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CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Thursday, June 20, 2024, and filed with the agency secretary on Thursday, June 20, 2024.

AGENCY NAME: Alabama Board of Medical Examiners

INTENDED ACTION: New

RULE NO.: 540-X-9-.13

(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **New Rule**

RULE TITLE: Physician Issued Verbal Do Not Attempt Resuscitation (DNAR) Order

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes. Board was requested to clarify in paragraph (1) that the issuance of a verbal DNAR Order by a patient's attending physician applies to occasions when the patient's attending physician is unable to timely to to the facility where the patient is located. The Board voted to make this non-substantive change to the certified rule.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 7, AAM, DATED TUESDAY, APRIL 30, 2024.

STATUTORY RULEMAKING AUTHORITY: Ala. Code §§ 22-8A-4.1(b)(2); 34-24-53 and 53.1

REC'D & FILED
(Date Filed)
(For LRS Use Only)
JUN 20 2024
LEGISLATIVE SVC AGENCY

William M. Perkins
William M Perkins
Certifying Officer or his or her Deputy

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(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

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, if the patient's attending physician is unable to timely go to the facility where the patient is located, and ~~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 withs 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 _____~~June 28, 2024; effective August 12, 2024.