SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 664 (Substitute S-2 as passed by the Senate)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy

Date Completed: 8-28-90

RATIONALE

Advances in medical technology have made it possible to bring back to life a person whose heart, circulatory system, and breathing have ceased functioning. Through technology and life-saving techniques, such as cardiopulmonary resuscitation (CPR) and the use of electrical shock in automatic defibrillators, persons who appear to have died can be revived. Current protocols pertaining to emergency medical personnel require that CPR be started and procedures initiated to re-start the heart when a victim has stopped breathing, blood pressure cannot be measured, and a heartbeat cannot be detected. In some cases, ambulances have been called to homes to help a person who is in the final stages of a terminal disease and who has collapsed. Even though that individual's family may be aware of the patient's wishes not to be revived under these circumstances, emergency medical personnel have no choice under current protocols but to attempt to revive the person. Furthermore, there apparently is no legally recognized vehicle available in Michigan whereby terminally ill persons can make known their desire not to be resuscitated. Some people believe that the wishes of terminally ill patients should be respected, and that a means should be provided in law to allow these persons to inform family, friends, caretakers, and emergency personnel that in event of complete heart and respiratory failure, they do not want to be revived.

CONTENT

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-resucitate 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 physcian 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 physcian to apply a "do-not-resucitate 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 or organization from civil or criminal liability for withholding medical treatment, or for attempting to resuscitate a person under certain circumstances.**
- **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.**

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 "directing that in the event that a patient suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated". "Terminally ill" would mean a state in which an incurable and irreversible disease or condition would, in the opinion of the attending physician based on current medical practices, likely result in death within six months even if the person with the disease or condition received medical treatment.)

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 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 immediately to make 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 and with the concurrence of the patient, the physician would be required to note the date of review on the order. The physician and patient would be required to initial the 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 clearly recognizable do-not-resuscitate identification bracelets to physicians. ("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 upon the individual's actual notice of revocation.

No Attempt to Resuscitate

If a paramedic, emergency medical technician, emergency medical technician specialist,

physician, nurse, peace officer, fire fighter, first responder, respiratory care practitioner, or an individual employed by an ambulance operation or an advanced or limited advanced mobile emergency care service, upon arrival at a patient's location, were shown a do-not-resuscitate 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.

The bill also specifies that a person or organization that was unaware that an individual had executed an order would not be subject to civil or criminal liability merely because the person or organization attempted to resuscitate that individual.

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 states 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.

FISCAL IMPACT

The bill would have an indeterminate impact on Michigan 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.

ARGUMENTS

Supporting Argument

Many terminally ill persons are choosing to spend their last days at home rather than in hospitals or medical institutions. When it appears that such a person has stopped breathing and may have died, family, friends, and caretakers invariably seek emergency assistance by calling either an ambulance service or the police, who then send an emergency unit to the house. In some cases, the patient has let it be known that he or she does not want to be resuscitated when respiratory functions have ceased. Even though family members or caretakers may know of this desire and convey this information either verbally or in written form, such as a letter signed by the patient, to the emergency medical technicians (EMTs), the EMTs have no choice under current law but to try to revive the person. According to a representative of an

EMT union, emergency personnel must make every effort to revive a patient except in certain cases, such as when the body has decomposed, rigor mortis has set in, the body has been decapitated, or the body has been consumed by fire. Thus, even in cases in which the patient prior to the collapse clearly was near death, resuscitative measures still must be undertaken. This can be especially traumatic for the family and caretakers who knew that their loved one did not want to be revived. Despite the patient's wishes, emergency personnel have no choice under the law but to try to resuscitate the patient. EMTs have reported incidents in which people who were revived have been angry that they weren't allowed to die. In one case, a terminally ill patient from Grand Rapids questioned his family as to why he was revived. The patient evidently was upset because he knew that he had been near death due to the illness and that his being revived only would mean that he and his family again would have to undergo the ordeal of his dying. There apparently also have been instances in which families of terminally ill patients have been advised to wait one to three hours after a patient has collapsed before calling emergency personnel, to make revival impossible. Another reported incident involved a Saginaw woman whose terminally ill husband had been struggling for his breath. She called the family doctor, who allegedly called the local emergency medical technicians and ordered them not to revive the patient. If Senate Bill 664 (S-2) were enacted, patients and their family members or caretakers as well as EMTs would be spared the trauma of having the patient revived against his or her wishes.

Supporting Argument

The bill would provide a means by which a terminally person could make known his or her wishes as to the use of cardiopulmonary resuscitation upon cardiac arrest. Currently, there is no legally recognized means available in the State to accomplish this. The Department of Public Health reportedly has approved some medical protocols in areas of the State whereby a do-not-resuscitate order is issued for 72 hours at a time and can be renewed, upon a physician's verification, every 72 hours. Such a procedure is practical only in cases in which a patient is very close to death. There is no Statewide procedure, however, for issuance of do-not-resuscitate orders for terminally ill patients.

Supporting Argument

The bill would be restrictive in its application in that it would apply only to a "terminally ill" person, which would mean that a person would have to be in a state in which an incurable and irreversible disease would likely result in death within six months, even if the person received medical treatment. Permitting the withholding of CPR for terminally ill patients who are near death, as proposed in the bill, reflects the recommendations made in 1974 by a National Conference on Standards for Cardiopulmonary Resuscitation and Emergency Cardiac Care. According to an article entitled "Legislating Ethics, Implications of New York's Do-Not-Resuscitate Law" in the July 26, 1990, issue of "The New England Journal of Medicine", the Conference had issued a monograph that stated that, "[T]he purpose of cardiopulmonary resuscitation is the prevention of sudden, unexpected death. Cardiopulmonary resuscitation is not indicated in certain situations, such as in cases of terminal, irreversible illness where death is not unexpected." Furthermore, the bill also contains a number of safeguards that concern the issuance of a do-not-resuscitate order as well as provide for the revocation of such an order. It should be noted, in addition, that the bill would not establish a right-to-die procedure since it would prohibit the use of life-saving techniques only after a person's cardiac and respiratory functions had ceased--in effect after the patient had died.

Opposing Argument

Under the bill, the DPH would be required to provide physicians with a standard form to serve as a do-not-resuscitate order and do-not-resuscitate bracelets. The Department estimates that it would cost $175,000 in the first year of implementing the bill, and no appropriations have been made to cover these costs. It has been suggested that one way to cover these costs would be to permit the DPH to charge a fee for the forms and bracelets.

Legislative Analyst: L. Arasim
Fiscal Analyst: P. Graham

A8990\S664A