date:** 1/18/12

**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
- 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;

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- 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 is, however, no patient decision aids that have been certified by a national certifying organization.

**Summary of Bill:**

For purposes of establishing prima facie evidence of informed consent, if no national certifying organization has certified a patient decision aid, a patient decision aid may be utilized that meets international standards and that has been approved by the Medical Director of the Health Care Authority.

**Appropriation:** None.

**Fiscal Note:** Requested on January 11, 2012.

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