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

BILL ANALYSIS

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

Senate Bill 784 (Substitute S-2 as reported)
Senate Bill 786 (Substitute S-1 as reported)
Senate Bill 827 (Substitute S-1 as reported)
Sponsor: Senator Rebekah Warren (S.B. 784 & 786)
Senator Rick Jones (S.B. 827)
Committee: Judiciary

Date Completed: 4-11-18

RATIONALE

The Michigan Do-Not-Resuscitate Procedure Act was enacted in 1996 to establish a legally recognized vehicle for individuals to inform care-givers and emergency personnel of their wishes not to be resuscitated in the event of heart and respiratory failure, and to have those wishes respected. Specifically, the Act allows an individual to execute a do-not-resuscitate (DNR) order directing that, if the person suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated. The Act also allows a person's patient advocate (an individual designated to make medical decisions for a patient) to execute a DNR order on behalf of that person. In addition, under 2013 amendments to the Act and the Estates and Protected Individuals Code, the guardian of a legally incapacitated person may execute a DNR order on behalf of the ward. The Act, however, does not contain language allowing a parent to execute a DNR order for his or her minor child, although DNR orders executed by parents apparently are not uncommon. As a result, evidently there is uncertainty among school officials as to whether they are required or authorized to comply with DNR orders executed for students. Reportedly, there are different policies in school districts around the State and, in some cases, parents are required to obtain a court order directing a school to comply with a DNR order. To address this situation, it has been suggested that the Act should specifically allow parents to execute DNR orders for seriously ill children who are not expected to survive, and establish procedures for school officials to handle these DNR orders.

CONTENT

Senate Bill 784 (S-2) would amend the Michigan Do-Not-Resuscitate Procedure Act to do the following:

- **Allow a parent to execute a do-not-resuscitate order on behalf of his or her minor child (an individual under 18 years old who has been diagnosed by an attending physician as having an advanced illness, and who is not emancipated).**
- **Require a DNR order executed by a parent to be signed by the parent or parents, the child's attending physicians, and two witnesses 18 years of age or older.**
- **Require a parent who executed an order to maintain possession of it and have it accessible at the child's place of residence or other setting outside of a hospital, or, if applicable, provide a copy to the administrator of the child's school or the facility where the child was a patient or resident.**
- **Specify the requirements for revoking a DNR executed on behalf of a minor child.**
- **Allow the guardian of a minor ward to execute a DNR order on behalf of the ward.**
- **Require a guardian who executed a DNR order on behalf of a minor ward to give a copy of it to the administrator of his or her school or the administrator of the facility where the ward was a patient or resident.**

-- Allow a person interested in the welfare of a ward who was a minor child for whom a DNR order was executed, to petition the probate court to have the order reviewed.
-- Prohibit an individual from attempting to resuscitate a child for whom a DNR order had been executed at a school before a health professional arrived.

Senate Bill 786 (S-1) would amend the Estates and Protected Individuals Code to authorize a guardian of a minor to execute a DNR order on behalf of the ward as provided in the Michigan Do-Not-Resuscitate Procedure Act.

Senate Bill 827 (S-1) would amend the Revised School Code to do the following:

-- Require the administrator of a public or nonpublic school who received a copy of a DNR order executed on behalf of a minor pupil to ensure that the order was made a part of the child's individualized education program (IEP), or was placed in a file specifically for DNR orders, as applicable.
-- Require the administrator of a school who received a copy of a physician orders for scope of treatment (POST) form to ensure that it was made a part of the child's IEP, or was placed in a file specifically for POST forms, as applicable.
-- Require an individual to comply with a proposed requirement in the Michigan DNR Procedure Act not to attempt resuscitation.
-- Require a school administrator who received actual notice of a DNR order or POST form revocation to make the revocation part of the pupil's individualized education program, or place it in the file for DNR orders or POST forms, as applicable.
-- Specify that a school administrator, teacher, or other school employee who in good faith administered a comfort care measure to, or refused to perform resuscitation on, a pupil in compliance with a DNR order would not be civilly or criminally liable.
-- Specify that a school administrator, teacher, or other school employee who in good faith provided medical treatment to a pupil that was consistent with his or her POST form would not be civilly or criminally liable.
-- Provide that schools, school board members, and nonpublic school directors or officers would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under the bill.

Senate Bills 784 (S-2) and 827 (S-1) would take effect 90 days after being enacted. Senate Bills 786 (S-1) and 827 (S-1) are tie-barred to Senate Bill 784.

Senate Bills 784 (S-2) and 827 (S-1) are described in more detail below.

Senate Bill 784 (S-2)

DNR Order Executed by Parent

The bill would allow a parent to execute a do-not-resuscitate order on behalf of his or her minor child. If a parent shared with another parent legal decision-making authority as to the important decisions affecting the welfare of the child, both parents would have to execute the order.

The bill would define "minor child" as an individual who is less than 18 years of age, has been diagnosed by an attending physician as having an advanced illness, and is not emancipated by operation of law as provided in the emancipation of minors Act. "Advanced illness" would mean a medical or surgical condition with significant functional impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation. "Parent" would mean the natural or adoptive parent of a minor child who possesses legal decision-making authority as to the important decisions affecting the welfare of the minor child.

The bill would define "resuscitate" as perform cardiopulmonary resuscitation (CPR) or a component of CPR, including cardiac compression, endotracheal intubation or other advanced

airway management, artificial ventilation, defibrillation, the administration of a cardiac resuscitation medication, or another related procedure. The term would not include the Heimlich maneuver or a similar procedure used to expel an obstruction from a declarant's throat. (A "declarant" is an individual who has executed a DNR order on his or her own behalf or on whose behalf a DNR order has been executed.)

A DNR order executed on behalf of a minor child would have to be on a form described below, and signed by each of the following individuals:

-- The parent, or parents, as applicable, of the minor child.
-- The minor child's attending physician.
-- Two witnesses 18 years of age or older, each of whom could not be the minor child's 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 parent, or parents, 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 parent, the attending physician or his or her delegatee, or an individual designated by the parent could apply an identification bracelet to the minor child's wrist. (An identification bracelet is a wrist bracelet that meets requirements of the Act and is worn by a declarant while a DNR order is in effect.)

A parent who executed a DNR order on behalf of his or her minor child would have to maintain possession of it, and have it accessible within the child's place of residence or other setting outside of a hospital or, if applicable, would have to provide a copy of the order to the following, or their respective designees: a) the administrator of the minor child's school, or b) the administrator of a facility in which the child was a patient.

Form of DNR Order

The DNR Procedure Act requires a DNR order to include certain language, and to be in substantially the same form as provided in the Act. The bill would extend this requirement to a DNR order executed by parent on behalf of his or her minor child.

The form for a DNR order described in the Act would have to include the following language:

> C. PARENT CONSENT
>
> I authorize that in the event the minor child's heart and breathing should stop, no person shall attempt to resuscitate the minor child. I understand the full import of this order and assume responsibility for its execution. This order will remain in effect until it is revoked as provided by law.

The form would have to include spaces for the parent's, or parents', printed name and signature.

Copy of Order, Medical Record

Under the Act, an attending physician who signs a declarant's DNR order immediately must obtain a copy or a duplicate of the executed order and make it part of the declarant's permanent medical record. The bill would extend this requirement to a DNR order executed by a parent on behalf of a minor child.

Execution of DNR by Guardian of Minor Ward

The Act allows a guardian with the power to execute a DNR order under Section 5314 of the

Estates and Protected Individuals Code to do so on behalf of a ward who is legally incapacitated after complying with that section. "Ward" means an individual for whom a guardian is appointed.

(Under Section 5314 of the Code, the guardian of a legally incapacitated ward has the power to execute and revoke a do-not-resuscitate order on behalf of a ward, subject to certain requirements.)

Under the bill, a guardian of a ward who was a minor child also could execute a DNR order on behalf of the ward.

A guardian who executes a DNR order must maintain possession of the order and must 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 is a patient or resident, or to the administrator's designee. Under the bill, if applicable, a guardian also would have to provide a copy of the order to the administrator of the ward's school or to his or her designee.

Petition for Review of Order

The Act allows a person who is interested in the welfare of a declarant to petition the probate court to have the DNR order and the conditions of its execution reviewed if that person has reason to believe that an order has been executed contrary to the declarant's wishes or, if the declarant is a ward, contrary to the ward's wishes or best interests. If the court finds that an order has been executed contrary to the declarant's wishes or contrary to the ward's wishes or best interests, the court must issue an injunction voiding the effectiveness of the order and prohibiting compliance with it. Under the bill, these provisions also would apply to a ward who was a minor child.

Revocation of a DNR Order

The Act allows a declarant to revoke a DNR order executed by or on behalf of himself or herself at any time and in any manner by which he or she is able to communicate his or her intent to revoke it. If the revocation is not in writing, an individual who observes the declarant's revocation must describe the circumstances of the revocation in writing, sign it, and deliver it to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or his or her designee. Under the bill, if the declarant were a pupil of a school, the order would have to be delivered to the administrator of the school or his or her designee.

A patient advocate or guardian may revoke an order on behalf of a declarant at any time by issuing the revocation in writing, and may provide actual notice of the revocation by delivering it to the declarant's attending physician or his or her delegatee and, if the declarant is a patient or resident of a facility, to the administrator of the facility or his or her designee. Under the bill, a parent could revoke the order in the same manner. If the declarant were a pupil of a school, a parent or guardian could revoke the order by delivering the revocation to the administrator of the school.

Upon revocation, the declarant, patient advocate, guardian, or attending physician or his or her delegatee who has actual notice of a revocation of an order must write "void" on all pages of the order, and remove the declarant's do-not-resuscitate identification bracelet, if applicable. Under the bill, these requirements also would apply to a parent.

Prohibited Resuscitation

The Act requires one or more of the following health professionals who arrive at a declarant's location outside of a hospital to determine if the declarant has one or more vital signs, whether or not the health professional views or has actual notice of an order that is alleged to have been executed by or on behalf of the declarant:

-- A paramedic.
-- An emergency medical technician.
-- An emergency medical technician specialist.
-- A physician.
-- A nurse.
-- A medical first responder.
-- A respiratory therapist.
-- A physician's assistant.

Under the bill, if the declarant were a minor child who was enrolled and located at a school, an individual who determined that the declarant was wearing a DNR identification bracelet or had actual knowledge of his or her DNR order could not attempt to resuscitate the declarant before a health professional listed above arrived at the declarant's location.

Senate Bill 827 (S-1)

Filing of DNR Order; Revocation

The bill would require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a DNR order executed by the parent of a minor child or the guardian of a ward under the Michigan Do-Not-Resuscitate Procedure Act to ensure that, for a pupil with an individualized education program, the order would be made part of his or her IEP in the same manner as other medical information regarding the pupil. For a pupil without an individualized education program, the administrator would have to ensure that both of the following were met:

-- The DNR order would have to be placed in a file created specifically for DNR orders and that file would have to be stored in all of the locations in which an IEP was stored.
-- All parties that received notice of an individualized education program would have to receive notice of a DNR order for a pupil without an IEP.

If the administrator, or his or her designee, had received a DNR order for a pupil during the previous school year, the administrator or designee would have to ask the pupil's parent or guardian at the beginning of the school year whether the order was still in effect.

An administrator of a public or nonpublic school who received actual notice that a DNR order had been revoked would have to make the revocation part of the pupil's individualized education program in the same manner as other medical information regarding the pupil or place the revocation in the file for DNR orders, as applicable. All parties entitled to notice of an individualized education program would have to receive notice of the revocation, regardless of whether it pertained to a pupil with an IEP.

(Under the Code, "individualized education program" means the term as defined in 20 USC 1414: a written statement for each child with a disability that is developed, reviewed, and revised in accordance with that section and that includes a number of components, such as statements of the child's present level of academic achievement, measurable annual goals, and the special education and related services to be provided to the child.)

Filing of POST Form; Revocation

The bill would require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a POST form from a parent or guardian of a pupil to ensure that, for a pupil with an individualized education program, the order would be made part of his or her IEP in the same manner as other medical information regarding the pupil. For a pupil without an IEP, the administrator or designee would have to ensure that both of the following were met:

-- The POST form would have to be placed in a file created specifically for POST forms and that file would have to be stored in all of the locations in which an IEP was stored.

-- All parties that received notice of an individualized education program would have to receive notice of a POST form for a pupil without an IEP.

If an administrator of a public or nonpublic school, or his or her designee, received actual notice that a POST form had been revoked, he or she immediately would have to make the revocation part of the pupil's individualized education program in the same manner as other medical information regarding the pupil or place the revocation in the file for POST forms, as applicable. All parties entitled to notice of an individualized education program would have to receive notice of the revocation, regardless of whether it pertained to a pupil with an IEP.

("POST form" would mean that term as defined in the Public Health Code. The definition refers to the standardized POST form developed by the Department of Health and Human Services. The Code requires the standardized form to contain certain statements and items, including sections containing medical orders that direct specific types or levels of treatment to be provided in a setting outside of a hospital to which a patient or patient representative may consent.)

Immunity from Liability

Under the bill, a school administrator, teacher, or other school employee designated by the administrator, who in good faith administered a comfort care measure to a pupil, or refused to perform resuscitation on a pupil, in an emergency that threatened the life or health of the pupil, in compliance with a DNR order, would not be liable in a criminal action or for civil damages as a result of an act or omission in the administration of the comfort care measure, or the refusal to perform resuscitation, except for an act or omission amounting to gross negligence or willful and wanton misconduct.

("Comfort care measure" would mean a treatment designed by the physician issuing a DNR order for a pupil to ensure his or her mental and physical comfort in circumstances in which resuscitation is not attempted. The term would not include the routine provision of medications, treatment, or procedures.)

In addition, if a school administrator, teacher, or other school employee designated by the administrator, in good faith provided medical treatment to a pupil that was consistent with his or her POST form in an emergency that threatened the life or health of the pupil, the administrator, teacher, or other school employee would not be liable in a criminal action or for civil damages as a result of an act or omission in the provision of the medical treatment, except for an act or omission amounting to gross negligence or willful and wanton misconduct.

A school district, public school academy, nonpublic school, member of a school board, or director or officer of a public school academy or nonpublic school would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under the bill's provisions.

No Right to IEP

The bill's provisions could not be construed to create a right to an IEP.

MCL 333.1052 et al. (S.B. 784)
MCL 700.5215 (S.B. 786)
Proposed MCL 380.1180 & 380.1181 (S.B. 827)

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

The decision to execute a do-not-resuscitate order for a minor child is undoubtedly one of the most difficult choices any parent may have to make. Parents have the right to make this choice, however, to prevent their children from undergoing the trauma of resuscitation attempts that will be futile, in the end. Just as the original DNR Procedure Act recognizes the right of individuals to reject CPR if they are dying, this legislation would codify the right of parents to decide for their children.

Despite the gap in current law, parents already do execute DNR orders for children who have terminal conditions. Many of these children will survive for years and are able to attend school, which can vastly improve their quality of life. If a school district will not honor a DNR order, however, a parent might have to choose between allowing his or child to attend school, where CPR will be performed if a crisis occurs, and keeping the child home, where he or she will be denied the educational, interpersonal, and therapeutic benefits of attending school. Children have a right to an education and the fact that they have a terminal disorder should not infringe on that right. When parents make the decision to execute a DNR order for their children, no one should be allowed to disregard that order. While affirming the right of parents to make this decision, Senate Bill 784 (S-2) also would provide safeguards. These include a standard for the condition of a child who was the subject of a DNR order, obligations of parents executing an order, and parental consent language in the statutory DNR form.

At the same time, Senate Bill 827 (S-1) would address the legitimate concerns of school administrators. Because the statute does not specifically authorize parents to execute DNR orders for children, school officials do not know whether a DNR order has been properly executed, do not know how to handle a DNR order, and do not know whether they will be held liable for honoring one. If parents are required to obtain a court order directing the school to comply with a DNR order, the school has protection from liability. In addition, teachers have assurance that they are not being negligent if they do not try to save the life of a child in a medical emergency. The bill would address these issues by describing exactly how a school would have to handle a pupil's DNR order or the revocation of an order, creating immunity from civil and criminal liability for honoring a DNR order, and requiring compliance with a provision in the DNR Procedure Act prohibiting resuscitation. The bill also would extend immunity to personnel for administering a comfort care measure provided for in the order. A DNR order means that attempts to resuscitate a dying person may not be made, but it also can allow measures to make the person comfortable.

In addition, Senate Bills 784 (S-2) and 786 (S-1) would make it clear that guardians of minors, in addition to parents, would have the authority to execute DNR orders on the minors' behalf. Guardians of minors would be subject to the requirements that currently apply to guardians who execute DNR orders for legally incapacitated individuals and, like parents, would be required to give a copy of a minor's DNR order to a school administrator.

When the Michigan DNR Procedure Act was enacted more than 20 years ago, it was pointed out that advances in medical technology had made it possible, in some cases, to continue the life of a person whose heart and respiratory system had stopped functioning. Through contemporary life-saving techniques, people who appear to have died sometimes can be revived. The statute recognized that these interventions are not welcome in all cases. The same applies today regarding children with incurable conditions. Medical technology is such that babies who would not have made it to term in the recent past, now are being born and kept alive. Children with severe birth defects are living longer than ever, sometimes far exceeding doctors' expectations. These children deserve the best possible quality of life, including educational opportunities, for as long they survive. Under this legislation, parents would not have to fear that unwanted CPR would be performed if their children attended school, and children with terminal conditions would not be denied the benefits of going to school.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bills 784 (S-2) & 786 (S-1)

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

Senate Bill 827 (S-1)

The bill would have no fiscal impact on the State, and minimal or no impact on local units of government. Schools that received do-not-resuscitate orders or POST forms would have to create files and update them annually for pupils without an individualized education program. For pupils with an IEP, schools would need only to update the information in the pupils' files and update them annually. Due to uncertainty in the number, location, and IEP status of pupils who would have a do-not-resuscitate order or POST form, an exact cost is difficult to estimate, but would likely be negligible.

Fiscal Analyst: Cory Savino
Michael Siracuse

SAS\A1718\s784a