TITLE X
PUBLIC HEALTH

Chapter 137-J
WRITTEN DIRECTIVES FOR MEDICAL DECISION MAKING FOR ADULTS WITHOUT CAPACITY TO MAKE HEALTH CARE DECISIONS

Section 137-J:1

137-J:1 Purpose and Policy. –

I. The state of New Hampshire recognizes that individual persons have the right, founded in the autonomy and sanctity of a person, to control the decisions relating to the rendering of their 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 practitioners, 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 in the durable power of attorney for health care the authority to make health care decisions on the person's behalf, in the event such person is unable to make those decisions independently, either due to permanent or temporary lack of capacity to make health care decisions;

(b) Stating the person's wishes in the living will about end of life care and providing guidance to the person's agent, surrogate, and/or attending practitioner.

II. All persons have a right to make health care decisions and to refuse health care treatments, 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. Recognizing this right, the refusal of health care treatments is not sufficient to demonstrate that a person lacks capacity to make health care decisions.

III. While all persons have a right to make a written directive, not all take advantage of that right, and it is the purpose of the surrogacy provisions of this chapter to ensure that health care decisions can be made in a timely manner by a person's next of kin or loved one without involving court action. This chapter specifies a process to establish a surrogate decision-maker when there is no agent appointed under a durable power of attorney for health care or a guardian, as defined in RSA 464-A, to make health care decisions.

IV. This chapter seeks to simplify and clarify the process by which a person may execute a health care advance directive by combining in one form the durable power of attorney for health care document and the living will, either of which (or both) may be executed by the person. The law recognizes that it is preferable for a person to choose an agent under a durable power of attorney for health care document who can make decisions in real time and under then existing circumstances regarding health care decisions that best reflect the person's values, as articulated orally or in writing by the person. The law also recognizes that a person may wish to execute a living will that sets forth their wishes about end of life care that would be used by an agent or surrogate as guidance in implementing the person's wishes. The law further recognizes that a person may wish to grant greater power and authority to their named agent than to a surrogate and honors any limitations placed on a surrogate in a person's advance directive.

Source. 2006, 302:2. 2009, 54:4. 2014, 239:1, eff. Jan. 1, 2015. 2020, 39:26, eff. Jan. 1, 2021. 2021, 176:1, eff. July 30, 2021.

Section 137-J:2

137-J:2 Definitions. –

In this chapter:

I. " Actively dying " 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 only postpone the moment of death to another imminent moment, as certified in the principal's medical record by 2 physicians, or a physician and another attending practitioner who is not under the supervision of the certifying physician.

II. " Advance directive " means a document allowing a person to give directions and guidance about future medical care and to designate another person to make medical decisions if the principal should lose the capacity to make health care decisions. The term " advance directive " shall include a durable power of attorney for health care and a living will.

III. " Advanced practice registered nurse " or " APRN " means a registered nurse who is licensed in good standing in the state of New Hampshire as having specialized clinical qualifications.

IV. " Agent " means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

V. " Attending practitioner " means the physician, physician assistant, or advanced practice registered nurse, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician, physician assistant, or advanced practice registered nurse shares that responsibility, any one of those physicians, physician assistants, or advanced practice registered nurses may act as the attending practitioner under the provisions of this chapter.

VI. " 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. The fact that a person has been diagnosed with mental illness, brain injury, or intellectual disability, or has declined a recommended medical procedure or therapy, shall not mean that the person necessarily lacks the capacity to make health care decisions.

VII. " Cardiopulmonary resuscitation " means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

VIII. " Certified in the principal's medical record " means the making of a statement in the medical record, whether such record is written or electronic.

IX. " Close friend " means any person 18 years of age or older who presents an affidavit to the attending physician stating that the individual is a close friend of the patient, is willing and able to become involved in the patient's health care, and has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious and moral beliefs. The affidavit shall also state facts and circumstances that demonstrate such familiarity with the patient.

X. " Do not resuscitate identification " means a standardized identification necklace, bracelet, card, pink portable Do Not Resuscitate Order, POLST, or other written medical order that signifies that a "Do Not Resuscitate Order" has been issued for the principal.

XI. " 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 defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

XII. " 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.

XIII. " 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.
XIV. " 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.
XV. " Health care provider " means a 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.
XVI. " 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. " Life-sustaining treatment " includes, but is not limited to, the following: medically administered nutrition and hydration, 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.
XVII. " Living will " means a written statement of guidance that sets forth the express wishes of the principal that attempts at life sustaining treatment shall be continued or that certain life-sustaining treatment shall not be attempted when the principal has been diagnosed and certified in the principal's medical record by 2 attending physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician to have lost capacity to make health care decisions and to be permanently unconscious or to suffer from an advanced life-limiting, incurable and progressive condition for which treatment has become excessively burdensome or ineffective for the principal.
XVIII. " 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.
XIX. " 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 APRN or PA.
XX. " Physician " means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.
XXI. " Physician assistant " or " PA " means a physician assistant licensed in good standing to practice in the state of New Hampshire pursuant to RSA 328-D.
XXII. " POLST " means a form that contains a set of emergency medical orders signed by an attending practitioner. This order set may contain DNR orders, and, although it may be completed in any state under similar title, the DNR and all other orders shall conform to New Hampshire law.
XXIII. " Principal " means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter or a qualified patient who has not executed an advance directive and whose health care decisions are made by a surrogate appointed pursuant to the provisions of this chapter.
XXIV. " Qualified patient " means any patient who has been certified in the patient's medical record by the attending practitioner to lack the capacity to make health care decisions.
XXV. " Reasonable degree of medical certainty " means a medical judgment that is made by the attending practitioner who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
XXVI. " 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.
XXVII. " Surrogate decision-maker " or " surrogate " means an adult individual who has health care decision-making capacity, is available upon reasonable inquiry, is willing to make health care decisions on behalf of a patient who lacks health care decision-making capacity, and is identified by

the attending practitioner in accordance with the provisions of this chapter as the person who is to make those decisions in accordance with the provisions of this chapter.
XXVIII. " Witness " means a competent person 18 years or older who is present when the principal signs an advance directive.

Source. 2006, 302:2. 2009, 54:1. 2013, 224:1. 2014, 239:2-4, eff. Jan. 1, 2015. 2020, 39:27, 28, eff. Jan. 1, 2021. 2021, 176:1, eff. July 30, 2021.

Section 137-J:3

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, do not resuscitate order, or POLST, 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 or POLST 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.

Source. 2006, 302:2, eff. Jan. 1, 2007. 2021, 176:1, eff. July 30, 2021.

Section 137-J:4

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Advance Directives

Section 137-J:5

137-J:5 Scope and Duration of Agent's and Surrogate's Authority. –
I. Subject to the provisions of this chapter and any express limitations set forth by the principal in a durable power of attorney for health care, the agent or surrogate 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 a durable power of attorney for health care or a surrogate's authority shall be in effect only when the principal lacks capacity to make health care decisions, as certified in the principal's medical record by the principal's attending practitioner. The name of the agent or

surrogate shall be indicated in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in the principal's medical record by the principal's attending practitioner, the agent's or surrogate's authority shall terminate, and the authority to make health care decisions shall revert to the principal.

III. If the principal has no attending practitioner for reasons based on the principal's religious or moral beliefs as specified in the principal's 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 principal's lack of capacity to make health care decisions. 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 practitioner shall make reasonable efforts to inform the principal, even if the principal has lost capacity, of any proposed treatment, or of any proposal to withdraw or withhold treatment. When the principal has lost capacity to make health care decisions and an agent or surrogate is acting on the principal's behalf, and the agent or surrogate consents to treatment or withholding of treatment from the principal, such treatment may be given or withheld even over the principal's objection, unless the principal's durable power of attorney for health care provides otherwise.

IV-a. Consent to clinical trials or experimental treatments. Agents and surrogates shall have the authority to consent to clinical trials or experimental treatments pursuant to the following:

(a) The clinical trial or experimental treatment must be authorized by an institutional review board and be consistent with the relevant state and federal regulations, including 45 CFR part 46, subpart A (the "Common Rule"), and 21 CFR parts 50 and 56, as applicable.

(b) An agent or surrogate may only give consent that is consistent with authority granted in a durable power of attorney for health care. If the durable power of attorney for health care does not address authority to give consent to a clinical trial or experimental treatment, the agent or surrogate may only give consent that is consistent with the authority provided in subparagraph (c).

(c) Absent a limitation in a durable power of attorney for health care, an agent or surrogate may give consent to clinical trials or experimental treatment as follows:

(1) For purposes of this subsection, "immediately life-threatening diseases or conditions" are diseases or conditions that are likely to cause death if treatment is not provided promptly. When there is an immediately life-threatening disease or condition, consent may be given if:

(A) There is no alternate method of approved or generally recognized therapy available that provides an equal or greater likelihood of saving the life of the patient or preventing a permanent or extended impairment of function that is likely to substantially limit one or more major life activities, or

(B) The clinical trial or experimental treatment is not intended to save the life of the patient but rather is intended to be beneficial to the patient in terms of increasing mobility or reducing pain, distress, or discomfort.

(2) For purposes of this subsection, "serious diseases or conditions" are diseases or conditions that, if left untreated, are likely to result in a permanent or extended impairment of function that is likely to substantially limit one or more major life activities. When there is a serious disease or condition, consent may be given if:

(A) There is no alternate method of approved or generally recognized therapy that is available, and

(B) The clinical trial or experimental treatment is intended to prevent or diminish a permanent or extended impairment of function that is likely to substantially limit one or more major life activities, and such impairment is likely to occur if not treated promptly, or be beneficial to the patient in terms of increasing mobility or reducing pain, distress, or discomfort that is likely to substantially limit a major life activity.

V. Nothing in this chapter shall be construed to give an agent or surrogate authority to:

(a) Consent to voluntary admission to any state institution;

(b) Consent to a voluntary sterilization;

(c) Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified in the principal's medical record by the attending practitioner 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; or
(d) Consent to psychosurgery or electro-convulsive shock therapy.

Source. 2006, 302:2. 2009, 54:4. 2014, 239:5, eff. Jan. 1, 2015. 2020, 39:5, eff. July 1, 2021; 39:29, eff. Jan. 1, 2021. 2021, 176:2, eff. July 1, 2021 and July 30, 2021.

Section 137-J:6

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. – After consultation with the attending practitioner and other health care providers, the agent or surrogate shall make health care decisions in accordance with the agent's or surrogate's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, in writing, including but not limited to in the durable power of attorney for health care and the living will, or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's or surrogate's assessment of the principal's best interests and in accordance with accepted medical practice.

Source. 2006, 302:2. 2009, 54:4. 2014, 239:14, eff. Jan. 1, 2015. 2020, 39:30, eff. Jan. 1, 2021. 2021, 176:2, eff. July 30, 2021.

Section 137-J:7

137-J:7 Attending Practitioner and Health Care Provider's Responsibilities. –
I. A qualified patient's attending practitioner, or a qualified patient's health care provider or residential care provider, and employees thereof, shall follow, as applicable, the directives of a qualified patient's designated agent or surrogate 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 practitioner, 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 who possesses 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 practitioner, or any other physician, PA, or APRN, 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 in the principal's medical record that the principal is a "qualified patient"), so that the attending practitioner and the principal's agent or surrogate may be authorized to act pursuant to this chapter.
II. An attending practitioner who, because of personal beliefs or conscience, is unable to comply with a POLST, the principal's living will and/or the agent's or the surrogate's decision 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 practitioner who has been chosen by the qualified patient's agent or surrogate provided, that pending the completion of the transfer, the attending practitioner shall not deny health care treatment 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 qualified patient's advance directive, or the agent or surrogate.
III. When an agent's or a surrogate's decision pursuant to this chapter, or the principal's living will or POLST 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 agent or surrogate and shall incur no liability for its refusal to carry out the terms of the direction by the agent or surrogate; provided, that, pending the completion of the transfer, the health care provider or residential care provider shall not deny health care treatment, which denial would within 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 or surrogate; and further provided, that, the health care provider or residential care provider shall inform the agent or surrogate of its decision not to participate in such an act or omission.

Source. 2006, 302:2. 2009, 54:4. 2014, 239:6, 7, eff. Jan. 1, 2015. 2020, 39:31, eff. Jan. 1, 2021. 2021, 176:2, eff. July 30, 2021.

Section 137-J:8

137-J:8 Restrictions on Who May Act as Agent or Surrogate. –
A person may not exercise the authority of an agent or a surrogate while serving in one of the following capacities:
I. The principal's attending practitioner or a person acting under the direct authority of the attending practitioner.
II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.

Source. 2006, 302:2. 2014, 239:8, eff. Jan. 1, 2015. 2021, 176:2, eff. July 30, 2021.

Section 137-J:9

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 or surrogate 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 or surrogate in making health care decisions on the principal's behalf.
(b) Provide copies of the principal's advance directive as necessary to facilitate treatment of the principal.
II. Subject to any limitations set forth in the durable power of attorney for health care by the principal, an agent or surrogate 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 to a third party.

Source. 2006, 302:2, eff. Jan. 1, 2007. 2021, 176:2, eff. July 30, 2021.

Section 137-J:10

137-J:10 Criminal Act Not Construed or Authorized. –
I. 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 legalize, 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 to permit the natural process of dying. 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.
II. 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 in the principal's medical record by the attending practitioner 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, in the absence of such directive, authorization, or order, such action is taken in accordance with the written protocol of a health care facility licensed under RSA 151 as applicable to its general patient population.
(c) The use of this chapter to authorize any health care decision rejected by the patient based primarily, substantially, or solely on a finding that the patient is not capable of making a health care decision because the patient has refused that procedure or therapy.
III. 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.
IV. 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.
V. 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 provided 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 attending practitioners in consultation with patients, their surrogates, or legal guardians in the absence of an advance directive.

Source. 2006, 302:2. 2009, 54:4. 2012, 251:1. 2014, 239:9, eff. Jan. 1, 2015. 2020, 39:32-34, eff. Jan. 1, 2021. 2021, 176:2, eff. July 30, 2021.

Section 137-J:11

137-J:11 Liability for Health Care Costs. – Liability for the cost of health care provided pursuant to the agent's or surrogate's decision shall be the same as if the health care were provided pursuant to the principal's decision.

Source. 2006, 302:2, eff. Jan. 1, 2007. 2021, 176:2, eff. July 30, 2021.

Section 137-J:12

137-J:12 Immunity. –
I. No person acting as agent pursuant to an advance directive or acting as a surrogate 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 any if such person made such decision 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 or surrogate, and/or 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 or a surrogacy and in accordance with this chapter; or
(b) Failure to follow the directive of an agent or surrogate 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 or surrogate 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.
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.

Source. 2006, 302:2. 2014, 239:10, eff. Jan. 1, 2015. 2021, 176:3, eff. July 30, 2021.

Section 137-J:13

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.
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. [Repealed.]

Source. 2006, 302:2. 2013, 224:3, eff. Jan. 1, 2014. 2021, 176:4, eff. July 30, 2021.

Section 137-J:14

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 or surrogate, 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 practitioner, or person acting under the direction or control of the attending practitioner. 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 awareness 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-B.
II. If the principal is physically unable to sign, the advance directive may be signed by another person who signs the principal's name in the principal's physical presence and at the principal's express direction.

Source. 2006, 302:2. 2009, 54:4, eff. July 21, 2009. 2020, 39:35, eff. Jan. 1, 2021. 2021, 176:5, eff. July 30, 2021.

Section 137-J:15

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 surrogate 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 a person disqualified from acting as a witness under RSA 137-J:14, I(a); 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 physical presence;
(b) By execution by the principal of a subsequent advance directive; or
(c) By the filing of an action for divorce, legal separation, annulment or protective order, where both the agent and/or the surrogate, 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.
(d) [Repealed.]
II. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive or surrogacy shall immediately record the revocation, and the time and date when the revocation was received, in the principal's medical record and notify the agent, the attending practitioner, 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 practitioner.

Source. 2006, 302:2. 2009, 54:4. 2014, 239:11, eff. Jan. 1, 2015. 2017, 178:2, eff. Jan. 1, 2018. 2020, 39:36, eff. Jan. 1, 2021. 2021, 176:5, eff. July 30, 2021.

Section 137-J:16

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Section 137-J:17

137-J:17 Reciprocity. – A DNR, POLST, durable power of attorney for health care, living will, or similar document executed in another state, and valid according to the laws of the state where it was executed, shall be as effective in this state as it would have been if executed according to the laws of this state, provided that this paragraph shall not be construed to authorize any violation of this chapter.

Source. 2006, 302:2. 2012, 252:1, eff. June 18, 2012. 2021, 176:6, eff. July 30, 2021.

Section 137-J:18

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Section 137-J:19

137-J:19 Advance Directive; Disclosure Statement. – The disclosure statement which must accompany an advance directive shall be in substantially the following form:
AN ADVANCE DIRECTIVE IS A LEGAL DOCUMENT. YOU SHOULD KNOW THESE FACTS BEFORE SIGNING IT.
BULLET This form allows you to choose who you want to make decisions about your health care when you cannot make decisions for yourself. This person is called your "agent". You should consider choosing an alternate in case your agent is unable to act.
BULLET Agents must be 18 years old or older. They should be someone you know and trust. They cannot be anyone who is caring for you in a health care or residential care setting.
BULLET This form is an "advance directive" that defines a way to make medical decisions in the future, when you are not able to make decisions for yourself. It is not a medical order (e.g., it is not in and of itself a DNR (do not resuscitate order or (POLST)).
BULLET You will always make your own decisions until your medical practitioner examines you and certifies that you can no longer understand or make a decision for yourself. At that point, your "agent" becomes the person who can make decisions for you. If you get better, you will make your own healthcare decisions again.
BULLET With few exceptions(*), when you are unable to make your own medical decisions, your agent will make them for you, unless you limit your agent's authority in Part I.B of the durable power of attorney form. Your agent can agree to start or stop medical treatment, including near the end of your life. Some people do not want to allow their agent to make some decisions. Examples of what you might write in include: "I do NOT want my agent ...
- to ask for or agree to stop life-sustaining treatment (such as breathing machines, medically-administered nutrition and/or hydration (tube feeding), kidney dialysis, other mechanical devices, blood transfusions, and certain drugs)."
- to ask for or to agree to a Do Not Resuscitate Order (DNR order)."
- to agree to treatment even if I object to it in the moment, after I have lost the ability to make health care decisions for myself."
BULLET The law allows your agent to put you in a clinical trial (medical study) or to agree to new or experimental treatment that is meant to benefit you if you have a disease or condition that is immediately life-threatening or if untreated, may cause a serious disability or impairment (for example new treatment for a pandemic infection that is not yet proven). You may change this by writing in the durable power of attorney for health care form:
ordm "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or
ordm "I don't want to participate in medical studies or experimental treatment even if the treatment may help me or I will likely die without it."
BULLET Your agent must try to make the best decisions for you, based on what you have said or written in the past. Tell your agent that you have appointed them as your healthcare decision maker. Talk to your agent about your wishes.
BULLET In the "living will" section of the form, you can write down wishes, values, or goals as guidance for your agent, surrogate, and/or medical practitioners in making decisions about your medical treatment.
BULLET You do not need a lawyer to complete this form, but feel free to talk to a lawyer if you have questions about it.
BULLET You must sign this form in the physical presence of 2 witnesses or a notary or justice of the peace for it to be valid. The witnesses cannot be your agent, spouse, heir, or anyone named in your will, trust or who may otherwise receive your property at your death, or your attending medical practitioner or anyone who works directly under them. Only one witness can be employed by your health or residential care provider.
BULLET Give copies of the completed form to your agent, your medical providers, and your lawyer.

* Exceptions: Your agent may not stop you from eating or drinking as you want. They also cannot agree to voluntary admission to a state institution; voluntary sterilization; withholding life-sustaining treatment if you are pregnant, unless it will severely harm you; or psychosurgery.

Source. 2006, 302:2. 2009, 54:4, 5. 2014, 239:13, eff. Jan. 1, 2015. 2020, 39:37, eff. Jan. 1, 2021. 2021, 176:7, eff. July 30, 2021.

Section 137-J:20

137-J:20 Advance Directive; Durable Power of Attorney and Living Will Forms. –
An advance directive in its individual "Durable Power of Attorney for Health Care" and "Living Will" components shall be in substantially the following form:
NEW HAMPSHIRE ADVANCE DIRECTIVE FORM
Name (Principal's Name): _____
DOB: _____
Address: _____
I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE
The durable power of attorney for healthcare form names your agent(s) and, if you wish, sets limits on what your agent can decide.
I choose the following person(s) as agent(s) if I have lost capacity to make health care decisions (cannot make health care decisions for myself).
(If you choose more than one person, they will become your agent in the order written, unless you indicate otherwise.)
A. Choosing Your Agent:
Agent: I appoint _____, of _____, and whose phone number is _____ to be my agent to make health care decisions for me.
Alternate Agent: If the person above is not able, willing, or available, I appoint _____, of _____, and whose phone number is _____ to be my alternate agent.
If no one listed above can make decisions for you, a surrogate will be assigned in the order written in law (spouse, adult child, parent, sibling, etc.), and will have the same powers as an agent. If there is no surrogate, a court appointed guardian may be assigned.
B. Limiting Your Agent's Authority or Providing Additional Instructions
When you can no longer make your own health care decisions, your agent will be able to make decisions for you. Please review the Disclosure Statement that is attached to this advance directive for examples of how you may want to advise your agent. You may write in limits or additional instructions below or attach additional pages.
I have attached _____ additional pages titled "Additional wishes for my Durable Power of Attorney for Health Care" to express my wishes.
II. LIVING WILL
If you would like to provide written guidance to your agent, surrogate, and/or medical practitioners in making decisions about life sustaining medical treatment if you cannot make your own decisions, you may complete the options below.
CHOOSE ITEM A OR B. Initial your choice:
If I suffer from an advanced life-limiting, incurable and progressive condition:
_____ A. I wish to have all attempts at life-sustaining treatment (within the limits of generally accepted health care standards) to try to extend my life as long as possible, no matter what burdens, costs or complications may occur.
OR
_____ B. I do NOT wish to have any life-sustaining treatment attempted that I would consider to be excessively burdensome or that

would not have a reasonable hope of benefit for me. I wish to receive only those forms of life-sustaining treatment that I would not consider to be excessively burdensome AND that have a reasonable hope of benefit for me. The following are situations that I would consider excessively burdensome: (Cross out and initial any of the below statements # 1-4 if you disagree.)
1. I do not wish to have life-sustaining treatment attempted if I am actively dying (medical treatment will only prolong my dying).
2. I do not wish to have life-sustaining treatment attempted if I become permanently unconscious with no reasonable hope of recovery.
3. I do not wish to have life-sustaining treatment attempted if I suffer from an advanced life-limiting, incurable and progressive condition and if the likely risks and burdens of treatment would outweigh the expected benefits.
4. Other situations that I would consider excessively burdensome if I suffer from an advanced life-limiting, incurable and progressive condition: (I have attached _____ additional pages titled "Living Will Burdens"):
In these situations, I wish for comfort care only. I understand that stopping or starting treatments to achieve my comfort, including stopping medically-administered nutrition and hydration, may be a way to allow me to die when the treatments would be excessively burdensome for me.
III. SIGNATURE
I have received, reviewed, and understood the disclosure statement, and I have completed the durable power of attorney for health care and/or living will consistent with my wishes. I have attached _____ pages to better express my wishes.
Signed this _____ day of _____, 20 _____
Principal's Signature: _____
(If you are physically unable to sign, this advance directive may be signed by someone else writing your name in your physical presence at your direction.)
THIS ADVANCE 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 this advance directive is signed and that the principal affirms that the principal is aware of the nature of the directive and is signing it freely and voluntarily.
Witness: _____ Address (city/state): _____
Witness: _____ Address (city/state): _____
STATE OF NEW HAMPSHIRE
COUNTY OF _____
The foregoing advance directive was acknowledged before me this _____ day of _____, 20 _____, by _____ (the "Principal").

_____
Notary Public/Justice of the Peace
My commission expires:

Source. 2006, 302:2. 2009, 54:4. 2013, 224:2, eff. Jan. 1, 2014. 2020, 39:38, eff. Jan. 1, 2021. 2021, 176:7, eff. July 30, 2021.

Section 137-J:21

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Section 137-J:22

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 member of the clergy, may file an action in the probate court of the county where the principal is located at the time:
(a) Requesting that 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 564-E:116 which shall apply to directives executed under this chapter and persons acting pursuant to this chapter.
(b) Challenging the right of any agent or surrogate 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 practitioner 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 or surrogate 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.
III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

Source. 2006, 302:2. 2009, 54:4, eff. July 21, 2009. 2017, 178:3, eff. Jan. 1, 2018. 2020, 39:39, eff. Jan. 1, 2021. 2021, 176:8, eff. July 30, 2021.

Section 137-J:23

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Do Not Resuscitate

Section 137-J:24

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

Source. 2006, 302:2, eff. Jan. 1, 2007.

Section 137-J:25

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 a wish not to receive cardiopulmonary resuscitation, or the principal's agent or surrogate has determined that the person would not wish to receive cardiopulmonary resuscitation;

(c) A person who lacks capacity to make health care decisions is actively dying and admitted to a health care facility, and the person's agent or surrogate is not available and the facility has made diligent efforts to contact the agent or surrogate without success, or the person's agent or surrogate is not legally capable of making health care decisions for the person, and the attending practitioner 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 practitioner 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.

(e) The application of cardiopulmonary resuscitation would clearly be medically futile based on accepted medical standards.

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.

Source. 2006, 302:2. 2009, 54:4, eff. July 21, 2009. 2020, 39:40, eff. Jan. 1, 2021. 2021, 176:9, eff. July 30, 2021.

Section 137-J:26

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

I. An attending practitioner may issue a do not resuscitate order for a person if the person, or the person's agent or surrogate, 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 their attending practitioner issue a do not resuscitate order for the person.

III. A do not resuscitate order written by the attending practitioner for such a person with the consent of the agent or surrogate is valid and shall be respected by health care providers and residential care providers.

IV. If an agent or surrogate is not reasonably available and the facility has made diligent efforts to contact the agent or surrogate without success, or

the agent or surrogate is not legally capable of making a decision regarding a do not resuscitate order, an attending practitioner may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is actively dying, and who is admitted to a health care facility if a second practitioner who has personally examined the person concurs in the opinion of the attending practitioner that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.
V. The do not resuscitate order shall be reflected in at least one of the following forms:
(a) Forms issued in accordance with the policies and procedures of the health care facility in compliance with this chapter if applicable;
(b) A portable DNR (P-DNR); medical orders form documenting the patient's name and signed by an attending practitioner and that clearly documents the DNR order; DNR bracelet or necklace worn by a patient, and inscribed with the patient's name, date of birth (in numerical form), and "NH DNR" or "NH Do not resuscitate"; and POLST constitutes a DNR if it states "This will constitute a DNR Order, and no separate DNR Order will be required."
VI. Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.

Source. 2006, 302:2. 2009, 54:4, 5, eff. July 21, 2009. 2020, 39:41, eff. Jan. 1, 2021. 2021, 176:9, eff. July 30, 2021.

Section 137-J:27

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 or POLST that indicates Do Not Resuscitate completed by the attending practitioner on a form as specified in RSA 137-J:26;
(b) A do not resuscitate order or POLST indicating Do Not Resuscitate 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 or POLST form on which the attending practitioner 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.

Source. 2006, 302:2. 2009, 54:4, eff. July 21, 2009. 2020, 39:42, eff. Jan. 1, 2021. 2021, 176:9, eff. July 30, 2021.

Section 137-J:28

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent or Surrogate by Attending Practitioner Refusing to Comply With Do Not Resuscitate or POLST 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 or POLST order authorized by this chapter on behalf of a person as instructed by the person, or the person's agent or surrogate, 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 practitioner 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 or POLST order issued pursuant to this chapter shall take reasonable steps to advise promptly the person or agent or surrogate of the person that such attending practitioner is unwilling to effectuate the order. The attending practitioner shall thereafter at the election of the person or agent or surrogate permit the person or agent or surrogate to obtain another attending practitioner.
(b) If an attending practitioner, because of the practitioner's personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate or POLST order, the practitioner shall immediately inform the person, the person's agent or surrogate. The person or the person's agent or surrogate[may then request that the case be referred to another practitioner, as set forth in RSA 137-J:7.

Source. 2006, 302:2. 2009, 54:4, eff. July 21, 2009. 2020, 39:43, eff. Jan. 1, 2021. 2021, 176:9, eff. July 30, 2021.

Section 137-J:29

137-J:29 Revocation or Suspension of Do Not Resuscitate or POLST Order. –
I. At any time a principal admitted as an inpatient or outpatient to a health care facility may revoke a do not resuscitate or POLST order by making either a written, oral, or other act of communication to the attending practitioner or other professional staff of the health care facility.
II. At any time a principal residing outside a health care facility may revoke the principal's do not resuscitate or POLST order by destroying such order and removing do not resuscitate identification on the principal's person or by making either a written, oral, or other act of communication to a healthcare provider that is present with the principal.
III. At any time, in accordance with RSA 137-J:6, an agent or surrogate may revoke a do not resuscitate or POLST order for a principal who lacks capacity to make health care decisions who is admitted to a health care facility by making either a written, oral, or other act of communication to the attending practitioner or other professional staff at the health care facility.
IV. At any time, in accordance with RSA 137-J:6, an agent or surrogate may revoke a do not resuscitate or POLST order for a principal who lacks capacity to make health care decisions who is residing outside a health care facility by destroying such order and removing do not resuscitate identification from the principal's person, or by making either written, oral, or other act of communication to a healthcare provider that is present with the principal. The agent is responsible for notifying the person's attending practitioner of the revocation.
V. The attending practitioner who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel or suspend the do not resuscitate or POLST order in the principal's medical record if the principal is in a health care facility and notify the professional staff of the health care facility responsible for the principal's care of the revocation, suspension, or 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 practitioner of such revocation.

Source. 2006, 302:2. 2009, 54:4, 5, eff. July 21, 2009. 2020, 39:43, eff. Jan. 1, 2021. 2021, 176:9, eff. July 30, 2021.

Section 137-J:30

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, constitute, condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

Source. 2006, 302:2, eff. Jan. 1, 2007. 2021, 176:10, eff. July 30, 2021.

Section 137-J:31

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.

Source. 2006, 302:2, eff. Jan. 1, 2007.

Section 137-J:32

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. 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.

Source. 2006, 302:2, eff. Jan. 1, 2007. 2021, 176:11, eff. July 30, 2021.

Section 137-J:33

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, physician assistant, or advanced practice registered nurse 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.

Source. 2006, 302:2. 2009, 54:5, eff. July 21, 2009. 2020, 39:44, eff. Jan. 1, 2021.

Surrogacy

Section 137-J:34

137-J:34 Repealed by 2021, 176:15, eff. July 30, 2021. –

Section 137-J:35

137-J:35 Surrogate Decision-making. –
I. When a patient lacks capacity to make health care decisions, the attending practitioner shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid durable power of attorney for health care and, to the extent that the patient has designated an agent, whether such agent is available, willing and able to act. When no health care agent is authorized and available, the health care provider shall make a reasonable inquiry as to the availability of possible surrogates listed under this paragraph. A surrogate decision-maker may make medical decisions on behalf of a patient without court order or judicial involvement in the following order of priority:
(a) The patient's spouse, or civil union partner or common law spouse as defined by RSA 457:39 if the principal were currently deceased, unless there is a divorce proceeding, separation agreement, or restraining order limiting that person's relationship with the patient.
(b) Any adult son or daughter of the patient.
(c) Either parent of the patient.
(d) Any adult brother or sister of the patient.
(e) Any adult grandchild of the patient.
(f) Any grandparent of the patient.
(g) Any adult aunt, uncle, niece, or nephew of the patient.
(h) A close friend of the patient.
(i) The agent with financial power of attorney or a conservator appointed in accordance with RSA 464-A.
(j) The guardian of the patient's estate.
II. The attending practitioner may identify a surrogate from the list in paragraph I if the attending practitioner determines the surrogate is able and willing to act, and determines after reasonable inquiry that neither a legal guardian, health care agent under a durable power of attorney for health care, nor a surrogate of higher priority is available and able and willing to act. The surrogate decision-maker, as identified by the attending practitioner, may make health care decisions for the patient, in accordance with RSA 137-J:6. The surrogacy provisions of this chapter shall take effect when the decision-maker names are recorded in the medical record. The attending practitioner shall have the right to rely on any of the above surrogates if the attending practitioner believes after reasonable inquiry that neither a health care agent under a durable power of attorney for health care or a surrogate of higher priority is available or able and willing to act.

Source. 2014, 239:12, eff. Jan. 1, 2015. 2020, 39:45, eff. Jan. 1, 2021. 2021, 176:12, eff. July 30, 2021.

Section 137-J:36

137-J:36 Determining Priority Among Multiple Surrogates. –
I. Where there are multiple surrogate decision-makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach a consensus as to their decision on behalf of the patient regarding any health care decision. If 2 or more surrogates who are in the same category and have equal priority indicate to the attending practitioner that they disagree about the health care decision at issue, a majority of the available persons in that category shall control, unless the minority or any other interested party initiates guardianship proceedings in accordance with RSA 464-A. There shall not be a recognized surrogate when a guardianship proceeding has been initiated and a decision is pending. The person initiating the petition for guardianship shall immediately provide written notice of the initiation of the guardianship proceeding to the

health care facility where the patient is being treated. This process shall not preempt the care of the patient. No health care provider or other person shall be required to seek appointment of a guardian.
II. After a surrogate has been identified, the name, address, telephone number, and relationship of that person to the patient shall be recorded in the patient's medical record.
III. Any surrogate who becomes unavailable or unable or unwilling to act for any reason may be replaced by applying the provisions of RSA 137-J:35 in the same manner as for the initial choice of surrogate.
IV. In the event an individual of a higher priority to an identified surrogate becomes available and is willing and able to be the surrogate, the individual with higher priority may be identified as the surrogate. In the event an individual in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority or ability of the surrogate or the life-sustaining treatment decision of the recognized surrogate decision-maker, the challenging party may initiate guardianship proceedings in accordance with RSA 464-A.

Source. 2014, 239:12, eff. Jan. 1, 2015. 2020, 39:46, eff. Jan. 1, 2021. 2021, 176:13, eff. July 30, 2021.

Section 137-J:37

137-J:37 Limitations of Surrogacy. –
I. A surrogate shall not be identified over the express objection of the patient, and a surrogacy shall terminate if at any time a patient for whom a surrogate has been appointed expresses objection to the continuation of the surrogacy.
II. No attending practitioner shall be required to identify a surrogate, and may, in the event a surrogate has been identified, revoke the surrogacy if the surrogate is unwilling or unable to act.
III. An attending practitioner may, but shall not be required to, initiate guardianship proceedings or encourage a family member or friend to seek guardianship in the event a patient is determined to lack capacity to make health care decisions and no guardian, agent under a health care power of attorney, or surrogate has been appointed or named.
IV. Nothing in this chapter shall be construed to require an attending practitioner to treat a patient who the practitioner reasonably believes lacks health care decision-making capacity and for whom no guardian, agent, or surrogate has been appointed.
V. The surrogate may make health care decisions for a principal to the same extent as an agent under a durable power of attorney for health care for up to 180 days after being identified in RSA 137-J:35, I. The authority of the surrogate shall terminate if the principal regains the capacity to make health care decisions or a guardian is appointed. The authority of the surrogate shall terminate after 180 days, unless the patient is determined to be actively dying.

Source. 2014, 239:12, eff. Jan. 1, 2015. 2020, 39:47, eff. Jan. 1, 2021. 2021, 176:14, eff. July 30, 2021.