

117TH CONGRESS  
1ST SESSION

# H. R. 5656

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.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2021

Mr. LATURNER (for himself, Mr. SMITH of New Jersey, Mr. BANKS, Mrs. MILLER-MEEKS, Mrs. HINSON, Mr. MANN, Mr. ESTES, Ms. SALAZAR, Mr. MOORE of Utah, Mrs. BICE of Oklahoma, Mr. BARR, Mr. BABIN, Mr. CAWTHORN, Mrs. LESKO, Mr. LAMBORN, Mr. LATTA, Ms. VAN DUYN, Mr. GOOD of Virginia, Ms. LETLOW, Mr. MULLIN, Mr. HARRIS, Mr. DUNCAN, Mr. ROSENDALE, Mr. JACKSON, Mr. C. SCOTT FRANKLIN of Florida, Mr. WILLIAMS of Texas, Mr. KUSTOFF, and Mrs. MILLER of Illinois) 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

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## 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

9 (a) MEDICARE PROVIDER AGREEMENT REQUIRE-  
 10 MENT.—

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

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

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

1 sion, and whether it was provided in writing. In  
2 the case that only one parent has been in-  
3 formed, the nature of reasonable attempts to  
4 inform the other parent or the reason why such  
5 attempts were not made shall be contempora-  
6 neously recorded in the medical record of the  
7 unemancipated minor.

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

19 “(C) The provider shall not have the au-  
20 thority to require the withholding or withdrawal  
21 of life-sustaining procedures from an unemanci-  
22 pated minor over the objection of the parent or  
23 legal guardian, unless electronic brain, heart,  
24 and respiratory monitoring activity conclusively  
25 establishes that the minor has died. There shall

1 be a presumption that the continuation of life  
2 is in the minor's best interest.

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

24 “(E) Upon the request of a patient or resi-  
25 dent or a prospective patient or resident, the

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

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

1 tile and supported with objective evidence that is  
2 documented in the patient’s records in writing.”.

3 (2) CONFORMING AMENDMENTS.—

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

7 (i) by striking “requirement” and in-  
8 serting “requirements”; and

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

12 (B) Section 1819(c)(1)(E) of the Social  
13 Security Act (42 U.S.C. 1395i–3(c)(1)(E)) is  
14 amended—

15 (i) by striking “requirement” and in-  
16 serting “requirements”; and

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

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

22 (i) by striking “requirement” and in-  
23 serting “requirements”; and

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

4 (D) Section 1852(i) of the Social Security  
5 Act (42 U.S.C. 1395w–22(i)) is amended—

6 (i) by striking “requirement” and in-  
7 serting “requirements”; and

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

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

14 (i) by striking “requirement” and in-  
15 serting “requirements”; and

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

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

22 (i) by striking “requirement” and in-  
23 serting “requirements”; and



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

4 (3) EFFECTIVE DATE.—The amendments made  
5 by this subsection shall apply with respect to items  
6 and services furnished on or after the date that is  
7 90 days after the date of the enactment of this Act.

8 (b) MEDICAID STATE PLAN REQUIREMENT.—

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

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

22 “(A) A do-not-resuscitate order or similar  
23 physician’s order shall not be instituted, either  
24 orally or in writing, unless at least one parent  
25 or legal guardian of such unemancipated minor

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

1 attempts were not made shall be contempora-  
2 neously recorded in the medical record of the  
3 unemancipated minor.

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

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

24 “(D) Within 48 hours of being notified of  
25 the intent to institute a do-not-resuscitate order

1 or a similar physician's order according to sub-  
2 paragraph (A), a parent or legal guardian may  
3 request a transfer of the unemancipated minor  
4 patient or resident to another facility or dis-  
5 charge. If a transfer is requested by a parent  
6 or legal guardian, the hospital or health care fa-  
7 cility under whose care the unemancipated  
8 minor is admitted must continue provision of  
9 artificial life-sustaining procedures and life-sus-  
10 taining artificial nutrition and hydration for a  
11 minimum of 15 days after the transfer request  
12 has been made known and make every reason-  
13 able effort to assist the requesting parent or  
14 legal guardian in the transfer process. The hos-  
15 pital or health care facility's duties and finan-  
16 cial obligations regarding transfer shall be gov-  
17 erned by existing State law, applicable rules or  
18 regulations, hospital policy, and relevant third-  
19 party payment contracts.

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

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

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

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 1903(m)(1)(A) of the Social  
25 Security Act (42 U.S.C. 1396b(m)(1)(A)) is

1 amended in the matter preceding clause (i), by  
2 striking “requirement” and inserting “require-  
3 ments”.

4 (B) Section 1919(c)(2)(E) of the Social  
5 Security Act (42 U.S.C. 1396r(c)(2)(E)) is  
6 amended—

7 (i) by striking “requirement” and in-  
8 serting “requirements”; and

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

12 (3) EFFECTIVE DATE.—

13 (A) IN GENERAL.—Except as provided in  
14 paragraph (2), the amendments made by this  
15 subsection shall take effect on the date of the  
16 enactment of this Act and shall apply to serv-  
17 ices furnished on or after the date that is 90  
18 days after the date of the enactment of this  
19 Act.

20 (B) EXCEPTION IF STATE LEGISLATION  
21 REQUIRED.—In the case of a State plan for  
22 medical assistance under title XIX of the Social  
23 Security Act which the Secretary of Health and  
24 Human Services determines requires State leg-  
25 islation (other than legislation appropriating

1 funds) in order for the plan to meet the addi-  
2 tional requirement imposed by the amendments  
3 made by this subsection, the State plan shall  
4 not be regarded as failing to comply with the  
5 requirements of such title solely on the basis of  
6 its failure to meet this additional requirement  
7 before the first day of the first calendar quarter  
8 beginning after the close of the first regular  
9 session of the State legislature that begins after  
10 the date of the enactment of this Act. For pur-  
11 poses of the previous sentence, in the case of a  
12 State that has a 2-year legislative session, each  
13 year of such session shall be deemed to be a  
14 separate regular session of the State legislature.

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