



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bills 451 and 452 (as introduced 4-19-95)  
Sponsor: Senator Dale L. Shugars (S.B. 451)  
Senator John J. H. Schwarz, M.D. (S.B. 452)  
Committee: Health Policy and Senior Citizens

Date Completed: 2-6-96

### CONTENT

**Senate Bill 452** 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; prescribe the powers and duties of the Department of Public Health; 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 451 is tie-barred to Senate Bill 452. Following is a detailed description of each bill.

#### Senate Bill 452

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, 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 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 do-not-resuscitate 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 The order would have to be dated and executed voluntarily, and would remain in effect until it was revoked by the declarant.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. 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 do-not-resuscitate 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 do-not-resuscitate 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.

Upon request, the Department would have to provide do-not-resuscitate identification bracelets to physicians and to individual religious adherents described above. The bracelets would have to be a wrist bracelet to be worn by the declarant while a do-not-resuscitate order was in effect, and would have to possess features that made them clearly recognizable as do-not-resuscitate identification bracelets. The Department would have to contract with a public or private entity for the production and distribution of the bracelets. At the time an order was signed and witnessed, the attending physician or the individual would have to apply a bracelet to the declarant's wrist, unless the declarant or another person acting pursuant to the directions of the declarant specifically declined the identification bracelet.

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 an 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 would have to destroy the order and remove the do-not-resuscitate identification bracelet. A physician 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.

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 care practitioner. 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 do-not-resuscitate 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 do-not-resuscitate order, if the person or organization had no actual notice of the order.
- Failing to resuscitate an individual who had revoked a do-not-resuscitate order or on whose behalf a do-not-resuscitate 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 Procedures 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 Procedures Act; and provide that a protocol established could not conflict with the proposed Act.

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

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

### **Senate Bill 451**

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

### **Senate Bill 452**

The bill would result in an indeterminate increase in Michigan Department of Public Health expenditures. The Department would incur the costs of providing the bracelets required by the bill. The cost per bracelet would be approximately \$2.50. Total cost would depend on the number of individuals who executed do-not-resuscitate orders.

Fiscal Analyst: P. Graham

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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.