

Legislative Analysis



ALLOW DO-NOT-RESUSCITATE ORDER FOR MINOR CHILD WITH ADVANCED ILLNESS

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House Bills 5417 and 5418 (H-4) as reported from committee
Sponsor: Rep. Rebekah Warren

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5419 as reported from committee
Sponsor: Rep. Daire Rendon

Committee: Judiciary
Complete to 5-13-20

SUMMARY:

House Bill 5417 would allow a parent or guardian of a minor child to execute a do-not-resuscitate (DNR) order on behalf of a child or ward with an advanced illness.

House Bill 5418 would require a school to retain a copy of a valid DNR order or physician orders for scope of treatment (POST) form or revocation of a DNR order or POST form and provide immunity from civil or criminal liability for certain individuals and entities.

House Bill 5419 would authorize a guardian to execute a DNR order on behalf of a minor ward under provisions of HB 5417.

Currently, an individual, his or her patient advocate, or a guardian of a legally incapacitated person may execute a DNR order directing that resuscitation will not be initiated if the person suffers cessation of both spontaneous respiration and circulation in a setting outside a hospital. Current law does not allow a minor, or a person on behalf of a minor, to execute a DNR order.

House Bill 5417 would amend the Michigan Do-Not-Resuscitate Procedure Act to allow a *parent* on behalf of his or her *minor child* to execute a DNR order. If a parent shared legal decision-making authority as to important decisions affecting the welfare of the child with another parent, both parents would have to execute the order. The bill would also extend, to include an order for a minor ward, current provisions pertaining to a declarant (an adult executing a DNR order on his or her own behalf) and a guardian executing a DNR order on behalf of a ward. This would include the ability of a parent or guardian to revoke a DNR order for a minor child and for a court review upon petition that the order may be contrary to the minor child's wishes or best interest.

Minor child would mean an individual who is less than 18 years of age, who has been diagnosed by an attending physician as having an *advanced illness*, and who is not lawfully emancipated.

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 a minor child's natural or adoptive parent who possesses legal decision-making authority as to the important decisions affecting the welfare of the minor child.

DNR order executed by parent

All of the following would apply to a DNR order executed by a parent:

- It would have to be on a form as described in section 4 of the act.
- It would have to be executed voluntarily, dated, and signed by each of the following:
 - The parent or parents, as applicable.
 - The minor child's attending physician.
 - Two witnesses at least 18 years of age. The minor child's parent, child, grandchild, sibling, or presumptive heir could not be a witness. A witness could not sign a DNR order unless the parent or both parents, as applicable, appeared to the witness to be of sound mind and not under duress, fraud, or undue influence.

The parent would have to do all of the following:

- Maintain possession of the order.
- Have the order accessible within the minor child's place of residence or other setting outside of a hospital.
- If applicable, provide a copy of the DNR order to the following:
 - The administrator of the child's **school** or the administrator's designee. (**School** would mean a nonpublic school or public school as those terms are defined in the Revised School Code.)
 - The administrator of a facility in which the child is a patient or resident or the administrator's designee.

At any time after the DNR order was signed and witnessed, the parent, the attending physician or his or her delegatee, or an individual designated by the parent could place on the child's wrist an identification bracelet indicating that the child has a DNR order.

Form to execute a DNR order

The form for a DNR order, described in section 4 of the act, would be revised to also apply to a minor child. In addition, the form would have to include a new paragraph requiring the name and signature of the parent or parents and the following statements:

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.

Revocation of DNR order for a minor child

Current provisions pertaining to revoking a DNR order would be amended to apply also to an order for a minor child. In addition, the bill would require a revocation of a DNR order to be provided to the administrator of the school the child attends or the facility in which the child resides. A school administrator (or his or her designee) who received an actual notice of a revocation of a DNR order of a pupil would have to immediately place the revocation in the file created for the DNR order under the Revised School Code (as HB 5418 would require).

Prohibited resuscitation

If a minor child for whom an order was executed were enrolled and located at a school, an individual who determined that the child was wearing a DNR identification bracelet or who had actual notice of a DNR order for that child would be prohibited from attempting to *resuscitate* the child before a health professional listed in the act arrived at the child's location.

Resuscitate would mean to perform cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, including any of the following:

- Cardiac compression.
- Endotracheal intubation or other advanced airway management.
- Artificial ventilation.
- Defibrillation.
- The administration of a cardiac resuscitation medication.
- Another related procedure.

It would not include the Heimlich maneuver or a similar procedure used to expel an obstruction from an individual's throat.

Currently, the act requires one or more of the following health professionals who arrive at a declarant's location outside of a hospital setting 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 alleged to have been executed by or on behalf of the declarant:

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

If the health professional determines that the declarant has no vital signs, and either determines that the declarant is wearing a DNR identification bracelet or has actual notice of a DNR order, the health professional is prohibited from attempting to resuscitate the declarant.

MCL 333.1052 et seq.

House Bill 5418 would add new sections to the Revised School Code to establish protocols for filing with the child's school a DNR order, *POST form*, revocation of a DNR order, or modification or revocation of a POST form, and to provide civil and criminal immunity for schools and school personnel who comply with a DNR order or POST form.

POST form would mean that term as defined in the Public Health Code. [A physician orders for scope of treatment (POST) form is an advance care planning tool that includes a patient's medical condition, the signatures of the patient or patient representative and attending health professional, and a list of the treatments that may be administered outside of a hospital. In general, a POST form is a companion document to the better-known advance directive, which delegates power of attorney for health care authority and scenario-based treatment directives. A POST form gives

more specific instructions for care of seriously ill patients and is intended to be used for patients for whom death within a year is foreseeable though not necessarily inevitable.]

DNR order or POST form

The bill would require the administrator of a public or nonpublic school, or his or her designee, who receives a copy of a DNR order or a POST form from a parent or legal guardian of a pupil enrolled in the school to ensure that all of the following are met:

- The copy of the DNR order or POST form is placed in a file created specifically for copies of such orders or forms, or for copies of the revocation of such orders or forms, in a manner and location to be determined by the administrator, regardless of whether the order or form pertains to a student with an individualized education program (IEP).
- If a copy of a DNR order or POST form was received by the administrator or designee for a pupil during the immediately preceding school year, the administrator or designee inquires of the parent or guardian at the beginning of the school year to determine whether the order or form is still in effect. If applicable, an updated copy of a POST form must be requested.
- **Actual notice** of the DNR order or POST form, or the revocation of either, is provided by the administrator or designee to each teacher or other school employee who provides instructional or noninstructional services directly to the pupil. For revocation of a POST form, the notification would apply regardless of whether the revocation pertained to a pupil with an IEP.

For a DNR order, **actual notice** would mean that term as defined in section 2 of the Michigan Do-Not-Resuscitate Procedure Act. [Section 2 of that act defines the term as including the physical presentation of an order, a revocation of an order, or another written document authorized under the act from or on behalf of a declarant.]

For a POST form, **actual notice** would mean that term as defined in section 5672 of the Public Health Code. [Section 5672 of that act defines the term as including the physical presentation of a POST form or a revoked POST form, or the electronic transmission of a POST form or a revoked POST form if the recipient of the form sends an electronic confirmation to the patient, patient representative, or attending health professional, who sent the electronic transmission, indicating that the POST form or revoked POST form has been received. Actual notice also includes knowledge of a patient's intent to revoke the POST form by a health professional who is treating the patient, by an attending health professional, or by emergency medical services personnel.]

Training

Timely and appropriate training regarding compliance with a DNR or POST form would have to be provided to each teacher or other school employee who provides services to the pupil, according to his or her level of responsibility. If a public or nonpublic school had a copy of a DNR order or POST form on file for a pupil, the board of a school district or intermediate school district that operates the school, board of directors of a public school academy that operates the school, or governing body of a nonpublic school that operates the school would have to ensure that the training was provided.

Immunity for compliance with the bill

All of the following would apply to a school administrator, teacher, or other school employee under the bill:

- He or she would not be liable in a criminal action or for civil damages as a result of calling 9-1-1 in an emergency that threatens the life or health of a pupil.
- He or she would not be subject to civil or criminal liability as provided under sections 12 and 13 of the Michigan Do-Not-Resuscitate Procedure Act.
- He or she would not be liable in a criminal action or for civil damages as a result of an act or omission in acting or attempting to act in compliance with the DNR order or in providing or attempting to provide medical care under a POST form. The immunity from criminal or civil liability would apply to an administrator, teacher, or other employee who in good faith in accordance with his or her knowledge and ability administers or attempts to administer a *comfort care measure* or acts or attempts to act in compliance with a DNR order, or who provides or attempts to provide medical care consistent with a pupil's POST form, in an emergency that threatens the life or health of the pupil. Immunity would not attach to an act or omission amounting to gross negligence or willful or wanton misconduct.

Comfort care measure would mean a treatment designed by the physician issuing a DNR order for a student to ensure the student's mental and physical comfort in circumstances in which resuscitation is not attempted. It would not include the routine provision of medications, treatment, or procedures.

The above provisions would not eliminate, limit, or reduce any other immunity or defense that a person described above would have under other state law.

A school district, intermediate 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. Similarly to the above, this provision would not eliminate, limit, or reduce any other immunity or defense that a person described in this provision may have under state law.

Finally, the bill would specify that it must not be construed to create a right to an IEP.

Proposed MCL 380.1180 and 380.1181

House Bill 5419 would amend the Estates and Protected Individuals Code (EPIC) to allow a guardian to execute a DNR order on behalf of the ward as provided in section 3a of the Michigan Do-Not-Resuscitate Procedure Act. (Section 3a would be added by HB 5417.)

MCL 700.5215

Effective dates and tie-bars: HBs 5417 and 5418 would take effect 90 days after enactment. HBs 5417 and 5418 are tie-barred to each other, and HB 5419 is tie-barred to HB 5417. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

BACKGROUND:

The bills are reintroductions of SBs 784, 786, and 827 of the 2017-18 legislative session.

BRIEF DISCUSSION:

The legislation seeks to address an issue experienced by parents whose children are terminally ill with life-threatening disorders but who are not actively dying. Whether due to birth defects, traumatic injury, or illness, some children will not live to adulthood. However, although their medical condition is terminal, these children may survive for years and are able to attend school, which can improve their quality of life. Although there are no known cases of a terminally ill child dying while at school, it could happen. Parents are left with the dilemma of continuing to send a child to school despite a decline in health, or keeping the child away from friends and services that the child enjoys, that offer comfort, and that increase the child's overall quality of life.

To spare the child from the trauma of resuscitation efforts, which often are not beneficial, and to allow the child a natural death, some parents and legal guardians have executed DNR orders or POST forms on behalf of their children only to find that their child's school has no policy on complying with such orders. Even for those schools that do, policies can differ between school districts. Reportedly, there are currently nine different policies in place across the 57 intermediate school districts in the state. Moreover, because current law does not specifically authorize parents and guardians to execute a DNR order on behalf of a minor, school districts are unsure of their responsibility, or liability, in complying with or ignoring such orders.

Adoption of the bills would provide clarity regarding the legal authority for parents and guardians to execute DNR orders on behalf of a minor, as well as provide clarity and uniformity across the state regarding a school's responsibility to comply with a DNR order or POST form. This would provide certainty for parents that their wishes and decisions for what is in the best interests of their child would be followed whether the child was at home or at school. The bills would also provide for proper safeguards by requiring the child's physician to sign the order, as well as two adult witnesses who are not close relatives. Further, the bills provide immunity from criminal or civil liability for school personnel complying with, or attempting to comply with, a DNR order or POST form.

No arguments opposing the legislation were raised when similar bills were taken up in a prior legislative session, and none were offered regarding the present bills.

FISCAL IMPACT:

The bills would have no fiscal impact on the state and could create a minimal cost increase for public or nonpublic schools that receive a copy of a DNR order or POST form for a pupil.

A school that receives a copy of a DNR order or POST form for a pupil could incur administrative costs to create a file for DNR orders and POST forms, inquire annually if the order or form is still in effect, and provide notice of the receipt or revocation of an order or form to each teacher or other school employee who provides services to the pupil. Additionally, the school must ensure timely and appropriate training regarding compliance with the DNR

order or POST form is provided to each teacher or other school employee who provides services to the pupil. These costs would likely be absorbed using existing staff time.

POSITIONS:

A representative of the Washtenaw Intermediate School District testified in support of the bills. (2-25-20)

The following entities indicated support for the bills (2-25-20):

Michigan Catholic Conference
ESA Legislative Group
Michigan Association of School Boards

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Samuel Christensen
Jacqueline Mullen

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