

# Legislative Analysis



## AUTHORIZE GUARDIANS TO EXECUTE DO-NOT-RESUSCITATE ORDERS

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**House Bill 4382**  
**Public Act 155 of 2013**  
**Sponsor: Rep. Kevin Cotter**

**House Bill 4383**  
**Public Act 156 of 2013**  
**Sponsor: Rep. Andrea LaFontaine**

**House Bill 4384**  
**Public Act 157 of 2013**  
**Sponsor: Rep. Kenneth Kurtz**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**

**Complete to 7-30-14**

## A SUMMARY OF HOUSE BILLS 4382-4384 AS ENACTED

The bills taken together do the following, among other things:

- Expand the authority to execute or revoke a do-not-resuscitate (DNR) order on behalf of another to include guardians;
- Require, among other things, a guardian to visit a ward no more than 14 days before executing a DNR order and to consult with the ward's physician regarding specific medical indications warranting an order.
- Revise the definition of "do-not-resuscitate order" so as to make it apply in all settings outside of a hospital;
- Void, rather than destroy, an order that was revoked;
- Revise the information and signatures required to be on a DNR order; and
- Require a guardian ad litem, in a hearing to determine incapacity, to inform the subject of the petition regarding DNR orders should a guardian be appointed.

The bills took effect February 4, 2014.

### **House Bill 4382**

The bill amends the Michigan Do-Not-Resuscitate Procedure Act (MCL 333.1052 et al.). A Do-Not-Resuscitate Order, or DNR, is a document that an individual executes directing that resuscitation will not be initiated if both the individual's breathing and heart stop simultaneously.

House Bill 4382 revised the definition of "do-not-resuscitate order" to mean a document executed under the act (instead of under Sections 3 or 5) directing that, if an individual (rather than a patient) suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated. (The bill eliminates

references to a setting outside of a nursing home or outside of a mental health facility owned or operated by the Department of Community Health.) The bill also makes numerous changes to the act as detailed below.

Patient Advocate. The act allows an individual (hereinafter, "declarant") 18 years of age or older who is of sound mind to execute a DNR on his or her own behalf. A patient advocate at least 18 years old may also execute a DNR on the declarant's behalf. The bill adds a definition of "patient advocate," defining the term to mean an individual designated to make medical treatment decisions for a patient under Sections 5506-5515 of the Estates and Protected Individuals Code (EPIC). The bill also requires the patient advocate to sign the DNR order and applies several current provisions, such as applying a DNR identification bracelet to the individual's wrist, to the patient advocate.

Court-appointed Guardian. The bill allows a guardian with the power to execute a do-not-resuscitate order under Section 5314 of EPIC (added by House Bill 4384) to execute a DNR order on behalf of a ward. A guardian would first have to comply with the requirements in Section 5314. "Guardian" means that term as defined in EPIC and does not include a guardian ad litem.

The bill establishes a process by which a guardian could execute a do-not-resuscitate order that is substantially similar to that in place for a person to execute a DNR order on his or her own behalf or for a patient advocate to do so.

DNR Form. The bill revises information required to be included in a DNR order. Among other things, the bill requires the signature of the guardian or patient advocate authorizing that no person shall attempt to resuscitate the declarant if the declarant's heart and breathing stops; that the guardian or patient advocate understands the full import of the order and takes responsibility for its execution; and that the order remains in effect until it is revoked as provided by law. Similar changes are required of the DNR form executed for an adherent of a church or religious denomination, though that form does not require the signature of a guardian or a physician.

DNR Order Not in Best Interest. The bill expands a provision allowing any interested person to petition the probate court for a review of a do-not-resuscitate order if he or she has reason to believe it was executed contrary to the declarant's wishes. The provision is expanded so that it also applies to DNR orders executed by a guardian that are contrary to a ward's best interests. In addition, the bill requires the court to issue an injunction to void the order and prohibit complying with it if the court finds that the order has been executed contrary to the declarant's wishes or a ward's best interests or wishes.

Revoking a DNR Order. The act allows a declarant or patient advocate to revoke a DNR order at any time and in any manner by which the declarant is able to communicate the intent to do so. If the revocation is not in writing, the act requires an individual who observes the declarant's revocation to describe the circumstances in writing. The bill, instead, applies this provision to an order executed by the declarant or executed on the

declarant's behalf and requires the written description to be delivered to the declarant's attending physician and, if a resident of a facility, to the administrator of the facility.

The bill also allows a guardian (in addition to the patient advocate) to revoke a DNR order, requires such revocations to be in writing, and requires actual notice of the revocation to be delivered to the declarant's attending physician (or a delegate) and also to the administrator of a facility (or that person's designee) if the declarant is a patient or resident of that facility.

Instead of requiring copies of the DNR order to be destroyed, the bill requires the declarant, patient advocate, guardian, or attending physician who has actual notice of the revocation to write "VOID" on all pages of the DNR order and, if applicable, remove the DNR bracelet from the declarant's wrist. If the declarant is a patient or resident of a facility, the administrator or a designee who receives an actual notice of a revocation must immediately make the revocation part of the patient's or resident's permanent medical record (this currently applies only to physicians).

### **House Bill 4384**

The bill amends the Estates and Protected Individuals Code (MCL 700.1103 et al.). Under EPIC, the guardian of a legally incapacitated individual must consult with the individual before making a major decision affecting the individual whenever meaningful communication is possible. The powers and duties of a guardian, to the extent granted by the court order that establishes the guardianship, are prescribed under EPIC.

Under the bill, the power of a guardian to execute, reaffirm, and revoke a DNR order on behalf of a ward are subject to specific requirements stating that a guardian may not execute a do-not-resuscitate order without:

- Visiting the ward within 14 days before executing the DNR order and, if meaningful communication were possible, consulting with the ward about executing an order; and,
- Consulting directly with the ward's attending physician as to specific medical indications that warrant a DNR order.

A guardian's power to execute a DNR order under the above provision does not affect or limit the guardian's power to consent to a physician's order to withhold resuscitative measures in a hospital.

If a DNR order had been executed on the ward's behalf, at least once a year thereafter the guardian must:

- Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the DNR order; and,
- Consult directly with the ward's attending physician as to specific medical indications that may warrant reaffirming the order.

Annual Report. The annual report to the court required under a guardianship (or more frequently, if applicable) must include whether the guardian has executed, reaffirmed, or revoked a DNR order on behalf of the ward during the past year.

Guardian Ad Litem Duties. When a guardianship petition is filed on the basis of incapacity, a guardian ad litem (GAL) is appointed for the individual who is the subject of the petition, if that individual does not already have legal counsel. The GAL is required to explain the hearing procedure and certain rights of the individual, such as the right to contest the petition. The bill requires the GAL to inform the individual that if a guardian is appointed, the guardian may have the power to execute a DNR order on the individual's behalf and, if meaningful communication is possible, the GAL must discern if the individual objects to having a DNR order executed. In addition, the GAL must explain to the individual that the right to request limits on a guardian's powers includes a limitation on the guardian's power to execute a do-not-resuscitate order. A GAL must also notify the court if the individual objected to having a DNR order executed.

### **House Bill 4383**

The bill made a complementary amendment to the Adult Foster Care Facility Licensing Act (MCL 400.704) to revise a reference to the Michigan Do-Not-Resuscitate Procedure Act.

### **FISCAL IMPACT:**

The bills would not have a significant fiscal impact on state or local government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.