Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 451(as passed by the Senate)
Senate Bill 452 (Substitute S-1 as passed by the Senate)
Senate Bill 836 (as passed by the Senate)
Sponsor: Senator Dale L. Shugars (S.B. 451 & 836)
Sponsor: Senator John J.H. Schwarz, M.D. (S.B. 452)
Committee: Health Policy and Senior Citizens

Date Completed: 2-12-96

RATIONALE

Advances in medical technology have made it possible, in some instances, to continue the life of 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 sometimes be revived. While the efforts may be welcome in many instances, they may be considered inappropriate in certain situations.

It has been pointed out that while a person in the latter stages of a serious or terminal illness can request that he or she not be resuscitated if heart function or respiration stops, these requests are honored only if the person is in a hospital or other health facility. If a person is at home, 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 under which persons can make known their desire not to be resuscitated. Some people believe that the wishes of patients should be respected, and that a means should be provided in law to allow these persons to inform caretakers and emergency personnel that in event of complete heart and respiratory failure, they do not want to be revived.

CONTENT

Senate Bill 452 (S-1) would create the "Michigan Do-Not-Resuscitate Procedure Act" to allow a person to execute a do-not-resuscitate order under certain circumstances; forbid certain persons from attempting to resuscitate a person; provide an exemption from criminal or civil liability for withholding medical treatment; and place certain restrictions on insurers. Senate Bill 451 would amend the Public Health Code to prohibit a health facility from requiring a do-not-resuscitate order as a condition for admission, and to require the development of protocols for emergency service personnel in complying with the new Act. Senate Bill 836 would amend the Adult Foster Care Facility Licensing Act to provide that a licensee, who provided foster care to a resident enrolled in a licensed hospice program and whose assessment plan included a do-not-resuscitate order, would be considered to be protecting the health and safety of the resident if the licensee contacted the hospice program, under certain conditions.

Senate Bills 451 and 836 are tie-barred to Senate Bill 452. Following is a detailed description of each bill.

Senate Bill 452 (S-1)

Under the bill, a do-not-resuscitate order would be a document (executed pursuant to the bill) directing that, in the event that a patient (the

declarant) suffered cessation of both spontaneous respiration and circulation, in a setting outside of a hospital, nursing home, or a facility run by the Department of Mental Health, no resuscitation would be initiated.

The bill would allow a person 18 years old or older, of sound mind, to execute a do-not-resuscitate (D-N-R) order on his or her own behalf. Further, a patient advocate (an individual designated to make medical treatment decisions for a patient under the provisions of the Revised Probate Code) of a person 18 years old or older, could execute a D-N-R order on behalf of the person. The order would have to be dated and executed voluntarily, and would remain in effect until it was revoked by the declarant. The order would have to be signed by the declarant or another person acting pursuant to the directions of the declarant in his or her presence; the declarant's attending physician; and two witnesses who were 18 years old or older, at least one of whom was not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir. The names of the attending physician and each witness would have to be printed or typed below the corresponding signatures. A witness could not sign an order unless the declarant appeared to the witness to be of sound mind and under no duress, fraud, or undue influence. A declarant who executed an order would have to maintain possession of the order and have it accessible within his or her residence or other setting outside of a hospital, nursing home, or a facility owned or operated by the Department of Mental Health. An order would have to include but not be limited to the language of, and read substantially as, an order prescribed in the bill.

The bill also provides that an individual who was 18 years old or older, of sound mind, and an adherent of a church or religious denomination whose members depended upon spiritual means through prayer alone for healing, could execute a D-N-R order on his or her own behalf. A patient advocate of an individual who was 18 years old or older, and an adherent of a church or religious denomination whose members depended upon spiritual means through prayer alone for healing, could execute a D-N-R order on behalf of the person. An order executed under this provision would have to be on a form that included, but was not limited to the language of, and read substantially as, an order prescribed in the bill. The order would have to be dated and executed voluntarily, and signed by all the persons except a physician whom the bill would require to sign other do-not-resuscitate orders.

The bill would define "do-not-resuscitate identification bracelet" as a wrist bracelet that was worn by a declarant while a D-N-R order was in effect. At any time after a D-N-R order was signed and witnessed the declarant, or an individual designated by the declarant, could apply a do-not-resuscitate identification bracelet to the declarant's wrist. The bracelet would have to possess features that made it clearly recognizable as a do-not resuscitate identification bracelet including, but not limited to, the following: the bracelet would have to be imprinted with the words "DO-NOT-RESUSCITATE", printed in a type size and style that were as easily read as practicable given the size of the bracelet; the name and address of the declarant; and the name and telephone number of the declarant's physician, if any.

The bill would prohibit a person from applying a do-not-resuscitate identification bracelet to another person, unless he or she knew that the other person was a declarant. A person who violated this provision would be guilty of a misdemeanor punishable by imprisonment for up to two years, a fine up to $1,000, or both.

An attending physician who signed a declarant's order immediately would have to make a copy of the order or obtain a duplicate from the declarant, and make the copy or duplicate a part of the declarant's medical record.

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

A declarant or a patient advocate who executed an order on behalf of a declarant could revoke the 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 declarant, patient advocate, or attending physician (or the attending physician's "delegatee", who had actual notice of the revocation) would have to destroy the order and remove the do-not-resuscitate identification bracelet. A physician (or the physician's delegatee) who received notice of a revocation immediately would have to make the revocation (including, if available, the written description of its circumstances) part of the declarant's medical

record. A declarant's or patient advocate's revocation of an order would be binding upon another person at the time that the other person received actual notice of the revocation. (Under the bill, a "delegatee" would be an individual to whom a physician had delegated the authority to perform one or more selected acts, tasks, or functions as provided under the Public Health Code.)

One or more of the following health professionals who arrived at a declarant's location outside of a hospital, a nursing home, or a facility owned or operated by the Department of Mental Health would have to determine whether the declarant had a pulse or evidence of respiration (whether or not the professional viewed or was provided with a do-not-resuscitate order alleged to have been signed by the declarant or other person authorized to execute the order): a paramedic; an emergency medical technician; an emergency medical technician specialist; a physician; a nurse; a medical first responder; or a respiratory therapist. The health professional would be prohibited from attempting to resuscitate the declarant if the professional determined that the declarant had no pulse or evidence of respiration, and determined that the declarant was wearing a do-not-resuscitate identification bracelet, or was provided with a D-N-R order.

A person or organization would not be subject to civil or criminal liability for withholding resuscitative procedures from a declarant in accordance with the bill's provisions. In addition, a person or organization would not be subject to civil or criminal liability for either of the following:

-- Attempting to resuscitate an individual who had executed a D-N-R order, if the person or organization had no actual notice of the order.
-- Failing to resuscitate an individual who had revoked a D-N-R order or on whose behalf a D-N-R order had been revoked, if the person or organization had not received actual notice of the revocation.

A person or 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 declarant.
-- Charge the declarant a higher premium.
-- Offer the declarant different policy terms because he or she had executed an order.
-- Consider the terms of an existing policy of life insurance to have been breached or modified.
-- Invoke a suicide or intentional death exemption or exclusion in any policy covering the declarant.

The provisions of the bill would be cumulative and could not impair or supersede a legal right that a person could have to consent to or refuse medical treatment for himself or herself, or that a parent, guardian, or other individual could have to consent to or refuse medical treatment on behalf of another. The bill 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. The bill 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.

Senate Bill 451

The bill would prohibit a health facility or agency from requiring the execution of a do-not-resuscitate order under the proposed Michigan Do-Not-Resuscitate Procedure Act as a condition for admission or receipt of services.

Currently, under the Code, a local medical control authority must establish written protocols for the practice of life support agencies and licensed emergency medical services personnel within its region. The protocols are developed and adopted in accordance with procedures established by the Department of Public Health. The Code lists the protocols that must be adopted. The bill would add to the list protocols for complying with the proposed Michigan Do-Not-Resuscitate Procedure Act; and provides that a protocol established could not conflict with the proposed Act.

Senate Bill 836

Currently, a licensee (an entity that has been issued a license to operate an adult foster care facility) must provide "protection" to a resident; that is, it is "the continual responsibility of the licensee to take reasonable action to insure the health, safety, and well-being of a resident, including

protection from physical harm...". The bill provides that a licensee providing foster care to a resident, who was enrolled in a licensed hospice program and whose assessment plan included a do-not-resuscitate order, would be considered to be providing protection to the resident if, in the event the resident suffered cessation of both spontaneous respiration and circulation, the licensee contacted the hospice program.

Currently, the Act defines "adult foster care facility" to include a facility for adults who are aged, mentally ill, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. The bill provides that a resident of an adult foster care facility who was enrolled in a licensed hospice program would not be considered to require continuous nursing care, for purposes of the Act's requirement.

MCL 333.20919 et al. (S.B. 451)
400.703 et al. (S.B. 836)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Hospitals and many long-term health care facilities have over the years developed policies and procedures for honoring do-not-resuscitate requests from seriously ill patients, but no such system has evolved for handling the cases of persons outside a health facility. Increasing numbers of seriously or 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 often notify the authorities by calling either an ambulance service or the police, who then send an emergency unit to the house. In many 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 orally 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. Reportedly, 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. This places the patient, emergency medical personnel, and the patient's caretakers in a situation that none desires, because there is not a State law that specifically allows certain health or emergency personnel to honor do-not-resuscitate requests. The bill would create a legally recognized means whereby such requests would have to be honored.

Supporting Argument

The bill would be restrictive in its application in that it would apply only to a person who suffered cessation of both spontaneous respiration and circulation. 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 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.

Legislative Analyst: G. Towne

FISCAL IMPACT

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

Fiscal Analyst: P. Graham

A9596\S451A

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.