

AUTHORIZE GUARDIANS TO EXECUTE DO-NOT-RESUSCITATE ORDERS

**House Bill 4382 reported without amendment
Sponsor: Rep. Kevin Cotter**

**House Bill 4383 reported without amendment
Sponsor: Rep. Andrea LaFontaine**

**House Bill 4384 reported without amendment
Sponsor: Rep. Kenneth Kurtz**

Committee: Judiciary

Complete to 4-17-13

A SUMMARY OF HOUSE BILLS 4382-4384 AS REPORTED BY COMMITTEE 4-11-13

Together, the bill package would, among other things:

- expand the authority to execute or revoke a do-not-resuscitate (DNR) order on behalf of another to include guardians;
- 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- void, rather than destroy, an order that was revoked;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 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.

House Bills 4382 and 4384 are tie-barred to each other, and House Bill 4383 is tie-barred to House Bill 4382. A bill that is tie-barred to another cannot take effect unless that other bill is also enacted.

House Bill 4382

The bill would amend the Michigan Do-Not-Resuscitate Procedure Act (MCL 333.1052 et al.) to do the following:

- Revise 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.)

- Allow a guardian with the power to execute a do-not-resuscitate order under Section 5314 of the Estates and Protected Individuals Code (EPIC) to execute a DNR order on behalf of a ward. A guardian would first have to comply with the requirements in Section 5314. "Guardian" would mean that term as defined in EPIC and would not include a guardian ad litem.
- Establish 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.
- Revise information required to be included in a DNR order to, among other things, require the signature of the guardian or patient advocate authorizing that, in the event the declarant's heart and breathing stops, no person shall attempt to resuscitate the declarant; that he or she 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.
- Expand 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 would be expanded so that it would apply to DNR orders executed by a guardian that are contrary to a ward's best interests. In addition, the bill would require the court to issue an injunction to void the order and prohibit complying with it if the court found that the order has been executed contrary to the declarant's wishes or a ward's best interests.
- Allow a guardian (in addition to the declarant or patient advocate) to revoke a DNR order, require all revocations to be in writing, require actual notice of the revocation to be by delivering the written revocation 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 destroying a revoked order, require the declarant, patient advocate, guardian, or attending physician to write "void" on all pages of the order and remove the declarant's do-not-resuscitate identification bracelet (if applicable).
- Require, if the declarant is a patient or resident of a facility, the administrator or a designee who receives an actual notice of a revocation to immediately make the revocation part of the patient's or resident's permanent medical record.
- Revise various provisions to comply with the major changes proposed by the bill.

House Bill 4384

The bill would amend the Estates and Protected Individuals Code (MCL 700.1103 et al.). Under the bill, a guardian could not execute a do-not-resuscitate order without visiting

the ward within 14 days of executing the DNR order and, if meaningful communication were possible, consulting with the ward about executing an order. The guardian would also have to consult directly with the ward's attending physician as to specific medical indications that warrant a DNR order. This would have to be repeated annually if a do-not-resuscitate order had been executed on the ward's behalf in order to consult with the ward or the attending physician regarding reaffirming the order.

The annual report to the court required under a guardianship would have to include whether the guardian has executed, reaffirmed, or revoked a DNR order on behalf of the ward during the past year.

In addition, 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 bill would include in the guardian ad litem's duties requiring the GAL to 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.

The GAL would also have to inform the individual that if a guardian were appointed, the guardian may have the power to execute a DNR order on his or her behalf, and, if meaningful communication were possible, the GAL would have to discern if the individual objects to having a DNR order executed on his or her behalf. A GAL would have to notify the court if the individual objected to having a DNR order executed.

House Bill 4383

The bill would amend the Adult Foster Care Facility Licensing Act (MCL 400.704) to revise the reference to the Michigan Do-Not-Resuscitate Procedure Act contained in the definition of the term "do-not-resuscitate order."

FISCAL IMPACT:

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

POSITIONS:

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bills. (3-21-13)

A representative of the Health Care Association of Michigan testified in support of the bills. (3-21-13)

A representative of the Elder Law and Disability Rights Section of the State Bar of Michigan testified in support of the bills. (4-11-13)

The Association of Children's Mental Health (ACMH) indicated support for the bills. (4-11-13)

The Michigan Catholic Conference indicated support for the bills. (4-11-13)

Right to Life of Michigan indicated support for the bills. (3-21-13)

Hospice and Palliative Care Association of Michigan indicated it would support the bills with some amendments. (3-21-13)

The Department of Community Health indicated a neutral position on the bills. (4-11-13)

A representative of Michigan Protection and Advocacy testified in opposition to the bills. (3-21-13)

The ARC, Michigan indicated opposition to the bills. (3-21-13)

Legislative Analyst: Susan Stutzky
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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.