



## NH Partnership for End-of-Life Care

10.10.06

### EDUCATION MODULE 4: EMS, Emergency Physicians, and Nurses

*The contents of this module are not comprehensive with regards to NH RSA 137-J. Please refer to our Master Education Module or the statute for the complete text.*

#### Background and Rationale

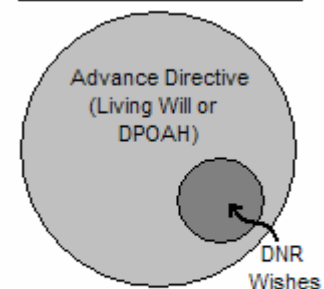
New Hampshire House Bill (HB) 656, pertaining to advance directives and do not attempt resuscitation orders, goes into effect on January 1, 2007. The purpose of the new legislation is to update the law so that honoring patient wishes is as simple as possible. Amongst other changes and additions that have been made, the terminology relating to living wills and durable powers of attorney for health care has been clarified, and a new section on do not attempt resuscitation orders has been added.

#### Do Not Attempt Resuscitation Order and Advance Directive Document: What is the difference?

Advance care planning is the process of thinking about values and choices for medical care and discussing them with family and health care providers. The distinction between an advance directive document and do not attempt resuscitation orders is often a confusing one. An *advance directive* document are important written guides in determining the medical care a patient receives towards the end of his or her life. An advance directive can include a patient's wishes regarding many different types of medical decisions, treatments, and procedures. A do not attempt resuscitation (DNR) order is the medical order that documents the patient's decision not to have clinicians attempt resuscitation in the event of a cardiac or respiratory arrest.

In New Hampshire, the term *advance directive* refers specifically and only to a single legal document with two separate sections: a *Durable Power of Attorney for Health Care* and a *Living Will*. A Durable Power of Attorney for Health Care (DPOAH) states that if a patient loses the capacity to make medical decisions for him or herself, that patient grants authority to another adult of his or her choosing to make the decisions. "Losing capacity" means that the patient cannot generally understand the significant risks and benefits of a health care decision, as well as any alternative options. A physician or advanced registered nurse practitioner (ARNP) must determine and record when a patient loses capacity and the DPOAH is activated or put into effect. In the context of this law, "capacity" is a medical judgment, as opposed to "competency", which is determined in a court of law. A Living Will states that if a patient is diagnosed with a medical condition

#### Scope of Advance Directives



\*Advance directives deal with far more than simply patient wishes about resuscitation.

which renders him or her near death or permanently unconscious without hope of recovery, and the patient is unable to actively participate in the decision-making process, that patient wishes to have all life-sustaining treatment withheld or withdrawn. A patient must specifically indicate whether this applies to medically administered nutrition or hydration.

While a patient's advance directive document may make reference to their wishes regarding whether they want to be resuscitated or not, these documents do not constitute a DNR order. A DNR order is an official medical order, written by a physician or ARNP on either a standardized institutional order form or on a state-recognized portable DNR order form. It documents the patient's choice not to have clinicians attempt resuscitation if they go into cardiac or respiratory arrest. The purpose of the DNR order is to translate the patient's wishes into an actual medical order that will subsequently direct the care of that patient in the health care facility. In contrast, an advance directive document lets the patient's wishes regarding treatment be known, but these wishes must also be translated into doctor's orders in order to take effect in the health care setting.

## **Summary of RSA- 137-J for EMS and Emergency Dept. Personnel**

### **I. Advance Directives**

#### **1. Physician, ARNP, and Provider's Health Care Responsibilities**

- a. If a patient's advance directive has gone into effect, that patient's health care provider and employees of the health care facility must follow the patient's living will directions or the directions given by the patient's designated agent in their DPOAH, as long as they are within the bounds of reasonable medical practice and they do not violate New Hampshire law.
- b. If it is determined that a patient with an advance directive lacks capacity and/or the patient is near death or permanently unconscious, the patient's attending physician or ARNP must take the necessary steps to document this as quickly as possible so that the patient's advance directive may be honored.
- c. If a physician or ARNP cannot comply with the terms of the advance directive, the direction of the agent, or the direction of the living will because of his or her personal beliefs or conscience, he or she must immediately inform the patient, the patient's family, or the patient's agent. The patient, patient's family, or agent may then request a referral to another physician or ARNP. Furthermore, he or she must immediately make the necessary arrangements to transfer the patient and the medical records that document the patient's lack of capacity to another physician or ARNP who has been chosen by the patient, the patient's agent, or the patient's family. While awaiting the completion of the transfer, the attending physician or ARNP cannot deny health care treatment, nutrition, or hydration which, if denied, would, within a reasonable degree of medical certainty, result in or hasten the patient's death against the will of the patient, the advance directive, or the agent.
- d. A patient's decision to exclude or strike references to ARNPs and the powers granted to ARNPs in his or her advance directive must be honored.
- e. If a patient lacks capacity, health care providers and persons acting for those providers or under their control can communicate to the agent any medical

information necessary for the purpose of helping the agent make health care decisions. These providers may also provide copies of the patient's advance directives to the agent, if it is necessary to facilitate treatment.

## 2. The Role of the Agent

Definition of *Agent*: in an advance directive, the adult designated by the patient to have authority to make that patient's health care decisions.

Definition of *Patient*: a person 18 years of age or older who has executed an advance directive.

- a. The agent has the authority to make any and all health care decisions on the patient's behalf that the patient could make, **only** when the patient does not have capacity to make health care decisions, unless otherwise prohibited by law. Lack of capacity **must** be certified in writing by the patient's attending physician or ARNP, or certified in writing and acknowledged before a notary by a person designated by the patient, and the agent's name must be noted and placed in the patient's medical record.
- b. **The "Ulysses Clause"**: Even if the patient lacks capacity and an advanced directive is in effect, the attending physician or ARNP must make reasonable efforts to inform them of proposed treatment or any proposal to withdraw or withhold treatment. If the patient objects to the proposed plan, **even if they lack capacity and an advanced directive is in effect**, the patient's vocalized wishes must be honored. The only exception to this is if the patient's advance directive includes the following statement initialed by the patient: *"Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."*

## 3. Withholding or Withdrawing Life-Sustaining Treatment

- a. Medically administered nutrition and hydration and life-sustaining treatment **can never be withdrawn in any circumstance UNLESS**:
  - The patient clearly expresses that this is his or her wish in their advance directive, OR
  - Such treatment would have the unintended consequence of hastening death or causing irreparable harm. This must be certified by an attending physician and a physician knowledgeable about the patient's condition.
- b. If one of the above conditions is met, and the agent decides to withhold or withdraw life-sustaining treatment but the patient does not have the "Living Will" part of the advance directive, **the following additional conditions apply**:
  - The patient's attending physician or ARNP must certify in writing that the patient lacks the capacity to make health care decisions.
  - Two physicians or a physician and an ARNP must certify in writing that the patient is near death or is permanently unconscious.
  - The agent must make a good faith effort to explore all avenues reasonably available to determine the desires of the patient. This includes, but is not limited to, the patient's advance directive, the patient's written or spoken expressions of wishes, and the patient's known religious or moral beliefs.
- c. **Life-sustaining treatment can never be withheld or withdrawn** from a pregnant patient unless, to a reasonable degree of medical certainty, the treatment or procedures will not allow the continuing development and live birth of the fetus, or

the treatment or procedures will be physically harmful to the patient or prolong severe pain which cannot be alleviated by medication. This must be documented on the patient's medical record by the attending physician or ARNP and an obstetrician who has examined the patient.

- d. **Life-sustaining treatment can never be withheld or withdrawn** from a mentally incompetent or developmentally disabled person, unless that person has a validly executed advance directive, or the action is authorized by an existing guardianship or other court order, or the action is in accordance with the facility's standard protocol as applicable to its general patient population.

#### **4. Revoking an Advance Directive**

- a. If a patient's health care provider is informed of a revocation of an advance directive, they must immediately record the revocation, with the time and date when the revocation was received, in the patient's medical record and notify the agent, the attending physician or ARNP, and staff responsible for the patient's care.
- b. If an agent informs the patient's health care provider of a revocation, the revocation shall become effective upon communication to the attending physician or ARNP.

#### **5. What if a document is from another state, or was made before the new law passed?**

- a. Advance directives created in another state must be honored. However, the advance directive is subject to requirements of New Hampshire state law.
- b. Advanced directives that were created under prior New Hampshire law must be honored.

#### **6. What if more than one person is named as a patient's health care agent?**

- a. If more than one person is listed as the agent in a Durable Power of Attorney for Health Care document, the agents have authority in the order they are listed on the document. If another method of joint agency is desired by the patient (for example, "majority rule"), that method must be included in the directive.

#### **7. What if there is a conflict between advanced directives?**

- a. If there is a conflict between a terminal care document or living will and a durable power of attorney for health care, the durable power of attorney for health care has control.

## **II. Do Not Attempt Resuscitation Orders**

#### **8. Presumed Consent to Cardiopulmonary Resuscitation**

- a. In the event of cardiac or respiratory arrest, every person is presumed to consent to cardiopulmonary resuscitation (CPR), **except when:**
  - A do not attempt resuscitation order has been issued for that person, OR
  - A completed advance directive for that person is in effect stating the person does not want CPR or their agent determines that the person would not want CPR, OR
  - A person who lacks capacity to make health care decisions is near death and admitted to a health care facility, and the person's agent is not reasonably

available or is not legally capable of making health care decisions for the person, and the attending physician or ARNP, and a concurring second physician, have determined that CPR would be contrary to accepted medical standards and would cause harm to [or cause pain and suffering of] the person, and the attending physician or ARNP has completed a do not attempt resuscitation order, OR

- A person is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner.

### **9. Issuing a Do Not Attempt Resuscitation Order**

- a. An agent may consent to a do not attempt resuscitation order for a person who lacks the capacity to make health care decisions, if the advance directive signed by the patient grants that authority.
- b. If an agent is not reasonably available or is not legally capable of making a decision regarding a do not attempt resuscitation order, an attending physician or ARNP may issue a do not attempt resuscitation order for a person who lacks capacity to make health care decisions. This may only occur if the person is near death and is admitted to a health care facility, and only if a second physician who has personally examined the person concurs with the opinion of the attending physician or ARNP that CPR would be contrary to accepted medical standards and would cause harm or pain and suffering.
- c. If the person is present in a health care facility, the DNR order must be written either on a form consistent with that health care facility's policy and procedures, on a do not attempt resuscitation card according to the new NH state law, or on a medical orders form according to the new NH state law.
- d. Do not attempt resuscitation *identification* can consist of either a medical condition bracelet or necklace with the inscription of the person's name, date of birth in numerical form and "NH Do Not Resuscitate" or "NH DNR" on it.

### **10. Complying with a Do Not Attempt Resuscitation Order**

- a. All health care and residential care providers must comply with a do not attempt resuscitation order when presented with the order in one of the three forms described above.
- b. If a physician or ARNP refuses to issue a DNR order or comply with a DNR order because of his or her personal beliefs or conscience, he or she must immediately inform the patient, the patient's family, or the patient's agent. The patient, family, or agent may then request a referral to another physician or ARNP.

### **11. Revoking a Do Not Attempt Resuscitation Order**

- a. A person in a health care facility can revoke his or her DNR order at any time by making either a written, oral, or other act of communication to the attending physician, ARNP, or other professional staff of the facility.
- b. An agent can revoke a DNR order issued for a patient who is admitted to a health care facility at any time by written notification to the attending physician, ARNP, or other

- professional staff of the facility, or by oral notification to the attending physician or ARNP in the presence of a witness 18 years of age or older.
- c. If a DNR order is revoked and the person is in a health care facility, the attending physician or ARNP must immediately cancel the order and notify the staff responsible for that person's care.
  - d. Any staff of a health care facility that is notified of the revocation of a DNR order must immediately inform the attending physician or ARNP.
  - e. Only a physician or ARNP can cancel a DNR order.

## **12. Liability**

- a. Nobody (including health care providers) who witnesses a cardiac or respiratory arrest can be held criminally or civilly liable for providing cardiopulmonary resuscitation to a person that has a DNR order, only if that person providing the CPR is unaware of the DNR order or believed that the DNR order had been revoked or canceled.

## **13. Interinstitutional Transfer**

- a. If a person with a do not attempt resuscitation order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer must communicate the existence of a DNR order to the receiving facility prior to the transfer. The written DNR order, the DNR card, or the medical orders form must accompany the person to the receiving facility and remains effective until a physician at the receiving facility issues admission orders. The DNR card or the medical orders form must be kept as the first page in the person's transfer records.