

PUBLIC COMMENTS

HB 2853

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

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Hearing Date: March 31, 2021 8:00 AM

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I am a patient safety advocate who emphasizes the importance of genuine informed consent to the community I serve. Informed consent may be predicated on two levels - what a 'reasonable physician' should disclose to a patient or what a 'reasonable person' wishes to know from their clinician before an invasive procedure is considered. States are about evenly divided on which standard should apply; however, Texas law clearly specifies the 'reasonable person' type of informed consent must be given to patients contemplating an invasive procedure. Unfortunately, at present, the Texas Medical Disclosure Panel (TMDP), which decides what patients should be told, consists of 6 practicing physicians and 3 attorneys known to litigate for physicians accused of malpractice. Clearly, the voice of the 'reasonable patient' is not going to be heard as this panel decides what risks must be disclosed to patients. HB 2853 seeks to partially rectify this situation by adding two patient advocates and one unbiased attorney to the TMDP.

The gap between what a reasonable patient wishes to know and what is generally disclosed to patients is huge. Survey research published in a respected, peer-reviewed, medical journal in 2019 found that patients want to know all options when facing a possible invasive procedure, they want to know dangers associated with off-label drugs (not FDA approved for the present illness or age group), they want to use decision aids, they want to know precisely who is going to do an invasive procedure, they want a full day to make their decision, and they want to know expected outcomes of the invasive procedure, including risk of infection. A first-of-its-kind study, also published in 2020 in a respected, peer-reviewed medical journal showed that informed consent was so poorly documented in hospitals that, on average, less than 5 of 20 quality points were scored.

The TMDP is currently limited by their internal, self-imposed decision to list only the adverse outcomes associated with a given procedure; however, a reasonable patient is going to want to know the identity of the adverse outcome and the likelihood of its occurrence from the invasive procedure. For example, one adverse outcome from a given procedure may be infection. The reasonable patient is going to want to know what the probability of that adverse outcome might be. Is it 1 in 100, 1 in 1,000 or 1 in 10,000? Presence of patient advocates on the TMDP will offer a chance to rectify this gap in what should be disclosed to patients. There are certainly cases where the probability of a harmful outcome may not be known, but in many cases, probabilities, or at least general ranges of probabilities, are well known. It is a legal and ethical imperative that reasonable patients' voices be heard on the TMDP by passage of HB 2853.

Joleen Chambers

Self/Retired and former Texas DSHS Consumer Member of the Healthcare Safety Committee

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Please include the public member as a voting member. It is critical that the State of Texas provides its' 28 million residents with this token. I was active as a Consumer Representative on the DSHS Healthcare Safety Committee that was recently and suddenly disbanded. Though there were supposed to be two Consumer Representatives, I arrived and asked who was the other. The person fulfilling that spot currently and several years prior had no knowledge of this responsibility and did not fulfill it. We need representation that is legitimate and has voting power. Please do not compromise.

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