House Legislative Analysis Section

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DO-NOT-RESUSCITATE ORDERS

House Bill 5244 with committee amendments
First Analysis (2-14-90)

Sponsor: Rep. Perry Bullard
Committee: Judiciary

THE APPARENT PROBLEM:

It is the choice of many terminally ill people to live their last days in a non-institutional setting, often at home. However, the desire of patient and family to have a peaceful death is sometimes thwarted by modern emergency response procedures. If emergency response personnel are called at the time of death, they are as a rule obliged to attempt resuscitation. A quiet deathbed scene can be transformed into a noisy place of confusion. The apparent violence of resuscitation procedures often adds to the distress of family members while doing nothing for the patient; in the emotionally charged atmosphere, family members may threaten emergency personnel. Resuscitation efforts can also instill in family members the hope that despite all odds, something can be done for the loved one. When procedures call for transporting the patient to a hospital, major expenses may be added to emotional trauma. The solution to these problems, many say, is the use of written "do-not-resuscitate" orders by which terminally ill people can ensure that their death is not marred by the indignities and trauma of futile resuscitation efforts. Legislation to provide for such orders has been proposed.

THE CONTENT OF THE BILL:

The bill would create the "Michigan Do-Not-Resuscitate Procedure Act" to provide for the execution of a do-not-resuscitate order for patients in a nonhospital setting. A do-not-resuscitate order would bar emergency personnel from attempting to resuscitate when there were no vital signs. To execute an order, a person would have to be at least 18 years old, of sound mind, and diagnosed as terminally ill. An order would have to be on a form prescribed by the bill and distributed by the Department of Public Health, dated, and voluntarily signed by the patient, the attending physician, and two adult witnesses. Neither witness could be a close family member or an employee of a health facility treating the patient or a home for the aged housing the patient. A witness would be forbidden to sign an order unless the patient appeared to be of sound mind and under no duress, fraud, or undue influence. Someone other than the patient could sign the document on the patient's behalf if the signing was done in the presence of the patient at his or her direction; the person signing for the patient would also have to sign his or her own name.

At the time an order was signed and witnessed, the attending physician would put a department-provided identification bracelet on the patient's wrist. The patient would keep the order accessible within his or her place of residence. The physician would immediately make a copy of the order a part of the patient's medical record. The physician would review the conditions of the order with the patient at least every six months, note the date of the review on the order, and initial it.

A person interested in the welfare of the patient could petition the probate court to review the order if the person had reason to believe that an order had been executed contrary to the wishes of the patient.

A patient could revoke the order at any time and in any manner by which he or she was able to communicate that intent. A person who observed an unwritten revocation would describe the circumstances of the revocation in writing and sign it. Upon revocation, the patient or attending physician would destroy the order and remove the identification bracelet. The revocation would be made part of the patient's medical record.

Emergency personnel arriving at a patient's location would have to check for vital signs, and if there were none, check for a do-not-resuscitate identification bracelet. Upon verifying that the name on the order was the same as the name on the bracelet, emergency personnel would not attempt to resuscitate the patient. A person or organization would not be civilly or criminally liable for withholding medical treatment in accordance with the bill.

A person or organization could not require an order as a condition for insurance coverage, admittance to a health care facility, receiving health care benefits or services, or for any other reason. A life insurer could not use execution or implementation of an order as a reason to refuse coverage, charge a higher premium, offer different policy terms, consider existing terms breached or modified, or invoke any suicide or intentional death exemption.

The provisions of the bill would be cumulative and could not be construed to impair or supersede any legal right that any person might have to consent to or refuse medical intervention. With regard to someone who had executed an order, the bill would not create a presumption regarding the person's intent to consent to or refuse medical treatment in circumstances other than the cessation of both spontaneous circulation and respiration. The bill also would not create any presumption concerning the intention of an individual who had not executed an order to consent to or refuse any type of medical treatment.

The bill would not take effect unless House Bill 4952, which deals with emergency medical services, was enacted.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no significant fiscal implications. (2-13-90)

ARGUMENTS:

For:

While hospitals and other institutions generally have developed do-not-resuscitate policies that recognize patient and family wishes, problems sometimes arise when a terminally ill person chooses to live out his or her last days at home. Advances in medical technology and emergency response, coupled with procedures that call for emergency personnel to be sent to the scene and attempt to revive a patient, mean that people who have died at home are

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sometimes subjected to futile and expensive resuscitation efforts, robbing the patient of the peaceful and dignified death that was his or her choice, and adding to the distress of grieving family members. By providing for the use of do-not-resuscitate orders, the bill offers a way to ensure that resuscitation is not attempted on a terminally ill person who has died at home, and that expensive and unnecessary transport to a hospital emergency room is avoided. The bill does not propose to make it easier to die; rather, it allows a person to enforce his or her wish that emergency personnel not tamper with his or her body after death.

For:

The title of the bill refers to resuscitation "in a nonhospital setting," and there is nothing about the concept of do-not-resuscitate orders that demands that they apply only in the home. The bill was amended in committee so that emergency personnel would observe a do-not-resuscitate order when arriving at a patient's "location," rather than at a patient's "place of residence," with the idea that if a patient collapsed while on an outing, his or her wishes would nonetheless be respected.

Against:

Under the bill, emergency personnel who attempt resuscitation in unwitting violation of a do-not-resuscitate order may be unfairly vulnerable to lawsuits. While giving emergency personnel the ability not to resuscitate contrary to a patient's or family wishes, the bill can and should protect personnel from liability for attempting resuscitation when there was no knowledge of a do-not-resuscitate order, when there was some question over the validity of an order, or when the matter of whether to resuscitate was in doubt.

Against:

While the bill addresses the problem of emergency personnel having to attempt resuscitation despite the objections of those present, it does not address various related matters such as the wasteful expense of dispatching personnel to a scene where a do-not-resuscitate order is to apply, the need to make arrangements for the pronouncement of death and disposition of the body, or the need for procedures to care for the body in the event that organs are to be donated.

Response: Those matters are largely outside the scope of this bill. For example, the problem of dispatching emergency personnel has been examined, but there appears little that can be done, especially given the variation in situations and procedures from county to county. If police or fire departments are called about a death in the home, they must, as a matter of proper policy, dispatch emergency personnel to the scene. There often would be no time to get details regarding a possible do-not-resuscitate order either from the caller or from some sort of records office that might be established. In any event, the possibility of incorrect information regarding a do-not-resuscitate order would make it necessary to respond to an emergency call.

Against:

The bill may not be sufficiently protective of life. There may be concerns that the definition of "terminally ill" is not narrow enough, and that review of a do-not-resuscitate order would not be frequent enough. Further, the document itself should bear some sort of expiration date that ensured that it was not used if necessary review and renewal had not occurred.

POSITIONS:

The American Civil Liberties Union of Michigan supports the bill. (2-13-90)

The International Union of Operating Engineers Local 547A B C E and H, (which represents emergency medical services personnel in Detroit) supports the bill. (2-13-90)

The Michigan Association of Ambulance Services supports the bill. (2-13-90)

The Michigan Home Health Assembly supports the bill. (2-13-90)

The Michigan Hospice Organization supports the bill. (2-13-90)

The Michigan State Firefighters Union supports the bill. (2-13-90)

The Michigan State Legislative Committee of the American Association of Retired Persons supports the bill. (2-14-90)

The Department of Public Health is taking no position on the bill. (2-13-90)

Right to Life of Michigan does not oppose the concept of the bill, but has some reservations about the bill. (2-13-90)