



Change in the Laws Governing Advance Directives, POLST, and Medical Surrogacy in New Hampshire

On July 30, 2021 amendments to RSA 137:J went into immediate effect. For details, please check the amended statute at: http://gencourt.state.nh.us/bill_status/billtext.aspx?txtFormat=html&v=CF&id=848

In summary:

All prior versions of Advance Directives remain in effect and need not be replaced, however moving forward the use of the new form is advised.

Current forms and disclosures are immediately available for download within the Advance Care Planning Guide at www.healthynh.org under Advance Care Planning.

Final revisions are being made to the guide prior to publication in hard copy for bulk order and these will be available shortly. You can download the order form from our website under Advance Care Planning.

Training is being revised and will be offered in the autumn of 2021. The schedule of upcoming training opportunities will be posted at www.healthynh.org under Advance Care Planning when available.

The changes to the Advance Care Planning Guide include the following:

- 1) Language in the disclosures and forms has been simplified for consumer use.
- 2) The default assumption has changed: limits to the authority of an agent to issue or deny consent must be written in, where, in previous editions, authorities were limited unless specifically extended by initialing. Important prompts for consideration have been included in the accompanying disclosure statement which must be considered and acknowledged by the user.
- 3) A medical surrogate now has all of the authorities an agent would have unless limited by a valid directive.
- 4) A surrogate's tenure is now 180 days (previously 90 days) and may not be extended except when a patient is actively dying.
- 5) Agent and surrogate may not consent to psychiatric commitment, ECT, psychosurgery or to some decisions affecting pregnancy; restrictions regarding experimental treatments have been changed to allow consent to certain sanctioned protocols.
- 6) Living Wills are now defined as "guidance" to agents or surrogates, or in the absence of either, to providers.
- 7) POLST is included as a portable, actionable DNR order. Out of state orders will be honored here, but only NH licensed providers (MD, DO, APRN or PA) can authorize POLST or PDNR orders in New Hampshire. New Hampshire now uses the national POLST form.
- 8) DNR orders can be voided/rescinded in standard ways for those living at home.
- 9) 18 is the consistent age of adulthood in all provisions within the statute.
- 10) Some language has been changed to reflect terms consistent with terms used in clinical settings.