

SUBJECT: Requiring informed consent to perform hysterectomies

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Davila, Delisi, Maxey

0 nays

4 absent — Coleman, Glaze, Janek, Rodriguez

WITNESSES: For — Dr. Vicki Hufnagel, National Organization of Women; Dr. Kevin Kanz, Travis County Chiropractic Association; Lisa McGiffert, Consumer's Union; Michele Kay Gerard; Robin Shepperd

Against — None

On — Susan Steeg and Ron P. Mansolo, Texas Department of Health

BACKGROUND : The Texas Medical Disclosure Panel reviews all surgical procedures and medical treatments to determine when physicians must fully disclose all related risks. The panel establishes the general form, degree and substance of disclosure for listed medical procedures.

Physicians must inform patients about the risks and hazards involved with listed surgical procedures or medical treatments before the patient gives consent to undergoing the procedure. The patient's consent to the medical treatment must be in writing, acknowledge the risks and hazards of the procedure, and be signed by the patient and a witness.

DIGEST: CSHB 723 would require that physicians obtain patients' informed written consent before performing hysterectomies. The Texas Medical Disclosure Panel would have to develop easy-to-understand written materials to inform a patient of the risks involved with a hysterectomy and the availability of alternatives to the procedure.

The material would have to include statements that the patient or her authorized representative:

- understood the hysterectomy would be permanent and irreversible and that the patient could not become pregnant or bear children afterwards;
- had a right to seek a second opinion;
- understood that refusal to undergo a hysterectomy would not adversely affect the patient's benefits from federal funds or otherwise affect her right to future care or treatment;
- understood what a hysterectomy was and entailed;
- was informed of available and medically appropriate alternatives and a list of the alternatives, if appropriate;
- was given a description of the discomforts and risks associated with the procedure; and
- was informed about the risks, hazards, and potential side effects of any anesthetic to be used during the procedure.

The materials also would have to provide space to list the name of the person explaining the information to the patient, the exact procedures that would be performed, the approximate length of hospital stay and time of recovery, and the physician's fee and other costs. The patient or her representative would have to sign a statement indicating that she understood the nature and consequences of the hysterectomy.

The materials developed by the panel would have to be available in English, Spanish, and other languages considered appropriate. The materials would have to be prepared by January 1, 1998, and receive approval from the Texas State Board of Medical Examiners.

Hysterectomies performed under life-threatening situations where informed written consent by the patient was not reasonably possible would be exempt from the disclosure requirements. In these cases, the physician performing the procedure would have to sign a written statement certifying the nature of the emergency and insert the statement into the patient's medical records.

The bill would take effect September 1, 1997, and would apply only to hysterectomies performed at least 90 days after the publication of the written materials in the Texas Register.

SUPPORTERS
SAY:

CSHB 723 would require that women receive full and accurate information about the consequences, effects, risks and hazards associated with a hysterectomy before consenting to the procedure. It also would require that physicians disclose alternatives to a hysterectomy, thereby allowing women to make informed decisions about their medical treatment. Both patients and doctors would benefit from these requirements because it would clear up confusion and establish responsibility.

Some 20 million women in the U.S. have had a hysterectomy, and 90 percent of those were performed in normal situations with no life-threatening implications. Some women have hysterectomies to control depression and premenstrual syndrome, others as a form of birth control, and still others to correct trauma from childbirth. In most of these cases, alternative and less dangerous medical treatments are available to what is a major surgical procedure with potentially severe complications. In addition to the normal recuperative stresses that follow major surgery, women who undergo hysterectomies may suffer lingering and lifelong problems with chronic depression, weight gain, facial hair, increased risk of heart disease and osteoporosis, loss of sex drive, and loss of ability to have sexual intercourse. Unfortunately, many women who undergo a hysterectomy do not know about these effects until they begin to experience them after the procedure is performed. Research has shown that some women do not know that a hysterectomy removes the uterus, thus preventing future pregnancy and childbirth.

CSHB 723 could help curb an alarming trend toward using hysterectomies to treat less than life-threatening problems. Oftentimes, insurance companies encourage hysterectomies by not paying for other procedures that would better treat the symptoms or for pathology reports to confirm whether a disease requires this drastic procedure.

CSHB 723 would target this one type of medical procedure for enhanced informed consent procedures because the intended consequences and potential side effects are so severe and life changing that they warrant this type of informed consent. Some 700,000 hysterectomies are performed in the U.S. each year, with 46 percent of the procedures removing normal and healthy ovaries. Half of all women in the U.S. will have a hysterectomy by the age of 65.

The medical community has had information documenting the abuse of hysterectomies for over 10 years, but has taken no action to remedy the problem. Because the Texas Medical Disclosure Panel has not acted upon this information, legislative action is necessary to curb the overuse of hysterectomies.

CSHB 723 would not undercut the Texas Medical Disclosure Panel but would simply require the panel to develop disclosure materials for hysterectomies by January 1, 1998. With these materials in hand, all physicians in Texas would be able to provide the same accurate and comprehensive information to all potential hysterectomy candidates in a manner that is consistent with informed consent laws in other states.

CSHB 723 would allow women to take on a more active role in their health care. Informed consent for a hysterectomy would give women the options, choices and alternatives they are demanding to make informed and responsible decisions.

OPPONENTS
SAY:

The medical disclosure panel already takes into account a great number of adverse circumstances that could occur during an operation. The medical panel should be trusted to do its job in order to keep disclosure rules consistent among different treatments and procedures rather than mandate specific requirements just for hysterectomies.

The information required to be disclosed could overwhelm patients with information most have no expertise to evaluate. Too much disclosure can be tantamount to no disclosure and lead to unnecessary confusion.

NOTES:

The committee substitute deleted a requirement for oral consent by the patient and penalties for noncompliance; directed the Texas Medical Disclosure Panel to develop materials for physicians to use to inform patients of the risks associated with a hysterectomy; specified the contents of these materials; and required that the Texas State Board of Medical Examiners approve the materials.