

STORAGE NAME: h0677.grr
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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 677

RELATING TO: Do-not-resuscitate orders/ Emergency Medical Technicians (EMTs)

SPONSOR(S): Representative Greenstein

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS
 - (2) HEALTH CARE LICENSING & REGULATION
 - (3) TRANSPORTATION
 - (4) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
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I. SUMMARY:

HB 677 amends ss. 401.35 and 401.45, F.S., and creates s. 401.50, F.S. The created section (401.50, F.S.) requires the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a program allowing persons to register do-not-resuscitate (DNR) orders as part of the process of issuing driver licenses and identification cards by directing the following:

- Requires the Department of Highway Safety and Motor Vehicles to distribute a registration card providing information and documentation relating to the DNR.
- Requires the Department of Highway Safety and Motor Vehicles to provide the necessary record keeping system.
- Requires the Agency for Health Care Administration to provide the necessary supplies and forms.
- Requires the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a do-not-resuscitate order registry.
- Provides for rules of the Department of Health authorizing emergency medical technicians and paramedics to honor information relating to a do-not-resuscitate order encoded on a patient's driver license or identification card.
- Grants authority to the Department of Highway Safety and Motor Vehicles, after consultation with and concurrence by the Agency for Health Care Administration to adopt rules pursuant to the provisions of Chapter 120 to implement DNR orders as part of driver license or identification card process.
- Restricts the Agency for Health Care Administration from expending funds allocated for patient care on any provision specified in Section 3 of HB 677.

The bill appears to have a fiscal impact; agencies affected by bill estimate significant implementation costs. The effective date of HB 677 is October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Ch. 401.45, F.S., states that a paramedic or an emergency medical technician can withhold or withdraw resuscitation or life-prolonging techniques upon receiving an order from the patient's physician. Such order liberates a paramedic or EMT from criminal prosecution or civil liability as a result of carrying out do-not-resuscitate orders, assuming that no negligent or unprofessional conduct occurs. It is only under the direction of a medical director that a licensee, physician, medical director, or emergency medical technician or paramedic may carry out do-not-resuscitate orders.

B. EFFECT OF PROPOSED CHANGES:

HB 677 creates s. 401.50, F.S., requiring the Department of Highway Safety and Motor Vehicles to provide a process for encoding DNR orders on driver licenses and identification cards. This encoded DNR process appears to be an alternative to the current process in which emergency medical services personnel honor a standardized form. However, the bill does not eliminate the use of the standardized form, which is already widely used. The Agency for Health Care Administration assists in developing and implementing a DNR registry.

The effect of the proposed legislation extends the authority to execute "do-not-resuscitate" orders. The proposed legislation vests authority also on the emergency medical technicians and paramedics by permitting the execution of DNR orders based on information encoded on driver licenses and identification cards.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The Department of Health has authority to adopt rules establishing circumstances and procedures under which EMTs and paramedics honor DNR orders.

The Department of Highway Safety and Motor Vehicles, after consultation and concurrence by the Agency for Health Care Administration, has the authority to adopt rules pursuant to Ch. 120, F.S., to implement DNR orders as part of driver license or identification card process.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

In creating s. 401.50, F.S., the bill requires the Department of Highway Safety and Motor Vehicles to provide a process for registering DNR orders on driver licenses and identification cards. The Agency for Health Care

Administration is required to work in conjunction with the Department of Highway Safety and Motor Vehicles to carry out the provisions of this bill.

HB 677 increases the EMT's and paramedic's responsibility in carrying out DNR orders. Under the provisions of HB 677, EMTs and paramedics are authorized to carry out DNR orders based on information retrieved from driver licenses and identification cards. The EMTs and paramedics no longer need to have direct contact with a physician in order to carry out DNR orders.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

HB 677 permits individuals to register DNR orders with the Department of Highway Safety and Motor Vehicles and the Agency for Health Care Administration. Prior to HB 677, DNR orders could only be executed by a patient's physician. The option to encode a driver license or identification card makes DNR orders readily accessible to paramedics and EMTs.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates Section 401.50, F.S.; amends ss. 401.35 and 401.45, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 401.35 to require that rules be established to allow paramedics and emergency medical technicians (EMT) to carry out orders by the patient's physician not to resuscitate. Also includes language permitting paramedics and EMT to honor orders encoded on a patient's driver license or identification card for such requests.

Section 2: Amends s. 401.45 to authorize paramedics and EMTs to withhold or withdraw resuscitation or life-prolonging techniques if an order is presented by either the patient's physician or an encoded driver license or identification card with information relating to a do-not-resuscitate order. Such orders must be presented to the paramedic and EMT in a manner

provided by rule of the department. The said encoded driver licenses and identification cards are to be issued by the Department of Highway Safety and Motor Vehicles.

Protects any licensee, physician, medical director, EMT or paramedic acting under direction of a medical director from criminal prosecution or civil liability as a result of carrying out a DNR order, assuming that no negligent or unprofessional conduct occurred.

Section 3: Creates Section 401.50 providing DNR orders as part of driver license or identification card process.

Requires the Department of Highway Safety and Motor Vehicles to distribute a registration card providing information and documentation relating to the DNR. Such information shall be noted on identification cards, driver licenses, and driver records or such other methods the department may develop. The notation shall appear as an encoded "DNR" or "Do-Not-Resuscitate" on the front of the driver license or identification card.

Requires the Department of Highway Safety and Motor Vehicles to provide the necessary record keeping system.

Requires the Agency for Health Care Administration to provide the necessary supplies and forms.

Requires the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles to develop and implement a do-not-resuscitate order registry. This registry shall record electronically DNR orders submitted through the driver license and identification card program and provide such information immediately via electronic or telephonic methods to EMTs, paramedics and other parties. Such information shall be available 24 hours a day, 7 days a week.

Provides for rules of the Department of Health authorizing emergency medical technicians and paramedics to honor information relating to a do-not-resuscitate order encoded on a patient's driver license or identification card.

Grants authority to the Department of Highway Safety and Motor Vehicles, after consultation with and concurrence by the Agency for Health Care Administration to adopt rules pursuant to the provisions of Chapter 120.

Restricts the Agency for Health Care Administration from expending funds allocated for patient care on any provision specified in Section 3 of HB 677.

Section 4: Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Agency for Health Care Administration: The cost of designing and implementing a DNR registry is estimated at \$200,000, although an official and final fiscal impact is not yet available. Costs would be reduced if current HB 677 requirements to implement a DNR registry could be merged with existing programs and registries in operation under AHCA.

Department of Health: The bill requires rule promulgation by both the Department of Health and the Agency for Health Care Administration. The department estimates expenses associated with rule promulgation at approximately \$3,000 for each agency to cover the costs of public notices, workshops, hearings and related staff travel.

Department of Highway Safety and Motor Vehicles: The department estimates \$112,750 as the non-recurring, start up fiscal impact of implementing HB 677. Of the \$112,750, about \$6,500 is dedicated to OPS and \$106,250 dedicated to data processing services. The total dollar amount provides for vendor cost to encode "DNR" on driver license and identification cards. Also, this provides for 850 hours of contracted programming modifications at \$125 per hour to modify the Driver License Software System.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The following are comments expressed by the Agency for Health Care Administration: The fiscal cost of designing and implementing a DNR registry is a concern for AHCA. The agency is presently reviewing procedures to see if the DNR registry could be incorporated into the existing organ donor registry system. If possible, such an option would reduce the cost of implementing a new DNR registry. AHCA estimates the cost of implementing a new registry at \$200,000, although an official and final fiscal impact is not yet available.

The following are comments expressed by the Department of Health: The proposed program to establish a registry and the encoding "DNR" on driver licenses and state identification cards is similar to the Organ Donor Registry and the process for identifying oneself as an anatomical gift donor. This may work well for an organ donor, but may be less ideal for making a do-not-resuscitate determination since emergency personnel are required

to respond rapidly and administer care in a timely manner. Section 401.45(3)(a), F.S., provides that emergency medical services personnel may honor a do-not-resuscitate order if it is presented to them. Thus, pursuant to this section, a driver license "DNR" would not present a problem. However, s. 401.50(2), F.S., provides that the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement a do-not-resuscitate registry in a manner which will allow telephonic and electronic access immediately, 24-hours a day, 7-days a week to emergency medical services personnel and others. This language seems to suggest that there may be circumstances of the existence of a do-not-resuscitate order via the registry. This could be problematic. The time spent by emergency personnel looking for and checking a driver license, calling a registry after failure to find a driver license, and waiting for a response is moot to the patient who has no desire to be resuscitated. However, it does present a delay in initiating care critical to the patient who wants to live. Emergency medical service providers may also be at added risk of liability for searching a wallet for each individual who requires resuscitation.

Section 401.35, F.S., grants rulemaking authority to the department to implement driver license DNRs. Section 401.45, F.S., expands the authority of emergency personnel to honor this additional type of DNR. The creation of s. 401.50, F.S., seems inappropriately placed as the section grants additional responsibility, rulemaking authority, and immunity from civil liability to the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles, not the Department of Health. The language proposed in s. 401.50, F.S., might have more universal recognition and applicability if placed in Chapter 765, F.S., which deals with health care advances directives.

The Following are comments from the Department of Highway Safety and Motor Vehicles:
Page 3, lines 18-21 of HB 677 indicate that the department must provide a record keeping system through funds appropriated from General Revenue. It is unclear whether this is the current driver license database or a separate database system. Establishment of an additional database requires a cost that is not determinate at this time. Additionally, the department suggests that the proposed bill not become effective until January 1, 2000 due to the numerous information system projects.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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