

118TH CONGRESS
1ST SESSION

H. R. 6344

To amend titles XVIII and XIX of the Social Security Act to require providers of services and health maintenance organizations under the Medicare and Medicaid programs to provide for certain policies to be in place relating to do-not-resuscitate orders or similar physician's orders for unemancipated minors receiving services.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2023

Mr. LATURNER (for himself, Ms. STEFANIK, Mr. ADERHOLT, Mr. BANKS, Mr. SMITH of New Jersey, Mrs. MILLER-MEEKS, Ms. LETLOW, Mr. MOORE of Utah, Mr. ROUZER, Mr. MANN, Mrs. MILLER of Illinois, Mr. SESSIONS, Mr. ROSENDALE, Mr. BABIN, Mr. FULCHER, Mr. DUNCAN, Mr. ESTES, Mr. LAMBORN, Ms. VAN DUYNNE, Mrs. BICE, Mr. VALADAO, and Mr. BOST) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to require providers of services and health maintenance organizations under the Medicare and Medicaid programs to provide for certain policies to be in place relating to do-not-resuscitate orders or similar physician's orders for unemancipated minors receiving services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Simon Crosier Act”.

3 **SEC. 2. MEDICARE AND MEDICAID REQUIREMENTS FOR**
 4 **CERTAIN POLICIES RELATING TO DO-NOT-RE-**
 5 **SUSCITATE ORDERS OR SIMILAR PHYSI-**
 6 **CIAN’S ORDERS.**

7 (a) **MEDICARE PROVIDER AGREEMENT REQUIRE-**
 8 **MENT.—**

9 (1) **IN GENERAL.—**Section 1866(f) of the Social
 10 Security Act (42 U.S.C. 1395cc(f)) is amended by
 11 adding at the end the following new paragraphs:

12 “(5) For purposes of subsection (a)(1)(Q) and
 13 sections 1819(c)(1)(E), 1833(s), 1852(i),
 14 1876(c)(8), and 1891(a)(6), the requirement of this
 15 subsection, in addition to paragraph (1), is that a
 16 provider of services, MA organization, or prepaid or
 17 eligible organization (as the case may be) maintain
 18 the following written policies and procedures with re-
 19 spect to all unemancipated minors receiving medical
 20 care by or through the provider or organization (or
 21 prospective patient or resident, with respect to the
 22 provider or organization, who is an unemancipated
 23 minor):

24 “(A) A do-not-resuscitate order or similar
 25 physician’s order shall not be instituted, either
 26 orally or in writing, unless at least one parent

1 or legal guardian of such unemancipated minor
2 has first been informed of the physician's intent
3 to institute such an order and a reasonable at-
4 tempt has been made to inform the other par-
5 ent if the other parent is reasonably available
6 and has custodial or visitation rights. Such in-
7 formation must be provided both orally and in
8 writing unless, in reasonable medical judgment,
9 the urgency of the decision requires reliance on
10 only providing the information orally. Oral pro-
11 vision of such information shall include speak-
12 ing to at least one parent or legal guardian in
13 person or on the telephone, and shall not be
14 limited to recorded voice messages. Provision of
15 such information shall include at least 72 hours
16 of diligent efforts made by the physician or pro-
17 vider to contact and notify at least one parent
18 or legal guardian. The provision of such infor-
19 mation shall be contemporaneously recorded in
20 the medical record of the unemancipated minor,
21 specifying by whom and to whom the informa-
22 tion was given, the date and time of its provi-
23 sion, and whether it was provided in writing. In
24 the case that only one parent has been in-
25 formed, the nature of reasonable attempts to

1 inform the other parent or the reason why such
2 attempts were not made shall be contempora-
3 neously recorded in the medical record of the
4 unemancipated minor.

5 “(B) Either parent of the unemancipated
6 minor or the unemancipated minor’s guardian
7 may refuse consent for a do-not-resuscitate
8 order or similar physician’s order for the
9 unemancipated minor, either in writing or oral-
10 ly. Any such refusal of consent must be contem-
11 poraneously recorded in the medical record of
12 the unemancipated minor. No do-not-resuscitate
13 order or similar physician’s order shall be insti-
14 tuted either orally or in writing if there has
15 been such a refusal of consent.

16 “(C) The provider shall not have the au-
17 thority to require the withholding or withdrawal
18 of life-sustaining procedures from an
19 unemancipated minor over the objection of the
20 parent or legal guardian, unless electronic
21 brain, heart, and respiratory monitoring activity
22 conclusively establishes that the minor has died.
23 There shall be a presumption that the continu-
24 ation of life is in the minor’s best interest.

1 “(D) Within 48 hours of being notified of
2 the intent to institute a do-not-resuscitate order
3 or a similar physician’s order according to sub-
4 paragraph (A), a parent or legal guardian may
5 request a transfer of the unemancipated minor
6 patient or resident to another facility or dis-
7 charge. If a transfer is requested by a parent
8 or legal guardian, the hospital or health care fa-
9 cility under whose care the unemancipated
10 minor is admitted must continue provision of
11 artificial life-sustaining procedures and life-sus-
12 taining artificial nutrition and hydration for a
13 minimum of 15 days after the transfer request
14 has been made known and make every reason-
15 able effort to assist the requesting parent or
16 legal guardian in the transfer process. The hos-
17 pital or health care facility’s duties and finan-
18 cial obligations regarding transfer shall be gov-
19 erned by existing state law, applicable rules or
20 regulations, hospital policy, and relevant third-
21 party payment contracts.

22 “(E) Upon the request of a patient or resi-
23 dent or a prospective patient or resident, the
24 provider of services or organization shall dis-
25 close in writing any policies relating to the pa-

1 tient or resident or the services the patient or
2 resident may receive involving resuscitation or
3 life-sustaining measures, including any policies
4 related to treatments deemed non-beneficial, in-
5 effective, futile or inappropriate, within the pro-
6 vider of services or organization. Nothing in
7 this subparagraph shall require a provider of
8 services or organization to have a written policy
9 relating to or involving resuscitation, life-sus-
10 taining or non-beneficial treatment for
11 unemancipated minor patients or adult patients,
12 residents or wards.

13 “(6) In applying paragraph (5)(A), a deter-
14 mination based on “reasonable medical judgement”
15 shall not be solely based on disability alone or the
16 view that the life of a person with a disability is of
17 lower value or of lower quality than that of a person
18 without a disability regardless of whether the per-
19 son’s disability is pre-existing or newly acquired and
20 therefore must not serve as the sole basis for the do-
21 not-resuscitate order or similar physician’s order un-
22 less treatment is determined to be physiologically fu-
23 tile and supported with objective evidence that is
24 documented in the patient’s records in writing.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 1866(a)(1)(Q) of the Social
2 Security Act (42 U.S.C. 1395cc(a)(1)(Q)) is
3 amended—

4 (i) by striking “requirement” and in-
5 serting “requirements”; and

6 (ii) by inserting “and certain do-not-
7 resuscitate orders or similar physician’s or-
8 ders” after “advance directives”.

9 (B) Section 1819(c)(1)(E) of the Social
10 Security Act (42 U.S.C. 1395i-3(e)(1)(E)) is
11 amended—

12 (i) by striking “requirement” and in-
13 serting “requirements”; and

14 (ii) by inserting “and certain do-not-
15 resuscitate orders or similar physician’s or-
16 ders” after “advance directives”.

17 (C) Section 1833(s) of the Social Security
18 Act (42 U.S.C. 1395l(s)) is amended—

19 (i) by striking “requirement” and in-
20 serting “requirements”; and

21 (ii) by inserting “and certain do-not-
22 resuscitate orders or similar physician’s or-
23 ders” after “advance directives”.

24 (D) Section 1852(i) of the Social Security
25 Act (42 U.S.C. 1395w-22(i)) is amended—

1 (i) by striking “requirement” and in-
2 serting “requirements”; and

3 (ii) by inserting “and certain do-not-
4 resuscitate orders or similar physician’s or-
5 ders” after “advance directives”.

6 (E) Section 1876(c)(8) of the Social Secu-
7 rity Act (42 U.S.C. 1395mm(c)(8)) is amend-
8 ed—

9 (i) by striking “requirement” and in-
10 serting “requirements”; and

11 (ii) by inserting “and certain do-not-
12 resuscitate orders or similar physician’s or-
13 ders” after “advance directives”.

14 (F) Section 1891(a)(6) of the Social Secu-
15 rity Act (42 U.S.C. 1395bbb(a)(6)) is amend-
16 ed—

17 (i) by striking “requirement” and in-
18 serting “requirements”; and

19 (ii) by inserting “and certain do-not-
20 resuscitate orders or similar physician’s or-
21 ders” after “advance directives”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply with respect to items
24 and services furnished on or after the date that is
25 90 days after the date of the enactment of this Act.

1 (b) MEDICAID STATE PLAN REQUIREMENT.—

2 (1) IN GENERAL.—Section 1902(w) of the So-
3 cial Security Act (42 U.S.C. 1396a(w)) is amended
4 by adding at the end the following new paragraphs:

5 “(6) For purposes of subsection (a)(57) and
6 sections 1903(m)(1)(A) and 1919(c)(2)(E), the re-
7 quirement of this subsection, in addition to para-
8 graph (1), is that a provider or organization (as the
9 case may be) maintain the following written policies
10 and procedures with respect to all unemancipated
11 minors receiving medical care by or through the pro-
12 vider or organization (or prospective patient or resi-
13 dent, with respect to the provider or organization,
14 who is an unemancipated minor):

15 “(A) A do-not-resuscitate order or similar
16 physician’s order shall not be instituted, either
17 orally or in writing, unless at least one parent
18 or legal guardian of such unemancipated minor
19 has first been informed of the physician’s intent
20 to institute such an order and a reasonable at-
21 tempt has been made to inform the other par-
22 ent if the other parent is reasonably available
23 and has custodial or visitation rights. Such in-
24 formation must be provided both orally and in
25 writing unless, in reasonable medical judgment,

1 the urgency of the decision requires reliance on
2 only providing the information orally. Oral pro-
3 vision of such information shall include speak-
4 ing to at least one parent or legal guardian in
5 person or on the telephone, and shall not be
6 limited to recorded voice messages. Provision of
7 such information shall include at least 72 hours
8 of diligent efforts made by the physician or pro-
9 vider to contact and notify at least one parent
10 or legal guardian. The provision of such infor-
11 mation shall be contemporaneously recorded in
12 the medical record of the unemancipated minor,
13 specifying by whom and to whom the informa-
14 tion was given, the date and time of its provi-
15 sion, and whether it was provided in writing. In
16 the case that only one parent has been in-
17 formed, the nature of reasonable attempts to
18 inform the other parent or the reason why such
19 attempts were not made shall be contempora-
20 neously recorded in the medical record of the
21 unemancipated minor.

22 “(B) Either parent of the unemancipated
23 minor or the unemancipated minor’s guardian
24 may refuse consent for a do-not-resuscitate
25 order or similar physician’s order for the

1 unemancipated minor, either in writing or oral-
2 ly. Any such refusal of consent must be contem-
3 poraneously recorded in the medical record of
4 the unemancipated minor. No do-not-resuscitate
5 order or similar physician's order shall be insti-
6 tuted either orally or in writing if there has
7 been such a refusal of consent.

8 “(C) The provider shall not have the au-
9 thority to require the withholding or withdrawal
10 of life-sustaining procedures from an
11 unemancipated minor over the objection of the
12 parent or legal guardian, unless electronic
13 brain, heart, and respiratory monitoring activity
14 conclusively establishes that the minor has died.
15 There shall be a presumption that the continu-
16 ation of life is in the minor's best interest.

17 “(D) Within 48 hours of being notified of
18 the intent to institute a do-not-resuscitate order
19 or a similar physician's order according to sub-
20 paragraph (A), a parent or legal guardian may
21 request a transfer of the unemancipated minor
22 patient or resident to another facility or dis-
23 charge. If a transfer is requested by a parent
24 or legal guardian, the hospital or health care fa-
25 cility under whose care the unemancipated

1 minor is admitted must continue provision of
2 artificial life-sustaining procedures and life-sus-
3 taining artificial nutrition and hydration for a
4 minimum of 15 days after the transfer request
5 has been made known and make every reason-
6 able effort to assist the requesting parent or
7 legal guardian in the transfer process. The hos-
8 pital or health care facility's duties and finan-
9 cial obligations regarding transfer shall be gov-
10 erned by existing state law, applicable rules or
11 regulations, hospital policy, and relevant third-
12 party payment contracts.

13 “(E) Upon the request of a patient or resi-
14 dent or a prospective patient or resident, the
15 provider of services or organization shall dis-
16 close in writing any policies relating to the pa-
17 tient or resident or the services the patient or
18 resident may receive involving resuscitation or
19 life-sustaining measures, including any policies
20 related to treatments deemed non-beneficial, in-
21 effective, futile or inappropriate, within the pro-
22 vider of services or organization. Nothing in
23 this subparagraph shall require a provider of
24 services or organization to have a written policy
25 relating to or involving resuscitation, life-sus-

1 taining or non-beneficial treatment for
2 unemancipated minor patients or adult patients,
3 residents or wards.

4 “(7) In applying paragraph (6)(A), a deter-
5 mination based on “reasonable medical judgement”
6 shall not be solely based on disability alone or the
7 view that the life of a person with a disability is of
8 lower value or of lower quality than that of a person
9 without a disability regardless of whether the per-
10 son’s disability is pre-existing or newly acquired and
11 therefore must not serve as the sole basis for the do-
12 not-resuscitate order or similar physician’s order un-
13 less treatment is determined to be physiologically fu-
14 tile and supported with objective evidence that is
15 documented in the patient’s records in writing.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 1903(m)(1)(A) of the Social
18 Security Act (42 U.S.C. 1396b(m)(1)(A)) is
19 amended in the matter preceding clause (i), by
20 striking “requirement” and inserting “require-
21 ments”.

22 (B) Section 1919(c)(2)(E) of the Social
23 Security Act (42 U.S.C. 1396r(c)(2)(E)) is
24 amended—

1 (i) by striking “requirement” and in-
2 serting “requirements”; and

3 (ii) by inserting “and certain do-not-
4 resuscitate orders or similar physician’s or-
5 ders” after “advance directives”.

6 (3) EFFECTIVE DATE.—

7 (A) IN GENERAL.—Except as provided in
8 paragraph (2), the amendments made by this
9 subsection shall take effect on the date of the
10 enactment of this Act and shall apply to serv-
11 ices furnished on or after the date that is 90
12 days after the date of the enactment of this
13 Act.

14 (B) EXCEPTION IF STATE LEGISLATION
15 REQUIRED.—In the case of a State plan for
16 medical assistance under title XIX of the Social
17 Security Act which the Secretary of Health and
18 Human Services determines requires State leg-
19 islation (other than legislation appropriating
20 funds) in order for the plan to meet the addi-
21 tional requirement imposed by the amendments
22 made by this subsection, the State plan shall
23 not be regarded as failing to comply with the
24 requirements of such title solely on the basis of
25 its failure to meet this additional requirement

1 before the first day of the first calendar quarter
2 beginning after the close of the first regular
3 session of the State legislature that begins after
4 the date of the enactment of this Act. For pur-
5 poses of the previous sentence, in the case of a
6 State that has a 2-year legislative session, each
7 year of such session shall be deemed to be a
8 separate regular session of the State legislature.

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