

CHAPTER 8

ADVANCE DIRECTIVES TO MAKE HEALTH CARE DECISIONS, DO NOT RESUSCITATE ORDERS (DNR ORDERS), AND DECLARATION OF DEATH

Authority

N.J.S.A. 30:1-12, 26:2H-53 et seq. and 26:6A-1 et seq., and 42 U.S.C. § 1395cc.

Source and Effective Date

R.1998 d.522, effective October 8, 1998.
See: 30 N.J.R. 2806(a), 30 N.J.R. 3961(a).

Executive Order No. 66(1978) Expiration Date

Chapter 8, Advance Directives to Make Health Care Decisions, Do Not Resuscitate Orders (DNR Orders), and Declaration of Death, expires on October 8, 2003.

Chapter Historical Note

Chapter 8, Advance Directives to Make Health Care Decisions, Do Not Resuscitate Orders (DNR Orders), and Declaration of Death, was adopted as R.1994 d.14, effective January 3, 1994. See: 25 N.J.R. 2669(a), 26 N.J.R. 221(b).

Pursuant to Executive Order No. 66(1978), Chapter 8, Advance Directives to Make Health Care Decisions, Do Not Resuscitate Orders (DNR Orders), and Declaration of Death, was readopted as R.1998 d.522, effective October 8, 1998. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10:8-1.1 Purpose
- 10:8-1.2 Scope
- 10:8-1.3 Definitions

SUBCHAPTER 2. POLICIES AND PROCEDURES

- 10:8-2.1 Advance directives to make health care decisions
- 10:8-2.2 Do not resuscitate orders (DNR orders)
- 10:8-2.3 Declaration of death

APPENDIX I. YOUR RIGHT TO MAKE HEALTH CARE DECISIONS IN NEW JERSEY

SUBCHAPTER 1. GENERAL PROVISIONS

10:8-1.1 Purpose

This chapter establishes and describes the Department of Human Services policies and procedures regarding patients' use of advance directives to make health care decisions, do not resuscitate (DNR) orders, and declaration of death.

10:8-1.2 Scope

The scope of this chapter applies throughout the Department of Human Services to all developmental centers within the Division of Developmental Disabilities and psychiatric hospitals within the Division of Mental Health Services.

Amended by R.1998 d.522, effective November 2, 1998.
See: 30 N.J.R. 2806(a), 30 N.J.R. 3961(a).

Substituted "Services" for "and Hospitals" at the end.

10:8-1.3 Definitions

The following words and terms, when used in this chapter and in Department policies and procedures, have the following meanings:

"Advance directive" means a written document executed in accordance with the requirements of the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53 et seq.). It is a written instruction stating the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life-sustaining treatment. It may include either a proxy directive designating a health care representative or surrogate in the event the declarant subsequently lacks decision making capacity, or an instruction directive providing instructions and directions regarding the declarant's wishes for health care in the event the declarant subsequently lacks decision making capacity, or both.

"Declarant" means a competent adult of 18 years of age or older who executes an advance directive.

"Decision making capacity" means a patient's ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of each, and alternatives to any proposed health care, and to reach an informed decision. A patient's decision making capacity is evaluated relative to the demands of a particular health care decision.

"Division(s)" means the Division of Developmental Disabilities and the Division of Mental Health Services.

"Do not resuscitate order (DNR order)" means a physician's written order not to attempt cardiopulmonary resuscitation in the event the patient suffers a cardiac or respiratory arrest.

"Emergency care" means immediate treatment provided in a response to a sudden, acute and unanticipated medical crisis in order to avoid injury, impairment or death.

"Ethics Committee" means a multi-disciplinary standing committee of the facility which meets to review determinations to withhold or withdraw a patient's life-sustaining treatment as needed.

"Facility" means a Division of Developmental Disabilities Developmental Center and a Division of Mental Health Services Psychiatric Hospital.

“Health care decision” means a decision to accept or to refuse any treatment, service or procedure used to diagnose, treat or care for a patient’s physical or mental condition, including life-sustaining treatment. Health care decision also means a decision to accept or to refuse the services of a particular physician, other health care professional or health care institution, including a decision to accept or to refuse a transfer of care.

“Health care representative” means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for the purpose of making health care decisions on the declarant’s behalf, and includes an individual designated as an alternate health care representative who is acting as the declarant’s health care representative in accordance with the terms and order of priority stated in an advance directive.

“Life-sustaining treatment” means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery or therapy that uses mechanical or other artificial means to sustain, restore or supplant a vital bodily function, and thereby increase the expected life span of a patient.

“Permanently unconscious” means a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

“Terminal condition” means the terminal stage of an irreversibly fatal illness, disease or condition. A determination of a specific life expectancy is not required as a precondition for a diagnosis of a “terminal condition,” but a prognosis of a life expectancy of six months or less, with or without the provision of life-sustaining treatment, based upon reasonable medical certainty, shall be deemed to constitute a terminal condition.

Amended by R.1998 d.522, effective November 2, 1998.

See: 30 N.J.R. 2806(a), 30 N.J.R. 3961(a).

In “Division(s)” and “Facility”, substituted “Services” for “and Hospitals”.

SUBCHAPTER 2. POLICIES AND PROCEDURES

10:8-2.1 Advance directives to make health care decisions

(a) The Divisions shall have written policies and procedures in accord with the New Jersey Advance Directives For Health Care Act (N.J.S.A. 26:2H-53 et seq.) and the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) which shall supplement and implement the provisions of this chapter and the applicable laws.

(b) Upon admission to the facility and thereafter, as appropriate under the circumstances, such as after an emergency admission, the attending physician shall make an affirmative inquiry of each patient concerning the existence of an advance directive. If the patient is incapable to respond to this inquiry, request shall be made for the information from the patient’s family or in the absence of family, another individual with the personal knowledge of the patient, if available and known to the facility. Inquiry shall be made of present patients, or their family or others, as appropriate.

(c) The attending physician shall note in the patient’s medical records whether or not an advance directive exists, and the name of the patient’s health care representative, if any, and shall attach a copy of the advance directive to the patient’s medical records. The attending physician or other health care professional, as applicable, shall document in the same manner the reaffirmation, modification, or revocation of an advance directive, if he has knowledge of such action.

(d) The written statement of New Jersey State law approved by the Commissioner of the Department of Health and Senior Services (Appendix I) regarding patients’ rights to make decisions concerning the right to accept, refuse, or choose from alternatives of medical and/or surgical treatment and the right to formulate an advance directive, shall be provided to present patients and to each patient upon admission, or where the patient is unable to respond, to family or other representative. The written statement shall be made available in any language in which it is translated and made available by the Department of Health and Senior Services and a translator or reader shall be provided as needed.

(e) The Divisions/facilities shall ensure that appropriate informational materials concerning advance directives are provided to all interested patients and their families and health care representatives, and that assistance is provided to all patients interested in discussing and executing an advance directive.

(f) The facilities shall have an ethics committee consistent with this chapter, the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53 et seq.) and the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.). The facilities shall ensure participation on the ethics committee by individuals with medical, nursing, legal, social work, and clergy backgrounds. The ethics committee shall provide a forum for patients, families, and staff to discuss and reach decisions on determinations to withhold or withdraw a patient’s life-sustaining treatment.