

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 540
Department or Agency: Alabama Board of Medical Examiners
Rule No.: 540-X-9-.13
Rule Title: Physician Issued Verbal Do Not Attempt Resuscitation (DNAR) Order
Intended Action: New

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

William M. Perkins
William M Perkins

Date

Friday, April 5, 2024

REC'D & FILED
APR 8, 2024
LEGISLATIVE SVC AGENCY

ALABAMA BOARD OF MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Medical Examiners

RULE NO. & TITLE: 540-X-9-.13 Physician Issued Verbal Do Not Attempt Resuscitation (DNAR) Order

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

New rule to provide for a process for physicians to verbally communicate and affirm a patient's desire that resuscitative measures be withheld to a facility so that undesired resuscitative measures and/or hospital transfers do not occur.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Carla Kruger, Office of the General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or email (bme@albme.gov), until and including June 4, 2024. Persons wishing to submit data, views, or comments in person should contact Carla Kruger by telephone (334-242-4116) during the comment period. Copies of proposed rules may be obtained at the Board's website, www.albme.gov.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, June 4, 2024

CONTACT PERSON AT AGENCY:

Carla Kruger

*William M. Perkins*

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William M Perkins

(Signature of officer authorized  
to promulgate and adopt  
rules or his or her deputy)

540-X-9-.13

**Physician Issued Verbal Do Not Attempt Resuscitation (DNAR) Order.**

(1) This rule is promulgated pursuant to the Natural Death Act, Code of Ala. 1975, §22-8A-4.1(b)(2). The intent of this rule is to provide for the issuance of a verbal DNAR Order by a patient's attending physician when the patient's decision regarding the provision of resuscitative measures is known but the DNAR Order has not been placed in the patient's medical record. It is further the intent of this rule to prevent the provision of resuscitative measures in violation of a patient's decision when the decision is known to the attending physician but not yet entered into the patient's medical record.

(2) The following definitions will apply to these rules:

(a) ATTENDING PHYSICIAN. The physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) ADVANCE DIRECTIVE FOR HEALTH CARE. A writing executed in accordance with Section 22-8A-4, Code of Alabama 1975, which may include a living will, the appointment of a health care proxy, or both such living will and appointment of a health care proxy.

(c) CARDIOPULMONARY CESSATION. A lack of pulse or respiration.

(d) DNAR (DO NOT ATTEMPT RESUSCITATION) ORDER. A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND." A DNAR order must be entered with the consent of the person, if the person is competent; or in accordance with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or with the consent of a health care proxy or surrogate functioning under the provisions of Title 22, Chapter 8A, Code of Alabama 1975; or instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in 22-8A-4(b)(1), Code of Alabama 1975.

(e) PORTABLE PHYSICIAN DNAR ORDER (PORTABLE DNAR). A DNAR order, entered in the medical record by a physician who has completed all sections of the required form designated by the State Board of Health, that travels with the patient should they transfer to other healthcare facilities.

(f) FACILITY SPECIFIC DNAR ORDER. A DNAR order, entered into the medical record by an attending physician, that may only be acted upon at a specific facility designated in the order.

(g) HEALTH CARE PROVIDER. A person who is licensed, certified, registered, or otherwise authorized by the law of this state to

administer or provide health care in the ordinary course of business or in the practice of a profession.

(h) HEALTH CARE PROXY. Any person designated to act on behalf of an individual pursuant to Section 22-8A-4, Code of Alabama 1975.

(i) LIVING WILL. A witnessed document in writing, voluntarily executed by the declarant, that gives directions and may appoint a health care proxy, in accordance with the requirements of Section 22-8A-4, Code of Alabama 1975.

(j) PATIENT. A terminally ill or injured adult 19 years of age or over who is found with cardiopulmonary cessation.

(k) RESUSCITATIVE MEASURES. Those measures used to restore or support cardiac or respiratory function in the event of cardiopulmonary cessation.

(l) SURROGATE. Any person appointed to act on behalf of an individual pursuant to Section 22-8A-4, Code of Alabama 1975.

(3) Communication of a Portable or Facility-Specific DNAR Order by Verbal Order.

(a) A healthcare provider who becomes aware that a patient wishes for resuscitation to be withheld in the event of cardiopulmonary cessation but has no DNAR filed in his or her medical record should contact the patient's attending physician to see if such an order exists. If no DNAR order has been issued, the attending physician may issue either a portable or facility-specific DNAR by verbal order in accordance with this rule.

(b) If the attending physician or the requesting healthcare provider is in possession of a partially completed State Board of Health portable physician DNAR form such that only the physician authorization section remains to be completed, then the physician may issue a verbal DNAR order to the requesting health care provider so long as the verbal order is pursuant to reasonable medical standards and in good faith, and the attending physician knows that the decision to withhold resuscitative measures has been made in accordance with Section 22-8A-4, Code of Alabama 1975.

(c) An attending physician may issue a facility-specific verbal DNAR order so long as the order is issued pursuant to reasonable medical standards and in good faith, and the attending physician knows that the decision to withhold resuscitative measures has been made in accordance with Section 22-8A-4, Code of Alabama 1975.

(d) An attending physician acts in good faith if the physician has no actual knowledge that a patient's decision to withhold resuscitative measures has been revoked and:

1. The attending physician is in possession of a State Board of Health Alabama Portable Physician Do Not Attempt

Resuscitation Order completed and executed by the patient, if the patient is competent; or

2. The patient has previously executed a living will or advance directive for health care with instructions that no life sustaining treatment be provided, and the living will or advance directive for health care have previously been made part of the patient's medical record; or

3. The patient's health care proxy or attorney-in-fact directs the attending physician in writing that resuscitative measures be withheld, and a copy of the proxy or attorney-in-fact designation has previously been made part of the patient's medical record; or

4. The patient's surrogate directs the attending physician in writing that resuscitative measures be withheld, and a copy of the completed and executed State Board of Health Certification of Health Care Decision Surrogate form has been made part of the patient's medical record.

(e) Any verbal DNAR order must be directly issued by the attending physician to a health care provider who is physically located at the same healthcare facility as the patient.

(f) The attending physician shall enter a completed portable DNAR form as required by the State Board of Health or a facility specific DNAR order in the patient's medical record within 72 hours of issuing the verbal DNAR order for the verbal DNAR order to remain valid.

(g) When an attending physician issues a verbal DNAR order pursuant to the written direction of a patient's health care proxy, attorney-in-fact, or surrogate, the writing shall be made part of the patient's medical record within 72 hours of the issuance of the verbal DNAR order.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Ala. Code §§ 22-8A-4.1(b)(2); 34-24-53; 34-24-53.1

**History: New Rule:** Published \_\_\_\_\_; effective \_\_\_\_\_.