

HB 656-FN – VERSION ADOPTED BY BOTH BODIES

15Feb2006... 0898h

15Feb2006... 0941h

04/20/06 1760s

24May2006... 2369cofc

24May2006... 2403eba

2006 SESSION

05-0803

01/10

HOUSE BILL ***656-FN***

AN ACT relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

SPONSORS: Rep. Sokol, Graf 9; Rep. Hammond, Graf 11; Rep. MacKay, Merr 11; Rep. Millham, Belk 5; Rep. Hager, Merr 12; Sen. Odell, Dist 8; Sen. Foster, Dist 13; Sen. Estabrook, Dist 21

COMMITTEE: Judiciary

ANALYSIS

This bill revises the laws relative to living wills and durable powers of attorney for health care. This bill also establishes procedures for Do Not Resuscitate Orders.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Repeal. RSA 137-H, relative to living wills, is hereby repealed.

2 Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions for Themselves. RSA 137-J is repealed and reenacted to read as follows:

CHAPTER 137-J

WRITTEN DIRECTIVES FOR MEDICAL DECISION MAKING FOR ADULTS

WITHOUT CAPACITY TO MAKE HEALTH CARE DECISIONS

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.

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.

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.

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.

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. “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.

VIII. “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 will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

IX. “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.

X. “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.

XI. "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.

XII. "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.

XIII. "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, 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.

XIV. "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.

XV. "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.

XVI. "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.

XVII. "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.

XVIII. "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

XIX. "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter.

XX. "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.

XXI. "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.

XXII. "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.

XXIII. "Witness" means a competent person 18 years or older who is present when the principal signs an advance directive.

137-J:3 Freedom From Influence; Notice Required.

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 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.

II. The execution of an advance directive 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.

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."

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.

Advance Directives

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.

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 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.

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.

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 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 an original or copy of 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 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 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: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 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.

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.

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 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 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: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-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 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.

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.

IV. For purposes of this section, "good faith" means honesty in fact in the conduct of the transaction concerned.

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:19 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:20.

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.

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.

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.

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;

(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.

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 ARNP.

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.

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: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.

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:

INFORMATION CONCERNING THE DURABLE POWER OF
ATTORNEY FOR HEALTH CARE

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING IT, YOU SHOULD
KNOW THESE IMPORTANT FACTS:

Except if you say otherwise in the directive, this directive gives the person you name as your health care agent the power to make any and all health care decisions for you when you lack the capacity to make health care decisions for yourself (in other words, you no longer have 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). "Health care" means any treatment, service or procedure to maintain, diagnose or treat your physical or mental condition. Your health care agent, therefore, will have the power to make a wide range of health care decisions for you. Your health care agent may consent (in other words, give permission), refuse to consent, or withdraw consent to medical treatment, and may make decisions about withdrawing or withholding life-sustaining treatment. Your health care agent cannot consent to or direct any of the following: commitment to a state institution, sterilization, or termination of treatment if you are pregnant and if the withdrawal of that treatment is deemed likely to terminate the pregnancy, unless the treatment will be physically harmful to you or prolong severe pain which cannot be alleviated by medication.

You may state in this directive any treatment you do not want, or any treatment you want to be sure you receive. Your health care agent's power will begin when your doctor certifies that you lack the capacity to make health care decisions (in other words, that you are not able to make health care decisions). If for moral or religious reasons you do not want to be treated by a doctor or to be examined by a doctor to certify that you lack capacity, you must say so in the directive and you must name someone who can certify your lack of capacity. That person cannot be your health care agent or alternate health care agent or any person who is not eligible to be your health care agent. You may attach additional pages to the document if you need more space to complete your statement.

If you want to give your health care agent power to withhold or withdraw medically administered nutrition and hydration, you must say so in your directive. Otherwise, your health

care agent will not be able to direct that. Under no conditions will your health care agent be able to direct the withholding of food and drink that you are able to eat and drink normally.

Your agent shall be directed by your written instructions in this document when making decisions on your behalf, and as further guided by your medical condition or prognosis. Unless you state otherwise in the directive, your agent will have the same power to make decisions about your health care as you would have made, if those decisions by your health care agent are made consistent with state law.

It is important that you discuss this directive with your doctor or other health care providers before you sign it, to make sure that you understand the nature and range of decisions which could be made for you by your health care agent. If you do not have a health care provider, you should talk with someone else who is knowledgeable about these issues and can answer your questions. Check with your community hospital or hospice for trained staff. You do not need a lawyer's assistance to complete this directive, but if there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

The person you choose as your health care agent should be someone you know and trust, and he or she must be at least 18 years old. If you choose your health or residential care provider (such as your doctor, advanced registered nurse practitioner, or an employee of a hospital, nursing home, home health agency, or residential care home, other than a relative), that person will have to choose between acting as your health care agent or as your health or residential care provider, because the law does not allow a person to do both at the same time.

You should consider choosing an alternate health care agent, in case your health care agent is unwilling, unable, unavailable or not eligible to act as your health care agent. Any alternate health care agent you choose will then have the same authority to make health care decisions for you.

You should tell the person you choose that you want him or her to be your health care agent. You should talk about this directive with your health care agent and your doctor or advanced registered nurse practitioner and give each one a signed copy. You should write on the directive itself the people and institutions who will have signed copies. Your health care agent will not be liable for health care decisions made in good faith on your behalf.

EVEN AFTER YOU HAVE SIGNED THIS DIRECTIVE, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AS LONG AS YOU ARE ABLE TO DO SO, AND TREATMENT CANNOT BE GIVEN TO YOU OR STOPPED OVER YOUR CLEAR OBJECTION. You have the right to revoke the power given to your health care agent by telling him or her, or by telling your health care provider, orally or in writing, that you no longer want that person to be your health care agent.

YOU HAVE THE RIGHT TO EXCLUDE OR STRIKE REFERENCES TO ARNP'S IN YOUR ADVANCE DIRECTIVE AND IF YOU DO SO, YOUR ADVANCE DIRECTIVE SHALL STILL BE VALID AND ENFORCEABLE.

Once this directive is executed it cannot be changed or modified. If you want to make changes,

you must make an entirely new directive.

THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR JUSTICE OF THE PEACE OR TWO (2) OR MORE QUALIFIED WITNESSES, WHO MUST BOTH BE PRESENT WHEN YOU SIGN AND WHO WILL ACKNOWLEDGE YOUR SIGNATURE ON THE DOCUMENT. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

___The person you have designated as your health care agent;

___Your spouse or heir at law;

___Your attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP;

ONLY ONE OF THE TWO WITNESSES MAY BE YOUR HEALTH OR RESIDENTIAL CARE PROVIDER OR ONE OF YOUR PROVIDER’S EMPLOYEES.

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:

NEW HAMPSHIRE ADVANCE DIRECTIVE

NOTE: This form has two sections.

You may complete both sections, or only one section.

I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, _____, hereby appoint _____ of _____ *(Please choose only one person. If you choose more than one agent, they will have authority in priority of the order their names are listed, unless you indicate another form of decision making.)* as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this directive or as prohibited by law. This durable power of attorney for health care shall take effect in the event I lack the capacity to make my own health care decisions.

In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____ as alternate agent. *(Please choose only one person. If you choose more than one alternate agent, they will have authority in priority of the order their names are listed.)*

**STATEMENT OF DESIRES, SPECIAL PROVISIONS,
AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.**

For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for these or other matters. If you wish, you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.

A. LIFE-SUSTAINING TREATMENT.

1. If I am near death and lack the capacity to make health care decisions, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

____(a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

____(b) life-sustaining treatment continue to be given to me.

2. Whether near death or not, if I become permanently unconscious I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

____(a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

____(b) life-sustaining treatment continue to be given to me.

B. MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.

1. I realize that situations could arise in which the only way to allow me to die would be to not start or to discontinue medically administered nutrition and hydration. In carrying out any instructions I have given in this document, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

____(a) medically administered nutrition and hydration not be started or, if started, be discontinued.

-or-

____(b) even if all other forms of life-sustaining treatment have been withdrawn, medically

administered nutrition and hydration continue to be given to me.

(If you fail to complete item B, your agent will not have the power to direct the withholding or withdrawal of medically administered nutrition and hydration.)

C. ADDITIONAL INSTRUCTIONS.

Here you may include any specific desires or limitations you deem appropriate, such as when or what life-sustaining treatment you would want used or withheld, or instructions about refusing any specific types of treatment that are inconsistent with your religious beliefs or are unacceptable to you for any other reason. You may leave this question blank if you desire.

(attach additional pages as necessary)

I hereby acknowledge that I have been provided with a disclosure statement explaining the effect of this directive. I have read and understand the information contained in the disclosure statement.

The original of this directive will be kept at _____ and the following persons and institutions will have signed copies:

Signed this ____ day of _____, 2__

Principal's Signature: _____

[If you are physically unable to sign, this directive may be signed by someone else writing your name, in your presence and at your express direction.]

THIS POWER OF ATTORNEY DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC OR A JUSTICE OF THE PEACE.

We declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal affirms that he or she is aware of the nature of the directive and is signing it freely and voluntarily.

Witness: _____ Address: _____

Witness: _____ Address: _____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

The foregoing durable power of attorney for health care was acknowledged before me this ____ day of _____, 20__, by _____ ("the Principal").

 Notary Public / Justice of the Peace

My commission expires:

II. LIVING WILL

Declaration made this ____ day of _____, 20__.

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness and I am certified to be near death or in a permanently unconscious condition by 2 physicians or a physician and an ARNP, and 2 physicians or a physician and an ARNP have determined that my death is imminent whether or not life-sustaining treatment is utilized and where the application of life-sustaining treatment would serve only to artificially prolong the dying process, or that I will remain in a permanently unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, the natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to die would be to discontinue medically administered nutrition and hydration.

In carrying out any instruction I have given under this section, I authorize that:

(Initial beside your choice of (a) or (b).)

____(a) medically administered nutrition and hydration not be started or, if started, be discontinued,

-or-

____(b) even if all other forms of life-sustaining treatment have been withdrawn, medically administered nutrition and hydration continue to be given to me.

In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this declaration shall be honored by my family and health care providers as the final expression of my right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Signed this ____ day of _____, 2__.

Principal's Signature: _____

[If you are physically unable to sign, this directive may be signed by someone else writing your name, in your presence and at your express direction.]

THIS LIVING WILL DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC OR A JUSTICE OF THE PEACE.

We declare that the principal appears to be of sound mind and free from duress at the time the living will is signed and that the principal affirms that he or she is aware of the nature of the directive and is signing it freely and voluntarily.

Witness: _____ Address: _____

Witness: _____ Address: _____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

The foregoing living will was acknowledged before me this ___ day of _____, 20___, by _____ (the "Principal").

Notary Public / Justice of the Peace

My commission expires:

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:20, conflicts with a terminal care document or living will, or such component of an advance directive as set forth in RSA 137-J:20, the durable power of attorney for health care shall control.

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.

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, II or III.

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

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.

Do Not Resuscitate

137-J:24 Applicability. The provisions of this subdivision apply to all persons regardless of whether or not they have completed an advance directive.

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;

(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 available and the facility has made diligent efforts to contact the agent without success, or the person's agent is not 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 unnecessary harm to 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 and the facility has made diligent efforts to contact the agent without success, or the agent 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 unnecessary harm to 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:

Do Not Resuscitate Order

As attending physician or ARNP of _____ and as a licensed physician or advanced registered nurse practitioner, I order that this person **SHALL NOT BE RESUSCITATED** in the event of cardiac or respiratory arrest.

This order has been discussed with _____ (or, if applicable, with his/her agent,) _____, who has given consent as evidenced by his/her signature below.

Attending physician or ARNP Name

Attending physician or ARNP Signature

Address

Person Signature

Address

Agent Signature *(if applicable)*

Address _____

VI. 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:26;
- (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.
- (d) Do not resuscitate identification as set forth in RSA 137-J:33.

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 Faith a Do Not Resuscitate Order; Notification of Agent by Attending Physician or ARNP Refusing to Comply With 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 person's agent, or the person'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, II and III.

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 Interinstitutional 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:26, 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, II or III.

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:26, 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 approved and issued by the emergency medical services medical control board for provision of emergency medical care, which 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. Notwithstanding RSA 541-A:12, III, the department may incorporate by reference into such rules protocols pertaining solely to medical and pharmaceutical patient care processes issued by the emergency medical services board and approved by the commissioner.

4 Guardians; Reference Change. Amend RSA 464-A:25, I(e) to read as follows:

(e) 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, I(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

AN ACT relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

FISCAL IMPACT:

The Departments of Health and Human Services and Corrections and the Judicial Council have determined this bill will increase state general fund expenditures by an indeterminable amount in FY 2006 and each year thereafter. The Judicial Branch has determined this bill will decrease state general fund expenditures by an indeterminable amount in FY 2006 and each year thereafter. The NH Association of Counties stated this bill will have an indeterminable fiscal impact on county revenue and expenditures in FY 2006 and each year thereafter. There will be no fiscal impact on state and local revenue or local expenditures.

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 stated this bill includes RSA 137-J:21, which allows for civil action in the Probate Court. The Council stated it is generally liable for the cost of the guardian designated by the court if the party is indigent. The fee cap for such an appointment is currently \$600, although the fee cap may be waived upon motion filed in advance and approved by the court.

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 Judicial Branch stated this bill may reduce the number of probate court hearings associated with the proposed RSA 137-J, which may reduce general fund expenditures by an indeterminable amount.

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.