

THE NEW PORTABLE DO NOT RESUSCITATE ORDER

The Natural Death Act, Ala. Code 22-8A-1 et seq., contains the provisions on how an individual may plan for end-of-life decisions. Specifically, it outlines the requirements for a valid Advanced Directive and the removal and withdrawal of life-sustaining treatment. However, until recently, there has been no law or guidance for "Do Not Resuscitate" ("DNAR") orders even though they are routinely used in health care settings throughout the state. Even when a DNAR order had been entered at one facility, the order was no longer valid after the patient left that facility or if the patient went to another facility, for example, from the hospital to a long term care setting. Each time, a new order had to be obtained to carry out the patient's wishes.

In the 2016 legislative session, the Alabama Legislature passed an amendment to Alabama's Natural Death Act to address DNAR orders and to facilitate the use of a valid DNAR order across multiple health care settings.

Statutory Changes

Because there was no reference to DNAR's in the Alabama Code, the legislation added a definition of "do not resuscitate" and acknowledged that a physician may enter a DNAR in a patient's medical record based on the patient's wishes, a valid advance directive, at the direction of an attorney-in-fact authorized to make those decisions or a health care surrogate.

The statute defines "Do not attempt resuscitation (DNAR) order" as:

A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND." A do not attempt resuscitation order must be entered with the consent of the person, if the person is competent; or in accordance with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or with the consent of a health care proxy or surrogate functioning under the provisions in this chapter; or instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in Section 22-8A-4(b)(1).

See Ala. Code § 22-8A-3. Additional changes included adding a definition of "Portable physician DNAR order" and providing immunity for civil or criminal liability for a health care provider who issues or follows a Portable Physician DNAR in accordance with the statute. Lastly, Section 22-8A-4.1 was added to the code specifically validating DNAR orders.

Although "Portable physician DNAR order" is defined by the statute, there is nothing in the new law setting forth the procedure for how the order follows the patient from facility to facility. This practice and procedure was left to the regulations, and the statute specifically granted authority to the Alabama Department of Public Health ("ADPH") and the Board of Medical Examiners to develop regulations to implement the statute's intent.

Regulatory Changes and Prescribed Form

After publication and comment period, the Alabama Department of Public Health published the file regulation, Alabama Administrative Code § 420-5-19, and the prescribed form for portable DNARs, Appendix II to the regulation. The regulation allows a physician to enter a Do Not Resuscitate order that transfers from facility to facility under certain circumstances. The form, which can be found at Appendix II to the regulation, requires the following:

- Patient's name;
- Patient's date of birth;
- One of the following;
 - Patient/resident signature/consent that resuscitative measures be withheld in the event of cardiopulmonary cessation;
 - Advance Directive with instructions regarding life sustaining treatment and the signature of facility/provider attesting that the patient/resident is not competent or is no longer able to understand, appreciate and direct his/her medical treatment and has no hope of regaining that ability
 - Health Care Proxy/Attorney in Fact consent OR
 - Surrogate consent; AND
- Physician's signature and date of signature.

If the form is completed by the health care proxy, attorney in fact or surrogate, the documentation evidencing that status must be made part of the patient's/resident's medical record. Additionally, the health care proxy or attorney in fact must be authorized in the proxy designation or power of attorney to make decisions regarding withholding life sustaining treatment pursuant to the Natural Death Act.

Once properly completed and made a part of the patient's medical record, the DNAR order becomes portable to other facilities/health care providers. The regulation places the burden on the transferring provider/facility to communicate the existence of the order to the receiving facility and to make sure a copy of the order accompanies the patient in transport to the receiving facility. As it stands now, there is no regulatory sanction or penalty for health care providers who do not communicate the existence of the order.

It is important to note that the new law on portable physician orders does not affect DNAR orders that already exist or that may be written in the future pursuant to facility policy. The regulation refers to these orders as "facility specific DNAR orders." The new law and regulation simply permit a properly completed **Portable** DNAR order to follow the patient from facility to facility. According to the regulation, "facility specific DNARs" can continue to be entered and followed. The purpose for the change was to alleviate some of the burden imposed on providers in obtaining a DNAR order.

The regulation and form can be found at:

http://adph.org/administration/assets/AdvanceDirective_2016_R.pdf