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House Bill 5417 (as passed by the House)
House Bill 5418 (Substitute H-4 as passed by the House)
House Bill 5419 (as passed by the House)
Sponsor: Representative Rebekah Warren (H.B. 5417 & 5418)
Representative Daire Rendon (H.B. 5419)
House Committee: Judiciary
Senate Committee: Families, Seniors, and Veterans

Date Completed: 7-21-20

CONTENT

House Bill 5417 would amend the Michigan Do-Not-Resuscitate Procedure Act to do the following:

- Allow a guardian with the power to execute a do-not-resuscitate (DNR) order to execute the order on behalf of a ward who was a minor child.
- Require a guardian who executed a DNR order to provide a copy of the order to the administrator of the ward's school or to the administrator's designee, if applicable.
- Allow a parent to execute a DNR order on behalf of his or her minor child, and if the parent shared with another parent legal decision-making authority, require both parents to execute the order.
- Require a parent who executed an order to maintain possession of the order and, if applicable, provide a copy of the order to the administrator of the minor child's school or to the administrator's designee, or the administrator of a facility in which the minor child was a patient or resident or to the administrator's designee, among other things.
- Allow a parent to revoke an order on behalf of a declarant.
- Require a form for a DNR order to include a parent consent section that contained certain language prescribed by the bill.
- Require an individual who observed a declarant's revocation of a DNR order to deliver it in writing to the administrator of a school, or his or her designee, if the declarant was a pupil of a school.
- If the declarant were a minor child who was enrolled and located at a school, prohibit an individual who determined that the declarant was wearing a DNR identification bracelet or had actual notice of a DNR order for the declarant from attempting to resuscitate the declarant before health professionals arrived at his or her location.

House Bill 5418 (H-4) would amend the Revised School Code to do the following:

- Require an administrator of a public or nonpublic school, or his or her designee, who received a copy of a DNR order executed under Michigan Do-Not-Resuscitate Procedure Act from a parent or legal guardian of a pupil enrolled in the school to

place in a file the order or its revocation and determine if an order from the preceding school year was still in effect, among other things.

- Require the administrator, or his or her designee, who received actual notice of a revocation of a DNR order to provide actual notice of the revocation to each teacher or other school employee who provided the instructional or noninstructional services directly to the pupil.
- Require the board of the school district or similar leadership for a public school or nonpublic school to ensure that timely and appropriate training regarding compliance with a DNR order was provided to each teacher or other school employees who provide services to a pupil who had on file a copy of a DNR order.
- Exempt a school administrator, teacher, or other school employee from civil or criminal liability under certain circumstances related to a DNR order.
- Require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a physician orders for scope of treatment (POST) form from a parent or legal guardian of a pupil enrolled in the school to file a copy of the POST form and determine if the POST form from the preceding year were still in effect, among other things.
- Require the administrator, or his or her designee, who received actual notice that a POST form had been revoked to place the revocation in the file immediately and to provide actual notice of the revocation to each teacher or other school employee who provided instructional or noninstructional services directly to the pupil.
- Require the board of a school district or similar leadership for a public school or nonpublic school to ensure that timely and appropriate training regarding compliance with the POST form was provided to each teacher or other school employee who provided services to the pupil.
- Exempt a school administrator, teacher, or other school employee from civil or criminal liability under certain circumstances related to a POST form.

House Bill 5419 would amend the Estate and Protected Individuals Code to allow a guardian to execute a DNR order on behalf of a ward as proposed in House Bill 5417.

House Bill 5417 and House Bill 5418 (H-4) are tie-barred. House Bill 5419 is tie-barred to House Bill 5417. House Bill 5417 and House Bill 5418 (H-4) would take effect 90 days after their enactment.

House Bill 5417

Guardian's Power to Execute a DNR Order

Under the Michigan Do-Not-Resuscitate Procedure Act, a guardian with the power to execute a DNR order under the Estates and Protected Individual Code may execute a DNR order on behalf of a ward after complying with the Code. The bill specifies that the guardian with the power to execute a DNR order as described above could execute the order on behalf of a ward who was not a minor child. The bill also specifies that a guardian of a ward who was a minor child could execute a DNR order on behalf of the ward.

(Under the bill, "resuscitate" would mean performance of cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, including cardiac compression, endotracheal intubation or other advanced airway management, artificial ventilation, defibrillation, the administration of cardiac resuscitation medication, another related procedure. The term would not include the Heimlich maneuver or a similar procedure used to expel an obstruction from an individual's throat.

The bill would define "minor child" as an individual who is less than 18 year 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 Section 4 of Public Act 293 of 1968. "Advanced illness" would mean a medical or surgical condition with significant impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation.)

The Michigan Do-Not-Resuscitate Procedure Act requires a guardian who executed an order to maintain possession of the order and have the order 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, a guardian who executed a DNR order also would have to provide a copy of the order to the administrator of the ward's school or to the administrator's designee. ("School" would mean a nonpublic or public school as those terms are defined under the Revised School Code.)

Parent's Power to Execute a DNR Order

The bill would allow a parent to execute a DNR order on behalf of his or her minor child. If the parent shared with another parent legal decision-making authority as to the important decisions affecting the welfare of the minor child, both parents would have to execute the order. The order would have to be dated, executed voluntarily, and signed by each of the following individuals:

- The parent or, if required, both the parents of the minor child.
- The minor child's attending physician.
- Two witnesses 18 years or older, each of whom was not the minor child's parent, child, grandchild, sibling, or presumptive heir.

(Under the bill, "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 require all signatories' names to be printed or typed below the corresponding signatures. A witness could not sign an order unless the parent appeared or, if required, both parents of the minor child 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 delegate, or an individual designated by the parent could apply an identification bracelet to the minor child's wrist.

The bill would require a parent who executed an order to do all 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 order to the administrator of the minor child's school or to the administrator's designee, or the administrator of a facility in which the minor child was a patient or resident or to the administrator's designee.

The Act currently requires an attending physician who signs a declarant's DNR order under the Act to obtain immediately a copy or a duplicate of the executed order and make that copy or duplicate part of the declarant's permanent medical record. The bill would extend this requirement to an order executed as described above. ("Declarant" means an individual who

has executed a DNR order on his or her own behalf or on whose behalf a DNR order has been executed as provided in the Act.)

Under the Act, if a person interested in the welfare of the declarant has reason to believe that an order has been executed contrary to the wishes of the declarant or, if the declarant is a ward, contrary to the wishes or best interest of the ward, the person may petition the probate court to have the order and other conditions of its execution reviewed. If the probate court finds that an order has been executed contrary to the wishes of the declarant or, if the declarant is a ward, contrary to the wishes or best interests of the ward, the probate court must issue an injunction voiding the effectiveness of the order and prohibiting compliance with it. The bill specifies that a ward would include a ward who is a minor child.

DNR Order Form

The Act specifies that a DNR order executed under the Act must include, but is not limited to, the language prescribed in the Act and must be in substantially the same form as provided in the Act. Generally, the language includes a declarant consent section, a patient advocate consent section, a guardian consent section, and a witnesses' attestations section.

The bill would include a parent consent section that would have to state the following: "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 bill also specifies that the form would apply to the proposed provisions of the bill and would require the form to specify that it was prepared pursuant to, and was in compliance with, the Michigan Do-Not-Resuscitate Procedure Act.

Revocation of a DNR Order

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

The Act allows a patient advocate or guardian to revoke an order on behalf of a declarant at any time by issuing the revocation in writing and providing 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 is a patient or resident of a facility, to the administrator of the facility or the administrator's designee. Upon revocation, the declarant, patient advocate, guardian, or attending physician or his or her delegate who has actual notice of a revocation of an order under the Act must write "void" on all pages of the order and, if applicable, remove the declarant's DNR identification bracelet.

The bill would allow a parent to revoke an order on behalf of the declarant and, if the parent did so, require him or her to act as described above. In addition, the bill specifies that a patient advocate, parent, or guardian could revoke the order at any time as describe above, and if the declarant were a pupil of a school, the actual notice of the revocation would have

to be delivered to the administrator of a school, or the administrator's designee, if the declarant were a pupil of a school.

The bill would require the administrator of a school or his or her designee who received actual notice of a revocation of an order of a declarant who was a pupil of the school to immediately place the revocation in the file created under Section 1180(1)(a) of the Revised School Code. (House Bill 5418 (H-4) would add Section 1180(1)(a) to the Revised School Code and is described below.)

Prohibition on Resuscitation

Under the Act, one or more of the following health professionals who arrive at a declarant's location outside of a hospital must 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 the declarant or other person authorized to execute an order on the declarant's behalf:

- 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 notice of a DNR order for the declarant could not attempt to resuscitate the declarant before a health professional described above arrived at the declarant's location.

House Bill 5418 (H-4)

DNR Order

The bill would amend the Revised School Code to require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a DNR order executed under Section 3a or 3b of the Michigan Do-Not-Resuscitate Procedure Act from a parent or legal guardian of a pupil enrolled in the school to ensure all the following were met:

- The copy of the DNR order was placed in a file created specifically for a copy of a DNR order or the revocation of a DNR order in a manner and location to be determined by the administrator of the public or nonpublic school, regardless of whether the order pertains to a pupil with an individualized education program.
- If the administrator, or his or her designee, received a copy of a DNR order for a pupil during the immediately preceding school year, the administrator, or his or her designee, inquired of the pupil's parent or legal guardian at the beginning of the school year to determine if the order was still in effect.
- The administrator, or his or her designee, provided actual notice of the DNR order to each teacher or other school employee who provided instructional or noninstructional services directly to the pupil.

(Section 3a of the Michigan Do-Not-Resuscitate Procedure Act allows a guardian with the power to execute a DNR order on behalf of a ward to do so after complying with certain

requirements. Section 3b of the Act, which House Bill 5417 would add, would allow a parent to execute a DNR order on behalf of his or her minor child.)

The administrator, or his or her designee, who received actual notice of a revocation of a DNR order under Section 10 of the Michigan Do-Not-Resuscitate Procedure Act would have to provide actual notice of the revocation to each teacher or other school employee who provided the instructional or noninstructional services directly to the pupil. (Section 10 of the Michigan Do-Not-Resuscitate Procedure Act allows a declarant to revoke an order executed by himself or herself in any manner by which he or she can communicate the intention to revoke the order.)

("Do-not-resuscitate order" or "order" would mean that term as defined in Section 2 of the Michigan Do-Not-Resuscitate Procedure Act: a document executed under the Act directing that, if an individual suffered from cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated.

"Actual notice" would mean that term as defined in Section 2 of the Michigan Do-Not-Resuscitate Procedure Act: the physical presentation of an order, a revocation of an order, or another written document authorized under the Act from or on behalf of the declarant.

"Individualized education program" would mean that term as defined in Section 614 of Part B of Title VI of the Individuals with Disabilities Education Act: a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the Section of US Code and includes 1) a statement of the child's present levels of academic achievement and functional performance, 2) a statement of measurable annual goals, and 3) a description of how the child's progress toward the goals will be measured, among other things.)

If a public or nonpublic school had a copy of a DNR order in a file described above for a pupil, the board of the school district or intermediate school district (ISD) that operated the school, the board of director of the public school academy (PSA) that operated the school, or the governing body of the nonpublic school that operated the school would have to ensure that timely and appropriate training regarding compliance with the DNR order was provided to each teacher or other school employee who provides services to the pupil, according to his or her level of responsibility.

Under the bill, all the following would apply:

- A school administrator, teacher, or other school employee who called 9-1-1 in an emergency that threatened the life or health of a pupil with a DNR order would not be liable in a criminal action or for civil damages as a result of the Act.
- A school administrator, teacher, or other school employee would not be subject to civil or criminal liability as provided under Sections 12 and 13 of the Michigan Do-Not-Resuscitate Procedure Act.
- A school administrator, teacher, or other school employee, who in good faith in accordance with his or her own knowledge and ability administered or attempted to administer a comfort care measure to a pupil, or in good faith in accordance with his or her knowledge and ability acted or attempted to act in compliance with a DNR order, in an emergency that threatened the life or health of the pupil would not be liable in a criminal action or for civil damages as a result of an omission in the administration or attempted administration of the comfort care measure or as a result of an act or omission in acting or attempting to act in compliance with the DNR order, except for an act or omission amount to gross negligence or willful or wanton misconduct.
- These provisions would not eliminate, limit, or reduce any other immunity or defense that a person described above could have under other State law.

("Comfort care measure" would mean a treatment designed by the physician issuing a DNR order for a pupil to ensure the pupil's 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.

The bill specifies that a school district, ISD, PSA, member of a school board, or director or officer of a PSA 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. The bill also specifies that this language would not eliminate, limit, or reduce any other immunity or defense that a person described under the bill could have under other State law.

The bill would require an individual to comply with Section 11(3) of the Michigan Do-Not-Resuscitate Procedure Act and would not create a right to an individualized education program. (Section 11(3) of the Act, which House Bill 5417 would add, would specify that if the declarant who was issued a DNR order was a minor child who was enrolled and located at school, an individual who determined that the declarant was wearing a DNR identification bracelet or had actual notice of a DNR order for the declarant could not attempt to resuscitate the declarant before certain health professionals arrived at the location.)

POST Form

Under the bill, 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 legal guardian of a pupil enrolled in the school would have to ensure that all the following were met:

- The copy of the POST form would have to be placed in a file specifically for a copy of a POST form or the revocation of a POST form, in a manner and location to be determined by the administrator of the public or nonpublic school, regardless of whether the form pertained to a pupil with an individualized education program.
- If the administrator, or his or her designee, received a copy of a POST form for a pupil during the immediately preceding school year, the administrator, or his or her designee, inquired of the pupil's parent or legal guardian at the beginning of the school year to determine if the POST form was still in effect and requested an updated copy of the form, if applicable.
- The administrator, or his or her designee, provided actual notice of the POST form to each teacher or other school employee who provided instructional or noninstructional services directly to the pupil.

("POST form" would mean a standardized POST form as described in Section 5676 of the Public Health Code.

"Actual notice" would mean that term as defined in Section 5672 of the Public Health Code: 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. The term 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.)

The administrator, or his or her designee, who received actual notice that a POST form had been revoked would have to place the revocation in the file immediately and would have to provide actual notice of the revocation to each teacher or other school employee who provided

instructional or noninstructional services directly to the pupil, regardless of whether the revocation pertained to the pupil with an individualized education program.

If a public or nonpublic school had a copy of a POST form in a file for a pupil, the board of the school district or ISD that operated the school, the board of directors of the PSA that operated the school, or the governing body of the nonpublic school that operated the school would have to ensure that timely and appropriate training regarding compliance with the POST form was provided to each teacher or other school employee who provided services to the pupil, according to his or her level of responsibility.

Under the bill, all the following would apply:

- A school administrator, teacher, or other school employee who called 9-1-1 in an emergency that threatened the life or health of a pupil with a POST form would not be liable in a criminal action or for civil damages as a result of the act.
- A school administrator, teacher, or other school employee, who in good faith in accordance with his or her knowledge and ability provided or attempted to provide medical care to a pupil consistent with the pupil's POST form in an emergency that threatened the life or the health of the pupil, would not be liable in a criminal action or for civil damages as a result of an act or omission in providing or attempting to provide the medical care, except for an act or omission amounting to gross negligence or willful or wanton misconduct.
- These provisions would not eliminate, limit, or reduce any other immunity or defense that a person described above could have under other State law.

The bill specifies that a school district, ISD, PSA, nonpublic school, member of a school board, or director or officer of a PSA 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. This provision would not eliminate, limit, or reduce any other immunity or defense that a person described in the provision could have under other State law.

The bill also specifies that its provisions above could not be construed to create a right to an individualized education program.

House Bill 5419

The Estates and Protected Individuals Code, among other things, prescribes the powers and duties of a minor's guardian, including the reasonable care of a ward's personal effects, facilitation of a ward's education and social or other activities, and authorization of medical or other professional care, treatment, or advice, among other things.

Under the bill, a guardian could execute a DNR order on behalf of the ward as provided in Section 3a of the Michigan Do-Not-Resuscitate Procedure Act.

MCL 333.1052 et al. (H.B. 5417)
Proposed MCL 380.1180 & 380.1181 (H.B. 5418)
MCL 700.5215 (H.B. 5419)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bills would not have a fiscal impact on the Department of Education and would have a minimal fiscal impact on schools that receive a DNR order or POST form for a student.

A school that received a DNR order or POST form for a student would incur minor administrative costs to update the student's health file (initially and annually), inform teachers

and necessary school employees, and provide training to teachers and employees who care for the student. These costs likely would be minimal and limited to schools serving a small population of students across the State.

Fiscal Analyst: Cory Savino

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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.