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House Bills 4382, 4383, and 4384 (as passed by the House)

Sponsor: Representative Kevin Cotter (H.B. 4382)
Representative Andrea LaFontaine (H.B. 4383)
Representative Kenneth Kurtz (H.B. 4384)

House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

House Bill 4382 would amend the Michigan Do-Not-Resuscitate Procedure Act to do the following:

- Include a declarant's patient advocate among the individuals who must sign a declarant's do-not-resuscitate (DNR) order.
- Allow a guardian with the power to execute a DNR order under the Estates and Protected Individuals Code to execute a DNR order on behalf of a ward.
- Require a court to issue an injunction voiding a DNR order if it found that an order had been executed contrary to the wishes of the declarant or, if the declarant were a ward, contrary to the wishes or best interests of the ward.
- Require that a writing prepared by a person who observed a declarant's revocation of a DNR order be delivered to the declarant's attending physician and, if the declarant were a patient or resident of a facility, to the facility's administrator.
- Allow a patient advocate or guardian to revoke a DNR order on behalf of a declarant.
- Require that "void" be written on every page of a revoked DNR order, rather than requiring the revoked order to be destroyed.

The bill also would require a DNR order to be accessible within a declarant's place of residence or other setting outside of a hospital, and prohibit a responding health professional from attempting to resuscitate a person who had a DNR order when arriving at the person's location outside of a hospital, rather than outside of a hospital, nursing home, or mental health facility.

House Bill 4383 would amend the Adult Foster Care Facility Licensing Act to define "do-not-resuscitate order" as a document executed under the Michigan Do-Not-Resuscitate Procedure Act directing that, in the event a resident suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated. Currently, the definition refers to such a document executed according to Section 3 of the Michigan Do-Not-Resuscitate Procedure Act.

House Bill 4384 would amend the Estates and Protected Individuals Code (EPIC) to do the following:

- Require a guardian ad litem appointed to represent a person for whom a petition of incapacity was filed to inform the person that, if a guardian were appointed, the guardian could have the power to execute a DNR order on the person's

- **behalf and that the person could request a limitation on that power.**
- **Require a guardian ad litem to inform the court whether an individual for whom a petition of incapacity had been filed objected to having a DNR order executed on his or her behalf.**
- **Prohibit a guardian appointed for an incapacitated person from executing a DNR order for that person unless the guardian consulted with the person within 14 days before executing the order, and consulted directly with the ward's physician.**
- **Require a guardian who executed a DNR order for a ward to visit the ward annually and consult with him or her, if meaningful communication were possible, and to consult with the ward's attending physician as to specific indications that warranted reaffirming the DNR order.**
- **Require a guardian's periodic report to the court, the ward, and interested persons to include whether the guardian had executed, reaffirmed, or revoked a DNR order on behalf of the ward in the past year.**

All of the bills would take effect 90 days after their enactment. House Bills 4382 and 4384 are tie-barred. House Bill 4383 is tie-barred to House Bill 4382.

A more detailed description of House Bills 4382 and 4384 follows.

House Bill 4382

Patient Advocate

Under the Michigan Do-Not-Resuscitate Procedure Act, an individual who is at least 18 years of age and of sound mind may execute a DNR order on his or her own behalf, and a patient advocate of an individual who is at least 18 may execute a DNR order on behalf of that individual. A DNR order must be on a form described in the Act, be dated and executed voluntarily, and be signed by the declarant or another person who, at the time of the signing, is in the declarant's presence and acting pursuant to the declarant's directions. The bill would refer to the declarant, the declarant's patient advocate, or another person in the declarant's presence and acting pursuant to

the declarant's directions. The bill would include the declarant's patient advocate, as an alternative to the declarant, in several provisions that require the declarant to act. (A patient advocate is an individual designated to make medical treatment decisions for a patient under EPIC.)

A declarant who executes an order under the Act must maintain possession of the order and have it accessible within his or her place of residence or other setting outside of a hospital, a nursing home, or a mental health facility owned or operated by the Department of Community Health (DCH). Under the bill, a declarant or patient advocate who executed an order would have to maintain possession of the order and have it accessible within the declarant's place of residence or other setting outside of a hospital.

Guardian's Execution of DNR Order

The bill would allow a guardian with the power to execute a DNR order under EPIC (as it would be amended by House Bill 4384) to execute a DNR order on behalf of a ward after complying with EPIC.

An order executed under this provision would have to be on a form prescribed in the Michigan Do-Not-Resuscitate Procedure Act. The DNR order would have to be dated and executed voluntarily, and be signed by each of the following individuals:

- The guardian.
- The ward's attending physician.
- Two witnesses who were at least 18, at least one of whom was not the ward's spouse, parent, child, grandchild, sibling, or presumptive heir.

The names of all signatories would have to be printed or typed below the corresponding signatures. A witness could not sign an order unless the guardian appeared to the witness to be of sound mind and under no duress, fraud, or undue influence. At any time after an order was signed and witnessed, the guardian, the attending physician or his or her delegate, or an individual designated by the guardian could apply a do-not-resuscitate identification bracelet to the ward's wrist.

A guardian who executed a DNR order would have to maintain possession of the order

and have it accessible within the ward's place of residence or other setting outside of a hospital or, if applicable, provide a copy of the order to the administrator of a facility in which the ward was a patient or resident.

Review & Revocation of DNR Order

Review. Under the Act, if a person interested in the welfare of the declarant has reason to believe that a DNR order has been executed contrary to the declarant's wishes, the interested person may petition the probate court to review the order and conditions of its execution. The bill would extend this provision to a declarant who was a ward. Under the bill, if the probate court found that an order had been executed contrary to the wishes of the declarant or, if the declarant were a ward, contrary to the wishes or best interests of the ward, the court would have to issue an injunction voiding the order's effectiveness and prohibiting compliance with it.

Revocation. A declarant or a patient advocate who executes an order on behalf of a declarant may revoke an order at any time and in any manner by which he or she is able to communicate intent to revoke. If the revocation is not in writing, a person who observed the revocation must describe the circumstances in writing and sign the document. The bill also would require that person to deliver the writing to the declarant's attending physician or the physician's delegate and, if the declarant were a patient or resident of a facility, to the administrator of the facility or the administrator's designee.

The bill would authorize a patient advocate or guardian to revoke an order on behalf of a declarant at any time by issuing the revocation in writing, and provide actual notice of the revocation by delivering the written revocation to the declarant's attending physician or his or her delegate and, if the declarant were a patient or resident of a facility, to the administrator of the facility or the administrator's designee.

Currently, upon revocation, the declarant, patient advocate, or attending physician, or the physician's delegate, who has actual notice of revocation, must destroy the order and, if applicable, remove the declarant's DNR identification bracelet. The bill would include a guardian in that requirement and

would require the person who took action after a revocation to write "void" on all pages of the order rather than destroy it.

The Act requires a physician or his or her delegate who receives actual notice of a revocation of a DNR order to make the revocation part of the declarant's permanent medical record. Under the bill, the administrator of a facility, or his or her designee, who received actual notice of a revocation of a DNR order of a patient or resident of the facility also would have to make the revocation part of the patient's or resident's permanent medical record.

Health Professional Response

The Act requires the following health professionals, who arrive at a person's location outside of a hospital, a nursing home, or a DCH mental health facility, to determine if the person has one or more vital signs, regardless of whether the health professional views or is given a DNR order for the person:

- A paramedic, emergency medical technician, or emergency medical technician specialist.
- A physician or nurse.
- A medical first responder.
- A respiratory therapist.

If the health professional determines that the person has no vital signs, and if he or she determines that the person is wearing a DNR identification bracelet or is given a DNR order for the person, the medical professional may not attempt to resuscitate the person.

Under the bill, these provisions would apply to one of those health professionals who arrived at a person's location outside of a hospital. Also, the requirements would apply if the health professional had actual notice of a DNR order for the declarant, rather than was given a DNR order.

House Bill 4384

Guardian Ad Litem Duties

Under EPIC, an individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian. When a petition is filed, unless

the allegedly incapacitated individual has legal counsel of his or her own choice, the court must appoint a guardian ad litem to represent the person in the proceedings.

The duties of a guardian ad litem include explaining to the individual his or her rights in the hearing procedure, including the right to request limits on the guardian's powers. Under the bill, this would include the right to request a limitation on the guardian's power to execute a DNR order on behalf of the ward.

In addition, the bill would require a guardian ad litem to inform the individual that, if a guardian were appointed, the guardian could have the power to execute a DNR order on the individual's behalf and, if meaningful communication were possible, discern if the individual objected to having a DNR order executed.

A guardian ad litem's duties include making certain determinations, and informing the court of those determinations. Under the bill, this would include determining, and informing the court, whether the individual objected to having a DNR order executed on his or her behalf.

Guardian's Consultation with Ward

Under EPIC, whenever meaningful communication is possible, a legally incapacitated individual's guardian must consult with the individual before making major decisions affecting the individual. A guardian has certain enumerated powers and duties, to the extent granted by court order.

Under the bill, a guardian could not execute a DNR order unless he or she did the following:

- Visited the ward within 14 days before executing the order and, if meaningful communication were possible, consulted with the ward about executing the DNR order.
- Consulted directly with the ward's attending physician as to the specific medical indications that warranted the DNR order.

If a guardian executed a DNR order, he or she would have to do the following at least annually after the order was first executed:

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

Guardian's Report

Under EPIC, a guardian must report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, but at least annually. The guardian also must serve the report on the ward and interested persons as specified in Michigan court rules. The bill would require the report to include whether the guardian had executed, reaffirmed, or revoked a DNR order on behalf of the ward during the past year.

MCL 333.1052 et al. (H.B. 4382)
400.704 (H.B. 4383)
700.1103 et al. (H.B. 4384)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

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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.