FISCAL IMPACT REPORT

SPONSOR Schmedes **LAST UPDATED** **ORIGINAL DATE** 02/10/2023

SHORT TITLE Resuscitation of Unemancipated Minors **BILL NUMBER** Senate Bill 233

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From
Office of the Attorney General (NMAG)
Children, Youth and Families Department (CYFD)

No Response Received
Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 233

Senate Bill 233 amends Section 24-7A NMSA 1978, which deals with Uniform Health-Care Decisions and in particular the section dealing with decisions by surrogates. It establishes the means by which parents may contest a health care provider's order not to provide resuscitation or life-sustaining therapy to an unemancipated minor, and sets out means of dealing with differences of opinion among one or more parents/guardians and a health care provider.

Section 1 of the bill amends the definition section of that section of statute. The definition of "health-care decision," is expanded to include orders not to resuscitate among decisions to withdraw or withhold life-sustaining treatment. "Order not to resuscitate" (often called DNR orders, for "do not resuscitate") is further defined as avoiding resuscitative efforts when a patient's heart has stopped.

Section 2 amends Section 24-7A-6.1, which regards life-sustaining treatment for unemancipated minors, adding five new subsections, G through K:

New Section 24-7A-6.1(G) requires physicians writing a DNR order for an unemancipated minor notify a parent (and attempt to notify the other parent). If one or both parents object, the DNR will not be written, except after a court order.

Section 24-7A-6.1(H) states that if there is disagreement between parents on this issue, a court may decide the issue, with the presumption in favor of preserving life.

Section 24-7A-6.1(I) Parents or guardians may institute a district court action to resolve conflicts or to allege violations of the act. Hearings will have adequate notice if possible (and there is not an urgent need for a decision), and can occur in a courtroom , a hospital, or some other "suitable place."

Section 24-7A-6.1(J) If policies regarding resuscitation or life-sustaining procedures exist in a health care institution where that minor is a patient or a prospective patient, they must be disclosed to an unemancipated minor at his/her request.

Section 24-7A-6.1(K) If a court order allows a DNR order to stand despite one or both parents' objections, the parents may request a transfer to another health care institution, and the initial health care institution must attempt to comply.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 233 and no significant fiscal impact is noted.

SIGNIFICANT ISSUES

According to a 2017 American Academy of Pediatrics statement, "Pediatric health care is practiced with the goal of promoting the best interests of the child. Treatment is generally rendered under a presumption in favor of sustaining life. However, as medical and surgical technologies advance, pediatricians, parents, and other family caregivers may need to consider when it is ethically supportable or advisable to use available interventions to sustain the life of a child who is severely ill. In individual patients, they may conclude that continued treatment beyond maximizing comfort is no longer in the best interests of the child and instead redirect treatment toward limitation or withdrawal of interventions that are deemed more burdensome than beneficial."

"Many deaths in pediatric and neonatal critical care units are preceded by decisions agreed on by the medical team and family to withhold or withdraw life-sustaining medical treatment (LSMT).[1–4] This statement (available at https://publications.aap.org/pediatrics/article/140/3/e20171905/38281/Guidance-on-Forgoing-Life-Sustaining-Medical) provides guidance for decision-making and communication about withholding and withdrawing LSMT and directs physicians toward American Academy of Pediatrics' (AAP) statements that promote optimal end-of-life care for children.[5–7] This statement is presented in the context of health care in the United States today, in which

continuing LSMT is assumed to be the desire of the patient or family unless forgoing treatment is specifically discussed, agreed on, and ordered."
And in a 2018 AAP statement, these matters are further amplified: "Generally, wide latitude is granted to parents when making decisions for their child on the basis of the wide acceptance of the special relationship between parent and child and the important role played by parents in the lives of children. However, when high-risk decisions are made, health care teams serve as an important societal safeguard that questions whether a parent is an appropriate decision-maker for their child."

DNR decisions are fraught in all cases; having a prescribed means of dealing with them will ease the stress on both parents/guardians and medical care providers.

TECHNICAL ISSUES

New Section 24-7A-6.1J allows an unemancipated minor to request and be provided with any policies that a health care institution may have relative to resuscitation and DNR orders. It does not state that parents/guardians have that same right.

CYFD makes the following additional points:

The definitions of emancipated minor and unemancipated minor are not consistent as the unemancipated minor does not exclude married minors between the ages of 16 and 18.

The rights of parents and guardians to consent and the right of the unemancipated minor are not clearly articulated. Subsection G can be interpreted in multiple ways and does not provide a clear path for decision making. Reading this section (in conjunction with other new subsections), the following questions are not clearly answered:

a. Who can make a decision for DNR/DNI (parents, the unemancipated minor, the agent, etc.)?;
b. Who can make a decision for withholding treatment (same as above)?;
c. Who can make the decision to withdraw care (same as above)?;
d. Who can make the decision to withdraw life support (same as above)?;
e. Who can make the decision to withdraw mechanical support (theoretically, if there is brain death, the decision is medical)?

The right of the unemancipated minor to consent is not age limited.

The process for medical professionals to seek court relief is not clear.

A Do Not Resuscitate Order is a term of art for the medical profession, and it connotes the withholding of certain types of care. Here, it is being conflated with the withdrawal of life support measures. Overall, the amendments need input from medical professionals to align them the terminology used by the profession and the procedures and circumstances happening during these critical decisions.

There is also a focus on "life support", when often we are dealing with "mechanical

support". For instance, a child with no brain function may appear "alive" in the sense that all the monitors show his/her heart beating/respiratory rate/temperature/blood pressure; however, all of this is artificially ("mechanically") maintained.
The approach seems inconsistent with provisions of 24-7A-6.2, providing unemancipated minors 14 and over with defined rights to consent to medical care in certain circumstances.

OTHER SUBSTANTIVE ISSUES

NMAG did not allude to any deficiencies in the bill as written.

CYFD notes that "This bill does not appear to contemplate this question arising for children in CYFD custody, as that eventuality is not addressed. However, although these circumstances are rare and the scope fairly limited, CYFD workers and attorneys will require updated training on this matter, there may be increased litigation on the topic, and the bill could result in increased suffering for terminally ill unemancipated minors in CYFD custody as medical decisions made to ease said suffering risk being placed on hold while the new legal process plays out."

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