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COMMITTEE REPORT

February 17, 2022

**S. 508**

Introduced by Senators Shealy, Hutto and Gustafson

S. Printed 2/17/22--H.

Read the first time May 11, 2021.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (S. 508) to amend Sections 44‑78‑15, 44‑78‑20, 44‑78‑30, 44‑78‑45(a), 44‑78‑, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill allows a parent or legal guardian of a medically eligible child to request or revoke a “do not resuscitate order for emergency services” for the child, provided that the parent or legal guardian has legal authority to make medical decisions for the child. Health care providers and EMS personnel must follow the do not resuscitate order unless it has been revoked.

**Department of Health and Environmental Control.** While DHEC regulates EMS personnel, the department reports that the bill will not operationally or fiscally impact the agency. Therefore, there is no expenditure impact to DHEC.

**Judicial Department.** The Judicial Department indicates that implementation of this bill may increase the number of hearings held in the court system, which may lead to an increased backlog for the court system. While there is no data available to estimate the number of filings, hearings, or trials that may be impacted, the department anticipates being able to manage any increase in caseloads within existing appropriations.

**Local Expenditure**

This bill allows a parent or legal guardian of a medically eligible child to request or revoke a “do not resuscitate order for emergency services” for the child, provided that the parent or legal guardian has legal authority to make medical decisions for the child. Health care providers and EMS personnel must follow the do not resuscitate order unless it has been revoked. The Revenue and Fiscal Affairs Office contacted twenty-three county governments regarding the fiscal impact of this bill. Charleston, Hampton, and Lancaster Counties all report that the bill will have no expenditure impact on their EMS personnel. Based upon these responses, we do not anticipate an expenditure impact on county governments.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTIONS 44‑78‑15, 44‑78‑20, 44‑78‑30, 44‑78‑45(A), 44‑78‑50, AND 44‑78‑60 OF THE 1976 CODE, ALL RELATING TO DO NOT RESUSCITATE ORDERS, TO ALLOW A PARENT OR LEGAL GUARDIAN OF A MEDICALLY ELIGIBLE CHILD TO REQUEST AND REVOKE A DO NOT RESUSCITATE ORDER FOR EMERGENCY SERVICES FOR THE CHILD, AND FOR OTHER PURPOSES; AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Section 44‑78‑15(7) of the 1976 Code is amended to read:

“(7) ‘Terminal condition’ means an incurable or irreversible condition that within reasonable medical judgment ~~could~~ will cause death within a reasonably short period of time ~~if life sustaining procedures are not used~~ with or without the administration of life-sustaining treatment.”

B. Section 44‑78‑15 of the 1976 Code is amended by adding an appropriately numbered item to read:

“( ) ‘Child’ means a person under the age of eighteen who is neither married nor judicially emancipated and who is medically eligible for hospice care as a result of a terminal condition.”

SECTION 2. Section 44‑78‑20 of the 1976 Code is amended to read:

“Section 44-78-20. (A) Except as prohibited in subsections (C) and (D), a patient who has a terminal condition, a surrogate for a patient with a terminal condition under the Adult Health Care Consent Act, ~~or~~ an agent of a ~~person~~ patient with a terminal condition named by the patient in a Health Care Power of Attorney, or a parent or legal guardian with the legal authority to make medical decisions for a child with a terminal condition may request a health care provider responsible for the care of the patient to execute a ‘do not resuscitate order for emergency services’ if ~~the~~:

(1) the patient has a terminal condition; and

(2) the terminal condition has been diagnosed by a health care provider and the health care provider's record establishes the time, date, and medical condition which gives rise to the diagnosis of a terminal condition.

(B) At the request of the patient for whom a ‘do not resuscitate order’ is written, ~~or his~~ the patient’s surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child, the health care provider who executes the ‘do not resuscitate order’ shall make the order in writing on a form conforming to the requirements of Section 44‑78‑30(A), and either shall:

(1) affix to the wrist of the patient a ‘do not resuscitate bracelet’ that meets the specifications established under Section 44‑78‑30(B); or

(2) provide the patient, ~~or his~~ the patient’s surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child with an order form, from a commercial vendor approved by the department pursuant to Section 44‑78‑30(B), to allow ~~the patient to order~~ a ‘do not resuscitate bracelet’ to be ordered from the commercial vendor.

(C) Neither parent or legal guardian with the legal authority to make medical decisions for a child shall request a ‘do not resuscitate for emergency services order’ for the child unless a reasonable attempt has been made to inform, either orally or in writing, the second parent or legal guardian of the child with the legal authority to make medical decisions for the child of the intention of the first parent or legal guardian to request a ‘do not resuscitate order’, if the second parent or legal guardian is reasonably available. Accordingly, the following shall be entered in the child’s medical record:

(1) the date, time, and mode of communication of the provision of such information, as well as the name of the sender;

(2) if the second parent or legal guardian of the child does not respond to the provision of such information within forty-eight hours; and

(3) the nature of the lack of availability of the second parent or legal guardian if an attempt to provide such information is not made.

(D) A ‘do not resuscitate order for emergency services order’ shall not be requested by either parent or legal guardian with the legal authority to make medical decisions for a child nor executed by a health care provider responsible for the care of the child if either parent or legal guardian with the legal authority to make medical decisions for the child explicitly refuses consent, either orally or in writing, for requesting a ‘do not resuscitate order’ for the child, except in accordance with a court order pursuant to subsection (E). Such refusal of consent shall be entered in the child’s medical record.

(E) If the parents or legal guardians of a child with the legal authority to make medical decisions for the child are unable to agree to request a ‘do not resuscitate order for emergency services’ of a health care provider responsible for the care of the child, either parent or legal guardian may institute a proceeding under subsection (F) to resolve the conflict. Pending the final determination of such proceedings, including any appeals, a ‘do not resuscitate order for emergency services’ shall not be requested by either parent or legal guardian nor executed by the health care provider.

(F) A parent or legal guardian with legal authority to make medical decisions for the child may petition the family court or circuit court of the county in which the child resides or in which the child is receiving treatment for an order to a health care provider responsible for the care of the child to execute a ‘do not resuscitate order for emergency services’ for the child, or an order to enjoin a violation of or threat to violate subsection (D). Upon receiving such a petition, the family court or circuit court shall issue an order fixing the date, time, and place of a hearing on the petition and order that notice of the hearing shall be given to such persons as the court shall direct. A preliminary hearing may be held without notice if the court determines that doing so is necessary to prevent imminent danger to the child’s life. In the court’s discretion, a hearing may be conducted in a courtroom, a treatment facility, or at some other suitable place.”

SECTION 3. Section 44‑78‑30 of the 1976 Code is amended to read:

“Section 44‑78‑30. (A) A document purporting to be a ‘do not resuscitate order’ for EMS purposes must be in substantially the following form:

NOTICE TO EMS PERSONNEL

This notice is to inform all emergency medical personnel who may be called to render assistance to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he/she has a terminal condition which has been diagnosed by me, and has specifically requested that no resuscitative efforts including artificial stimulation of the cardiopulmonary system by electrical, mechanical, or manual means be made in the event of cardiopulmonary arrest or, if he/she is a child, such a request has been specifically made by a parent or legal guardian with the legal authority to make medical decisions for the child.

REVOCATION PROCEDURE

THIS FORM MAY BE REVOKED BY AN ORAL STATEMENT BY THE PATIENT OR, IF THE PATIENT IS A CHILD, BY A PARENT OR LEGAL GUARDIAN WITH THE LEGAL AUTHORITY TO MAKE MEDICAL DECISIONS FOR THE CHILD TO EMS PERSONNEL OR BY MUTILATING, OBLITERATING, OR DESTROYING THE DOCUMENT IN ANY MANNER.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Patient’s signature (or surrogate or agent)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parent or Legal Guardian

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician’s signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician’s address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician’s telephone number

(B) The department may approve a ‘do not resuscitate bracelet’ developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words ‘South Carolina Do Not Resuscitate EMS’ and the patient’s first name and last name on the back. The department may not approve a ‘do not resuscitate bracelet ‘ developed and distributed by a commercial vendor if the vendor does not require a health care provider’s order for the bracelet before distributing it to a patient.

(C) The cost of obtaining a bracelet must be borne by the patient or, if the patient is a child, the parent or legal guardian of the child and may not be provided by the department at the expense of the department.

(D) The vendor approved by the department shall not fulfill a request for a ‘do not resuscitate bracelet’ without receiving a health care provider’s order for the bracelet with the request.”

SECTION 4. Section 44‑78‑45(A) of the 1976 Code is amended to read:

“Section 44‑78‑45. (A) A health care provider and an EMS personnel shall follow the request of the patient or, if the patient is a child, the parent or legal guardian with the legal authority to make medical decisions for the child and must not provide resuscitative measures when the patient has a ‘do not resuscitate order for emergency medical services’ or is wearing a ‘do not resuscitate bracelet’, except where the:

(1) order is revoked pursuant to Section 44‑78‑60; or

(2) bracelet, when applicable, appears to have been tampered with or removed.”

SECTION 5. Section 44‑78‑50 of the 1976 Code is amended to read:

“Section 44‑78‑50. (A) Nothing in this chapter may be construed to condone, authorize, or approve mercy killing or euthanasia or to permit any affirmative action or deliberate act to end life other than to allow the natural process of dying.

(B) No ~~person under the age of eighteen years~~ child may request ~~or receive~~ a ‘do not resuscitate order for emergency medical services’ as provided for in this article.

(C) The withholding of resuscitative measures pursuant to this article does not constitute suicide for any purpose.”

SECTION 6. Section 44‑78‑60 of the 1976 Code is amended to read:

“Section 44‑78‑60. A patient or, if the patient is a child, a parent or legal guardian with the legal authority to make medical decisions for the child, may revoke a ‘do not resuscitate order for emergency services’ by:

(1) mutilating, obliterating, or destroying the ‘do not resuscitate order for emergency medical services’ document in any manner;

(2) orally expressing to an emergency medical technician, first responder, or to a person who serves as a member of an emergency health care facility’s personnel, the desire to be resuscitated, after which the emergency medical technician, first responder, or the member of the emergency health care facility shall disregard the ‘do not resuscitate order for emergency medical services’ document and, if applicable, promptly remove the bracelet;

(3) defacing, burning, cutting, or otherwise destroying the bracelet, if applicable; or

(4) removing the bracelet or asking another person to remove the bracelet.”

SECTION 7. This act takes effect upon approval by the Governor.

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