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BILL ANALYSIS

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Senate Bill 784 (Substitute S-1)
Senate Bill 785 (Substitute S-1)
Senate Bill 786 (Substitute S-1)
Sponsor: Senator Rebekah Warren (S.B. 784 and 786)
Senator Rick Jones (S.B. 785)
Committee: Judiciary

Date Completed: 2-6-18

CONTENT

Senate Bill 784 (S-1) would amend the Michigan Do-Not-Resuscitate Procedure Act to do the following:

- **Allow a parent to execute a do-not-resuscitate (DNR) order on behalf of his or her minor child.**
- **Require a DNR order to be on a form prescribed by the bill, dated, and signed by the parent or parents, the child's attending physicians, and two witnesses 18 years of age or older.**
- **Require a parent who executed an order to maintain possession of it and have it accessible at the child's place of residence, or, if applicable, provide a copy to the administrator of the child's school or the facility where the child was a patient or resident.**
- **Specify the requirements for revoking a DNR executed on behalf of a minor child.**
- **Allow the guardian of a minor ward to execute a DNR order on behalf of the ward.**
- **Require a guardian who executed a DNR order on behalf of a minor ward to give a copy of it to the administrator of his or her school or the administrator of the facility where the ward was a patient or resident.**
- **Extend to a ward who was a minor child a provision that allows a person who is interested in the welfare of a declarant to petition the probate court to have the order reviewed.**
- **Prohibit an individual from attempting to resuscitate a child for whom a DNR order had been executed at a school before a health professional arrived.**

Senate Bill 785 (S-1) would amend the Revised School Code to do the following:

- **Require the administrator of a public or nonpublic school who received a copy of a DNR order executed on behalf of a minor pupil to ensure that the order was made a part of the child's individualized education program, or was placed in a file specifically for DNR orders, as applicable.**
- **Require a school administrator who received actual notice of a DNR order revocation to make the revocation part of the pupil's individualized education program, or place it in the DNR order-specific file, as applicable.**

-- Specify that a school administrator, teacher, or other school employee who in good faith administered a comfort or care measure to a pupil would not be liable in a criminal action or for civil damages, if certain conditions were satisfied.
-- Specify entities and individuals who would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under the bill.

Senate Bill 786 (S-1) would amend a section of the Estates and Protected Individuals Code that specifies the powers and duties of a guardian of a minor, to allow a guardian to execute a DNR order on behalf of a ward as provided in the Michigan Do-Not-Resuscitate Procedure Act.

Senate Bills 785 (S-1) and 786 (S-1) are tie-barred to Senate Bill 784. Each bill would take effect 90 days after its enactment.

Senate Bills 784 (S-1) and 785 (S-1) are described in more detail below.

Senate Bill 784 (S-1)

DNR Order Executed by Parent

The bill would allow a parent to execute a DNR order on behalf of his or her minor child. ("Do-not-resuscitate order" or "order" means a document executed under the Michigan Do-Not-Resuscitate Procedure Act directing that, if an individual suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated. Except as otherwise provided, "resuscitate" means perform cardiopulmonary resuscitation (CPR) or a component of CPR. The term does not include the Heimlich maneuver or a similar procedure used to expel an obstruction from a declarant's throat. A "declarant" is an individual who has executed a DNR order on his or her own behalf or on whose behalf a DNR order has been executed.)

The bill would define "minor child" as an individual who is less than 18 years of age, has been diagnosed by an attending physician as having an advanced illness, and is not emancipated by operation of law as provided in the emancipation of minors Act. "Advanced illness" would mean a medical condition with significant functional impairment that is anticipated to progress toward death and is not reversible by medical or surgical curative therapies or modulation. "Parent" would mean the natural or adoptive parent of a minor child who possesses legal decision-making authority as to the important decisions affecting the welfare of the minor child. If a parent shared with another parent legal decision-making authority as to the important decisions affecting the welfare of the child, both parents would have to execute the order.

A DNR order executed on behalf of a minor child would have to be on a form described below, and signed by each of the following individuals:

-- The parent, or parents, as applicable, of the minor child.
-- The minor child's attending physician.
-- Two witnesses 18 years of age or older, each of whom could not be the minor child's parent, child, grandchild, sibling, or presumptive heir.

The names of all signatories would have to be printed or typed below the corresponding signatures. A witness could not sign an order unless the parent, or parents, appeared to the witness to be of sound mind and under no duress, fraud, or undue influence.

At any time after an order was signed and witnessed, the parent, attending physician or his or her delegatee, or an individual designated by the parent could apply an identification bracelet to the minor child's wrist.

A parent who executed a DNR order on behalf of his or her minor child would have to maintain possession of it, and have it accessible within the child's place of residence or other setting outside of a hospital or, if applicable, would have to provide a copy of the order to the following, or their respective designees: a) the administrator of the minor child's school, or b) the administrator of a facility in which the child was a patient.

Form of DNR Order

A DNR order must include certain language, and must be in substantially the same form as provided in the Michigan Do-Not-Resuscitate Procedure Act. The bill would extend this requirement to a DNR order executed by parent on behalf of his or her minor child.

The language for a DNR order executed on behalf of a minor child would have to be in substantially the following form:

> C. Parent Consent
>
> I authorize that in the event the minor child's heart and breathing should stop, no person shall attempt to resuscitate the minor child. I understand the full import of this order and assume responsibility for its execution. This order will remain in effect until it is revoked as provided by law.

The form would have to include the parent's, or parents', printed name and signature.

Copy of Order, Medical Record

Under the Act, an attending physician who signs a declarant's DNR order immediately must obtain a copy or a duplicate of the executed order and make it part of the declarant's permanent medical record. The bill would extend this requirement to a DNR order executed by a parent on behalf of a minor child.

Execution of DNR by Guardian of Minor Ward

The Act allows a guardian with the power to execute a DNR order under Section 5314 of the Estates and Protected Individuals Code to do so on behalf of a ward who is legally incapacitated after complying with that section. "Ward" means an individual for whom a guardian is appointed.

(Under Section 5314 of the Code, the guardian of a legally incapacitated ward has the power to execute and revoke a do-not-resuscitate order on behalf of a ward, subject to certain requirements.)

Under the bill, a guardian of a ward who was a minor child could execute a DNR order on behalf of the ward.

A guardian who executes a DNR order must maintain possession of the order and must have it accessible within the ward's place of residence or other setting outside of a hospital or, if applicable, provide a copy of the order to the administrator of a facility in which the ward is a patient or resident, or to his or her designee. Under the bill, if applicable, a guardian also

would have to provide a copy of the order to the administrator of the ward's school or to his or her designee.

Petition for Review of Order

The Act allows a person who is interested in the welfare of the declarant to petition the probate court to have the order and the conditions of its execution reviewed if that person has reason to believe that an order has been executed contrary to the declarant's wishes or, if the declarant is a ward, contrary to the ward's wishes or best interests. If the court finds that an order has been executed contrary to the declarant's wishes or contrary to the ward's wishes or best interests, the court must issue an injunction voiding the effectiveness of the order and prohibiting compliance with the order. Under the bill, these provisions also would apply to a ward who was a minor child.

Revocation of a DNR Order

The Act allows a declarant to revoke a DNR order executed by or on behalf of himself or herself at any time and in any manner by which he or she is able to communicate his or her intent to revoke it. If the revocation is not in writing, an individual who observes the declarant's revocation must describe the circumstances of the revocation in writing, sign it, and deliver it to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or his or her designee. Under the bill, if the declarant were a pupil of a school, the order would have to be delivered to the administrator of the school, or his or her designee.

A patient advocate or guardian may revoke an order on behalf of a declarant at any time by issuing the revocation in writing, and may provide actual notice of the revocation by delivering it to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or his or her designee. Under the bill, a parent could revoke the order in the same manner. If the declarant were a pupil of a school, a parent or guardian could revoke the order by delivering the revocation to the administrator of the school.

Upon revocation, the declarant, patient advocate, guardian, or attending physician or his or her delegatee who has actual notice of a revocation of an order must write "void" on all pages of the order, and remove the declarant's do-not-resuscitate identification bracelet, if applicable. Under the bill, these requirements also would apply to a parent.

Vital Signs Determination

The Act requires one or more of the following health professionals who arrive at a declarant's location outside of a hospital to determine if the declarant has one or more vital signs, whether or not the health professional views or has actual notice of an order that is alleged to have been executed by or on behalf of the declarant:

-- A paramedic.
-- An emergency medical technician.
-- An emergency medical technician specialist.
-- A physician.
-- A nurse.
-- A medical first responder.
-- A respiratory therapist.
-- A physician's assistant.

Under the bill, if the declarant were a minor child who was enrolled and located at a school, an individual who determined that the declarant was wearing a DNR identification bracelet or had actual knowledge of his or her DNR order could not attempt to resuscitate the declarant before a health professional listed above arrived at the declarant's location.

Senate Bill 785 (S-1)

Filing of DNR Order; Schools

The bill would add Section 1180 to the Revised School Code to require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a DNR order executed by the guardian of a ward or the parent of a minor child under the Michigan Do-Not-Resuscitate Procedure Act to ensure that, for a pupil with an individualized education program, the order would be made part of his or her program in the same manner as other medical information regarding the pupil. For a pupil without an individualized education program, the administrator would have to ensure that both of the following were met:

-- The DNR order would have to be placed in a file created specifically for DNR orders and that file would have to be stored in the same locations in which an individualized education program was stored.
-- All parties that received notice of an individualized education program would have to receive notice of a DNR order for a pupil without a program.

("Individualized education program" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 USC 1414 (which pertains to the evaluation of, and eligibility determinations for, an individualized education program) and that includes a number of components, such as statements of the child's present level of academic achievement, measurable annual goals, and the special education and related services to be provided to the child.)

An administrator of a public or nonpublic school who received actual notice that a DNR order had been revoked would have to make the revocation part of the pupil's individualized education program in the same manner as other medical information regarding the pupil or place the revocation in the DNR order-specific file, as applicable. All parties entitled to notice of an individualized education program would have to receive notice of the revocation, regardless of whether the revocation pertained to a pupil with an individualized program.

Comfort or Care Measures & Other Provisions

Under Section 1180, a school administrator, teacher, or other school employee designated by the administrator, who in good faith administered a comfort or care measure to a pupil in the presence of another adult or in an emergency that threatened the life or health of the pupil, pursuant to written permission of the pupil's parent or guardian, and in compliance with the instructions of a physician, physician's assistant, or certified nurse practitioner, would not be liable in a criminal action or for civil damages as a result of an act or omission in the administration of the comfort or care measure, except for an act or omission amounting to gross negligence or willful and wanton misconduct.

If a school employee were a licensed registered professional nurse, this provision would apply to that employee regardless of whether the comfort or care measure was administered in the presence of another adult.

"Comfort or care measure" would mean treatment of a pupil to ensure the pupil's mental or physical comfort. The term would not include treatment that attempts to prolong a pupil's life.

A school district, public school academy (PSA), nonpublic school, member of a school board, or director or officer of a PSA or nonpublic school would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under Section 1180.

Section 1180 could not be construed to create a right to an individualized education program.

For the purposes of Section 1180, "do-not-resuscitate order" or "order" would mean that term as defined in the Michigan Do-Not-Resuscitate Procedure Act.

MCL 333.1052 et al. (S.B. 784)
Proposed MCL 380.1180 (S.B. 785)
MCL 700.5215 (S.B. 786)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 784 (S-1)

The bill would have no fiscal impact on State or local government.

Senate Bill 785 (S-1)

The bill would have no fiscal impact on the State, and minimal or no impact on local units of government. Schools that received do-not-resuscitate orders would have to create files for pupils without an individualized education program (IEP). For pupils with an IEP, schools would need only to update the information in the pupils' files. Due to uncertainty in the number, location, and IEP status of pupils who would have a do-not-resuscitate order, an exact cost is difficult to estimate, but would likely be negligible.

Senate Bill 786 (S-1)

The bill would have no fiscal impact on State or local government.

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