Current Statute	HB 656 as approved by Governor & Legislature	Notes
137-H:1 Purpose and Policy. – The state of New Hampshire recognizes that a person has a right, founded in the autonomy and sanctity of the person, to control the decisions relating to the rendering of his own medical care. In order that the rights of persons may be respected even after they are no longer able to participate actively in decisions about themselves, and to encourage communication between patients and their physicians, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to make a written declaration instructing his physician to provide, withhold, or withdraw life-sustaining procedures in the event such person is in a terminal condition or is permanently unconscious. **Source.** 1985, 157:1. 1991, 239:2, eff. June 10, 19	**137-J:1 Purpose and Policy.** I. The state of New Hampshire recognizes that a person has a right, founded in the autonomy and sanctity of the person, to control the decisions relating to the rendering of his or her own medical care. In order that the rights of persons may be respected even after such persons lack the capacity to make health care decisions for themselves, and to encourage communication between patients and their attending physicians or ARNPs, the general court declares that the laws of this state shall recognize the right of a competent person to make a written directive: (a) Delegating to an agent the authority to make health care decisions on the person's behalf, in the event such person is unable to make those decisions for himself or herself, either due to permanent or temporary lack of capacity to make health care decisions; (b) Instructing his or her attending physician or ARNP to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.	The statute combines the Living Will (LW) and Durable Power of Attorney for Healthcare (DPOAH) to help clarify the linkage of each advance directive.
	II. All persons have a right to make health care decisions, including the right to refuse cardiopulmonary resuscitation. It is the purpose of the "Do Not Resuscitate" provisions of this chapter to ensure that the right of a person to self-determination relating to cardiopulmonary resuscitation is protected, and to give direction to emergency services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.	Includes a new section regarding Do Not Resuscitate (DNR) Orders.
137-H:2 Definitions. – In this chapter: I. "Attending physician" means the physician selected by or assigned to the patient who has primary responsibility for the treatment and care of the patient.	**137-J:2 Definitions.** In this chapter: I. "Advance directive" means a directive allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose the capacity to make health care decisions. The term "advance directives" shall include living wills and durable powers of attorney for health care.	Explains link between LW and DPOAH.

II. "Life-sustaining procedures" means any medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, in the written judgment of the attending physician and a consulting physician, when applied to the qualified patient, would serve only to artificially postpone the moment of death, and where, in the written judgment of the attending physician and the consulting physician, the patient is in a terminal condition or is permanently unconscious. "Life-sustaining procedures" shall not include the administration of medication, sustenance, or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain. III. "Living will" means a document which, when duly executed, contains the express direction that no life-sustaining procedures be taken when the person executing said document is in a terminal condition or is permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.	II. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse who is licensed in good standing in the state of New Hampshire as having specialized clinical qualifications as provided in RSA 326-B:10. III. "Agent" means an adult to whom authority to make health care decisions is delegated under an advance directive. IV. "Attending physician or ARNP" means the physician or advanced registered nurse practitioner, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician or advanced registered nurse practitioner shares that responsibility, any one of those physicians or advanced registered nurse practitioners may act as the attending physician or ARNP under the provisions of this chapter. V. "Capacity to make health care decisions" means the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.	ARNPs added because they provide a significant amount of primary and specialty patient care. Adds "generally" after "appreciate."
IV. "Physician" means a medical doctor licensed to practice in the state of New Hampshire pursuant to RSA 329. V. "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been diagnosed and certified in writing to be in a terminal condition or permanently unconscious by 2 physicians who have personally examined the patient, one of whom shall be the attending physician. VI. "Terminal condition" means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining measures would, within the reasonable medical judgment of the attending physician and a consulting physician, only postpone the moment of death.	VI. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest. VII. "Commissioner" means the commissioner of the department of health and human services. VIII. "Do not resuscitate identification" means a standardized identification necklace, bracelet, card, or written medical order that signifies that a "Do Not Resuscitate Order" has been issued for the principal. IX. "Do not resuscitate order" or "DNR order" (also known as "Do not attempt resuscitation order" or "DNAR order") means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient	Adds definition of key term related to end-of-life care. Adds definition of key term related to end-of-life care.

VII. "Permanently unconscious" means a lasting condition, indefinitely and without change, in which thought, awareness of self and environment, and all other indicia of consciousness are absent as determined by the attending physician and a consulting physician.	will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.	
VIII. "Artificial nutrition and hydration" means invasive procedures such as but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include sustenance.	X. “Durable power of attorney for health care” means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter. It shall not mean forms routinely required by health and residential care providers for admissions and consent to treatment.	
IX. "Sustenance" means the natural ingestion of food or fluids by eating and drinking. **Source.** 1985, 157:1. 1991, 239:3-5, eff. June 10, 1991.	XI. “Emergency services personnel” means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers, or entities acting within the usual course of their professions.	Adds definition of health care providers involved in DNR orders.
137-J:1 Definitions. – In this chapter: I. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.	XII. “Health care decision” means informed consent, refusal to give informed consent, or withdrawal of informed consent to any type of health care, treatment, admission to a health care facility, any service or procedure to maintain, diagnose, or treat an individual’s physical or mental condition except as prohibited in this chapter or otherwise by law.	Adds “informed” and “type of health.”
II. "Artificial nutrition and hydration" means invasive procedures such as but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include the natural ingestion of food or fluids by eating and drinking.	XIII. “Health care provider” means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.	
III. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. IV. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.	XIV. “Life-sustaining treatment” means any medical procedures or interventions which utilize mechanical or other medically administered means to sustain, restore, or supplant a vital function which, in the written judgment of the attending physician or ARNP, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious. “Life-sustaining treatment” includes, but is not limited to, the following: mechanical respiration, kidney dialysis or the use of other external mechanical or technological devices. Life sustaining treatment may include drugs to maintain blood pressure,	Expands the definition to provide examples of what is and is not "life sustaining treatment;" combines the definitions from the LW and DPOAH statutes; replaces “sustenance” with plain-English definition.

V. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter. It shall not mean forms routinely required by health and residential care providers for admissions and consent to treatment. VI. "Health care decision" means consent, refusal to consent, or withdrawal of consent to any care, treatment, admission to a health care facility, any service or procedure to maintain, diagnose, or treat an individual's physical or mental condition except as prohibited in this chapter or otherwise by law. VII. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. VIII. "Life-sustaining treatment" means procedures without which a person would die, such as but not limited to the following: cardiopulmonary resuscitation, mechanical respiration, kidney dialysis or the use of other external mechanical or technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics. IX. "Principal" means a person 18 years of age or older who has executed a durable power of attorney for health care. X. "Residential care provider" means a "facility" as defined in RSA 161-F:11, V, a "nursing home" as defined in RSA 151-A:1, IV, or any individual or facility licensed, certified or otherwise authorized or permitted by law to operate, for profit or otherwise, a residential care facility for adults, including but not limited to those operating pursuant to RSA 420-D. **Source.** 1991, 146:2, eff. July 19, 1991. 2004, 110:3, eff. July 16, 2004.	blood transfusions, and antibiotics. "Life-sustaining treatment" shall not include the administration of medication, natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide comfort or to alleviate pain. XV. "Living will" means a directive which, when duly executed, contains the express direction that no life-sustaining treatment be given when the person executing said directive has been diagnosed and certified in writing by the attending physician or ARNP to be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process. XVI. "Medically administered nutrition and hydration" means invasive procedures such as, but not limited to the following: Nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include the natural ingestion of food or fluids by eating and drinking. XVII. "Near death" means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining treatment would, to a reasonable degree of medical certainty, as determined by 2 physicians or a physician and an ARNP, only postpone the moment of death. XVIII. "Permanently unconscious" means a lasting condition, indefinitely without improvement, in which thought, awareness of self and environment, and other indicators of consciousness are absent as determined by an appropriate neurological assessment by a physician in consultation with the attending physician or an appropriate neurological assessment by a physician in consultation with an ARNP. XIX. "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.	For clarity, adds "has been diagnosed and certified in writing by the attending physician or ARNP." Renames "artificial" to "medically administered" because it is more descriptive. Renames "terminal condition" to "near death" because it is a more descriptive term. Adds "to a reasonable degree of medical certainty" to account for variation and change in diagnostic/prognostic capability of medicine; Adds "in good standing."

	XX. "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter.	
	XXI. "Qualified patient'' means a patient who has executed an advance directive in accordance with this chapter and who has been certified in writing by the attending physician or ARNP to lack the capacity to make health care decisions.	New definition to make this definition applicable with the new statute that combines LW and DPOAH.
	XXII. "Reasonable degree of medical certainty" means a medical judgment that is made by a physician or ARNP who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.	
	XXIII. "Residential care provider" means a "facility" as defined in RSA 161-F:11, IV, a "nursing home" as defined in RSA 151-A:1, IV, or any individual or facility licensed, certified, or otherwise authorized or permitted by law to operate, for profit or otherwise, a residential care facility for adults, including but not limited to those operating pursuant to RSA 420-D.	
	XXIV. "Witness" means a competent person 18 years or older who is present when the principal signs an advance directive.	
137-J:9 Freedom From Influence. – No health care provider or residential care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall charge a person a different rate because of the existence or non-existence of a durable power of attorney for health care or require any person to execute a durable power of attorney for health care as a condition of admission to a hospital, nursing home, or residential care home, or as a condition of being insured for, or receiving health or residential care. Health or	**137-J:3 Freedom From Influence.** I. No health care provider or residential care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall charge a person a different rate because of the existence or non-existence of an advance directive or do not resuscitate order, or require any person to execute an advance directive or require the issuance of a do not resuscitate order as a condition of admission to a hospital, nursing home, or residential care home, or as a condition of being insured for, or receiving, health or	Adds reference to new DNR component.

residential care shall not be refused because a person has executed a durable power of attorney for health care. **Source.** 1991, 146:2, eff. July 19, 1991.	residential care services. Health or residential care services shall not be refused because a person is known to have executed an advance directive or have a do not resuscitate order.	
137-H:11 Freedom From Influence. – I. No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall require any person to execute a living will as a condition for being insured for or receiving health care services; nor shall health care services be refused because a person is known to have executed a living will.	II. The execution of an advance directive or issuance of a do not resuscitate order pursuant to this chapter shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired, modified or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured person notwithstanding any term of the policy to the contrary.	Adds reference to new DNR component.
II. The execution of a living will pursuant to RSA 137-H:3 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary. **Source.** 1985, 157:1. 1991, 239:15, eff. June 10, 1991.	III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 ½" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."	New section requiring written public notice if a health organization decides to not honor patient wishes related to end-of-life care.
	137-J:4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.	New section to protect overall content of this statute even if a section is determined to be invalid.
137-J:2 Scope and Duration of Authority. I. Subject to the provisions of this chapter and any express limitations set forth by the principal in the durable power of attorney for health care, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could	**137-J:5 Scope and Duration of Agent's Authority.** I. Subject to the provisions of this chapter and any express limitations set forth by the principal in an advance directive, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make.	Describes the specific role of an agent and when the agent's authority is in effect.

make. II. After consultation with the attending physician and other health care providers, the agent shall make health care decisions in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by principal to agent, or as contained in the durable power of attorney for health care or in a terminal care document executed pursuant to the provisions of RSA 137-H; or if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests and in accordance with accepted medical practice. III. Under a durable power of attorney for health care, the agent's authority shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record. When and if a person regains capacity to make such decisions, such event shall be noted in the principal's medical record. A durable power of attorney for health care may include a provision that, if the principal has no attending physician for reasons based on his religious or moral beliefs as specified in the durable power of attorney for health care, a person designated by the principal in the durable power of attorney for health care may certify in writing, acknowledged before a notary or justice of the peace, as to the lack of decisional capacity of the principal. The person so designated by the principal shall not be the agent, or a person ineligible to be the agent. IV. Notwithstanding that a durable power of attorney for health care is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.	II. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician or ARNP, and filed with the name of the agent in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing by the principal's attending physician or ARNP, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make health care decisions shall revert to the principal. III. If the principal has no attending physician or ARNP for reasons based on the principal's religious or moral beliefs as specified in his or her advance directive, the advance directive may include a provision that a person designated by the principal in the advance directive may certify in writing, acknowledged before a notary or justice of the peace, as to the lack of decisional capacity of the principal. The person so designated by the principal shall not be the agent, or a person ineligible to be the agent. IV. The principal's attending physician or ARNP shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment. Notwithstanding that an advance directive is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection." V. Nothing in this chapter shall be construed to give an agent authority to: (a) Consent to voluntary admission to any state institution; (b) Consent to a voluntary sterilization; or (c) Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical	Reordered clauses for reading clarity; specifies when and how agent's authority is made effective, and when and how decisional authority returns to the principal. References to ARNPs are added throughout to make determinations regarding patient-decision making capacity. Made into separate section; no change. Re-orders the sentences to make it clearer. Requires health care provider to always honor the patient's wishes and a patient can orally override any written advance directive. New section that allows the patient to give specific consent in writing to treatment even if they later object.

V. Nothing in this chapter shall be construed to give an agent authority: (a) To consent to voluntary admission to any state institution; (b) To consent to a voluntary sterilization; or (c) To consent to withholding life-sustaining treatment from a pregnant patient, unless, to a reasonable degree of medical certainty, as certified on the patient's chart by the attending physician and an obstetrician who has examined the patient, such treatment or procedures will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful to the patient or prolong severe pain which cannot be alleviated by medication. **Source.** 1991, 146:2, eff. July 19, 1991.	certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.	Changed "unborn child" to "fetus."
	137-J:6 Requirement to Act in Accordance with Principal's Wishes and Best Interests. After consultation with the attending physician or ARNP and other health care providers, the agent shall make health care decisions in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests and in accordance with accepted medical practice.	Separated from former J:2 for clarity. Emphasizes expectation of agents to follow the patient's wishes, religious and moral beliefs.
137-H:5 Notification; Medical Record. – An attending physician who is requested to do so by the person executing the living will shall make such document or a copy of such document a part of that person's permanent medical record. **Source.** 1985, 157:1. 1991, 239:8, eff. June 10, 1991.		
137-J:8 Action by Provider. – I. A principal's health or residential care provider, and employees thereof, having knowledge of the principal's durable power of attorney for health care, shall be bound to follow the directives of the principal's designated agent to the extent they are consistent with this chapter and the durable power of attorney for health care. II. When the direction of an agent requires an act or omission contrary to the moral or ethical principles or other standards of a health or residential care provider of which the principal is a patient or resident, the care	**137-J:7 Physician, ARNP, and Provider's Responsibilities.** I. A qualified patient's attending physician or ARNP, or a qualified patient's health care provider or residential care provider, and employees thereof, having knowledge of the qualified patient's advance directive shall be bound to follow, as applicable, the dictates of the qualified patient's living will and or the directives of a qualified patient's designated agent to the extent they are consistent with this chapter and the advance directive, and to the extent they are within the bounds of responsible medical practice. (a) An attending physician or ARNP, or other health care	Describes the specific role of the health provider related to LW and DPOAH. Requires providers to follow advance directives and agents' instructions; adds "to the extent they are within the bounds of responsible medical practice."

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<td>provider shall allow for the transfer of the patient to another facility and shall incur no liability for its refusal to carry out the terms of the direction by the agent, provided that the health or residential care provider shall inform the agent of its decision not to participate in such an act or omission.
Source. 1991, 146:2, eff. July 19, 1991.

137-H:8 Duty to Deliver. – Any person having in his possession a duly executed living will or a revocation thereof, if it becomes known to him that the person executing the same is in such circumstances that the terms of the living will might become applicable, shall forthwith deliver the same to the physician attending the person executing said document or to the medical facility in which said person is a patient.
Source. 1985, 157:1. 1991, 239:12, eff. June 10, 1991.

137-H:6 Physician Responsibilities. –
I. An attending physician and any other physician under his direction or control, having in his possession his patient's living will, or having knowledge that such a duly executed document is part of the patient's record in the institution in which he is receiving care, or who has been notified of the existence of a declaration executed under this chapter, shall follow as closely as possible within the bounds of responsible medical practice, the dictates of said document. In addition, the attending physician or any other physician under his control or direction who becomes aware, pursuant to this section, of such a document shall, without delay, take the necessary steps to provide for written verification of the patient's terminal condition or permanently unconscious condition, so that the patient may be deemed to be a qualified patient under this chapter. However, if a physician, because of his personal beliefs or conscience, is unable to comply with the terms of the declaration, he or she shall forthwith so inform the patient or the patient's family. The qualified patient may, or the family of the qualified patient shall, then request that the case be referred to</td>
<td>provider or residential care provider, who is requested to do so by the principal shall make the principal's advance directive or a copy of such document a part of the principal's medical record.
(b) Any person having in his or her possession a duly executed advance directive or a revocation thereof, if it becomes known to that person that the principal executing the same is in such circumstances that the terms of the advance directive might become applicable (such as when the principal becomes a "qualified patient"), shall forthwith deliver the same to the health care provider or residential care provider with which the principal is a patient.
(c) The principal's attending physician or ARNP, or any other physician or ARNP who is aware of the principal's execution of an advance directive shall, without delay, take the necessary steps to provide for written verification of the principal's lack of capacity to make health care decisions (in other words, to certify that the principal is a "qualified patient"), and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition, so that the attending physician or ARNP and the principal's agent may be authorized to act pursuant to this chapter.
(d) If a physician or an ARNP, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician or ARNP.

II. An attending physician or ARNP who, because of personal beliefs or conscience, is unable to comply with the advance directive pursuant to this chapter shall, without delay, make the necessary arrangements to effect the transfer of a qualified patient and the appropriate medical records that document the qualified patient's lack of capacity to make health care decisions to another physician or ARNP who has been chosen by the qualified patient, by the qualified patient's agent, or by the qualified patient's family, provided, that</td>
<td>Requires health providers to put an advance directive in the patient's medical record.

Requires a clear process to link an advance directive to understanding a patient's capacity and communicating patient's status. For clarity, adds "as appropriate to the principal's medical condition" and "lack of capacity to make health care decisions."</td>
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another physician. II. An attending physician who, because of personal beliefs or conscience, is unable to comply with the declaration pursuant to this chapter shall, without delay, make the necessary arrangements to effect the transfer of the qualified patient and the appropriate medical records that qualify said patient to another physician who has been chosen by the qualified patient or by the family of the qualified patient. III. Artificial nutrition and hydration shall not be withdrawn or withheld under this chapter unless there is a clear expression of such intent in the document. **Source.** 1985, 157:1. 1991, 239:9, 10, eff. June 10, 1991. **137-J:4 Restrictions on Who May Act as Agent. –** A	pending the completion of the transfer, the attending physician or ARNP shall not deny health care treatment, nutrition, or hydration which denial would, within a reasonable degree of medical certainty, result in or hasten the qualified patient's death against the express will of the qualified patient, the advance directive, or the agent. III. Medically administered nutrition and hydration and life sustaining treatment shall not be withdrawn or withheld under this chapter unless: (a) There is a clear expression of such intent in the directive; (b) The principal objects pursuant to RSA 137-J:5, IV; or (c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition. IV. When the direction of an agent or instruction under a living will requires an act or omission contrary to the moral or ethical principles or other standards of a health care provider or residential care provider of which the principal is a patient or resident, the health care provider shall allow for the transfer of the principal and the appropriate medical records to another health care provider chosen by the principal or by the agent and shall incur no liability for its refusal to carry out the terms of the direction by the agent; provided, that, pending the completion of the transfer, the health care provider or residential care provider shall not deny health care treatment, nutrition, hydration, or life sustaining treatment which denial would with a reasonable degree of medical certainty result in or hasten the principal's death against the expressed will of the principal, the principal's advance directive, or the agent; and further provided, that the health care provider or residential care provider shall inform the agent of its decision not to participate in such an act or omission. **137-J:8 Restrictions on Who May Act as Agent.** A person	Requires health care treatment, nutrition and hydration be continued pending a transfer to another health provider.

person may not exercise the authority of agent while serving in one of the following capacities: I. The principal's health care provider. II. A nonrelative of the principal who is an employee of the principal's health care provider. III. The principal's residential care provider. IV. A nonrelative of the principal who is an employee of the principal's residential care provider. **Source.** 1991, 146:2, eff. July 19, 1991.	may not exercise the authority of agent while serving in one of the following capacities: I. The principal's health care provider or residential care provider. II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.	
137-J:7 Inspection and Disclosure of Medical Information. – Subject to any limitations set forth in the durable power of attorney for health care by the principal, an agent whose authority is in effect may for the purpose of making health care decisions: I. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records. II. Execute any releases or other documents which may be required in order to obtain such medical information. III. Consent to the disclosure of such medical information. **Source.** 1991, 146:2, eff. July 19, 1991.	**137-J:9 Confidentiality and Access to Protected Health Information.** I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to; (a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf. (b) Provide copies of the principal's advance directives as necessary to facilitate treatment of the principal. II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to: (a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records. (b) Execute any releases or other documents which may be required in order to obtain such medical information. (c) Consent to the disclosure of such medical information. **137-J:10 Withholding or Withdrawal of Life-Sustaining**	Clarifies guidelines for confidentiality of and access to LW and DPOAH documents, and medical information of the principal.

	Treatment. I. In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent, and the principal has not executed the "Living Will" of the advance directive, the following additional conditions shall apply: (a) The principal's attending physician or ARNP shall certify in writing that the principal lacks the capacity to make health care decisions. (b) Two physicians or a physician and an ARNP shall certify in writing that the principal is near death or is permanently unconscious. (c) Notwithstanding the capacity of an agent to act, the agent shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.	New section to clarify the decision-making process by an agent when there is no Living Will. Clarifies steps prior to withholding or withdrawing of life-sustaining treatment.
	II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless: (a) There is a clear expression of such intent in the directive; (b) The principal objects pursuant to RSA 137-J:5, IV; or (c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.	New section intended to prevent death or harm that can result from treatment.
137-H:10 Suicide. – I. The withholding or withdrawal of life-sustaining procedures from a patient who has executed a living will consistent with the purposes of RSA 137-H:3 shall at no time be construed as a suicide for any legal purpose. II. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide or permit any affirmative or deliberate act or omission to end one's own life other than to permit the natural process of dying as provided in this chapter. **Source.** 1985, 157:1. 1991, 239:14, eff. June 10, 1991.	III. The withholding or withdrawal of life-sustaining treatment pursuant to the provisions of this chapter shall at no time be construed as a suicide or murder for any legal purpose. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia, or permit any affirmative or deliberate act or omission to end one's own life or to end the life of another other than either to permit the natural process of dying of a patient near death or the removal of life-sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter. The	

137-H:13 Assisted Suicide, Mercy Killing, Euthanasia. – Nothing in this chapter shall be construed to constitute, condone, authorize, or approve assisted suicide, mercy killing, or euthanasia, or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying of those in a terminal condition or a permanently unconscious condition as provided in this chapter. **Source.** 1985, 157:1. 1991, 239:17, eff. June 10, 1991. **137-H:14 Exceptions. –** I. Nothing in this chapter shall be construed to condone, authorize, or approve the withholding of life-sustaining procedures from or to permit any affirmative or deliberate act or omission to end the life of a pregnant woman by an attending physician when such physician has knowledge of the woman's pregnant condition. II. Nothing in this chapter shall be construed to condone, authorize, or approve of the arbitrary withholding or withdrawing of life-sustaining procedures from mentally incompetent or developmentally disabled persons. III. [Repealed.] **Source.** 1985, 157:1. 1991, 239:19, eff. June 10, 1991. **137-H:16 Existing Rights. –** Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining procedures in any lawful manner. **Source.** 1985, 157:1, eff. May 24, 1985. **137-H:12 No Presumption. –** This chapter shall not be construed to create a presumption that in the absence of a living will, a person wants life-sustaining procedures to be either taken or withdrawn. Nor shall this chapter be construed to supplant any existing rights and responsibilities under the law of this state governing the conduct of physicians in consultation with patients or their families or legal guardians in the absence of a living	withholding or withdrawal of life-sustaining treatment in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the principal's condition. IV. Nothing in this chapter shall be construed to condone, authorize, or approve: (a) The consent to withhold or withdraw life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication. (b) The withholding or withdrawing of medically administered nutrition and hydration or life-sustaining treatment from a mentally incompetent or developmentally disabled person, unless such person has a validly executed advance directive or such action is authorized by an existing guardianship or other court order, or such action is taken in accordance with the facility's standard protocol as applicable to its general patient population. V. Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining treatment in any lawful manner; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, II or III. VI. Nothing in this chapter shall be construed to revoke or adversely affect the privileges or immunities of health care providers or residential care providers and others to provide treatment to persons in need thereof in an emergency, as provided for under New Hampshire law. VII. Nothing in this chapter shall be construed to create a presumption that in the absence of an advance directive, a	Revised language specifies circumstances when life sustaining treatment may be withheld or withdrawn for a mentally incompetent or developmentally disabled person.

will. **Source.** 1985, 157:1. 1991, 239:16, eff. June 10, 1991.	person wants life-sustaining treatment to be either taken or withdrawn. This chapter shall also not be construed to supplant any existing rights and responsibilities under the law of this state governing the conduct of physicians or ARNPs in consultation with patients or their families or legal guardians in the absence of an advance directive.	
137-J:13 Liability for Health Care Costs. – Liability for the cost of health care provided pursuant to the agent's decision shall be the same as if the health care were provided pursuant to the principal's decision. **Source.** 1991, 146:2, eff. July 19, 1991.	**137-J:11 Liability for Health Care Costs**. Liability for the cost of health care provided pursuant to the agent's decision shall be the same as if the health care were provided pursuant to the principal's decision.	
137-H:9 Immunity. – An attending physician, other physician, nurse, health care professional or any other person acting for him or under his control, or hospital or other medical facility within which the person may be, shall be immune from any civil or criminal liability for any act or intentional failure to act if said act or intentional failure to act is done in good faith and in keeping with reasonable medical standards pursuant to the living will and in accordance with this chapter. **Source.** 1985, 157:1. 1991, 239:13, eff. June 10, 1991 **137-J:11 Immunity. –** I. No person acting as agent pursuant to a durable power of attorney for health care shall be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the terms of the durable power of attorney for health care and the provisions of this chapter, if such person exercised such power in a manner consistent with the requirements of this chapter and New Hampshire law. II. No health or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith,	**137-J:12 Immunity.** I. No person acting as agent pursuant to an advance directive shall be subjected to criminal or civil liability for making a health care decision on behalf of the principal in good faith pursuant to the provisions of this chapter and the terms of the advance directive if such person exercised such power in a manner consistent with the requirements of this chapter and New Hampshire law. II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct for: (a) Any act or intentional failure to act, if the act or intentional failure to act is done pursuant to the dictates of an advance directive, the directives of the principal's agent, and the provisions of this chapter, and said act or intentional failure to act is done in good faith and in keeping with reasonable medical standards pursuant to the advance directive and in accordance with this chapter; or (b) Failure to follow the directive of an agent if the health care provider or residential care provider or other such person believes in good faith and in keeping with reasonable medical standards that such directive exceeds the scope of or conflicts	Re-ordered clauses for reading clarity, and adds "and in keeping with reasonable medical standards pursuant to the advance directive and in accordance with this chapter."

if the act or intentional failure to act is done pursuant to the dictates of the durable power of attorney for health care, the directives of the patient's agent, and the provisions of this chapter, or for failure to follow such directive if the health or residential care provider believes in good faith that such directive exceeds the scope of or conflicts with the contents of the principal's durable power of attorney for health care. Nothing in this section shall be construed to establish immunity for the failure to exercise due care in the provision of services or for actions contrary to the requirements of this chapter or other laws of the state of New Hampshire. **Source.** 1991, 146:2, eff. July 19, 1991.	with the authority of the agent under this chapter or the contents of the principal's advance directive; provided, that this subparagraph shall not be construed to authorize any violation of RSA 137-J:7, II or III.	Adds "the authority of the agent or."
	III. Nothing in this section shall be construed to establish immunity for the failure to exercise due care in the provision of services or for actions contrary to the requirements of this chapter or other laws of the state of New Hampshire.	New section.
	IV. For purposes of this section, "good faith" means honesty in fact in the conduct of the transaction concerned.	
137-H:3. Living Will – A person of sound mind who is 18 years of age or older may execute at any time a document commonly known as a living will, directing that no life-sustaining procedures be used to prolong his life when he is in a terminal condition or is permanently incapable of participating in decisions about his care, and it may be, but need not be, in form and substance substantially as follows:		
137-J:3 Use of Statutory Forms. I. Every person wishing to execute a durable power of attorney for health care shall be provided with a disclosure statement substantially in the form set forth in RSA 137-J:14 prior to execution. The principal shall be required to sign a statement acknowledging that he has received the disclosure statement and has read and understands its contents. II. A durable power of attorney for health care executed on or after the effective date of this chapter shall be substantially in the form set forth in RSA 137-J:15. III. Artificial nutrition and hydration may not be withdrawn or withheld under a durable power of attorney	**137-J:13 Use of Statutory Forms.** I. Every person wishing to execute an advance directive shall be provided with a disclosure statement substantially in the form set forth in RSA 137-J:18 prior to execution. The principal shall be required to sign a statement acknowledging that he or she has received the disclosure statement and has read and understands its contents. II. An advance directive executed on or after the effective date of this chapter shall be substantially in the form set forth in RSA 137-J:19. III. Medically administered nutrition and hydration shall not be withdrawn or withheld under an advance directive unless there is a clear expression of such power in the document.	Eliminates the inconsistency between modifying the LW and DPOAH forms. Changes "may be, but need not be" in form and substance for LW and uses "substantially in the form set forth" for both LW and DPOAH.

for health care unless there is a clear expression of such power in the document. **Source.** 1991, 146:2, eff. July 19, 1991.		
137-J:5 Execution and Witnesses. – The durable power of attorney for health care shall be signed by the principal in the presence of 2 or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir, or a person entitled to any part of the estate of the principal upon death of the principal under a will, trust or other testamentary instrument or deed in existence or by operation of law. No more than one such witness may be the principal's health or residential care provider or such provider's employee. The witness shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that he was aware of the nature of the document and signed it freely and voluntarily. If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction. **Source.** 1991, 146:2, eff. July 19, 1991.	**137-J:14 Execution and Witnesses.** I. The advance directive shall be signed by the principal in the presence of either of the following: (a) Two or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir at law, or a person entitled to any part of the estate of the principal upon death of the principal under a will, trust, or other testamentary instrument or deed in existence or by operation of law, or attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP. No more than one such witness may be the principal's health or residential care provider or such provider's employee. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the advance directive was signed and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; or (b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A. II. If the principal is physically unable to sign, the advance directive may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction.	Simplifies the execution of advance directives, because no longer requires BOTH a notary and two witnesses – either is sufficient. Adds disqualification of "attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP" as witnesses.
137-H:4 Execution and Witness. – The document set forth in RSA 137-H:3 shall be executed by the person making the same in the presence of 2 or more subscribing witnesses, none of whom shall be the person's spouse, heir at law, attending physician or person acting under the direction or control of the attending physician or any other person who has at the time of the witnessing thereof any claims against the estate of the person, and shall be acknowledged pursuant to the provisions of RSA 456 or RSA 456-A. If the person making the document is a resident of a health care facility or patient in a hospital, no more than one witness may be the health care provider or such provider's employee.	III. A principal's decision to exclude or strike references to ARNPs and the powers granted to ARNPs in his or her advance directive shall be honored.	New section to allow a person to exclude ARNPs from being involved in their advance directive or related care.

Source. 1985, 157:1. 1991, 239:7, eff. June 10, 1991. **137-H:7 Revocation. –** I. A person who has validly executed a living will consistent with the provisions of RSA 137-H:3 and RSA 137-H:4 may revoke such document in the following manner: (a) By burning, tearing or obliterating the same or causing the same to be done by some other person at his direction and in his presence; (b) By oral revocation in the presence of 2 or more witnesses, none of whom shall be the person's spouse or heir at law; or (c) By written revocation, to be signed and dated in the presence of 2 or more witnesses, none of whom shall be the person's spouse or heir at law, expressing the intent to revoke.	**137-J:15 Revocation.** I. An advance directive consistent with the provisions of this chapter shall be revoked: (a) By written revocation delivered to the agent or to a health care provider or residential care provider expressing the principal's intent to revoke, signed, and dated by the principal; by oral revocation in the presence of 2 or more witnesses, none of whom shall be the principal's spouse or heir at law; or by any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the principal's direction and in the principal's presence; (b) By execution by the principal of a subsequent advance directive;	Combines revocation provisions of LW and DPOAH statutes.
II. Revocation shall become effective upon communication to the attending physician who shall record in the patient's medical record the time and date when he received notification. **Source.** 1985, 157:1. 1991, 239:11, eff. June 10, 1991. **137-J:6 Revocation. –** I. A durable power of attorney for health care shall be revoked: (a) By notification by the principal to the agent or to a health or residential care provider orally, or in writing, or by any other act evidencing a specific intent to revoke the power;	(c) By the filing of an action for divorce, legal separation, annulment or protective order, where both the agent and the principal are parties to such action, except when there is an alternate agent designated, in which case the designation of the primary agent shall be revoked and the alternate designation shall become effective. Re-execution or written re-affirmation of the advance directive following a filing of an action for divorce, legal separation, annulment or protective order shall make effective the original designation of the primary agent under the advance directive; or (d) By a determination by a court under RSA 506:7 that the agent's authority has been revoked.	Adds "legal separation, annulment or protective order."
(b) By execution by the principal of a subsequent durable power of attorney for health care; or (c) By the filing of an action for divorce of the principal and spouse, where the spouse is the principal's agent, except when there is an alternate agent designated, in which case the designation of the spouse shall be revoked and the alternate designation shall become effective. Re-execution or re-affirmation of the durable	II. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive shall immediately record the revocation, and the time and date when he or she received the revocation, in the principal's medical record and notify the agent, the attending physician or ARNP, and staff responsible for the principal's care of the revocation. An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation. Revocation shall become effective upon communication to the attending physician or	Adds "and the time and date when he or she received the revocation," for complete documentation in the event there is a dispute.

power of attorney for health care following filing for divorce shall make effective the designation of the former spouse as agent under the durable power of attorney.	ARNP.	
II. A principal's health or residential care provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and notify the agent, the attending physician, and staff responsible for the principal's care of the revocation. An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation. **Source.** 1991, 146:2, eff. July 19, 1991.	**137-J:16 Documents Executed Prior to Enactment** Nothing in this chapter limits the enforceability of an advance directive or similar instrument validly executed under prior New Hampshire law.	Adds "under prior New Hampshire law" to ensure that currently valid documents are not invalidated by the revised statute.
137-H:14-a Reciprocity. – Nothing in this chapter limits the enforceability of a living will or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a foreign living will or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire. **Source.** 1992, 67:1, eff. June 19, 1992.	**137-J:17 Reciprocity**. Nothing in this chapter limits the enforceability of an advance directive or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a foreign advance directive or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire.	
137-J:10 Reciprocity. – Nothing in this chapter limits the enforceability of a durable power of attorney for health care or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a foreign durable power of attorney or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire. **Source.** 1991, 146:2, eff. July 19, 1991.	**137-J:18 Naming of Multiple Agents.** If the principal lists more than one person as the agent in a durable power of attorney for health care directive, the agents shall have authority in priority of the order in which their names are listed on the document, unless the method of joint agency is expressly included.	New section; intended to help avoid the complications of having co-agents.
137-J:14 Durable Power of Attorney; Disclosure	**137-J:19 Durable Power of Attorney; Disclosure**	

Statement. – The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:	**Statement.** The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form: **See Attached Statute.**	Revised for more plain-English text.
137-J:15 Durable Power of Attorney; Form. – The durable power of attorney shall be in substantially the following form: **137-H:3 Living Will. –** A person of sound mind who is 18 years of age or older may execute at any time a document commonly known as a living will, directing that no life-sustaining procedures be used to prolong his life when he is in a terminal condition or is permanently unconscious. The document shall only be effective if the person is permanently incapable of participating in decisions about his care, and it may be, but need not be, in form and substance substantially as follows**:**	**137-J:20 Advance Directive; Durable Power of Attorney and Living Will; Form**. An advance directive in its individual "Durable Power of Attorney for Healthcare" and "Living Will" components shall be in substantially the following form: **See Attached Statute.**	Revised for more plain-English text.
137-J:12 Effect of Appointment of Guardian; Inconsistency. – I. On motion filed in connection with a petition for appointment of a guardian or on petition of a guardian if one has been appointed, the probate court shall consider whether the authority of an agent designated pursuant to a durable power of attorney for health care should be suspended or revoked. In making its determination, the probate court shall take into consideration the preferences of the principal as expressed in the durable power of attorney for health care. No such consideration shall change the procedures or burden of proof involved in the guardianship process as otherwise provided by law or procedures. In such consideration, the durable power of attorney for health care and agent appointed shall be presumed to be in the best interest of the principal and valid, absent clear and convincing evidence to the contrary.	**137-J:21 Effect of Appointment of Guardian; Inconsistency.** I. On motion filed in connection with a petition for appointment of a guardian or on petition of a guardian if one has been appointed, the probate court shall consider whether the authority of an agent designated pursuant to an advance directive should be suspended or revoked. In making its determination, the probate court shall take into consideration the preferences of the principal as expressed in the advance directive. No such consideration shall change the procedures or burden of proof involved in the guardianship process as otherwise provided by law or procedures. In such consideration, the advance directive and agent appointed shall be presumed to be in the best interest of the principal and valid, absent clear and convincing evidence to the contrary. II. To the extent that a durable power of attorney for health care, or such component of an advance directive as set forth in RSA 137-J:19, conflicts with a terminal care document or living will, or such component of an advance directive as set	

II. To the extent that a durable power of attorney for health care conflicts with a terminal care document executed in accordance with RSA 137-H, the durable power of attorney for health care shall control. **Source.** 1991, 146:2, eff. July 19, 1991.	forth in RSA 137-J:19, the durable power of attorney for health care shall control.	
137-J:16 Civil Action. – Any person who is a near relative of the principal or a responsible adult who is directly interested in the principal by personal knowledge and acquaintance, including but not limited to a guardian, social worker, physician, or clergyman, may file an action in probate court requesting that the durable power of attorney for health care be revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or undue influence when the durable power of attorney for health care was executed and shall have all the rights and remedies provided by RSA 506:7 which shall apply to documents executed under this chapter and persons acting pursuant to this chapter. **Source.** 1991, 146:2. 1992, 284:2, eff. Jan. 1, 1993.	**137-J:22 Civil Action.** I. The principal or any person who is a near relative of the principal, or who is a responsible adult who is directly interested in the principal by personal knowledge and acquaintance, including, but not limited to a guardian, social worker, physician, or clergy, may file an action in the probate court of the county where the principal is located at the time: (a) Requesting that the authority granted to an agent by an advance directive be revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or undue influence when the advance directive was executed, and shall have all the rights and remedies provided by RSA 506:7 which shall apply to directives executed under this chapter and persons acting pursuant to this chapter. (b) Challenging the right of any agent who is acting or who proposes to act as such pursuant to this chapter and naming another person, who agrees to so act, to be appointed guardian over the person of the principal for the sole purpose of making health care decisions, as provided for in RSA 464-A.	Adds the principal as a person who can challenge an agent's authority. Adds "of the county where the principal is located at the time."
	II. A copy of any such action shall be given in hand to the principal's attending physician or ARNP and, as applicable, to the principal's health care provider or residential care provider. To the extent they are not irreversibly implemented, health care decisions made by a challenged agent shall not thereafter be implemented without an order of the probate court or a withdrawal or dismissal of the court action; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV or V.	For clarity, adds "the authority granted to an agent by an advance directive." New section, to create a way to challenge the authority of an agent absent a problem with the execution of the document.
	III. The probate court in which such a petition is filed shall	

	hold a hearing as expeditiously as possible.	New section, to clarify what happens to medical decisions pending court action.
137-H:15 Penalty. – A person who knowingly and falsely makes, alters, forges, or counterfeits, or knowingly and falsely causes to be made, altered, forged or counterfeited, or procures, aids or counsels the making, altering, forging, or counterfeiting, of a living will or revocation with the intent to injure or defraud a person shall be guilty of a class B felony, notwithstanding any provisions in title LXII. **Source.** 1985, 157:1. 1991, 239:18, eff. June 10, 1991.	**137-J:23 Penalty**. A person who knowingly and falsely makes, alters, forges, or counterfeits, or knowingly and falsely causes to be made, altered, forged, or counterfeited, or procures, aids or counsels the making, altering, forging, or counterfeiting, of an advance directive or revocation of same with the intent to injure or defraud a person shall be guilty of a class B felony, notwithstanding any provisions in title LXII.	
There is currently no statute on Do Not Resuscitate (DNR) orders.	**137-J:24 Applicability**. The provisions of this subdivision apply to all persons regardless of whether or not they have completed an advance directive.	Creates statutory authority for DNR orders.
	137-J:25 Presumed Consent to Cardiopulmonary Resuscitation; Health Care Providers and Residential Care Providers Not Required to Expand to Provide Cardiopulmonary Resuscitation. I. Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider or residential care provider has actual knowledge, apply: (a) A do not resuscitate order in accordance with the provisions of this chapter has been issued for that person; (b) A completed advance directive for that person is in effect, pursuant to the provisions of this chapter, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her agent has determined that the person would not wish to receive cardiopulmonary resuscitation; or (c) 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	A DPOAH or Living Will is not required for a DNR order. Provides a direct link to patient wishes expressed through an advance directive with decision about CPR.

legally capable of making health care decisions for the person, and the attending physician or ARNP, and a physician knowledgeable about the patient's condition, have determined that the provision of cardiopulmonary resuscitation 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 resuscitate order; or

(d) 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 thereof.

II. Nothing in this section shall be construed to revoke any statute, regulation, or law otherwise requiring or exempting a health care provider or residential care provider from instituting or maintaining the ability to provide cardiopulmonary resuscitation or expanding its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending Physician or ARNP.

I. An attending physician or ARNP may issue a do not resuscitate order for a person if the person, or the person's agent, has consented to the order. A do not resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do not resuscitate order shall be issued in accordance with the policies and procedures of the health care facility and in accordance with the provisions of this chapter.

II. A person may request that his or her attending physician or ARNP issue a do not resuscitate order for the person.

III. An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority. A do not resuscitate order written by the attending physician or ARNP for such a person with the consent of the

agent is valid and shall be respected by health care providers and residential care providers.

IV. If an agent is not reasonably available or is not legally capable of making a decision regarding a do not resuscitate order, an attending physician or ARNP may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is near death, and who is admitted to a health care facility if a second physician who has personally examined the person concurs in the opinion of the attending physician or ARNP that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause harm to or cause pain and suffering of the person.

V. For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person: **See Attached Statute.**

V. For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:

(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;

(b) The do not resuscitate card as set forth in paragraph V; or

(c) The medical orders form in compliance with this chapter.

137-J:27 Compliance with a Do Not Resuscitate Order.

I. Health care providers and residential care providers shall comply with the do not resuscitate order when presented with one of the following:

(a) A do not resuscitate order completed by the attending physician or ARNP on a form as specified in RSA 137-J:25;

(b) A do not resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures in compliance with the chapter; or

(c) A medical orders form on which the attending physician

	or ARNP has documented a do not resuscitate order in compliance with this chapter. II. Pursuant to this chapter, health care providers shall respect do not resuscitate orders for persons in health care facilities, ambulances, homes, and communities within this state. **137-J:28 Protection of Persons Carrying Out in Good Notification of Agent by Attending Physician or ARNP Refusing to Comply with Do Not Resuscitate Order. Faith a Do Not Resuscitate Order;** I. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for carrying out in good faith a do not resuscitate order authorized by this chapter on behalf of a person as instructed by the person, or the person's agent, or for those actions taken in compliance with the standards and procedures set forth in this chapter. II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, or other individual who witnesses a cardiac or respiratory arrest shall be subjected to criminal or civil liability for providing cardiopulmonary resuscitation to a person for whom a do not resuscitate order has been issued; provided, that such provider or individual: (a) Reasonably and in good faith is unaware of the issuance of a do not resuscitate order; or (b) Reasonably and in good faith believed that consent to the do not resuscitate order has been revoked or canceled. III. (a) Any attending physician or ARNP who, because of personal beliefs or conscience, refuses to issue a do not resuscitate order at a person's request or to comply with a do not resuscitate order issued pursuant to this chapter shall take reasonable steps to advise promptly the person or agent of the	

	person that such attending physician or ARNP is unwilling to effectuate the order. The attending physician or ARNP shall thereafter, at the election of the person or agent, permit the person or agent to obtain another attending physician or ARNP. (b) If a physician or ARNP, because of his or her personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate order, he or she shall immediately inform the person, the patient's agent, or the patient's family. The person, the person's agent, or the person's family may then request that the case be referred to another physician or ARNP, as set forth in RSA 137-J:7, IV and V. **137-J:29 Revocation of Do Not Resuscitate Order.** I. At any time a person in a health care facility may revoke his or her previous request for or consent to a do not resuscitate order by making either a written, oral, or other act of communication to the attending physician or ARNP or other professional staff of the health care facility. II. At any time a person residing at home may revoke his or her do not resuscitate order by destroying such order and removing do not resuscitate identification on his or her person. The person is responsible for notifying his or her attending physician or ARNP of the revocation. III. At any time an agent may revoke his or her consent to a do not resuscitate order for a person who lacks capacity to make health care decisions who is admitted to a health care facility by notifying the attending physician or ARNP or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician or ARNP in the presence of a witness 18 years of age or older. IV. At any time an agent may revoke his or her consent for a person who lacks capacity to make health care decisions who is residing at home by destroying such order and removing do not resuscitate identification from the person. The agent is responsible for notifying the person's attending	

	physician or ARNP of the revocation. V. The attending physician or ARNP who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel the do not resuscitate order if the person is in a health care facility and notify the professional staff of the health care facility responsible for the person's care of the revocation and cancellation. Any professional staff of the health care facility who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify the attending physician or ARNP of such revocation. VI. Only a physician or advanced registered nurse practitioner may cancel the issuance of a do not resuscitate order. **137-J:30 Not Suicide or Murder.** The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter shall not, for any purpose, constitute suicide or murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this chapter shall be construed to legalize, condone, authorize, or approve mercy killing or assisted suicide. **137-J:31 Inter-institutional Transfers.** If a person with a do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of a do not resuscitate order to the receiving facility prior to the transfer. The written do not resuscitate order, the do not resuscitate card as described in RSA 137-J:25, or the medical orders form shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility	

issues admission orders. The do not resuscitate card or the medical orders form shall be kept as the first page in the person's transfer records.

137-J:32 Preservation of Existing Rights.

I. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this chapter are cumulative; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV or V.

II. Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this chapter.

137-J:33 Do Not Resuscitate Identification.

Do not resuscitate identification as set forth in this chapter may 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. Such identification shall be issued only upon presentation of a properly executed do not resuscitate order form as set forth in RSA 137-J:25, a medical orders form in which a physician or advanced registered nurse practitioner has documented a do not resuscitate order, or a do not resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

3 Emergency Care; Reference Change. Amend RSA 153-A:20, II to read as follows:

II. Protocols recommended by the emergency medical services medical control board for provision of emergency medical care, which shall provide for the provision of local options under medical control. The protocols shall address living wills established under RSA [137-H] 137-J, durable powers of attorney for health care established under RSA 137-J, and patient-requested, physician generated orders

relative to resuscitation.

4 Guardians; Reference Change. Amend RSA 464-A:25, I(d) to read as follows:
(d) If a ward has previously executed a valid living will, under RSA [137-H] 137-J, a guardian shall be bound by the terms of such document, provided that the court may hold a hearing to interpret any ambiguity in such document. If a ward has previously executed a valid durable power of attorney for health care, RSA 137-J shall apply.

5 Jurisdiction; Reference Change. Amend RSA 547:3, (j) to read as follows:
(j) The interpretation and effect of living wills under RSA [137-H] 137-J.

6 Effective Date. This act shall take effect January 1, 2007.

LBAO 05-0803 Revised 3/7/05

HB 656 FISCAL NOTE

METHODOLOGY:The Department of Health and Human Services stated this bill will require the Commissioner to implement statewide distribution of “do not resuscitate” (DNR) order forms, establish a system for the distribution of DNR identification (bracelet or necklace), and implement a statewide educational effort to inform the public of their right to refuse cardiopulmonary resuscitation and request their attending physician or ARNP to write a DNR order for them. The Department stated because it cannot determine how many individuals would request DNR identification or who would be responsible for the cost of the DNR identification, the costs associated with this bill are indeterminable. The Department assumes the DNR identification bracelets and necklaces would cost between $10 and $20 each. Other unknown costs include staff time devoted to program development and implementation of an education program, the cost of creating and adopting an administrative rule, and printing costs for

	producing forms. The Department stated this bill may necessitate establishing one additional position. The Judicial Council also stated this bill includes a criminal penalty section, RSA 137-J:22, which provides for a class B felony. The Council stated if an individual charged under this section is determined to be indigent, the court will appoint an attorney to represent the defendant. If a public defender or contract attorney is appointed, the fixed contract rate of $687.50 will apply to each felony case so charged. If an assigned counsel attorney must be used due to either conflict of interest or for reasons of caseload limitations, the $60 per hour rate will apply, with a fee cap of $3,000 per felony case. The fee cap may be waived, and services other than counsel may be approved by the court. The Judicial Council stated it cannot determine the number of civil or criminal cases that may result from this bill, therefore, general fund expenditures may increase by an indeterminable amount. The Department of Corrections stated it cannot determine the number of individuals that will be sentenced under this bill; however it may increase general fund expenditures by an indeterminable amount. The average annual cost to incarcerate an individual in the general prison population in FY 2004 was $27,533. The NH Association of Counties stated this bill will likely impact operations at county nursing homes, however, it is unable to determine the fiscal impact. The Department of Justice stated this bill will have no fiscal impact on the Department.	