

# Advance Care Planning Guide

*How to think about, talk about and plan for serious illness or injuries which may keep you from making your own healthcare decisions.*

## ***New Hampshire Advance Directives***

*Durable Power of Attorney for Health Care (DPOAH)*

*Living Will*



Foundation *for*  
Healthy Communities

# Why Advance Care Planning?

This guide provides you with information about creating an “advance directive” – a legal document that states your preferences about medical care. Please read it carefully and discuss it with your family, doctor, nurse practitioner, patient representative, chaplain or other caregiver.

Completing an advance directive will give you a voice in making medical decisions if you become unable to understand or speak for yourself at the time such decisions are made. This can give you and your family/caregivers peace of mind because it allows them to understand and follow your wishes about your medical care.

- No health provider or insurance company can require you to have an advance directive document to provide you with services.
- Advance Directives only become active if your medical provider certifies that you cannot understand your medical condition and choices for care, meaning you do not have the capacity to make your own medical decisions.
- After completing the advance directives forms, it is a good idea to talk to the person you choose to be your agent and your medical team to explain your wishes so that they will know your choices.

Completing Advance Directives can also help you avoid having decisions made by probate court, and/or by a temporary surrogate you did not select.

Please note that these forms are the same as NH statutes. You may refer to NH Revised Statutes Annotated 137-J for further clarification. This guide was prepared based on New Hampshire law as it existed in June 2021 and are printed to inform, not to advise. Please consult an attorney for legal advice on these or any estate matters. You may republish or cite any portion of this work, with the following attribution: “Reprinted by permission from the Foundation for Healthy Communities copyright © 2021. All rights reserved.” These materials may not be reproduced for resale.

# How to Use this Booklet

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**The disclosures and forms in it will allow you to authorize someone to make decisions about your medical care when and if you cannot. They are both a legal document and a medical standard and are very powerful when completed properly and available to providers.**

Consider who could best speak on your behalf about serious decisions. There is a worksheet within this booklet which may help. Talk with that/those individuals, now, about their willingness to do that. Talk with them about what you might want, and help them to understand how your values, beliefs and preferences should be honored. Be willing to continue the discussion with them as your circumstances change.

Consider the kinds of decisions that an agent may need to make. Anesthesia and delirium occur frequently in healthcare settings. While these usually get better, should decisions need to be made during an episode, they would be made by an agent. Dementia is a progressive condition; in its advanced stages decisions, big and small, need to be made by someone who knows your thinking. From time to time, important decisions about extending life in extreme circumstances may need to be made. All of these are responsibilities that fall to an agent.

- Read the Disclosure Statement that follows carefully as it lays out several important choices about the kinds of choices your agent can make and invites you to alter the document to serve your preferences. The whole purpose of Advance Directives is to see that YOUR intentions are honored. The disclosure statement will help to clarify those intentions.
- Write in your conditions, limitations, if any, in the space allotted or type and attach them as suggested in the form. They will become part of the directive and will define and limit what your agent(s) may consent to.
- Sign the form only in the presence of witnesses or a notary, according to the instructions in the form.
- Make copies of the forms and see that your agents, other loved ones, your estate attorney, your medical providers and the hospitals in your area have copies.
- Locate and carefully read the Directives each year, or when there are big changes in your health to see if what they contain still expresses your intentions. While the documents cannot be amended, they are easily and inexpensively replaced. Medical systems and attorneys are trained to discard prior versions when a new one is submitted

***NOTE: The first use of terms you may not understand have been indicated in italics and defined in the “Definitions” section at the end of this booklet.***

# Questions About Advance Directives

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## **What are Advance Directives?**

Advance directives are instructions you give regarding your future care. They may be oral or written and are shared with family, friends, or medical providers. Family, friends and medical providers attempt to understand and fulfill your instructions, no matter what form they are in. However, to ensure that everyone understands your instructions, the State of New Hampshire recognizes a written advance directive as a legal document with two parts: a *Durable Power of Attorney for Health Care* and a *Living Will*.

## **What is a Durable Power of Attorney for Health Care (DPOAH)?**

A Durable Power of Attorney for Health Care is a part of the advance directive document in which you name another person to act as your health care agent (agent) to make medical decisions for you if you lack capacity to make health care decisions. It can apply in many different health treatment situations. You can limit what decisions your agent can make in this section and/ or give other instructions about your wishes. The agent's authority does not take effect until or unless you are certified by your medical provider to lack capacity.

## **What is a Living Will?**

A Living Will guides your agent and health care team to help make decisions (if you cannot) about when you would want or not want life sustaining medical treatment to try to prolong your life.

## **Do I need both a Durable Power of Attorney for Health Care (DPOAH) and a Living Will?**

It is a good idea to complete both parts of the advance directive document because they serve two different purposes. A DPOAH takes effect whenever you become unable to make decisions – for instance, during surgery, or even when you become temporarily unconscious. A Living Will takes effect only when there is no reasonable hope for recovery. Under New Hampshire law, if the terms of your advance directive conflict, the DPOAH will overrule the Living Will.

## **What is the difference between a DNR order and an advance directive?**

If your heart stops beating and you stop breathing, health care providers will normally perform cardiopulmonary resuscitation (CPR) to try to restart your breathing and heartbeat. However, you may decide that you do not want CPR performed. In this case, you may ask for a *Do Not Attempt Resuscitation (DNR)* or a *Portable-DNR* (for use outside of a hospital or nursing home facility) order to be written. The differences between a DNR and an advance directive include: an advance directive is not a medical order, even though it is a legally recognized document; a DNR order is a medical order; a DNR order applies only if your heart stops beating and you stop breathing, while an advanced directive deals with many other medical issues and decisions, such as whether to provide medically assisted feeding or hydration. If you want a DNR order, you need to complete that order separately.

## **Why would I want a DNR order?**

Everyone gets CPR unless they indicate otherwise. Attempts at CPR are rarely successful when someone is frail or has a serious illness and may cause additional suffering. Talking with your doctor or other health providers can help you understand the potential benefits and risks of CPR and whether a DNR or Portable-DNR order is your preferred choice. A DNR only refers to CPR and does not mean that any other treatments (e.g., pain relief, comfort care, etc.) are stopped.

# Questions About Advance Directives

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## **What is POLST?**

Provider Order for Life Sustaining Treatment (POLST) is a set of medical orders used nationally to care for individuals whose life expectancy is approximately one to two years or less. The yellow forms, obtainable from providers, are medical orders signed by a patient and their provider, that reflect a discussion between patient and provider about the care that a person wants.

## **What if I want more than one person to make my health care decisions?**

Some people want to designate more than one person to be their agent. For example, a person may want all three of their children to share responsibility for medical decisions. If you list more than one person as your agent, the first person listed will be your decision-maker, followed by the next person listed, and so on. If you desire a different decision-making process (such as making sure all your agents agree before a decision is made), you must make this clear in your advance directive.

## **How is it determined whether I am unable to make decisions about my medical care?**

If the attending practitioner determines that you are unable to understand the significant risks and benefits of your health care decisions, they can document that you do not have “capacity”, in which case your health care agent, if you have designated one, will make decisions for you. This is not a permanent designation; if your doctor or ARNP later determines that you have regained capacity, you will be able to make your own health care decisions once again.

## **What if a serious injury or sudden illness leaves me unconscious, unaware and unlikely to recover?**

You would initially receive all the medical care required to keep you alive. If the doctors believed there was little chance you would ever recover the ability to know who you are or to respond to those around you, would you want to continue life support? Your *advance directives* and conversations about this issue beforehand could instruct the person or people you have designated as your agent(s) regarding continuation of life-sustaining treatment in that situation. Your living will can guide your agent about when you would want to be kept comfortable without using medical interventions to keep you alive, based on your preferences.

## **What does the Advance Directive not accomplish?**

An Advance Directive is a guide that only covers certain important health care decisions. Your wishes, expressed in an advance directive, will need to be put into medical orders when you are determined to lack capacity to make medical decisions. An advance directive does not give your agent any power or authority unless and until you are determined to lack capacity to make health care decisions. RSA 137J restricts certain types of health care decisions the agent can make. An advance directive does not provide for other important personal or financial management matters.

# Questions About Advance Directives

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## **Who will make my decisions if I do not complete advance directive documents?**

In 2015, RSA137J was amended to allow for a medical surrogate to make decisions on behalf of a patient without a judicial order or court involvement. If you do not have an advance directive, a surrogate will be assigned to make medical decisions for you for up to 180 days in the order listed below:

- The patient's spouse, or civil union partner or common law spouse as defined by RSA 457:39, unless there is a divorce proceeding, separation agreement, or restraining order limiting that person's relationship with the patient.
- Any adult son or daughter of the patient.
- A parent of the patient.
- Any adult brother or sister of the patient.
- Any adult grandchild of the patient.
- Any grandparent of the patient.
- Any adult aunt, uncle, niece, or nephew of the patient.
- A close friend of the patient.
- The agent with financial power of attorney or a conservator appointed in accordance with RSA 464-The guardian of the patient's estate.

After 180 days or if there is no available or willing surrogate, a guardian must be appointed by Probate Court, following a petition and formal hearing, which costs money and takes time.

## **Are my old advance directive documents still valid?**

Yes. An advance directive does not need to be renewed. However, if you want to change something in your advance directive document, you must complete a new one. You might want to re-examine your health care wishes from time to time, to see if your wishes are still the same. Although New Hampshire's Advance Directive law changed in June 2021, if you have an advance directive document that was created before this date, it will still be honored under New Hampshire law. However, updating your AD can help make sure your wishes are honored and consistent with the most recent additions to the law.

## **Can I revoke my advance directive document?**

You can revoke or cancel your advance directive document orally or in writing at any time. A separation, divorce, or marriage annulment action will automatically revoke your DPOAH if your spouse or partner is your agent and you have not named an alternate in your document. Additionally, if a protective order is filed between you and your agent, your DPOAH will also be automatically revoked if you have not named an alternate agent.

## **What if my advance directive document was completed in another state?**

New Hampshire law states *"An advance directive, living will, or similar document executed in another state, and valid according to the laws of the state where it was completed, shall be as effective in this state as it would have been if completed according to the laws of New Hampshire."* However, some things allowed in another state may not be permitted here and vice versa, so it is recommended that you complete a NH advance directive if you live in NH.

# Questions About Advance Directives

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## **Who should have copies of my advance directive document?**

Copies of your documents should be with your doctor, your hospital, or long-term care facility, the person(s) you select as your agent, and members of your family. Ideally the original documents should be stored where you keep your other important legal papers such as wills, birth certificates and social security cards.

## **How will my health care providers know I have an advance directive?**

You should tell your doctor, nurses or other health care providers that you have an advance directive and provide them with a copy for your medical record. Any time you are admitted to a hospital, you will be asked if you have an advance directive. If you know that you will be admitted to a hospital, you should bring a copy of your document with you.

## **Do I need an attorney?**

You do not need an attorney to create an advance directive document. You can simply use the form in this brochure, which is the language contained in New Hampshire law. However, if you have any questions or special legal concerns, you can talk with an attorney; if you have medical questions, you should talk with a doctor or trained staff from a hospital or hospice.

## **Who can witness the signing of my advance directive document?**

In order to be valid, your advance directive document can be signed either in the presence of two witnesses or a notary. Your witnesses cannot be anyone who may be in a position to make health care decisions for you such as your health care agent, health care provider, spouse or heir. One witness may be an employee of any of your health or residential care providers.

## **Why would I want to allow my health care agent to make decisions over my objections?**

Advance Directives are tools to allow you to have your preferences honored. Some people want the decisions and guidelines they set when they have all their faculties honored when, later, their ability to understand the decisions at hand becomes severely limited; that is, when they lose the capacity to make complex decisions. Others want their decisions in real time honored, even if it is at a time when they do not fully understand their circumstances. If you are in the latter category, you may indicate, in completing your Directive that your agent may not make treatment decisions over your objection. The law allows an individual to remove an agent at any time.

*It's your right to participate and plan for your care.*

# Questions About Advance Directives

## Selecting Your Durable Power of Attorney for Health Care or Health Care Agent

When you decide to pick someone to speak for you in a medical crisis in case you are not able to speak for yourself, there are several things to think about. The chart below is a tool to help you decide who the best person is. It is best to name one person or agent to serve at a time, with at least one alternate or back-up person, in case the first person is not available when needed. Compare up to 3 people with this tool. The person best suited to be your DPOAH or Health Care Agent rates well on the below qualifications.

Name #1:			
	Name #2:		
		Name #3:	
			2. Would be willing to speak on your behalf.
			3. Would be able to act on your wishes and separate his or her own feelings from yours.
			4. Lives close by or could travel to be at your side if needed.
			5. Knows you well and understands what’s important to you.
			6. Could handle the responsibility.
			7. Is comfortable talking with you about sensitive issues and will listen to your wishes.
			8. Will likely be available long into the future.
			9. Would be able to handle conflicting opinions among family members, friends, and medical personnel.
			10. Can be a strong advocate in the face of an unresponsive doctor or institution.

*This worksheet adapted by the American Bar Association’s Commission on Legal Problems of the Elderly from R. Pearlman, et. al., Your Life Your Choices— Planning for Future Medical Decisions: How to Prepare a Personalized Living Will, Veterans Administration Medical Center, Seattle, Washington. Reprinted by permission.*

## What to Do After you Pick a Health Care Agent

- Talk to your agent about the qualifications on this worksheet.
- Ask permission to name him or her as your agent.
- Discuss your health care wishes and values and fears with your agent and doctor or health provider.
- Make sure your agent and your doctor or health provider gets a copy of your advance directive.

*Making Medical Decisions for Someone Else: A New Hampshire Handbook* is a resource available at [www.healthynh.org](http://www.healthynh.org). It may also be available at the care facility where you receive healthcare.

# Advance Directives Disclosure Statement

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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.**

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.

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.

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))).

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.

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."

# Advance Directives Disclosure Statement

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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:

- “I want my agent to be able to agree to medical studies or experimental treatment in any situation.” or
- “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.”

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 and talk to them about your wishes.

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.

You do not need a lawyer to complete this form, but feel free to talk to a lawyer if you have questions about it.

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.

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.

# 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.

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I have attached \_\_\_\_\_ additional pages titled *Additional wishes for my Durable Power of Attorney for Health Care* to express my wishes.

# New Hampshire Advance Directive Form

## 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*):

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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.

# New Hampshire Advance Directive Form

## 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): \_\_\_\_\_

### IF USING A NOTARY PUBLIC OR JUSTICE OF THE PEACE:

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: \_\_\_\_\_

# Advance Directive Definitions

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## Actively Dying

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.

## Allow Natural Death (AND)

Allow Natural Death is an alternative language used by some people who do not want CPR but want only comfort care.

## Attending Practitioner

A physician, Advance Practice Registered Nurse, or Physician Assistant who has primary responsibility for your treatment and care.

## Capacity to Make Health Care Decisions

The ability to generally understand the risks and benefits of a health care decision, as well as any alternate options for treatment. This is determined by an attending practitioner.

## CPR or Cardiopulmonary Resuscitation

Emergency medical procedure used to try to restart heartbeat and breathing, which can involve blowing into the mouth, pushing on the chest, inserting a breathing tube into the windpipe, giving medicines into your vein, and electrical shock.

## Comfort Care

Keeping you as comfortable and peaceful as possible, including pain medication, giving you ice chips and lip ointment, turning your body to prevent bed sores and bathing you.

## DNR or Do Not Attempt Resuscitation Order

A medical order placed in your medical chart in a hospital or other health facility that says you do not want CPR performed if your heart or breathing stops. You can extend a DNR outside a hospital or health facility by completing a pink Portable-DNR order or a yellow POLST form. Both are brightly colored and that stay with the person who requests it.

## Guardianship

A guardianship of an incompetent person is established by the Probate Court when it determines that the functional limitations of a person have declined to the point where that person's ability to participate in and perform minimal activities of daily living is not present. The incompetence of the person must be proved *beyond a reasonable doubt* and there must be no other available solutions that would impose fewer restrictions on the person. The person loses the right to make decisions. The court appointed guardian shall make any decision.

## Health Care Agent

Someone chosen as your Durable Power of Attorney for Health Care to make health care decisions when you are unable to express your own wishes for care or treatment.

## Health Care Decision

This means informed consent, refusal to give informed consent or withdrawal of informed consent to any type of health care, treatment, admission to a health facility or procedure to diagnose or maintain an individual's physical or mental condition.

# Advance Directive Definitions

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## Hospice Care

A team approach to provide comprehensive medical, nursing and social services, spiritual care and bereavement support for you and your family near the end of life.

## Intravenous or IV Line

A tube placed in your vein that is used to give you fluids, blood or medication.

## Life–Sustaining Treatment

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.

## Medically Administered Nutrition & Hydration

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.

## Medical Surrogacy

A provision in New Hampshire statute that temporarily recognizes the authority of a relative or friend to make a patient's healthcare decisions in the absence of an advanced directive until the patient's death, or a guardian is appointed or ninety days pass, whichever is first. The authority may not be extended unless the patient is "near death" and, like advance directive, appointed agents, cannot commit a patient to a psychiatric facility, or consent to sterilization, psychosurgery, electro- convulsive treatment, or an experimental treatment of any kind. Consents are limited with regard to pregnant patients. The law sets out the priority order for who may be recognized as follows:

- (a) The patient's spouse, or civil union partner or common law spouse as defined by RSA 457:39, 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) A 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.

The individual may be named as surrogate by the provider or APRN and authority is granted when the individual is named in the medical record. The priority order must be adhered to, and the surrogate decision maker must be willing and able. A surrogate with higher priority must replace one with lower priority if found to be willing and able.

# Advance Directive Definitions

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## **Organ and Tissue Donation**

Giving your usable organs for transplantation into others, which can save or improve their lives, including heart, kidneys, pancreas, lungs, liver, and intestines. Tissue you can donate includes cornea, skin, bone marrow, heart valves, and connective tissue. To be transplanted, organs must receive blood until they are removed from your body. Therefore, it may be necessary to place you on a breathing machine temporarily or provide other organ-sustaining treatment. Doctors evaluate whether you have organs or tissue suitable for transplant at or near the time of death. Your body can still be shown and buried after your death.

## **Palliative Care**

Taking care of the whole person – body, mind and spirit. This approach views dying as natural and personal; its goal is to provide you with relief of symptoms (see Hospice care).

## **Permanently Unconscious**

A lasting condition, indefinitely without improvement, in which you are not aware of your thoughts, yourself and environment and other indicators of consciousness are absent as determined by a neurological assessment by a doctor in consultation with your doctor or APRN.

## **Persistent Vegetative State**

An irreversible condition where reasonable medical judgment finds the complete loss of key brain functions. It results in the end of all thinking and consciousness, although heartbeat and breathing continue. Periods of sleep and wakefulness will still occur.

## **POLST**

Provider Orders for Life Sustaining Treatment. Medical orders for patients likely to be in the last year of life, containing orders (meeting form requirements for Portable DNR orders) which guide medical treatment decisions. A POLST form is intended to move with the patient between health and residential care facilities and is signed by patient and Provider.

## **Provider**

Provider or Medical Care Provider is used in this document to refer to any licensed professional providing medical, rehabilitative, or residential or custodial care under medical orders. It is important to note that the only providers authorized by law to determine a patient's capacity to make medical decisions, to recognize a surrogate, to authorize POLST or DNR orders and Medical Doctors, Advanced Practice Registered Nurses and Physicians Assistants.

## **Trial of Treatment**

To try treatment(s) for a period of time (such as 1 or 2 weeks) until it is decided that the treatment will or will not succeed.

The information contained in this booklet was prepared by the

**New Hampshire Healthcare Decisions Coalition**

The New Hampshire Healthcare Decisions Coalition is a group of organizations and individuals that helps people to plan for their health care, talk about their choices and have them respected.



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