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BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 664

Sponsor: Senator John J. H. Schwarz, M.D.

Committee: Health Policy

JUN 28 1990

Date Completed: 5-22-90

SUMMARY OF SENATE BILL 664 as introduced 11-1-89:

The bill would create the "Michigan Do-Not-Resuscitate Procedure Act" to establish procedures for the execution of a "do-not-resuscitate order", and to:

- Permit a person who had been diagnosed as "terminally ill" to execute a do-not-resuscitate order.
- Prescribe information to be contained in such an order, such as signatures of the patient, attending physician, and witness, and prohibit certain persons, such as a patient's spouse, from being a witness.
- Prohibit a witness from signing an order unless the patient appeared to be of sound mind and under no duress.
- Require a physician who signed an order to make it part of the patient's medical record, and require a review of the order every six months.
- Require a patient who executed an order to possess the order and have it accessible in his or her residence.
- Require an attending physician to apply a "do-not-resuscitate identification bracelet" on a patient at the time an order was signed and dated.
- Permit a person to petition the probate court for review of an order, if it were suspected that the order was executed against the patient's wishes.
- Provide for the revocation of an order.
- Prohibit certain emergency medical personnel from resuscitating a patient if a patient were wearing a do-not-resuscitate identification bracelet.
- Exempt a person from civil or criminal liability for withholding medical treatment in accordance with the bill.
- Prohibit requiring an order as a condition for insurance coverage, admittance into a health facility, or other reasons.
- Prohibit a life insurer from taking certain actions because of the execution of an order.
- Specify that the bill could not be construed to impair any legal right a person may have to consent to or refuse medical treatment.

The bill is tie-barred to House Bill 4952, which would amend the Public Health Code to provide for the regulation of emergency medical services.

Do-Not-Resuscitate Order

A person who was 18 years of age or older and of sound mind, and who had been diagnosed to be terminally ill could execute a do-not-resuscitate order. ("Do-not-resuscitate order" would mean a document executed pursuant to the bill that directed that in the event that a patient suffered cessation of both spontaneous respiration and circulation, no resuscitation would be initiated. "Terminally

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ill" would mean a state in which an incurable, irreversible, and uncontrollable disease or condition would, in the opinion of the attending physician based on current medical practices, likely result in death within six months.)

The order would have to be: on a form distributed by the Department of Public Health (DPH); dated and executed voluntarily; and, signed by the patient, or in the presence of the patient at his or her direction, the attending physician, and two witnesses who were 18 years of age or older. A person who signed for the patient also would have to sign his or her own name. The names of the attending physician and witnesses would have to be printed or typed below the corresponding signatures. The witnesses could not be the patient's spouse, parent, child, grandchild, sibling, or presumptive heir; an employee of a health facility that was treating the patient; or an employee of a home for the aged where the patient resided. A witness could not sign an order unless the patient appeared to be of sound mind and under no duress, fraud, or undue influence. A patient who executed an order would have to possess the order and have it accessible within in his or her place of residence.

The Department would be required to provide a standard form to serve as a do-not-resuscitate order. The order would have to read as outlined in the bill. A physician who signed a patient's do-not-resuscitate order would be required to make immediately a copy of the executed order part of the patient's medical record and to review the conditions of the order with the patient at least every six months. After such review, the physician would be required to note the date of review on the order and place his or her initials next to that date.

At the time an order was signed and witnessed, the attending physician would have to apply an identification bracelet to the patient's wrist. The Department would be required to provide "do-not-resuscitate identification bracelets" to physicians. The bracelets would have to possess features in order to be clearly recognizable as do-not-resuscitate identification bracelets. ("Do-not-resuscitate identification bracelet" would mean a hospital-type wrist bracelet issued by the DPH to be worn by the patient while a do-not-resuscitate order was in effect.)

#### Revocation of the Order

If a person who was interested in the welfare of a patient had reason to believe that an order had been executed contrary to the patient's wishes, the person could petition the probate court to have the order and the conditions of its execution reviewed.

A patient could revoke an order at any time and in any manner by which he or she was able to communicate an intent to revoke the order. If the revocation were not in writing, a person who observed the revocation would have to describe the circumstances of the revocation in writing and sign the writing. Upon revocation, the patient or attending physician would have to destroy the order and remove the identification bracelet.

A physician who received notice of a revocation immediately would have to make the revocation, including, if available, the written description of the circumstances of the revocation, part of the patient's medical record. A patient's revocation would be binding on an individual and on the individual's actual notice of revocation.

### No Attempt to Resuscitate

If an advanced emergency medical technician, emergency medical technician, emergency medical technician specialist, physician, nurse, peace officer, fire fighter, first responder, or an individual employed by an ambulance operation or an advanced or limited advanced mobile emergency care service, upon arrival at a patient's place of residence, were shown an order, that person would have to check to see if the patient had any "vital signs" (a pulse or evidence of respiration).

If the patient had no vital signs, the person would have to check to see if the patient was wearing a do-not-resuscitate identification bracelet and verify that the name on the order was the same as the name on the bracelet. If the patient were wearing a bracelet and the names on the order and the bracelet were the same, the person would be prohibited from attempting to resuscitate the patient.

### Liability

The bill specifies that a person or organization would not be subject to civil or criminal liability for withholding medical treatment from a patient in accordance with the bill.

### Insurance

A person or an organization could not require the execution of an order as a condition for insurance coverage, admittance to a health care facility, or receiving health care benefits or services, or for any other reason.

A life insurer could not do any of the following because of the execution or implementation of an order:

- Refuse to provide or continue coverage to the patient.
- Charge the patient a higher premium.
- Offer a patient different policy terms because the patient had executed an order.
- Consider the terms of an existing policy of life insurance to have been breached or modified.
- Invoke any suicide or intentional death exemption or exclusion in any policy covering the patient.

### Medical Intervention

The bill specifies that its provisions would be cumulative and could not be construed to impair or supersede any legal right that any person could have to consent to or refuse medical intervention.

The bill also specifies that the proposed Act would not create a presumption concerning the intention of a person executing an order to consent to or refuse medical treatment in circumstances other than the cessation of both spontaneous circulation and respiration. In addition, the bill specifies that the proposed Act would not create a presumption concerning the intention of an individual who had not executed an order to consent to or refuse any type of medical treatment.

Legislative Analyst: L. Arasim

### FISCAL IMPACT

The bill would have an indeterminate impact on State Department of Public Health expenditures. The magnitude of the impact would depend on the number of "do-not-resuscitate" orders signed, and the number of bracelets provided by the Department.

Fiscal Analyst: P. Graham

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.