



## **NH Partnership for End-of-Life Care**

10.10.06

### **EDUCATION MODULE 5: Healthcare Administrators**

*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**

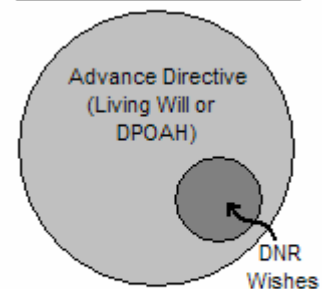
New Hampshire House Bill (HB) 656, pertaining to advance directives and do not attempt resuscitation orders, goes into effect on January 1, 2007. The purpose of the new legislation is to update the law so that honoring patient wishes is as simple as possible. Amongst other changes and additions that 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

#### **Scope of Advance Directives**



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

medical condition 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 Healthcare Administrators**

#### **1. Purpose of the Law**

- a. Every person has a right to control decisions related to their health care.
- b. Every person has a right to create an advance directive.
- c. Every person has a right to have a do not attempt resuscitation order written.
- d. Advance directives and do not attempt resuscitation orders are all *voluntary*. No person is *required* to have them.

#### **2. Freedom from Influence**

- a. No person can be charged a different rate for their health care based on whether or not they have an advance directive or DNR order.
- b. Medical fees must be the same, regardless of whether a person is making their own health care decisions, or those decisions are being made by their designated health care agent.
- c. No person can be refused services, admission to a facility, or health insurance based on whether or not they have an advance directive or DNR order.
- d. An advance directive cannot affect the sale or issuance of any life insurance policy, nor can it affect the terms of a person's current life insurance policy.
- e. Any health care provider or residential care provider which does not recognize DNRs or living wills must post a notice at every place of admission (minimum size of 8 ½" x 11") stating in legible print: "This hospital/facility does not honor Do Not Attempt Resuscitation (DNR) or Living Will documents."

#### **3. Physician, ARNP, and Provider's Health Care Responsibilities and Legal Rights**

- a. 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. The physician or ARNP cannot incur liability for their refusal to carry out the advance directive, as long as all of these steps are adhered to.

- b. If a principal lacks capacity, health care providers, residential care providers, and persons acting for such 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. Health care providers, residential care providers, and persons acting for such providers or under their control may also provide copies of the principal's advance directives to the agent, if it is necessary to facilitate treatment.
- c. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, can be held criminally or civilly liable, or be deemed to have engaged in unprofessional conduct, for acting according to an advance directive so long as it is within New Hampshire law, or for any failure to follow the directions of an agent if the health or residential care provider believes that the direction exceeds the scope or authority of the agent.

#### **4. Agent's Health Care Responsibilities and Legal Rights**

- a. If an agent's authority is in effect, and as long as the action is not prohibited by the principal's advance directive, the agent can legally:
  - Request and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records.
  - Execute any releases or other documents which may be required in order to obtain such medical information.
  - Consent to the disclosure of such medical information.
- b. No agent can be held criminally or civilly liable for making a health care decision for the principal, so long as they make that decision in accordance with New Hampshire law.

#### **5. Use of Statutory Forms**

- a. Every person who wishes to create an advance directive will be provided with a disclosure statement prior to the creation of the advance directive. The principal is required to sign a statement acknowledging that he or she has received the disclosure statement and has read and understands it.
- b. An advance directive created on or after January 1, 2007 must be *substantially* in the form set forth in RSA 137-J:19 (see the Advance Care Planning Guide, January 2007).

**6. Documents from Other States or Documents Created Prior to Enactment of HB 656**

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

**7. 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.

**8. Protection of Persons Carrying Out in Good Faith a Do Not Attempt Resuscitation Order**

- a. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, can be held criminally or civilly liable, or be deemed to have engaged in unprofessional conduct, for carrying out an official do not attempt resuscitation order.
- b. 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.
- c. 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.

## **9. Revocation of a Do Not Attempt Resuscitation Order**

- a. 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.
- b. 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.
- c. Only a physician or ARNP can cancel a DNR order.

## **10. Not Suicide or Murder**

- a. While withholding or withdrawal of life-sustaining treatment, or withholding cardiopulmonary resuscitation on a person with a DNR order, under the guidelines of the law is never considered murder or suicide, it will not relieve any individual of responsibility for any criminal acts that may have *caused* the principal's condition.
- b. Nothing in this law legalizes, condones, authorizes, or approves mercy killing or assisted suicide. The law serves only to permit the natural process of dying in a patient who is near death, or to withdraw life-sustaining treatment from a patient who is permanently unconscious.

## **11. Inter-institutional Transfer**

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 portable DNR order, the portable 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.

## **12. Do Not Attempt Resuscitation Identification**

- a. 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.
- b. DNR identification can be issued only upon presentation of a proper DNR order form, a medical orders form in which a physician or ARNP has documented a DNR order, or a DNR order documented in accordance with a health care facility's written policy and procedure.