LEGISLATIVE COMMITTEE MINUTES

SB74

Bill as Introduced

SB 74 - AS INTRODUCED

2021 SESSION

21-0857
08/06

SENATE BILL *74*

AN ACT relative to advance directives for health care decisions.

SPONSORS: Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Watters, Dist 4; Rep. Marsh, Carr. 8; Rep. Woods, Merr. 23

COMMITTEE: Health and Human Services

ANALYSIS

This bill:

I. Defines "attending practitioner" and "POLST."

II. Redefines "near death" as "actively dying."

III. Further defines the role of a surrogate.

IV. Repeals the applicability of certain advanced directives.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

21-0857
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to advance directives for health care decisions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 the authority to make health care decisions on the person's behalf, in the event such person is unable to make those decisions [~~for himself or herself~~] ***independently***, either due to permanent or temporary lack of capacity to make health care decisions;

(b) ***Stating the person's wishes about end of life care and instructing*** [~~Instructing~~] his or her attending physician, PA, or APRN to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.

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.

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 valid [~~advance directive~~] ***durable power of attorney for health care*** or a guardian, as defined in RSA 464-A, to make health care decisions.

IV. While it is a time-honored tradition in this state to allow persons to execute a living will document that sets forth their basic values about end of life treatment, the state recognizes that it is optimal for a person to have an agent under a durable power of

attorney for healthcare document or a surrogate decision-maker who can make decisions in real time and under then-existing conditions regarding health care decisions that best reflect the person's basic values; therefore, this chapter specifies that the directives of a person's living will shall be superseded by the agent or surrogate provided that the agent or surrogate takes into full account all of the basic values of the person as articulated orally and/or in writing by the person, including in the living will. In the event that no agent or surrogate has been appointed, the basic values articulated in the living will shall prevail.

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, as determined by 2 physicians, or a physician and another medical practitioner who is not under the supervision of the certifying physician.

[~~I.~~] ***II.*** "Advance directive" means a directive allowing a person to give directions about future medical care or to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance directives" shall include living wills and durable powers of attorney for health care.

[~~II.~~] ***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.

[~~III.~~] ***IV.*** "Agent" means an adult to whom authority to make health care decisions is delegated under an advance directive.

[~~IV.~~] ***V.*** "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] ***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 shall not mean that the person necessarily lacks the capacity to make health care decisions.

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

[~~VI-a.~~] ***VIII.*** "Close friend" means any person [~~21~~] *18* years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] ***IX.*** "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.

[~~VIII.~~] ***X.*** "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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] ***XI.*** "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.

[~~X.~~] ***XII.*** "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.

[~~XI.~~] ***XIII.*** "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.

[~~XII.~~] ***XIV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***XV.*** "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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVI.*** "Living will" means a directive which, when duly executed, contains the express direction that no life-sustaining treatment be given when the person executing said directive has been diagnosed and certified in writing by the attending [~~physician, PA, or APRN~~] ***practitioner*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision making process.~~] ***fulfill the following sets of criteria:***

(a) The person has permanently lost decision-making capacity; and

(b) The person is suffering from a condition that will lead to death; and

(c) The burdens, risks, or complications of treatment are excessive as defined by that person; or

(d) The person has permanently lost decision-making capacity, and

(e) The person is near death or permanently unconscious, without hope of recovery from such condition.

[~~XV.~~] ***XVII.*** "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.

[~~XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.~~]

[~~XVII.~~] ***XVIII.*** "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.

[~~XVIII.~~] ***XIX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] ***XX.*** "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.

XXI. "POLST" means a form that contains a set of medical orders designed for use with patients with serious illness or frailty. 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 conform to New Hampshire law.

[~~XIX.~~] ***XXII.*** "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter.

[~~XX.~~] ***XXIII.*** "Qualified patient" means [~~a~~] ***any*** patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in writing by the attending [~~physician, PA, or APRN~~] ***practitioner*** to lack the capacity to make health care decisions.

[~~XXI.~~] ***XXIV.*** "Reasonable degree of medical certainty" means a medical judgment that is made by a [~~physician, PA, or APRN~~] ***practitioner*** who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] ***XXV.*** "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.

[~~XXII-a.~~] ***XXVI.*** "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 [~~physician, PA, or APRN~~] ***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.

[~~XXIII.~~] ***XXVII.*** "Witness" means a competent person 18 years or older who is present when the principal signs an advance directive.

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, [~~or~~] 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 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.

~~[III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."]~~

2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 an advance directive, 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 [~~or surrogate's~~] authority under an advance directive ***or a surrogate's authority*** shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing ***or by electronic means*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***, and filed with the name of the agent or surrogate in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing ***or by electronic means*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***, noted in the principal's medical record, 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 lack of decisional capacity of the principal. 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 [~~physician, PA, or APRN~~] ***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. [~~Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."~~]

IV-a. Consent to clinical trials or experimental treatments. An agent or surrogate shall have the authority to consent to clinical trials or experimental treatments, authorized by an institutional review board, on behalf of a patient who does not have the capacity to provide their own consent to a clinical trial or experimental treatment so long as such clinical trial or experimental treatment is consistent with the relevant federal regulations, including 45 CFR part 46, subpart A (the "Common Rule"), and 21 CFR parts 50 and 56, as applicable.

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 on the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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[~~, electro-convulsive shock therapy, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life-threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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,*** 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.

137-J:7 [~~Physician, PA, APRN,~~] ***Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, having knowledge of the qualified patient's advance directive shall be bound to follow, as applicable, the dictates of the qualified patient's living will and/or 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 [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, who is aware of the principal's execution of an advance directive 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 that the principal is a "qualified patient"), and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition, so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified patient, by the qualified patient's agent or surrogate, or by the qualified patient's family, provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment, nutrition, or hydration 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 advance directive, or the agent or surrogate.

III. [~~Medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV.~~] When the direction of an agent or ***surrogate, or in the absence of an agent, surrogate, or*** instruction under a living will 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 principal or 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, nutrition, hydration, or life sustaining treatment which denial would with 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.

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 health care [~~provider~~] ***practitioner*** or [~~residential care provider~~] ***a person acting under the direct authority of the health care practitioner***.

II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.

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 directives as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the advance directive 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***.

137-J:10 [~~Withholding or Withdrawal of Life-Sustaining Treatment~~] ***Criminal Action Not Condoned or Presumed***.

I. [~~In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~III.~~] 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 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life-sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 on the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 standard protocol of a health care facility licensed under RSA 151 as applicable to its general patient population.

[~~V.~~] ***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, II [~~or III~~].

[~~VI.~~] ***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.

[~~VII.~~] ***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 taken 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 physicians, PAs, or APRNs in consultation with patients or their families or legal guardians in the absence of an advance directive.

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.

3 Advanced Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 such person exercised such power 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 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, II[~~or III~~].

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.

4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. The principal shall be required to sign a statement acknowledging [~~that he or she has received~~] the ***personal receipt of the*** disclosure statement and [~~has read and understands~~] ***an understanding of*** its contents.

5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the ***physical or electronic*** 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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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***, either in person or electronically,*** 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 [~~that he or she was aware~~] ***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 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by the principal's name written ***or by electronic means*** by some other person in the principal's presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive or surrogacy ***as applicable*** 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 the principal's spouse or heir at law; 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 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 [~~he or she received the revocation~~] ***the revocation was received***, in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner***.

6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.

7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

137-J:19 Durable Power of Attorney; Disclosure Statement.

The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE 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". An alternate can and should be chosen in case your agent is unable.
- 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 at 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. It is not a medical order (e.g., it is not in and of itself a DNR (do not resuscitate order).
- You will always make your own decisions until you request someone else to, or 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(*), your agent can make all health care decisions for you unless you write down (or check off) what you do not want your agent to be able to choose for you. This includes agreeing to start or stop medical treatment, including near the end of your life.
- Your agent must try to make the best decisions for you, based on what you have said or written in the past. Talk to your agent about your wishes. On the form you can write down wishes, values, or goals about your care.
- If you also have a living will that has different instructions for your medical care, your medical practitioner will follow what your agent chooses based on your Durable Power of Attorney for Healthcare form.
- You can revoke your advance directive at any time as long as you have decision-making capacity by telling a medical practitioner or your agent or by writing it down.
- You do not need a lawyer to complete this form, but you should talk to a lawyer if you have legal questions about it.
- You must sign this form in the presence of 2 witnesses or a notary to be fully valid. The witnesses cannot be your agent, spouse, heir, 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 lawyer, and your medical providers.

* 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.

137-J:20 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance directive in its individual "Durable Power of Attorney for Health Care" and "Living Will" components shall be in substantially the following form:

I. DURABLE POWER OF ATTORNEY

I choose the following person(s) as agent(s) to make health care decisions for me if I 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 write "joint agency".)

A. Choosing your agent: I, _____, DOB, appoint _____ of _____

Alternate, if the person above if not able, willing, or available: _____, DOB, ____ of _____

If no one listed above can make decisions for you, a surrogate will be assigned in the order written in law (spouse, child, parent, sibling....). If there is no surrogate, a court appointed guardian will be assigned.

B. Limiting your Agent's Choices:

Your agent will be able to make any decisions about your medical care that you could normally make, unless you set limits as you write below.

Limits you wish to place on your agent:

_____

_____

If you are physically unable to sign, this directive may be signed by someone else writing your name in your presence at your direction

Signed this _____day of _____. 20___. Signature: _____

Notary

Witnesses

II. LIVING WILL

This directive states your wishes if you cannot make your own decisions.

Declaration made this _____day of __, 20__

1. I, _____, wish my life prolonged as long as possible by whatever reasonable means possible, no matter what burdens, costs or complications may occur. Signed this _____day of _____, 20__. Signature, DOB ____.

OR

2. I, _____, want to be allowed to die naturally. I do not want attempts to prolong my life by medical treatment if the following criteria are met:

A. I cannot make my own decisions and I will not become able to make my own decisions AND

B. I suffer from a condition that will lead to my death AND

C. My condition and its treatment has become excessively burdensome for me and will not get better AND/OR

D. I become permanently unconscious or am actively dying (medical treatment will only prolong my dying)

To help my decision maker(s), these are situations I believe would be excessively burdensome:

(Initial before each statement that would be excessively burdensome for you)

____ if I am unable to recognize my family or friends now or in the foreseeable future

____ if I suffer ongoing symptoms such as pain or shortness of breath despite best medical treatment and there is no reasonable chance the symptoms will go away

Other situations that I would consider excessively burdensome:

_____

_____

In these situations, I want comfort care only. I understand that stopping or starting treatments to achieve my comfort, including stopping hydration and nutrition, may be a way to allow me to die. In order for this living will to become active, 2 attending practitioners must certify that the above criteria have been met. Another medical practitioner means your nurse practitioner or your physician assistant who is not under the direct authority of the certifying physician.

Decisions about what will happen in the future are based on 'a reasonable degree of medical certainty' by a medical practitioner.

If you are physically unable to sign, this directive may be signed by someone else writing your name in your presence at your direction.

Signed this ___ day of _____, 20__. Signature _____, DOB ___.

_____

Notary Public/Justice of the Peace

My commission expires:

Witness

8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 agent by 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 [~~physician, PA, or APRN~~] ***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, II [~~or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner.***

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***A principal may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the [~~person~~] ***principal.***

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second physician ***or other medical practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/ her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~_____~~

~~Address _____~~] ***The do not resuscitate order shall be reflected in at least one of the following forms:***

(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter if applicable;

(b) The medical orders form in compliance with this chapter.

(c) A portable DNR (P-DNR); medical orders form documenting the patient's name and signed by a physician or APRN 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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 ***written or verbal*** do not resuscitate orders for persons in health care facilities, ambulances, homes, and communities within this state.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent by Attending [~~Physician, PA, or APRN~~] ***Practitioner*** Refusing to Comply With Do Not Resuscitate 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 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 [~~physician, PA, or APRN~~] ***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 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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner.***

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's

agent ***or surrogate***, or the person's family. The person, the person's agent, ***the person's surrogate,*** or the person's family may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7, II [~~and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent~~] to a do not resuscitate order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate order by destroying such order and removing do not resuscitate identification on[~~his or her~~] ***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.*** [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate order for a [~~person~~] ***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*** [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time***, in accordance with RSA 137-J:6*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 physician, PA, or APRN of the revocation.~~]

V. The attending [~~physician, PA, or APRN~~] ***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 order ***in the principal's medical record*** if the [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation***, suspension, or*** [~~and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

10 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 [~~or III~~].

11 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid advance directive 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, 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 [~~physician, PA, or APRN~~] ***practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, may make health care decisions for the patient. The

surrogacy provisions of this chapter shall take effect when the decision-maker names are recorded in the medical record. The [~~physician, PA, or APRN~~] ***practitioner*** shall have the right to rely on any of the above surrogates if the [~~physician, PA, or APRN~~] ***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.

12 Advanced Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

13 Advanced Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. A [~~physician, PA, or APRN~~] ***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 a [~~physician, PA, or APRN~~] ***practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 same extent as an agent under a durable power of attorney for health care [~~for up to 90 days after being identified in RSA~~

~~137-J:35, I~~], unless the principal regains health care decision-making capacity or a guardian is appointed [~~or patient is determined to be near death, as defined in RSA 137-J:2, XVI. The authority of the surrogate shall terminate after 90 days~~].

14 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

15 Effective Date. This act shall take effect 60 days after its passage.

SB 74 - AS AMENDED BY THE SENATE

04/01/2021 1022s

2021 SESSION

21-0857
08/06

SENATE BILL ***74***

AN ACT relative to advance directives for health care decisions.

SPONSORS: Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Watters, Dist 4; Rep. Marsh, Carr. 8; Rep. Woods, Merr. 23

COMMITTEE: Health and Human Services

ANALYSIS

This bill:

I. Defines "attending practitioner" and "POLST."

II. Redefines "near death" as "actively dying."

III. Further defines the role of a surrogate.

IV. Repeals the applicability of certain advanced directives.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to advance directives for health care decisions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 [~~for himself or herself~~] ***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*** [~~Instructing his or her~~] attending ***practitioner*** ~~physician, PA, or APRN to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious~~] .

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.

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 [~~valid advance directive~~] ***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.

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.

[~~I.~~] *II.* "Advance directive" means a [~~directive~~] ***document*** allowing a person to give directions ***and guidance*** about future medical care [~~or~~] ***and*** to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance [~~directives~~] ***directive***" shall include [~~living wills and~~] ***a*** durable [~~powers~~] ***power*** of attorney for health care ***and a living will.***

[~~II.~~] *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.

[~~III.~~] *IV.* "Agent" means an adult to whom authority to make health care decisions is delegated under[~~ an advance directive~~] ***a durable power of attorney for health care.***

[~~IV.~~] *V.* "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] *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 shall not mean that the person necessarily lacks the capacity to make health care decisions.

[~~VI.~~] *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.

[~~VI-a.~~] *IX.* "Close friend" means any person [~~21~~] *18* years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] *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.

[~~VIII.~~] *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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] X*II.* "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.

[~~X.~~] ***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.

[~~XI.~~] ***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.

[~~XII.~~] ***XV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVII.*** "Living will" means a [~~directive~~] ***written statement of guidance that*** [~~which, when duly executed, contains~~] ***sets forth*** the express [~~direction~~] ***wishes of the principal*** that ***attempts at life sustaining treatment shall be continued or that certain*** [~~no~~] life-sustaining treatment ***shall not*** be [~~given~~] ***attempted*** when the [~~person executing said directive~~] ***principal*** has been diagnosed and certified in [~~writing~~] ***the principal's medical record*** by [~~the~~] ***2*** attending [~~physician, PA, or APRN~~] ***physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision making process.~~] ***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.***

[~~XV.~~] ***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.

[~~XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.~~]

[~~XVII.~~] ***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.

[~~XVIII.~~] ***XX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] ***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.

[~~XIX.~~] ***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.***

[~~XX.~~] ***XXIV.*** "Qualified patient" means [~~a~~] ***any*** patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in [~~writing~~] ***the patient's medical record*** by the attending [~~physician, PA, or APRN~~] ***practitioner*** to lack the capacity to make health care decisions.

[~~XXI.~~] ***XXV.*** "Reasonable degree of medical certainty" means a medical judgment that is made by [~~a physician, PA, or APRN~~] ***the attending practitioner*** who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] ***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.

[~~XXII-a.~~] ***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 [~~physician, PA, or APRN~~] ***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. "Virtual presence" means the use of an electronic device or process through which all participating individuals can communicate simultaneously by sight and sound.

[~~XXIII.~~] ***XXIX.*** "Witness" means a competent person 18 years or older who is [~~present~~] ***in the physical or virtual presence of the principal*** when the principal signs an advance directive.

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, [~~or~~] 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.

[~~III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."~~]

2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 [~~an advance directive~~] 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 [~~or surrogate's~~] authority under [~~an advance directive~~] ***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 [~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***. [~~and filed with~~] 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[~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***[~~, noted in the principal's medical record~~], 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 [~~decisional~~] capacity ***to make health care decisions*** [~~of the principal~~]. 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 [~~physician, PA, or APRN~~] ***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.*** [~~Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to~~

~~or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."~~]

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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life-threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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.

137-J:7 [~~Physician, PA, APRN,~~] ***Attending Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, [~~having knowledge of the qualified patient's advance directive~~] shall [~~be bound to~~] follow, as applicable, [~~the dictates of the qualified patient's living will and/or~~] 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~~] ***with accepted*** medical practice.

(a) An attending [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, [~~who is aware of the principal's execution of an advance directive~~] 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"), [~~and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition,~~] so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent ***or surrogate*** may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with ***a POLST,*** the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified [~~patient, by the qualified~~] patient's agent or surrogate[~~, or by the qualified patient's family,~~] provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment[~~, nutrition, or hydration~~] 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. [~~Medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV. When the direction of an agent or instruction under a living will~~] ***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 principal or 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, [~~nutrition, hydration, or life-sustaining treatment~~] which denial would [~~with~~] ***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.

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 [~~health care provider~~] ***attending practitioner*** or [~~residential care provider~~] ***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.

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 [~~directives~~] ***directive*** as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the [~~advance directive~~] ***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***.

137-J:10 [~~Withholding or Withdrawal of Life-Sustaining Treatment~~] ***Criminal Act Not Construed or Authorized.***

I. [~~In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~III.~~] 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~standard~~] ***written*** protocol of a health care facility licensed under RSA 151 as applicable to its general patient population.

[~~V.~~] ***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[~~, II or III~~].

[~~VI.~~] ***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.

[~~VII.~~] ***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 [~~taken~~] ***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 [~~physicians, PAs, or APRNs~~] ***attending practitioners*** in consultation with patients, [~~or their families~~] ***their surrogates,*** or legal guardians in the absence of an advance directive.

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.

3 Advance Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 [~~exercised~~] ***made*** such [~~power~~] ***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[~~, II or III~~].

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.

4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. [~~The principal shall be required to sign a statement acknowledging that he or she has received the its contents.~~]

5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the ***physical or virtual*** 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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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 [~~that he or she was aware~~] ***awareness*** of the nature of the document and signed it freely and voluntarily. ***Witnesses who sign in the virtual presence of the principal may sign in one or more counterparts, and the counterparts must be attached to the advance directive signed by the principal***; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by ***another person who signs*** the principal's name [~~written by some other person~~] in the principal's ***physical*** presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive [~~or surrogacy~~] 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 ***physical or virtual*** presence of 2 or more witnesses, none of whom shall be [~~the principal's spouse or heir at law~~] ***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 [~~he or she received the revocation~~] ***the revocation was received***, in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner.***

6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.***

7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

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.

- 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 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."

- 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:

o "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or

o "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. Talk to your agent 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 or virtual 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.

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 for your agent below.

_____

_____

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:

_____

_____

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 the disclosure statement, and I have completed the durable power of attorney for health care and/or living will consistent with 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. IF VIRTUAL PRESENCE IS USED, THE PAGES SIGNED BY THE WITNESSES MUST BE ATTACHED TO THE ADVANCE DIRECTIVE SIGNED BY YOU OR THE ADVANCE DIRECTIVE WILL NOT BE VALID.

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:

8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 [~~the authority granted to an agent by~~] 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 [~~physician, PA, or APRN~~] ***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[~~, II or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~ that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner***.

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the person.

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second [~~physician~~] ***practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/ her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~_____~~

~~Address _____~~] ***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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent ***or Surrogate*** by Attending [~~Physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner.***

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate ***or POLST*** order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's agent ***or surrogate.***[~~,~~] ***The person*** or the person's [~~family. The person, the person's~~] agent[~~,~~] ***or surrogate***[~~ or the person's family~~] may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7[~~, II and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate ***or POLST*** Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent to~~] a do not resuscitate ***or POLST*** order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate ***or POLST*** order by destroying such order and removing do not resuscitate identification on[~~ his or her~~] ***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.*** [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate ***or POLST*** order for a [~~person~~] ***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*** [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time, ***in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate or POLST order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** of the revocation.

V. The attending [~~physician, PA, or APRN~~] ***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 [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation, ***suspension, or*** [~~and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

10 Not Suicide or Murder. Amend RSA 137-J:30 to read as follows:

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 [~~assisted suicide~~] ***euthanasia.***

11 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 or III~~].

12 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***attending practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid [~~advance directive~~] ***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~~], 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 [~~physician, PA, or APRN~~] ***attending practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***attending practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** shall have the right to rely on any of the above surrogates if the [~~physician, PA, or APRN~~] ***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.

13 Advance Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

14 Advance Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. [~~A physician, PA, or APRN~~] ***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 [~~a physician, PA, or APRN~~] ***an attending practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 [~~90~~] ***180*** days after being identified in RSA 137-J:35, I[~~, unless~~]. ***The authority of the surrogate shall terminate if*** the principal regains ***the capacity to make*** health care [~~decision-making capacity~~] ***decisions*** or a guardian is appointed [~~or patient is determined to be near death, as defined in RSA 137-J:2, XVI~~]. The authority of the surrogate shall terminate after [~~90~~] ***180*** days, ***unless the patient is determined to be actively dying***.

15 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

16 Effective Date.

I. Section RSA 137-J:5 IV-a as inserted by section 2 of this act shall take effect July 1, 2021.

II. The remainder of this act shall take effect upon its passage.

SB 74 - AS AMENDED BY THE HOUSE

04/01/2021 1022s
3Jun2021... 1846h

2021 SESSION

21-0857
08/06

SENATE BILL *74*

AN ACT relative to advance directives for health care decisions.

SPONSORS: Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Watters, Dist 4; Rep. Marsh, Carr. 8; Rep. Woods, Merr. 23

COMMITTEE: Health and Human Services

ANALYSIS

This bill:

I. Defines "attending practitioner" and "POLST."

II. Redefines "near death" as "actively dying."

III. Further defines the role of a surrogate.

IV. Repeals the applicability of certain advanced directives.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

04/01/2021 1022s
3Jun2021... 1846h

21-0857
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to advance directives for health care decisions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 [~~for himself or herself~~] ***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*** [~~Instructing his or her~~] attending ***practitioner*** ~~physician, PA, or APRN to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious~~] .

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 [~~valid advance directive~~] ***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.

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.

[~~I.~~] *II.* "Advance directive" means a [~~directive~~] ***document*** allowing a person to give directions ***and guidance*** about future medical care [~~or~~] ***and*** to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance [~~directives~~] ***directive***" shall include [~~living wills and~~] ***a*** durable [~~powers~~] ***power*** of attorney for health care ***and a living will.***

[~~II.~~] *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.

[~~III.~~] *IV.* "Agent" means an adult to whom authority to make health care decisions is delegated under[~~ an advance directive~~] ***a durable power of attorney for health care.***

[~~IV.~~] *V.* "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] *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.

[~~VI.~~] ***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.

[~~VI-a.~~] ***IX.*** "Close friend" means any person [~~21~~] ***18*** years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] ***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.

[~~VIII.~~] ***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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] ***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.

[~~X.~~] ***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.

[~~XI.~~] ***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.

[~~XII.~~] ***XV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVII.*** "Living will" means a [~~directive~~] ***written statement of guidance that*** [~~which, when duly executed, contains~~] ***sets forth*** the express [~~direction~~] ***wishes of the principal*** that ***attempts at life sustaining treatment shall be continued or that certain*** [~~no~~] life-sustaining treatment ***shall not*** be [~~given~~] ***attempted*** when the [~~person executing said directive~~] ***principal*** has been diagnosed and certified in [~~writing~~] ***the principal's medical record*** by [~~the~~] ***2*** attending [~~physician, PA, or APRN~~] ***physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.~~] ***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.***

[~~XV.~~] ***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.

[~~XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.~~]

[~~XVII.~~] ***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.

[~~XVIII.~~] ***XX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] *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.

[~~XIX.~~] *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.*

[~~XX.~~] *XXIV.* "Qualified patient" means [~~a~~] *any* patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in [~~writing~~] *the patient's medical record* by the attending [~~physician, PA, or APRN~~] *practitioner* to lack the capacity to make health care decisions.

[~~XXI.~~] *XXV.* "Reasonable degree of medical certainty" means a medical judgment that is made by [~~a physician, PA, or APRN~~] *the attending practitioner* who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] *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.

[~~XXII-a.~~] *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 [~~physician, PA, or APRN~~] *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.

[~~XXIII.~~] *XXVIII.* "Witness" means a competent person 18 years or older who is present when the principal signs an advance directive.

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, [~~or~~] 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.

~~[III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."]~~

2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 [~~an advance directive~~] 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 [~~or surrogate's~~] authority under [~~an advance directive~~] ***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 [~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***. [~~and filed with~~] 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[~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner[~~, noted in the principal's medical record~~]***, 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 [~~decisional~~] capacity ***to make health care decisions*** [~~of the principal~~]. 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 [~~physician, PA, or APRN~~] ***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. ~~[Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."]~~

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 [~~on~~] *in* the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life-threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline~~

~~the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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.

137-J:7 [~~Physician, PA, APRN,~~] ***Attending Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, [~~having knowledge of the qualified patient's advance directive~~] shall [~~be bound to~~] follow, as applicable, [~~the dictates of the qualified patient's living will and/or~~] 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 [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, [~~who is aware of the principal's execution of an advance directive~~] 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"), [~~and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition,~~] so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent ***or surrogate*** may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's~~

~~agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with ***a POLST,*** the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified [~~patient, by the qualified~~] patient's agent or surrogate[~~, or by the qualified patient's family,~~] provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment[~~, nutrition, or hydration~~] 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. [~~Medically administered nutrition and hydration and life sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV. When the direction of an agent or instruction under a living will~~] ***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 principal or 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, [~~nutrition, hydration, or life-sustaining treatment~~] which denial would [~~with~~] ***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.

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 [~~health care provider~~] ***attending practitioner*** or [~~residential care provider~~] ***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.

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 [~~directives~~] ***directive*** as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the [~~advance directive~~] ***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.***

137-J:10 [~~Withholding or Withdrawal of Life-Sustaining Treatment~~] ***Criminal Act Not Construed or Authorized.***

I. [~~In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~III.~~] 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life-sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~standard~~] ***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.

[~~V.~~] ***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[~~, II or III~~].

[~~VI.~~] ***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.

[~~VII.~~] *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 [~~taken~~] ***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 [~~physicians, PAs, or APRNs~~] ***attending practitioners*** in consultation with patients, [~~or their families~~] ***their surrogates,*** or legal guardians in the absence of an advance directive.

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.

3 Advance Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 [~~exercised~~] ***made*** such [~~power~~] ***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[~~, II or III~~].

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.

4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. [~~The principal shall be required to sign a statement acknowledging that he or she has received the its contents.~~]

5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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 [~~that he or she was aware~~] ***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 or RSA 456-A~~] ***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 [~~written by some other person~~] in the principal's ***physical*** presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive [~~or surrogacy~~] 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 [~~the principal's spouse or heir at law~~] ***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 [~~he or she received the revocation~~] ***the revocation was received***, in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~, or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner.***

6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.***

7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

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.

• 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."

• 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:

o "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or

o "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. Talk to your agent 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.

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:

8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 [~~the authority granted to an agent by~~] 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 [~~physician, PA, or APRN~~] ***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[~~, II or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~ that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner.***

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the person.

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second [~~physician~~] ***practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~Address _____~~] ***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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent ***or Surrogate*** by Attending [~~Physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner.***

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate ***or POLST*** order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's agent ***or surrogate.***[~~,~~] ***The person*** or the person's [~~family. The person, the person's~~] agent[~~,~~] ***or surrogate***[~~ or the person's family~~] may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7[~~, II and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate ***or POLST*** Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent to~~] a do not resuscitate ***or POLST*** order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate ***or POLST*** order by destroying such order and removing do not resuscitate identification on[~~his or her~~] ***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. [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate ***or POLST*** order for a [~~person~~] ***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*** [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate or POLST order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** of the revocation.

V. The attending [~~physician, PA, or APRN~~] ***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 [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation***, suspension, or*** [~~and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

10 Not Suicide or Murder. Amend RSA 137-J:30 to read as follows:

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 [~~assisted suicide~~] ***euthanasia.***

11 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 or III~~].

12 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***attending practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***attending practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** shall have the right to rely on any of the above surrogates if the

[~~physician, PA, or APRN~~] ***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.

13 Advance Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

14 Advance Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. [~~A physician, PA, or APRN~~] ***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 [~~a physician, PA, or APRN~~] ***an attending practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 [~~90~~] ***180*** days after being identified in RSA 137-J:35, I[~~, unless~~]. ***The authority of the surrogate shall terminate if*** the principal regains ***the capacity to make*** health care [~~decision-making capacity~~] ***decisions*** or a guardian is

appointed [~~or patient is determined to be near-death, as defined in RSA 137-J:2, XVI~~]. The authority of the surrogate shall terminate after [~~90~~] ***180*** days, ***unless the patient is determined to be actively dying.***

15 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

16 Effective Date.

I. Section RSA 137-J:5 IV-a as inserted by section 2 of this act shall take effect July 1, 2021.

II. The remainder of this act shall take effect upon its passage.

CHAPTER 176
SB 74 - FINAL VERSION

04/01/2021 1022s
3Jun2021... 1846h

2021 SESSION

21-0857
08/06

SENATE BILL *74*

AN ACT relative to advance directives for health care decisions.

SPONSORS: Sen. Sherman, Dist 24; Sen. Bradley, Dist 3; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Watters, Dist 4; Rep. Marsh, Carr. 8; Rep. Woods, Merr. 23

COMMITTEE: Health and Human Services

ANALYSIS

This bill:

I. Defines "attending practitioner" and "POLST."

II. Redefines "near death" as "actively dying."

III. Further defines the role of a surrogate.

IV. Repeals the applicability of certain advanced directives.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 176
SB 74 - FINAL VERSION

04/01/2021 1022s
3Jun2021... 1846h

21-0857
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to advance directives for health care decisions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

176:1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 [~~for himself or herself~~] ***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*** [~~Instructing his or her~~] attending ***practitioner*** [~~physician, PA, or APRN to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious~~].

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 [~~valid advance directive~~] ***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.

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.

[~~I.~~] ***II.*** "Advance directive" means a [~~directive~~] ***document*** allowing a person to give directions ***and guidance*** about future medical care [~~or~~] ***and*** to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance [~~directives~~] ***directive***" shall include [~~living wills and~~] ***a*** durable [~~powers~~] ***power*** of attorney for health care ***and a living will.***

[~~II.~~] ***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.

[~~III.~~] ***IV.*** "Agent" means an adult to whom authority to make health care decisions is delegated under[~~ an advance directive~~] ***a durable power of attorney for health care.***

[~~IV.~~] ***V.*** "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] ***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.

[~~VI.~~] ***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.

[~~VI-a.~~] ***IX.*** "Close friend" means any person [~~21~~] ***18*** years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] ***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.

[~~VIII.~~] ***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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] ***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.

[~~X.~~] ***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.

[~~XI.~~] ***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.

[~~XII.~~] ***XV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVII.*** "Living will" means a [~~directive~~] ***written statement of guidance that*** [~~which, when duly executed, contains~~] ***sets forth*** the express [~~direction~~] ***wishes of the principal*** that ***attempts at life sustaining treatment shall be continued or that certain*** [~~no~~] life-sustaining treatment ***shall not*** be [~~given~~] ***attempted*** when the [~~person executing said directive~~] ***principal*** has been diagnosed and certified in [~~writing~~] ***the principal's medical record*** by [~~the~~] ***2*** attending [~~physician, PA, or APRN~~] ***physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.~~] ***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.***

[~~XV.~~] ***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.

[~~XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.~~]

[~~XVII.~~] ***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.

[~~XVIII.~~] ***XX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] ***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.

[~~XIX.~~] ***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.***

[~~XX.~~] ***XXIV.*** "Qualified patient" means [~~a~~] ***any*** patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in [~~writing~~] ***the patient's medical record*** by the attending [~~physician, PA, or APRN~~] ***practitioner*** to lack the capacity to make health care decisions.

[~~XXI.~~] ***XXV.*** "Reasonable degree of medical certainty" means a medical judgment that is made by [~~a physician, PA, or APRN~~] ***the attending practitioner*** who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] ***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.

[~~XXII-a.~~] ***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 [~~physician, PA, or APRN~~] ***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.

[~~XXIII.~~] ***XXVIII.*** "Witness" means a competent person 18 years or older who is present when the principal signs an advance directive.

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, [~~or~~] 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.

[~~III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."~~]

176:2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 [~~an advance directive~~] 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 [~~or surrogate's~~] authority under [~~an advance directive~~] ***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 [~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***. [~~and filed with~~] 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[~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***[~~, noted in the principal's medical record~~], 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 [~~decisional~~] capacity ***to make health care decisions*** [~~of the principal~~]. 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 [~~physician, PA, or APRN~~] ***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.*** [~~Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."~~]

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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life-threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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.

137-J:7 [~~Physician, PA, APRN,~~] ***Attending Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, [~~having knowledge of the qualified patient's advance directive~~] shall [~~be bound to~~] follow, as applicable, [~~the dictates of the qualified patient's living will and/or~~] 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 [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, [~~who is aware of the principal's execution of an advance directive~~] 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"), [~~and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical~~

~~condition,~~] so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent ***or surrogate*** may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with ***a POLST,*** the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified [~~patient, by the qualified~~] patient's agent or surrogate[~~, or by the qualified patient's family,~~] provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment[~~, nutrition, or hydration~~] 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. [~~Medically administered nutrition and hydration and life sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV. When the direction of an agent or instruction under a living will~~] ***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 principal or 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, [~~nutrition, hydration, or life sustaining treatment~~] which denial would [~~with~~] ***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.

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 [~~health care provider~~] ***attending practitioner*** or [~~residential care provider~~] ***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.

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 [~~directives~~] ***directive*** as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the [~~advance directive~~] ***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.***

137-J:10 [~~Withholding or Withdrawal of Life-Sustaining Treatment~~] ***Criminal Act Not Construed or Authorized.***

I. [~~In the event a health care decision to withhold or withdraw life sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the~~

~~principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~III.~~] 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~standard~~] ***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.

[~~V.~~] ***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[~~, II or III~~].

[~~VI.~~] ***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.

[~~VII.~~] ***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 [~~taken~~] ***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 [~~physicians, PAs, or APRNs~~] ***attending practitioners*** in consultation with patients, [~~or their families~~] ***their surrogates,*** or legal guardians in the absence of an advance directive.

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.

176:3 Advance Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 [~~exercised~~] ***made*** such [~~power~~] ***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[~~, II or III~~].

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.

176:4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. [~~The principal shall be required to sign a statement acknowledging that he or she has received the its contents.~~]

176:5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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 [~~that he or she was aware~~] ***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 or RSA 456-A~~] ***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 [~~written by some other person~~] in the principal's ***physical*** presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive [~~or surrogacy~~] 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 [~~the principal's spouse or heir at law~~] ***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 [~~he or she received the revocation~~] ***the revocation was received,*** in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~-or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner.***

176:6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.***

176:7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

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.

• 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."

• 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:

o "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or

o "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. Talk to your agent 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.

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:

176:8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 [~~the authority granted to an agent by~~] 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 [~~physician, PA, or APRN~~] ***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[~~, II or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

176:9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner.***

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the person.

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second [~~physician~~] ***practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/ her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~_____~~

~~Address _____~~] ***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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent ***or Surrogate*** by Attending [~~Physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner.***

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate ***or POLST*** order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's agent ***or surrogate.***[~~,~~] ***The person*** or the person's [~~family. The person, the person's~~] agent[~~,~~] ***or surrogate***[~~ or the person's family~~] may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7[~~, II and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate ***or POLST*** Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent to~~] a do not resuscitate ***or POLST*** order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate ***or POLST*** order by destroying such order and removing do not resuscitate identification on[~~ his or her~~] ***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.*** [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate ***or POLST*** order for a [~~person~~] ***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*** [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate or POLST order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** of the revocation.

V. The attending [~~physician, PA, or APRN~~] ***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 [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation***, suspension, or*** [~~ and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

176:10 Not Suicide or Murder. Amend RSA 137-J:30 to read as follows:

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 [~~assisted suicide~~] ***euthanasia***.

176:11 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 or III~~].

176:12 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***attending practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***attending practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** shall have the right to rely on any of the above surrogates if the [~~physician, PA, or APRN~~] ***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.

176:13 Advance Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

176:14 Advance Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. [~~A physician, PA, or APRN~~] ***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 [~~a physician, PA, or APRN~~] ***an attending practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 [~~90~~] ***180*** days after being identified in RSA 137-J:35, I[~~, unless~~]. ***The authority of the surrogate shall terminate if*** the principal regains ***the capacity to make*** health care [~~decision making capacity~~] ***decisions*** or a guardian is appointed [~~or patient is determined to be near death, as defined in RSA 137-J:2, XVI~~]. The authority of the surrogate shall terminate after [~~90~~] ***180*** days***, unless the patient is determined to be actively dying***.

176:15 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

176:16 Effective Date.

I. RSA 137-J:5, IV-a as inserted by section 2 of this act shall take effect July 1, 2021.

II. The remainder of this act shall take effect upon its passage.

Approved: July 30, 2021
Effective Date:
I. RSA 137-J:5, IV-a as inserted by section 2 shall take effect July 1, 2021.
II. Remainder shall take effect July 30, 2021.

Amendments

Sen. Sherman, Dist 24
January 27, 2021
2021-0137s
08/05

Amendment to SB 74

Amend RSA 137-J:1, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) ***Stating the person's wishes about end of life care and instructing*** ~~[Instructing]~~ his or her attending ~~[physician, PA, or APRN]~~ ***practitioner*** to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.

Amend RSA 137-J:2, I as inserted by section 1 of the bill by replacing it with the following:

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, as determined by 2 physicians, or a physician and another attending practitioner who is not under the supervision of the certifying physician.

Amend the introductory paragraph of RSA 137-J:2, XVI as inserted by section 1 of the bill by replacing it with the following:

~~[XIV.]~~ ***XVI.*** "Living will" means a directive which, when duly executed, contains the express direction ***that life sustaining treatment shall be continued or*** that no life-sustaining treatment be given when the person executing said directive has been diagnosed and certified in writing by ~~[the]~~ ***2*** attending ~~[physician, PA, or APRN]~~ ***physicians or a physician and another attending practitioner*** to ~~[be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.]~~ ***fulfill the following sets of criteria:***

Amend RSA 137-J:2, XVI(e) as inserted by section 1 of the bill by replacing it with the following:

(e) The person is actively dying or permanently unconscious, without hope of recovery from such condition.

Amend RSA 137-J:2, XXI as inserted by section 1 of the bill by replacing it with the following:

XXI. "Physician orders for life sustaining treatment" or "POLST" means a form that contains a set of medical orders designed for use with patients with serious illness or frailty. 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.

Amend RSA 137-J:7, I(c) as inserted by section 2 of the bill by replacing it with the following:

(c) The principal's attending [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, who is aware of the principal's execution of an advance directive 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 that the principal is a "qualified patient"), and/or the principal's [~~near death~~] ***actively dying*** or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition, so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent may be authorized to act pursuant to this chapter.

Amend RSA 137-J:7, III as inserted by section 2 of the bill by replacing it with the following:

III. [~~Medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV.~~] When the direction of an agent or ***surrogate, or in the absence of an agent, surrogate,*** instruction under a living will 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 principal or 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, nutrition, hydration, or life sustaining treatment which denial would with 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.

Amend RSA 137-J:19 as inserted by section 7 of the bill by replacing it with the following:

137-J:19 Durable Power of Attorney; Disclosure Statement.

The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE 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". An alternate can and should be chosen in case your agent is unable.
- 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 at 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. It is not a medical order (e.g., it is not in and of itself a DNR (do not resuscitate order).
- You will always make your own decisions until you request someone else to, or 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(*), your agent can make all health care decisions for you unless you write down (or check off) what you do not want your agent to be able to choose for you. This includes agreeing to start or stop medical treatment, including near the end of your life.
- Your agent must try to make the best decisions for you, based on what you have said or written in the past. Talk to your agent about your wishes. On the form you can write down wishes, values, or goals about your care.
- If you also have a living will that has different instructions for your medical care, your medical practitioner will follow what your agent chooses based on your Durable Power of Attorney for Healthcare form.
- You do not need a lawyer to complete this form, but you should talk to a lawyer if you have legal questions about it.
- You must sign this form in the presence of 2 witnesses or a notary to be fully valid. The witnesses cannot be your agent, spouse, heir, 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 lawyer, and your medical providers.

* 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.

Amend RSA 137-J:20, I, A-B as inserted by section 7 of the bill by replacing it with the following:

A. Choosing your agent: I, _____, DOB, appoint _____, DOB, of _____ to be my agent.

Alternate, if the person above is not able, willing, or available: _____, DOB, _____ of _____

If no one listed above can make decisions for you, a surrogate may be assigned in the order written in law (spouse, child, parent, sibling....). If there is no surrogate, a court appointed guardian may be assigned.

B. Limiting your Agent's Choices or Providing your Agent with Additional Instructions:

Your agent will be able to make any decisions about your medical care that you could normally make, unless you set limits or provide other instructions as written below.

Limits you wish to place on your agent or additional instructions provided to your agent:

_____

_____

If you are physically unable to sign, this directive may be signed by someone else writing your name in your presence at your direction.

Signed this _____day of _____, 20___. Signature: _____

Notary

Witnesses

Amend RSA 137-F:20, II as inserted by section 7 of the bill by replacing it with the following:

II. LIVING WILL

This directive states your wishes if you cannot make your own decisions.

Declaration made this _____day of __, 20__

1. I, _____, wish my life prolonged as long as possible by whatever reasonable means possible, no matter what burdens, costs or complications may occur. Signed this _____day of _____, 20__. Signature, DOB ____.

OR

2. I, _____, want to be allowed to die naturally. I do not want attempts to prolong my life by medical treatment if the following criteria are met:

A. I cannot make my own decisions and I will not become able to make my own decisions AND

B. I suffer from a condition that will lead to my death AND

C. My condition and its treatment has become excessively burdensome for me and will not get better AND/OR

D. I become permanently unconscious or am actively dying (medical treatment will only prolong my dying)

To help my decision maker(s), these are situations I believe would be excessively burdensome:

(Initial before each statement that would be excessively burdensome for you)

____ if I am unable to recognize my family or friends now or in the foreseeable future

____ if I suffer ongoing symptoms such as pain or shortness of breath despite best medical treatment and there is no reasonable chance the symptoms will go away

Other situations that I would consider excessively burdensome:

_____

_____

In these situations, I want comfort care only. I understand that stopping or starting treatments to achieve my comfort, including stopping hydration and nutrition, may be a way to allow me to die. In order for this living will to become active, 2 attending physicians or a physician and another attending practitioner must certify that the above criteria have been met. Another medical practitioner means your nurse practitioner or your physician assistant who is not under the direct authority of the certifying physician.

Decisions about what will happen in the future are based on 'a reasonable degree of medical certainty' by a medical practitioner.

If you are physically unable to sign, this directive may be signed by someone else writing your name in your presence at your direction.

Signed this ___ day of _____, 20__. Signature _____, DOB ___.

_____

Notary Public/Justice of the Peace

My commission expires:

Witness

Amend RSA 137-J:35, I(a) as inserted by section 1 of the bill by replacing it with the following:

(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.

Sen. Sherman, Dist 24
March 16, 2021
2021-0854s
08/05

Amendment to SB 74

Amend the bill by replacing all after the enacting clause with the following:

1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 [~~for himself or herself~~] ***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*** [~~Instructing his or her~~] attending ***practitioner*** ~~physician, PA, or APRN to provide, withhold, or withdraw life sustaining treatment, in the event such person is near death or is permanently unconscious~~] .

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.

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 [~~valid advance directive~~] ***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.

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.

[~~I.~~] ***II.*** "Advance directive" means a [~~directive~~] ***document*** allowing a person to give directions ***and guidance*** about future medical care [~~or~~] ***and*** to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance [~~directives~~] ***directive***" shall include [~~living wills and~~] ***a*** durable [~~powers~~] ***power*** of attorney for health care ***and a living will.***

[~~II.~~] ***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.

[~~III.~~] ***IV.*** "Agent" means an adult to whom authority to make health care decisions is delegated under[~~an advance directive~~] ***a durable power of attorney for health care.***

[~~IV.~~] ***V.*** "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] ***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 shall not mean that the person necessarily lacks the capacity to make health care decisions.

[~~VI.~~] ***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.

[~~VI a.~~] ***IX.*** "Close friend" means any person [~~21~~] ***18*** years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] ***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.

[~~VIII.~~] ***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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated, or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] X***II.*** "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.

[~~X.~~] ***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.

[~~XI.~~] ***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.

[~~XII.~~] ***XV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVII.*** "Living will" means a [~~directive~~] ***written statement of guidance that*** [~~which, when duly executed, contains~~] ***sets forth*** the express [~~direction~~] ***wishes of the principal*** that ***attempts at life sustaining treatment shall be continued or that certain*** [~~no~~] life-sustaining treatment ***shall not*** be [~~given~~] ***attempted*** when the [~~person executing said directive~~] ***principal*** has been diagnosed and certified in [~~writing~~] ***the principal's medical record*** by [~~the~~] ***2*** attending [~~physician, PA, or APRN~~] ***physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision making process.~~] ***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.***

[~~XV.~~] ***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.

~~[XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.]~~

[~~XVII.~~] ***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.

[~~XVIII.~~] ***XX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] ***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.

[~~XIX.~~] ***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.***

[~~XX.~~] ***XXIV.*** "Qualified patient" means [~~a~~] ***any*** patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in [~~writing~~] ***the patient's medical record*** by the attending [~~physician, PA, or APRN~~] ***practitioner*** to lack the capacity to make health care decisions.

[~~XXI.~~] ***XXV.*** "Reasonable degree of medical certainty" means a medical judgment that is made by [~~a physician, PA, or APRN~~] ***the attending practitioner*** who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] ***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.

[~~XXII-a.~~] ***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 [~~physician, PA, or APRN~~] ***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. "Virtual-presence" means the use of an electronic device or process through which all participating individuals can communicate simultaneously by sight and sound.

[~~XXIII.~~] ***XXIX.*** "Witness" means a competent person 18 years or older who is [~~present~~] ***in the physical or virtual presence of the principal*** when the principal signs an advance directive.

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, [~~or~~] 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.

~~[III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."]~~

2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 [~~an advance directive~~] 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 [~~or surrogate's~~] authority under [~~an advance directive~~] ***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 [~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***. [~~and filed with~~] 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[~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***[~~, noted in the principal's medical record~~], 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 [~~decisional~~] capacity ***to make health care decisions*** [~~of the principal~~]. 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 [~~physician, PA, or APRN~~] ***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. [~~Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."~~]

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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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.

137-J:7 [~~Physician, PA, APRN,~~] ***Attending Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, [~~having knowledge of the qualified patient's advance directive~~] shall [~~be bound to~~] follow, as applicable, [~~the dictates of the qualified patient's living will and/or~~] 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~~] ***with accepted*** medical practice.

(a) An attending [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, [~~who is aware of the principal's execution of an advance directive~~] 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"), [~~and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition,~~] so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent ***or surrogate*** may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with ***a POLST,*** the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified [~~patient, by the qualified~~] patient's agent or surrogate[~~, or by the qualified patient's family,~~] provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment[~~, nutrition, or hydration~~] 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. [~~Medically administered nutrition and hydration and life sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV. When the direction of an agent or instruction under a living will~~] ***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 principal or 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, [~~nutrition, hydration, or life sustaining treatment~~] which denial would, [~~with~~] ***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.

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 [~~health care provider~~] ***attending practitioner*** or [~~residential care provider~~] ***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.

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 [~~directives~~] ***directive*** as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the [~~advance directive~~] ***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***.

137-J:10 [~~Withholding or Withdrawal of Life Sustaining Treatment~~] ***Criminal Act Not Construed or Authorized.***

I. [~~In the event a health care decision to withhold or withdraw life sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

[~~III.~~] 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life-sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~standard~~] ***written*** protocol of a health care facility licensed under RSA 151 as applicable to its general patient population.

[~~V.~~] ***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[~~, [II or III~~].

[~~VI.~~] ***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.

[~~VII.~~] ***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 [~~taken~~] ***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 [~~physicians, PAs, or APRNs~~] ***attending practitioners*** in consultation with patients, [~~or their families~~] ***their surrogates,*** or legal guardians in the absence of an advance directive.

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.

3 Advance Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 [~~exercised~~] ***made*** such [~~power~~] ***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[~~, II or III~~].

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.

4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. [~~The principal shall be required to sign a statement acknowledging that he or she has received the its contents.~~]

5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the ***physical or virtual*** 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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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 [~~that he or she was aware~~] ***awareness*** of the nature of the document and signed it freely and voluntarily. ***Witnesses who sign in the virtual presence of the principal may sign in one or more counterparts, and the counterparts must be attached to the advance directive signed by the principal***; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by ***another person who signs*** the principal's name [~~written by some other person~~] in the principal's ***physical*** presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive [~~or surrogacy~~] 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 ***physical or virtual*** presence of 2 or more witnesses, none of whom shall be [~~the principal's spouse or heir at law~~] ***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 [~~he or she received the revocation~~] ***the revocation was received***, in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner***.

6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.***

7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

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.

- 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 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."

- 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:

o "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or

o "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. Talk to your agent 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 or virtual 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.

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 for your agent below.

_____

_____

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:

_____

_____

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 the disclosure statement, and I have completed the durable power of attorney for health care and/or living will consistent with 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. IF VIRTUAL PRESENCE IS USED, THE PAGES SIGNED BY THE WITNESSES MUST BE ATTACHED TO THE ADVANCE DIRECTIVE SIGNED BY YOU OR THE ADVANCE DIRECTIVE WILL NOT BE VALID.

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:

8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 [~~the authority granted to an agent by~~] 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 [~~physician, PA, or APRN~~] ***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[~~, II or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~ that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner.***

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the person.

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second [~~physician~~] ***practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/ her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~_____~~

~~Address _____~~] ***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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent ***or Surrogate*** by Attending [~~Physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner.***

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate ***or POLST*** order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's agent ***or surrogate.***[~~;~~] ***The person*** or the person's [~~family. The person, the person's~~] agent[~~,~~] ***or surrogate***[~~ or the person's family~~] may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7[~~, II and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate ***or POLST*** Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent to~~] a do not resuscitate ***or POLST*** order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate ***or POLST*** order by destroying such order and removing do not resuscitate identification on[~~ his or her~~] ***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.*** [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate ***or POLST*** order for a [~~person~~] ***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 [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time, ***in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate or POLST order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** of the revocation.

V. The attending [~~physician, PA, or APRN~~] ***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 [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation, ***suspension, or*** [~~and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

10 Not Suicide or Murder. Amend RSA 137-J:30 to read as follows:

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 [~~assisted suicide~~] ***euthanasia.***

11 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 or III~~].

12 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***attending practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid [~~advance directive~~] ***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~~], 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 [~~physician, PA, or APRN~~] ***attending practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***attending practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** shall have the right to rely on any of the above surrogates if the [~~physician, PA, or APRN~~] ***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.

13 Advance Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

14 Advance Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. [~~A physician, PA, or APRN~~] ***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 [~~a physician, PA, or APRN~~] ***an attending practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 [~~90~~] ***180*** days after being identified in RSA 137-J:35, I[~~, unless~~]. ***The authority of the surrogate shall terminate if*** the principal regains ***the capacity to make*** health care [~~decision-making capacity~~] ***decisions*** or a guardian is appointed [~~or patient is determined to be near death, as defined in RSA 137-J:2, XVI~~]. The authority of the surrogate shall terminate after [~~90~~] ***180*** days***, unless the patient is determined to be actively dying.***

15 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

16 Effective Date.

I. Section RSA 137-J:5 IV-a as inserted by section 2 of this act shall take effect July 1, 2021.

II. The remainder of this act shall take effect upon its passage.

Health and Human Services
March 25, 2021
2021-1022s
08/05

Amendment to SB 74

Amend the bill by replacing all after the enacting clause with the following:

1 Advance Health Care Directives. Amend RSA 137-J:1-3 to read as follows:

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that [~~a person has~~] ***individual persons have the*** [~~a~~] right, founded in the autonomy and sanctity of [~~the~~] ***a*** person, to control the decisions relating to the rendering of [~~his or her~~] ***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 [~~physicians, PAs, or APRNs~~] ***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 [~~for himself or herself~~] ***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*** [~~Instructing his or her~~] attending ***practitioner*** ~~physician, PA, or APRN to provide, withhold, or withdraw life sustaining treatment, in the event such person is near death or is permanently unconscious~~] .

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.

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 [~~valid advance directive~~] ***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.

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.

[~~I.~~] ***II.*** "Advance directive" means a [~~directive~~] ***document*** allowing a person to give directions ***and guidance*** about future medical care [~~or~~] ***and*** to designate another person to make medical decisions if [~~he or she~~] ***the principal*** should lose the capacity to make health care decisions. The term "advance [~~directives~~] ***directive***" shall include [~~living wills and~~] ***a*** durable [~~powers~~] ***power*** of attorney for health care ***and a living will.***

[~~II.~~] ***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.

[~~III.~~] ***IV.*** "Agent" means an adult to whom authority to make health care decisions is delegated under[~~ an advance directive~~] ***a durable power of attorney for health care.***

[~~IV.~~] ***V.*** "Attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** under the provisions of this chapter.

[~~V.~~] ***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 shall not mean that the person necessarily lacks the capacity to make health care decisions.

[~~VI.~~] ***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.

[~~VI-a.~~] ***IX.*** "Close friend" means any person [~~21~~] ***18*** years of age or older who presents an affidavit to the attending physician stating that [~~he or she~~] ***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.

[~~VII.~~] ***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.

[~~VIII.~~] ***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 [~~ventricular~~] defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

[~~IX.~~] X***II.*** "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.

[~~X.~~] ***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.

[~~XI.~~] ***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.

[~~XII.~~] ***XV.*** "Health care provider" means [~~an individual or~~] ***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.

[~~XIII.~~] ***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 [~~which, in the written judgment of the attending physician, PA, or APRN, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious~~]. "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.

[~~XIV.~~] ***XVII.*** "Living will" means a [~~directive~~] ***written statement of guidance that*** [~~which, when duly executed, contains~~] ***sets forth*** the express [~~direction~~] ***wishes of the principal*** that ***attempts at life sustaining treatment shall be continued or that certain*** [~~no~~] life-sustaining treatment ***shall not*** be [~~given~~] ***attempted*** when the [~~person executing said directive~~] ***principal*** has been diagnosed and certified in [~~writing~~] ***the principal's medical record*** by [~~the~~] ***2*** attending [~~physician, PA, or APRN~~] ***physicians or a physician and another attending practitioner who is not under the supervision of the certifying physician*** to [~~be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision making process.~~] ***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.***

[~~XV.~~] ***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.

[~~XVI. "Near death" 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, as determined by 2 physicians, or a physician and a PA, or a physician and an APRN, only postpone the moment of death.~~]

[~~XVII.~~] ***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.

[~~XVIII.~~] ***XX.*** "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

[~~XVIII-a.~~] ***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.

[~~XIX.~~] ***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.***

[~~XX.~~] ***XXIV.*** "Qualified patient" means [~~a~~] ***any*** patient who [~~has executed an advance directive in accordance with this chapter and who~~] has been certified in [~~writing~~] ***the patient's medical record*** by the attending [~~physician, PA, or APRN~~] ***practitioner*** to lack the capacity to make health care decisions.

[~~XXI.~~] ***XXV.*** "Reasonable degree of medical certainty" means a medical judgment that is made by [~~a physician, PA, or APRN~~] ***the attending practitioner*** who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

[~~XXII.~~] ***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.

[~~XXII-a.~~] ***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 [~~physician, PA, or APRN~~] ***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. "Virtual presence" means the use of an electronic device or process through which all participating individuals can communicate simultaneously by sight and sound.

[~~XXIII.~~] ***XXIX.*** "Witness" means a competent person 18 years or older who is [~~present~~] ***in the physical or virtual presence of the principal*** when the principal signs an advance directive.

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, [~~or~~] 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.

~~[III. Any health care provider or residential care provider which does not recognize DNR's or living wills shall post at every place of admission, a notice which shall be a minimum size of 8 1/2" x 11" stating the following in legible print: "This hospital/facility does not honor Do Not Resuscitate (DNR) or Living Will documents."]~~

2 Advance Directives. Amend RSA 137-J:5-11 to read as follows:

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 [~~an advance directive~~] 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 [~~or surrogate's~~] authority under [~~an advance directive~~] ***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 [~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner***. [~~and filed with~~] 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[~~writing~~] ***the principal's medical record*** by the principal's attending [~~physician, PA, or APRN~~] ***practitioner[~~, noted in the principal's medical record~~]***, 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 [~~physician, PA, or APRN~~] ***practitioner*** for reasons based on the principal's religious or moral beliefs as specified in [~~his or her~~] ***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 [~~decisional~~] capacity ***to make health care decisions*** [~~of the principal~~]. 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 [~~physician, PA, or APRN~~] ***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. [~~Notwithstanding that an advance directive or a surrogacy is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection unless the principal's advance directive includes the following statement initialed by the principal, "Even if I am incapacitated and I object to treatment, treatment may be given to me against my objection."~~]

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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~, sterilization, or an experimental treatment of any kind~~].

[~~(e) Notwithstanding the prohibition in subparagraph V(d), for any patient experiencing severe, advanced COVID-19 symptoms or COVID-19 complications who does not have the capacity to consent himself or herself to an experimental treatment, an agent or surrogate shall have the authority to consent to experimental treatments, authorized by an institutional review board, on the patient for COVID-19 symptoms or complications.~~

~~(1) For an agent or surrogate to approve the use of an experimental treatment, approved by an institutional review board, the agent or surrogate must be informed of all risks and side effects and follow all institutional review board instructions regarding consent as if the agent or surrogate were the individual receiving the treatment, including the completion of all consent documentation required by the Food and Drug Administration. An agent or surrogate shall not consent unless the following factors exist:~~

~~(A) The patient is confronted by a life-threatening situation necessitating the use of the experimental treatment; and~~

~~(B) Informed consent cannot be obtained from the patient because of an inability to communicate with, or obtain legally effective consent from, the patient; and~~

~~(C) 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.~~

~~(2) If a patient has a living will, the agent shall follow the directions of the living will. In addition, if the agent or surrogate has actual knowledge that the patient wished to decline the experimental treatment, the agent or surrogate shall not have the authority to consent to treatment.~~]

137-J:6 Requirement to Act in Accordance With Principal's Wishes and Best Interests. After consultation with the attending [~~physician, PA, or APRN~~] ***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.

137-J:7 [~~Physician, PA, APRN,~~] ***Attending Practitioner*** and ***Heath Care*** Provider's Responsibilities.

I. A qualified patient's attending [~~physician, PA, or APRN~~] ***practitioner***, or a qualified patient's health care provider or residential care provider, and employees thereof, [~~having knowledge of the qualified patient's advance directive~~] shall [~~be bound to~~] follow, as applicable, [~~the dictates of the qualified patient's living will and/or~~] 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~~] ***with accepted*** medical practice.

(a) An attending [~~physician, PA, or APRN~~] ***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 [~~having in his or her possession~~] ***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 [~~physician, PA, or APRN~~] ***practitioner***, or any other physician, PA, or APRN, [~~who is aware of the principal's execution of an advance directive~~] 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"), [~~and/or the principal's near death or permanently unconscious condition, as defined in this chapter and as appropriate to the principal's medical condition,~~] so that the attending [~~physician, PA, or APRN~~] ***practitioner*** and the principal's agent ***or surrogate*** may be authorized to act pursuant to this chapter.

[~~(d) If a physician, PA, or an APRN, because of his or her personal beliefs or conscience, is unable to comply with the terms of the advance directive or surrogate's decision, he or she shall immediately inform the qualified patient, the qualified patient's family, or the qualified patient's agent. The qualified patient, or the qualified patient's agent or family, may then request that the case be referred to another physician, PA, or APRN.~~]

II. An attending [~~physician, PA, or APRN~~] ***practitioner*** who, because of personal beliefs or conscience, is unable to comply with ***a POLST,*** the [~~advance directive~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** who has been chosen by the qualified [~~patient, by the qualified~~] patient's agent or surrogate[~~, or by the qualified patient's family,~~] provided, that pending the completion of the transfer, the attending [~~physician, PA, or APRN~~] ***practitioner*** shall not deny health care treatment[~~, nutrition, or hydration~~] 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. [~~Medically administered nutrition and hydration and life sustaining treatment shall not be withdrawn or withheld under this chapter unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~IV. When the direction of an agent or instruction under a living will~~] ***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 principal or 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, [~~nutrition, hydration, or life sustaining treatment~~] which denial would [~~with~~] ***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.

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 [~~health care provider~~] ***attending practitioner*** or [~~residential care provider~~] ***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.

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 [~~directives~~] ***directive*** as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the [~~advance directive~~] ***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.***

137-J:10 [~~Withholding or Withdrawal of Life-Sustaining Treatment~~] ***Criminal Act Not Construed or Authorized.***

I. [~~In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent or surrogate, and the principal has not executed the "living will" of the advance directive, the following additional conditions shall apply:~~

~~(a) The principal's attending physician, PA, or APRN shall certify in writing that the principal lacks the capacity to make health care decisions.~~

~~(b) Two physicians or a physician and an APRN or PA shall certify in writing that the principal is near death or is permanently unconscious.~~

~~(c) Notwithstanding the capacity of an agent or surrogate to act, the agent or surrogate shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.~~

~~II. Notwithstanding paragraph I, medically administered nutrition and hydration and life-sustaining treatment shall not be withdrawn or withheld under an advance directive unless:~~

~~(a) There is a clear expression of such intent in the directive;~~

~~(b) The principal objects pursuant to RSA 137-J:5, IV; or~~

~~(c) Such treatment would have the unintended consequence of hastening death or causing irreparable harm as certified by an attending physician and a physician knowledgeable about the patient's condition.~~

~~III.~~] 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 [~~either~~] to permit the natural process of dying [~~of a patient near death actively dying or the removal of life-sustaining treatment from a patient in a permanently unconscious condition as provided in this chapter~~]. 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.

[~~IV.~~] ***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 [~~on~~] ***in*** the principal's medical record by the attending [~~physician, PA, or APRN~~] ***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 [~~standard~~] ***written*** protocol of a health care facility licensed under RSA 151 as applicable to its general patient population.

[~~V.~~] ***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[~~, [II or III~~].

[~~VI.~~] ***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.

[~~VII.~~] ***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 [~~taken~~] ***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 [~~physicians, PAs, or APRNs~~] ***attending practitioners*** in consultation with patients, [~~or their families~~] ***their surrogates,*** or legal guardians in the absence of an advance directive.

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.

3 Advance Health Care Directives. Amend RSA 137-J:12 to read as follows:

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 [~~exercised~~] ***made*** such [~~power~~] ***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[~~, II or III~~].

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.

4 Advance Health Care Directives; Use of Statutory Forms. Amend RSA 137-J:13, I to read as follows:

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. [~~The principal shall be required to sign a statement acknowledging that he or she has received the its contents.~~]

5 Advance Health Care Directives; Execution and Witnesses; Revocability. Amend RSA 137-J:14-15 to read as follows:

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the ***physical or virtual*** 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 [~~physician, PA, or APRN~~] ***practitioner***, or person acting under the direction or control of the attending [~~physician, PA, or APRN~~] ***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 [~~that he or she was aware~~] ***awareness*** of the nature of the document and signed it freely and voluntarily. ***Witnesses who sign in the virtual presence of the principal may sign in one or more counterparts, and the counterparts must be attached to the advance directive signed by the principal***; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by ***another person who signs*** the principal's name [~~written by some other person~~] in the principal's ***physical*** presence and at the principal's express direction.

[~~III. A principal's decision to exclude or strike references to PAs or APRNs and the powers granted to PAs or APRNs in his or her advance directive shall be honored.~~]

137-J:15 Revocation.

I. An advance directive [~~or surrogacy~~] 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 ***physical or virtual*** presence of 2 or more witnesses, none of whom shall be [~~the principal's spouse or heir at law~~] ***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 [~~he or she received the revocation~~] ***the revocation was received***, in the principal's medical record and notify the agent, the attending [~~physician, PA, or APRN~~] ***practitioner***, and staff responsible for the principal's care of the revocation. An agent[~~or surrogate~~] 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 [~~physician, PA, or APRN~~] ***practitioner***.

6 Advance Health Care Directives; Reciprocity. Amend RSA 137-J:17 to read as follows:

137-J:17 Reciprocity. ***A DNR, POLST, durable power of attorney for health care,*** [~~An advance directive,~~] 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.***

7 Advance Health Care Directives. RSA 137-J:19-20 are repealed and reenacted to read as follows:

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.

- 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 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."

- 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:

o "I want my agent to be able to agree to medical studies or experimental treatment in any situation." or

o "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. Talk to your agent 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 or virtual 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.

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 for your agent below.

_____

_____

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:

_____

_____

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 the disclosure statement, and I have completed the durable power of attorney for health care and/or living will consistent with 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. IF VIRTUAL PRESENCE IS USED, THE PAGES SIGNED BY THE WITNESSES MUST BE ATTACHED TO THE ADVANCE DIRECTIVE SIGNED BY YOU OR THE ADVANCE DIRECTIVE WILL NOT BE VALID.

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:

8 Advance Health Care Directives; Civil Action. Amend RSA 137-J:22 to read as follows:

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 [~~the authority granted to an agent by~~] 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 [~~physician, PA, or APRN~~] ***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[~~, II or III~~].

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

9 Advance Health Care Directives. Amend RSA 137-J:25-29 to read as follows:

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[~~ that he or she does not wish~~] ***a wish not*** to receive cardiopulmonary resuscitation, or [~~his or her~~] ***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 [~~near death~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:26 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending [~~Physician, PA, or APRN~~] ***Practitioner***.

I. An attending [~~physician, PA, or APRN~~] ***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 his or her~~] ***may request that their*** attending [~~physician, PA, or APRN~~] ***practitioner*** issue a do not resuscitate order for the person.

III. [~~An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions if the advance directive signed by the principal grants such authority.~~] A do not resuscitate order written by the attending [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** may issue a do not resuscitate order for a person who lacks capacity to make health care decisions, who is [~~near death~~] ***actively dying***, and who is admitted to a health care facility if a second [~~physician~~] ***practitioner*** who has personally examined the person concurs in the opinion of the attending [~~physician, PA, or APRN~~] ***practitioner*** that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards and would cause unnecessary harm to the person.

V. [~~For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:~~

~~Do Not Resuscitate Order~~

~~As attending physician, PA, or APRN of _____ and as a licensed physician, physician assistant or advanced practice registered nurse, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.~~

~~This order has been discussed with _____ (or, if applicable, with his/ her agent,) _____, who has given consent as evidenced by his/her signature below. Attending physician, PA, or APRN Name~~

~~Attending physician, PA, or APRN Signature~~

~~Address~~

~~Person Signature~~

~~Address~~

~~Agent Signature (if applicable)~~

~~_____~~

~~Address _____~~] ***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. [~~For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:~~

~~(a) Forms required by the policies and procedures of the health care facility in compliance with this chapter;~~

~~(b) The do not resuscitate card as set forth in paragraph V; [or~~

~~(c)] The medical orders form in compliance with this chapter.~~] ***Portable DNR and POLST (that indicates Do Not Resuscitate) forms are transferable, valid medical orders throughout this state.***

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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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.

137-J:28 Protection of Persons Carrying Out in Good Faith a Do Not Resuscitate Order; Notification of Agent ***or Surrogate*** by Attending [~~Physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician or APRN~~] ***practitioner*** is unwilling to effectuate the order. The attending [~~physician, PA, or APRN~~] ***practitioner*** shall thereafter at the election of the person or agent ***or surrogate*** permit the person or agent ***or surrogate*** to obtain another attending [~~physician, PA, or APRN~~] ***practitioner***.

(b) If [~~a physician, PA, or APRN~~] ***an attending practitioner***, because of [~~his or her~~] ***the practitioner's*** personal beliefs or conscience, is unable to comply with the terms of a do not resuscitate ***or POLST*** order, [~~he or she~~] ***the practitioner*** shall immediately inform the person, the person's agent ***or surrogate.***[~~,~~] ***The person*** or the person's [~~family. The person, the person's~~] agent[~~,~~] ***or surrogate***[~~or the person's family~~] may then request that the case be referred to another [~~physician, PA, or APRN~~] ***practitioner***, as set forth in RSA 137-J:7[~~, II and III~~].

137-J:29 Revocation ***or Suspension*** of Do Not Resuscitate ***or POLST*** Order.

I. At any time a [~~person in a~~] ***principal admitted as an inpatient or outpatient to a*** health care facility may revoke [~~his or her previous request for or consent to~~] a do not resuscitate ***or POLST*** order by making either a written, oral, or other act of communication to the attending [~~physician, PA, or APRN~~] ***practitioner*** or other professional staff of the health care facility.

II. At any time a [~~person~~] ***principal*** residing [~~at home~~] ***outside a health care facility*** may revoke [~~his or her~~] ***the principal's*** do not resuscitate ***or POLST*** order by destroying such order and removing do not resuscitate identification on[~~his or her~~] ***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.*** [~~The person is responsible for notifying his or her attending physician, PA, or APRN of the revocation.~~]

III. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent to~~] a do not resuscitate ***or POLST*** order for a [~~person~~] ***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 [~~notifying the attending physician, PA, or APRN or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician, PA, or APRN in the presence of a witness 18 years of age or older~~].

IV. At any time***, in accordance with RSA 137-J:6,*** an agent ***or surrogate*** may revoke [~~his or her consent~~] ***a do not resuscitate or POLST order for*** a [~~person~~] ***principal*** who lacks capacity to make health care decisions who is residing [~~at home~~] ***outside a health care facility*** by destroying such order and removing do not resuscitate identification from the [~~person~~] ***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 [~~physician, PA, or APRN~~] ***practitioner*** of the revocation.

V. The attending [~~physician, PA, or APRN~~] ***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 [~~person~~] ***principal*** is in a health care facility and notify the professional staff of the health care facility responsible for the [~~person's~~] ***principal's*** care of the revocation***, suspension, or*** [~~and~~] 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 [~~physician, PA, or APRN~~] ***practitioner*** of such revocation.

[~~VI. Only a physician, physician assistant, or advanced practice registered nurse may cancel the issuance of a do not resuscitate order.~~]

10 Not Suicide or Murder. Amend RSA 137-J:30 to read as follows:

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 [~~assisted suicide~~] ***euthanasia.***

11 Advance Health Care Directives; Preservation of Existing Rights. Amend RSA 137-J:32, I to read as follows:

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 or III~~].

12 Advance Health Care Directives; Surrogate Decision Making. Amend RSA 137-J:35 to read as follows:

137-J:35 Surrogate Decision-making.

I. When a patient lacks capacity to make health care decisions, the [~~physician, PA, or APRN~~] ***attending practitioner*** shall make a reasonable inquiry pursuant to 137-J:7 as to whether the patient has a valid [~~advance directive~~] ***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~~], 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 [~~physician, PA, or APRN~~] ***attending practitioner*** may identify a surrogate from the list in paragraph I if the [~~physician, PA, or APRN~~] ***attending practitioner*** determines [~~he or she~~] ***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 [~~physician, PA, or APRN~~] ***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 [~~physician, PA, or APRN~~] ***attending practitioner*** shall have the right to rely on any of the above surrogates if the [~~physician, PA, or APRN~~] ***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.

13 Advance Health Care Directives. Amend RSA 137-J:36, I to read as follows:

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 [~~physician, PA, or APRN~~] ***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.

14 Advance Health Care Directives; Limitations on Surrogacy. Amend RSA 137-J:37 to read as follows:

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 [~~physician, PA, or APRN~~] ***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. [~~A physician, PA, or APRN~~] ***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 [~~a physician, PA, or APRN~~] ***an attending practitioner*** to treat a patient who the [~~physician, PA, or APRN~~] ***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 [~~90~~] ***180*** days after being identified in RSA 137-J:35, I[~~, unless~~]. ***The authority of the surrogate shall terminate if*** the principal regains ***the capacity to make*** health care [~~decision-making capacity~~] ***decisions*** or a guardian is appointed [~~or patient is determined to be near death, as defined in RSA 137-J:2, XVI~~]. The authority of the surrogate shall terminate after [~~90~~] ***180*** days***, unless the patient is determined to be actively dying***.

15 Repeal. RSA 137-J:34, relative to applicability of certain advance directives, is repealed.

16 Effective Date.

I. Section RSA 137-J:5 IV-a as inserted by section 2 of this act shall take effect July 1, 2021.

II. The remainder of this act shall take effect upon its passage.

Committee Minutes

SENATE CALENDAR NOTICE
Health and Human Services

Sen Jeb Bradley, Chair
Sen James Gray, Vice Chair
Sen Kevin Avard, Member
Sen Tom Sherman, Member
Sen Rebecca Whitley, Member

Date: January 20, 2021

HEARINGS

Thursday		01/28/2021	
(Day)		(Date)	
Health and Human Services		REMOTE 000	1:00 p.m.
(Name of Committee)		(Place)	(Time)

1:00 p.m.	**SB 59**	relative to the collaborative care model service delivery method.
1:15 p.m.	**SB 74**	relative to advance directives for health care decisions.
1:45 p.m.	**SB 75**	relative to school district information on the COVID-19 dashboard maintained by the department of health and human services.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: https://www.zoom.us/j/98598486922
2. To listen via telephone: Dial(for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,98598486922# or +13017158592,,98598486922#
4. Webinar ID: 985 9848 6922
5. To view/listen to this hearing on YouTube, use this link: https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 59

Sen. Sherman	Sen. Bradley	Sen. Rosenwald	Rep. Marsh
Rep. Woods			

SB 74

Sen. Sherman	Sen. Bradley	Sen. Rosenwald	Sen. Whitley
Sen. Prentiss	Sen. Watters	Rep. Marsh	Rep. Woods

Griffin Roberge 271-3042

Jeb Bradley
Chairman

Senate Health and Human Services Committee

Kirsten Koch 271-3266

SB 74, relative to advance directives for health care decisions.

Hearing Date: January 28, 2021

Time Opened: 1:36 p.m. **Time Closed:** 2:58 p.m.

Members of the Committee Present: Senators Bradley, Gray, Avard, Sherman and Whitley

Members of the Committee Absent : None

Bill Analysis: This bill:

I. Defines "attending practitioner" and "POLST."

II. Redefines "near death" as "actively dying."

III. Further defines the role of a surrogate.

IV. Repeals the applicability of certain advanced directives.

Sponsors:

Sen. Sherman	Sen. Bradley	Sen. Rosenwald
Sen. Whitley	Sen. Prentiss	Sen. Watters
Rep. Marsh	Rep. Woods	

Who supports the bill: Senator Watters, District 4; Senator Rosenwald, District, 13; Senator Sherman, District 24; Rep. Marsh, District 8; Rep. Woods, District 23; Michael Padmore, NH Medical Society; Matthew Houde, Dartmouth-Hitchcock; Gina Balkus, Granite State Home Health & Hospice Association; Paula Minnehan, NH Hospital Association; Brian Kugel, Foundation for Healthy Communities; Peter Ames, Foundation for Healthy Communities; Phil Lawson, Healthcare Decisions Coalition; Michael Skibbie, Disability Rights Center NH; Donald McDonah; Normal Milne; Robert McCown; Dustin Senor; Kristina Snyder; Marcia Garber; Katherine Hanna.

Who opposes the bill: Heidi Kroll, NH Chapter of the National Academy of Elder Law Attorneys; Judith Jones, NH Chapter of NAELA; Ed Butler, NH Alliance for End of Life Options; Colleen McCormick, Cabrini Center for Ethics and Justice; Jeffrey Zellers; Beth Lorsbach; Andrea Sennot; Alyssa Garrigan; Tina Annis; David Craig.

Who is neutral on the bill: Rep. Chase, District 18; Benjamin Siracusa Hillman, NH Chapter of the National Academy of Elder Law Attorneys; Bob Dunn, Roman Catholic Bishop of Manchester; Rebecca Brown.

Summary of testimony presented in support:

Senator Sherman

NH Senate District 24

- Sponsored this bill at the request of stakeholders who have been working to create a bill to clarify and simplify advance directive documents.
- Senator Sherman committed to form a working group made up of Senator Bradley, elder law stakeholders, and the Disability Rights Center as a working group to iron out any concerns regarding SB 74.

Paula Minnehan – submitted written testimony

NH Hospital Association

- Ms. Minnehan expressed support for Amendment 0137s because it has gender neutral terminology.
- Ms. Minnehan believes a work group is a good idea and necessary because there needs to be a means for connecting with all the necessary stakeholders.
- Ms. Minnehan said the working group did not attempt to change longstanding policy or weaken the statute with SB 74. The bill makes it easier for patients and families to process papers for their end-of-life decisions.
- Senator Bradley asked if Ms. Minnehan could highlight what the longstanding policies were? This way the committee members know what we are not changing.
- Ms. Minnehan deferred the question to her colleagues to answer.

Brian Kugel – submitted written testimony

Foundation for Healthy Communities

- Mr. Kugel chairs a Health Care Decision Coalition.
- The longstanding statutes promote advance directives at the end of life.
- The coalition and foundation consist of people in several sectors including those in elder law, the health care sector, and the affected populations. The foundation and coalition publish and train health care professionals in what the law is and how to make decisions on advance directives.
- SB 74 as introduced is confusing, hard to interpret, and people are not able to get what the bill intends—which is to have their end-of-life wishes carried out. With the way that the current law is now people are not able to get what they need.
- Senator Whitley said, it was important to include people who are impacted by this statute. Senator Whitley wanted to confirm that individuals in the disability rights community and individuals that have patients that may be impacted will be included in the coalition.
    - Mr. Kugel said, individuals are not required to be at every meeting. They are welcome, and the importance is in our teaching to these special populations. What works for some, does not work for all.

Kate Hanna – submitted written testimony

Attorney in NH for Healthcare Professionals

- Ms. Hanna works as a NH attorney for health care professionals and advises on difficult questions with conflicting or ambiguous advance directives.
- History of advance directives in the state; fundamental issues that guided the state:
    - In 1986 the living-will legislation passed, which allowed for individuals to self-execute living-wills with their end of life wishes.
    - In 1991 the durable-power-of-attorney for health care legislation was passed. This was not just aimed at end-of-life matters, it allowed for any person eighteen years or older to appoint someone to make healthcare decisions for them in real time if they become incapacitated.
    - In 2015, despite encouragement by the state for people to execute advance directives, less than 50% had done so. This is what lead to the surrogacy laws.
        - A surrogate is chosen if a patient had failed to appoint an agent under the durable power document, and was then deemed incapacitated, then the health care professional was charged with picking a surrogate decision-maker for the patient.
        - Ms. Hanna explained that the reason why the legislature had chosen for the health care provide to select a surrogate was to ease the burden on the family of the patient. The alternative required a guardianship document from the court that can cost upwards of $1,000.
- SB 74 recognizes that advance directive documents must be simple enough for those without lawyers to complete forms with understanding and without expense.
- SB 74 eliminates language that we have seen the average person does not understand.
- SB 74 reverses the presumption in the current statute that the principal would want to override their agent's decision making, even while the principal is incapacitated.
- SB 74 eliminates the ninety-day tenure of a surrogate's appointment. The surrogacy should continue unless the family seeks change from a court.

Matthew Houde – submitted written testimony

Dartmouth-Hitchcock

- Mr. Houde stated it should be a priority for the advance directive forms to become user friendly.
- Because of the outbreak of COVID-19in 2020, there was an issue with preclusion with patient experimental treatments. Patients were unable to consent because they were unconscious, in this instance Governor Sununu made an exception so that an agent could consent for the patient to have experimental treatment. However, this consent exception will expire at the end July 1, 2021 and only pertains to COVID-19.
- Amendment 2021-0137s strikes the preclusion of an agent being allowed to consent to an experimental treatment. Instead, the amendment does not allow the agent to consent for an experimental treatment protocol that complies to federal laws on an incapacitated patient.
- Mr. Houde suggested the attorney who drafted Dartmouth-Hitchcock documents for Advance Directives should join the work group.
- Senator Sherman agreed to incorporate the attorney to join the working group. Senator Sherman also asked, isn't it correct that prior to understanding that we were allowing consent for being able to do studies, especially with COVID? There were studies that people do not have access to but may be lifesaving. You can get permission, but it requires you must go to the court system to do so. The concern is that the process of going to court

would delay the onset of protocol and the health care professionals would not be able to treat the patient in time.

- Mr. Houde answered, this is a significant matter of timing. The court makes valiant efforts to expedite the court process in these matters, but this court process could take up life-saving time. Mr. Houde suggested the question for attorneys or legal experts testifying at the hearing.

Gina Balkus – submitted written testimony

Granite State Home Health & Hospice Association

- The bill ensured an individual's wishes were honored at end-of-life. SB 74 simply allowed patients, their families, and health care professionals to follow an individual's end-of-life wishes without lawyers getting involved.
- SB 74 revised the disclosure statement to have concise, simple language while covering all the same points as the previous document.
- To clarify for the hearing, Ms. Balkus stated, that NH existing law allows agents to act with express written permissions to carry out advance directive. Surrogates only exist when there is no agent.

Phil Lawson – submitted written testimony

Healthcare Decisions Coalition

- Mr. Lawson said, there are issues and barriers with the way law is currently written. The law as written stipulates 3 very specific situations:
  - (1) Feeding tube or IV for hydration. This suggests every old person requires a feeding tube or iv for hydration. This is inconsistent with the values and goals of patients, or standard of care.
  - (2) The law should not force these interventions on patients when inconsistent with goals of patients. The law should clarify when the patient wants these interventions.
  - (3) Treatment against objection clause—which is very unique to NH. This requires the individual to previously state that their agent can request for the individual to be treated differently after the individual has lost capacity, even if the individual objects/previously objected the treatment. However, the default in the law needs to be that a patient will accept treatment after loss of capacity so that even if it is not spelled out, then treatment can still be given.

Frederick Rice

Hillsborough, NH

- Mr. Rice was happy to see the clarification that is offered in SB 74.

Summary of testimony presented in opposition:

Colleen McCormick

APRN/Medical Professional

- Ms. McCormick stated that she is a APRN and with experience and education in bioethics. She is concerned about parts of the bill.
- Ms. McCormick said a surrogate not designated by the individual can override the living will.
- Ms. McCormick is very concerned about the bill allowing for taking away hydration and nutrition, and ultimately leading to death. The bill implies removing nourishment and hydration should not hasten someone's demise but withholding food and water will cause demise and is allowed by this bill. IVs and feeding tubes can be comfort care.
- The bill's designation of permanently unconscious is not the same as not being able to communicate.
- Ms. McCormick said, rather than physicians leading the way, now legislative activity leads the way. Legislative activity can be in response to vocal people that do not have the same motives as the public.
- Senator Sherman pointed out that brain-wave activity can be tracked even when people are not able to speak.

Heidi Kroll

NH-NAELA

- Ms. Kroll said SB 74 will have significant consequences on people's wishes and autonomy. The issues raised in this bill are complex and should not be rushed
- The work group needs to be an inclusive process, and as of now, the stakeholders did not invite all the necessary communities.
- Senator Sherman stated that he is surprised by the position of opposition by NH-NAELA and invited Ms. Kroll to the work group.

Judith Jones

NH-NAELA

- Ms. Jones expressed interest in joining the work group to address issues and come up with a bill that works for all.
- Ms. Jones said people will not know what to put on blank lines on the forms, although it is more simple. People will not know all their options if the options are not in front of them.
- Ms. Jones asked, would hospital staff assist individuals in filling out blank lines? Would this make staff uncomfortable and responsible for providing information?
- Designated agents are relieved by the guidance provided by the patient in writing.
- Ms. Jones said, if an option is "condition that will lead to death" then the condition needs to be clarified as some conditions that will lead to death may take decades. (e.g. Dementia)
- A blank line puts agents in a difficult position without details supplied.

Neutral Information Presented:

Robert Dunn – submitted written testimony

Roman Catholic Bishop of Manchester

- Mr. Dunn said Catholics often guide individuals on end-of-life matters.
- The new definition in SB 74 of "actively dying" serves as a clarification of terms.

- Mr. Dunn said the permanently unconscious definition in Amendment 0137s allows for food and water to be withheld from a person that is unconscious, but not near death. He believes this is problematic.
- Mr. Dunn expressed interest in joining Senator Sherman's work group.

Benjamin Siracusa Hillman

NH-NAELA

- Mr. Siracusa Hillman said he wanted to ensure opposition is on the record too.
- Stakeholders were left out on this bill and in the working group. The bill needs to be addressed through compromise.
- The national trend is more specific regarding decisions based on specific conditions (e.g. decisions more specifically based on conditions such as dementia). The individual trend in this bill is contrary to the national trend.
- The form prompts thinking, and the elimination questions as done by this bill eliminates this thinking process of the individuals outlines their wishes. Additionally, when individuals must take their own initiative to manually fill-in the blank lines of the advance directive documents on their own, then individuals will be less likely to pursue the act of establishing their advance directives at all.
- Over 80% of guardianships are pursued without counsel. A guardian can get guidance from the court and other individuals that may want to get involved as a potential agent can join the case in court if they want to intervene.

Rebecca Brown

End-of-Life Healthcare Activist

- Ms. Brown said she is a part of a new citizens group that focuses on end-of-life health care matters.
- Ms. Brown support legislative changes for increased accessibility in end-of-life planning.
- SB 74 would make NH's end-of-life planning process reciprocal with end-of-life planning in other states.
- The last thing people need when they have a dying loved one is confusion. Families need to be able to under their rights regarding treatments.
- A diversity of stakeholders in the work group is necessary to the success of SB 74.

Tereze Stokes

New Futures

- Ms. Stokes shared a personal anecdote about her brother passing away from being withheld hydration. She asked the committee to consider this anecdote as others should no go through similar experiences.

KNK
Date Hearing Report completed: February 2, 2021

Speakers

Name	Title	Representing	Position	Testifing
Hanna Katherine	A Member of the Public	Myself	Support	Yes
Sherman Senator Tom	An Elected Official	SD 24	Support	Yes
Rosenwald Cindy	An Elected Official	SD 13	Support	No
Marsh William	An Elected Official	Myself	Support	No
Watters Senator David	An Elected Official	Myself (SD 4)	Support	No
McCormick Colleen	A Member of the Public	Cabrini Center for Ethics and Justice	Oppose	Yes
Balkus Gina	A Lobbyist	Granite State Home Health & Hospice Assoction	Support	Yes
Houde Matthew	A Lobbyist	Dartmouth-Hitchcock	Support	Yes
Lawson Phil	A Member of the Public	Myself and the Health Care Decisions Coalition	Support	Yes
Minnehan Paula	A Lobbyist	New Hampshire Hospital Association	Support	Yes
Kugel Brian	A Member of the Public	Foundation for Healthy Communities	Support	Yes
Brown Rebecca	A Member of the Public	Myself	Neutral	Yes
Kroll Heidi	A Lobbyist	NH Chapter of the National Academy of Elder Law Attorneys	Oppose	Yes
Siracusa Hillman Benjamin	A Member of the Public	NH Chapter - National Academy of Elder Law Attorneys	Neutral	Yes
Dunn Bob	A Lobbyist	Roman Catholic Bishop of Manchester	Neutral	Yes
Jones Judith	A Member of the Public	New Hampshire Chapter of NAELA	Oppose	Yes
Sennott Andrea	A Member of the Public	Myself	Oppose	No
Garrigan Alyssa	A Member of the Public	Myself	Oppose	No
Craig David	A Member of the Public	Myself as a Certified Elder Law Attorney	Oppose	No
Snyder Kristina	A Member of the Public	Myself	Support	No
Annis Tina	A Member of the Public	Myself	Oppose	No
Garber Marcia	A Member of the Public	Myself	Support	No
McCown Robert	A Member of the Public	Myself	Support	No
Senor Dustin	A Member of the Public	Myself	Support	No
Milne Norma	A Member of the Public	Myself	Support	No
Zellers Jeffrey	A Member of the Public	Myself	Oppose	No
Lorsbach Beth	A Member of the Public	Myself	Oppose	No
WOODS GARY	An Elected Official	Myself	Support	No
Butler Ed	A Member of the Public	NH Alliance for End of Life Options	Oppose	No
chase Wendy	An Elected Official	Myself	Neutral	No
Ames Peter	A Member of the Public	Foundation for Healthy Communities	Support	No
Padmore Michael	A Lobbyist	New Hampshire Medical Society	Support	No
McDonah Donald	A Member of the Public	Myself	Support	No

Testimony

Kirsten Koch

From: Bill Smith (home2h) <wjsmith18441@myfairpoint.net>
Sent: Saturday, May 15, 2021 5:29 PM
To: Jeb Bradley; James Gray; Tom Sherman; Becky Whitley; Kevin Avard; Kirsten Koch
Subject: ==> Please vote ITL or NO on SB74 "advance directives for health care decisions

Dear Committee Members,

Please vote ITL or NO on SB74 "Relative to advance directives for health care decisions".

Among the many issues with this bill, it:
- is far too complex,
- excessively loosens end-of-life decision-making rules,
- inappropriately authorizes new players, who may not know a patient's wishes, to make life-or-death decisions for them,
- broadens the new rules' applicability, from opt-in by those who signed documents, to ALL patients, and
- lacks any clear opt-out provision.

Again, I implore you, please vote ITL or NO on SB74 !

Thank You In Advance,

Bill Smith
Atkinson, NH

Kirsten Koch

From: Shannon Girard
Sent: Monday, February 1, 2021 2:16 PM
To: ~Senate Health and Human Services Committee
Cc: Kirsten Koch; Colleen McCormick
Subject: FW: SB74 Testimony delivered on 28 January 2021

Good Afternoon,

Please see the testimony below from Colleen McCormick on SB 74 in Senate HHS. She tried to email the committee through the General Court website and it came back undeliverable so I am forwarding her testimony.

Thank you,
Shannon

Shannon Girard
NH Senate
107 North Main Street
Concord, NH 03301
(603) 271-3479

-----Original Message-----
From: Colleen McCormick <colmcc44@gmail.com>
Sent: Monday, February 1, 2021 2:10 PM
To: Shannon Girard <Shannon.Girard@leg.state.nh.us>
Cc: Shannon Girard <Shannon.Girard@leg.state.nh.us>
Subject: SB74 Testimony delivered on 28 January 2021

Dear Chairman Bradley and Committee members:

Thank you for providing the opportunity to reflect upon the contents of SB74 yesterday. This is a written overview of that testimony, as promised.

My name is Colleen McCormick. My credentials for the purposes of this conversation are as an APRN, CRNA, with a Masters degree in Bioethics specializing in Clinical Ethics. My experience in medical ethics includes membership in the Clinical Ethics Committee and the Institutional Ethics Advisory Committee at the University of Vermont Medical Center where I was a member of the clinical faculty in anesthesia and also a course preceptor in medical ethics at the Medical College. In New Hampshire, I have served on the Ethics Committees at the VAMC in Manchester as well as at the Elliot Hospital of Solution Health. Additionally, I am a member of the Center for Bioethics and Human Dignity in Deerfield, Illinois, for which I have made public presentations on medical ethics at various forums. I represent no corporate entity in this conversation, only myself as a professional with specialized education and practice in the field of medical ethics and a long career in practical clinical medicine.

At the outset, I want to remark that I understand from the discourse at the hearing yesterday, this bill (SB74) represents an honest endeavor to refine and clarify policies and procedures surrounding the complex arena of end-of-life care. I fully recognize that the undertaking is a task that integrates many factors and interests, and the value of the ongoing work at hand. I also want to assert that I may have been misunderstood by one of the later presenters. It is not my intent to deny any patient legitimate autonomy of decision making regarding their care. Indeed, one of my points spoke to the necessity of preserving that autonomy.

Discussion I:

The first observation I want to offer is that the draft opens with the assertion that it has a foundational philosophy of securing the autonomy and sanctity of the principal, as decision maker. The means of communicating personal intentions are achieved via certain established documents: the Durable Power of Attorney for Health Care, the Advance Directive (also at times called the Living Will), DNR/DNAR, and Physician Orders for Life Sustaining Treatment (POLST) forms.

There are two problems that arise from this approach. The first, as noted today, is the large portion of the population that neglects to address the need for advance planning, and document nothing. The second, familiar to every ethicist and practitioner, is the conundrum that arises when the scenarios represented on paper fail to correspond to the specifics of the scenario in the clinical situation. It is just impossible to predict all the variables that will arise in a clinical situation and even if one could, it would take volumes to address them one by one.

Historically, this situation could be mediated well by a family physician who had a long-established relationship with the principal and knew their concerns and philosophical approach to end-of-life care. Those days are in large part a dim memory. The advent of the hospitalist practice means that hospital employees, of varying qualifications (MD, DO, APRN, PA) working in shifts, who likely have never met the principal previously, must try to navigate the vagaries of the given situation. It is not ideal.

Enter the assigned surrogate. Every effort is made to establish a surrogate decision maker who knows the principal and their interests well, and has those best interests at heart, but we are now several steps past the ideal situation. The optimum is to speak on one's own behalf, second to that is to have someone with whom you have had "the conversation" represent you. Now you are twice removed from the ideal, and to grant that surrogate authority to supersede the content established by the principal in the Advance Directive/Living Will (as outlined in Paragraph III, lines 23-28) is absolutely a violation of the autonomy of the principal, at odds with the initial premise of this document, and consequently profoundly unethical.

The complications of the situation at hand, therefore, should fall under the purview of the institution's Medical Ethics Committee, which group would evaluate the whole of the situation including the surrogate's testimony as well as the intentions of the principal as documented. At any time that there is a discrepancy between the stated intent of the principal or the DPOAHC designated by the principal, and the recommendation of the provider/caregivers, the mediation should be work of the Ethics Committee of the given institution.

Discussion 2:
Nutrition and Hydration at the end of life, as discussed in SB74 is a profoundly delicate issue about which to legislate, because there is a broad spectrum of decisions, actions, and outcomes to consider.

There are some foundational principles to consider in this regard:
1) There are a significant variety of means to supply supplemental nutrition and hydration, and the spectrum of invasiveness is a broad one, from the minimally invasive IV, to a PICC line, to a technique requiring surgical intervention such as the gastrostomy tube. Each technique has its own risk/benefit ratio, usually directly corresponding to the degree of complexity involved in its achievement. It is important to note that among the techniques of supplementation, the peripheral IV line is considered such normative care that it requires no documented informed consent. On the down side, it is not always possible to obtain or maintain peripheral IV access.
2) Supplemental hydration can be detrimental to a principal in uncompensated cardiac or renal failure, and in such cases must be used judiciously.
3)The absence of supplemental nutrition and hydration can result in a wide spectrum of noxious symptoms for the principal, from the parched throat that accompanies dehydration, to the headache that accompanies hypoglycemia, to the muscle spasms and cramps that accompany hypokalemia. Thus a successful minimally invasive technique of delivering these supplements, actually would qualify as palliative care.
4) No principal in the terminal stages of dying will be saved to linger indefinitely by the application of supplemental nutrition and hydration. Alternatively, the healthiest individual will succumb in the face of withdrawal or withholding of nutrition and dehydration for a prolonged period.
5) The principle of autonomy dictates that the principal, or said individual's DPOAHC, with decision making capacity, by right, can evaluate the risks versus the benefits of any proposed invasive procedure and accept or decline that procedure. Said decision should be made without duress and should be respected.
6) The role of the institution's Ethics Committee is to mediate any disagreements between the principal, their significant others including the DPOAHC, and clinical staff.

7) Special care and attention must be made for the concerns of members of vulnerable populations who have historically been at risk of receiving excessive interventions on the one hand, or inadequate interventions on the other, sadly usually related to their insurance status.
8) In particular, those suffering from unexplained loss of consciousness or minimal consciousness of prolonged duration may be suffering from a poorly understood but spontaneously reversible condition such as Locked In Syndrome. (Victoria Arlen, a native of New Hampshire describes her experience with the Syndrome in her autobiography: "Locked In: The Will to Survive and the Resolve to Live", a worthy read.) In these cases, the principal is often acutely aware of their surroundings, however unable to interact with them. More importantly, the condition is not a terminal one, unless termination is imposed by withholding or withdrawing nutrition and hydration. The designation of "permanent vegetative or minimally conscious state" is both inaccurate and unjust which makes it an unethical determination.

In closing, I want to thank you for the time and attention you are investing to make comprehensive end-of-life planning in New Hampshire a reality. This discussion represents my major concerns with the current wording of the document. Additionally, I want to thank you for inviting me to participate in the task force, and look forward to joining the group. Please advise me of the specifics and I will endeavor to make myself available.

Very respectfully,

Colleen A. McCormick

Sent from my iPad

Kirsten Koch

From: Ed Butler <edofthenotch@gmail.com>
Sent: Wednesday, January 27, 2021 8:35 PM
To: Kirsten Koch
Subject: From Ed Butler about SB74

Senators Sherman and Bradley and Committee Members,

Even though I signed in opposition to this bill I am very much in favor of clarification of our Advanced Directive and POLST laws. And I appreciate all the work that has gone into the analysis and proposed modifications of these statutes. However I believe that there are several communities who have significant interest and expertise about these issues, the Disabilities Community for example, who have not been included in the creation of this proposal. I am concerned that there is not enough time to adequately include those voices and needed modifications.

Thank you for all of the hard work that you are doing for our State,
Ed

Ed Butler, he/him
President
NH Alliance for End of Life Options (NHAELO)
2 Morey Road
Hart's Location, NH 03812
603-374-6131 (land line)
603-986-4387 (cell)

GRANITE STATE HOME HEALTH & HOSPICE ASSOCIATION

Testimony in Support of SB 74,
relative to advance directives for health care decisions
January 28, 2021

Good afternoon, Mr. Chairman and members of the Committee. I'm Gina Balkus, CEO of the Granite State Home Health & Hospice Association. We advocate on issues that affect home care, hospice and palliative care providers and the patients they serve. Our Association members care for individuals from birth through end of life, primarily in patients' homes. We are part of the Healthcare Decisions Coalition that carefully considered the NH's existing advance directive statute and worked together to draft improvements. The Association supports Senate Bill 74.

Medicine has changed much during the past 30+ years since NH enacted advance directive laws. What has not changed is the respect for individual's right to choose medical treatment they want and decline medical treatment they do not want. Assuring that an individual's wishes are honored at end of life – when the person may be unable to articulate their wishes – is the core of the legislation that the late Senator Susan McLane championed in the late 80s and early 90s, and it remains the core of SB 74 introduced today.

NH's current law is clunky and often difficult to understand. SB 74 improves NH's advance directives law by clarifying definitions and simplifying much of the "legalese" in the existing form. It will also make it easier for health care providers to honor patient wishes without having to seek legal counsel or judicial orders. And it will allow for smoother handoffs between providers, allowing medical orders to follow the patient across the continuum of care.

One major improvement is on page 14 of the bill. The Disclosure Statement which must accompany the Durable Power of Attorney Document has been revised from lengthy legal jargon to concise, simple language. It covers all the same points that an individual should know prior to signing a DPOA.

Another improvement relates to surrogacy. In the existing law, there is confusion as to whether the surrogate has the same authority as an appointed agent. Some legal counsels have advised that a surrogate – such as a wife, husband, or adult child – may not be able to consent to withholding or withdrawal of life-sustaining treatment because NH's existing law only allows an agent to do that with express written permission in an advance directive. The "catch-22" is this. A person becomes a surrogate because there is no written advance directive. SB 74 eliminates the requirement that an individual expressly permit in writing the withholding or withdrawal life-sustaining treatment. This has been a cause of great confusion for agents, providers and especially for family members who are surrogate decision-makers. It has also been problematic when providers encounter an out-of-state advance directive that do not have this requirement.

An affiliate of the Home Care, Hospice & Palliative Care Alliance of New Hampshire
Eight Green Street, #2 Concord, New Hampshire 03301 ▪ 603-225-5597 ▪ Fax 603-225-5817
www.homecarenh.org

Lastly, recognizing DNR orders and POLSTs and their counterparts from other states means that practitioner orders for life-sustaining treatment can accompany a patient in whatever setting they may be – a hospital, a nursing home, or at home with a home care or hospice provider. This is so important to honoring an individual's wishes across the continuum of care regarding the treatments they desire or decline. This has become vital during COVID 19, when many people are choosing to receive care in the community rather than in hospitals or nursing homes.

On behalf of NH's home care, hospice and palliative care providers and the patients they serve, I ask that you recommend SB 74 as ought to pass.

Dartmouth-Hitchcock

GOVERNMENT RELATIONS

Dartmouth-Hitchcock Medical Center
One Medical Center Drive
Lebanon, NH 03756-0001
Phone (603) 653-1910
Fax (603) 653-1906
Dartmouth-Hitchcock.org

January 27, 2021

Re: Support for SB 74 – relative to advance directives for health care decisions

Chairman Bradley and members of the Senate Health and Human Services Committee,

Dartmouth-Hitchcock Health is pleased to submit testimony in support of SB 74, relative to advance directives for health care decisions.

Dartmouth-Hitchcock Health is New Hampshire's only academic health system, committed to providing all of our patients with high quality care. We serve a regional population base of 1.9 million in New Hampshire, Vermont and across New England, providing access to approximately 2000 primary care doctors and specialists in almost every area of medicine. The health system includes Dartmouth-Hitchcock Medical Center, our flagship hospital in Lebanon, as well as member hospitals in Lebanon, Keene, New London and Windsor, Vermont.

In addition to our member hospitals, the health system includes the Norris Cotton Cancer Center, one of 51 NCI-designated comprehensive cancer centers in the country, the Children's Hospital at Dartmouth-Hitchcock, the Visiting Nurse and Hospice Association for Vermont and New Hampshire, and 24 ambulatory clinics throughout New Hampshire and Vermont. Dartmouth-Hitchcock trains nearly 400 residents and fellows each year and performs world class medical research in partnership with the Geisel School of Medicine at Dartmouth.

I would like to express our support for two components of SB 74 in particular:

First, the Honoring Care Decisions Program within Dartmouth Centers for Health and Aging has prioritized making the advance directive forms more user friendly. The proposed changes significantly advance this effort.

Second, we support new section RSA 137-J:5, IV-a, which explicitly authorizes consent for clinical trials or experimental treatments approved by internal review boards that comply with relevant federal guidelines.

By way of background, at the outset of the COVID-19 pandemic, Dartmouth-Hitchcock, as well as other hospitals within the state, had (and have) access to experimental therapies for COVID-19. However, patients who were unable to give consent (incapacitated or unconscious as a result of the virus) were precluded from participating in these potentially life-saving treatments, even if an agent or surrogate was available, because of the then-existing prohibition of RSA 137-J:5, specifically, precluding consent for "experimental treatment of any kind".

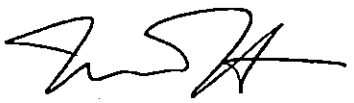
Recognizing this obstacle, Governor Sununu signed Emergency Order #39, which allows an agent to consent to experimental treatment for a patient experiencing severe COVID-19 symptoms and unable to consent to treatment. The Legislature followed suit, largely codifying EO #39 through HB 1369. However, removal of the prohibition on consent for experimental treatments only pertains to COVID and is to be repealed July 1, 2021.

SB 74 expands upon Governor Sununu's Emergency Order and the Legislative codification that followed in the COVID context by authorizing an agent or surrogate to consent not only in the context of other, currently unknown conditions and health care emergencies, but also to other arenas where similar consent would be necessary – such as on behalf of those with late stage conditions impacting decision-making (e.g., Alzheimer's) or where research interventions are the only care option remaining after all other standards of care have been exhausted (e.g., oncology), among others.

To reiterate, such consent would only be available for experimental treatments or clinical trials under the conditions imposed by federal law and regulation, which are familiar to internal review boards and provide safeguards for the exercise of such consent. Finally; this authority would make New Hampshire's approach to agent consent in clinical trials consistent with the approach taken by surrounding New England states.

For these reasons, Dartmouth-Hitchcock Health urges the passage of SB 74.

Thank you for your consideration,



Matthew Houde
VP of Government Relations

Kirsten Koch

From: Mike Skibbie <mikes@drcnh.org>
Sent: Wednesday, January 27, 2021 10:05 PM
To: Jeb Bradley; James Gray; Tom Sherman; Becky Whitley; Kevin Avard; Kirsten Koch; Senator Jeb Bradley; rebeccawhitleynh@gmail.com
Subject: Senate Bill 74, relative to advance directives for health care decisions

Chairman Bradley and members of the Health and Human Services Committee:

I am writing you about Senate Bill 74, which is scheduled for hearing tomorrow afternoon. Unfortunately, I do not expect to be available to testify as I have a public hearing at the same time on another bill that I must attend at the request of the prime sponsor.

SB 74 includes several provisions that would represent significant changes in public policy affecting people with disabilities. These provisions were developed by a group of health care providers without, to my knowledge, any consultation with the disability community. They include, but are not limited to:

- The removal of the current 90-day limitation of authority for physician-designated surrogates so that a person with a permanent injury that affected their capacity could have their health care controlled for years by someone they did not choose and was not appointed by a court.

- The removal of the prohibition of surrogate permission for experimental medical treatment of incapacitated persons (an exception limited to treatment for severe COVID was made last year and will expire later this year).

- New authority for a surrogate to override someone's wishes for end-of-life care expressed in a living will.

- The repeal of the law which prohibits the giving or withholding of treatment over a person's objection.

I hope that the Committee will agree that policy of this significance should be developed using a thorough deliberative process with the opportunity for input of those who will be affected. I request that the Committee defer action on the bill, perhaps through rereferral, until such a process can occur.

Thank you.

Mike Skibbie

Michael Skibbie
Policy Director
Disability Rights Center – New Hampshire
64 N Main Street, Suite 2, 3rd Floor
Concord, NH 03301-4913
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DIOCESE OF MANCHESTER

January 28, 2021

Senator Jeb Bradley, Chair
and Members, Senate HHS Committee
State House, Room 100
Concord, New Hampshire 03301

Re: SB 74 (Advance Directives)

Dear Senator Bradley and Members of the Committee:

As Director of Public Policy for the Roman Catholic Diocese of Manchester, and on behalf of Bishop Peter Libasci, I write to provide comments on SB 74. As I will explain below, we are not taking a position on the bill.

The Diocese of Manchester strongly supports the use of advance directives, and specifically the establishment of durable powers of attorney for health care. The Diocese publishes a booklet called *Three Beliefs* that is intended to assist Catholics in that regard. Based on our experience in this area, we think that SB 74 makes some excellent improvements to the current law. In particular, I want to highlight the new and clearer definition of "actively dying"; the precedence over living wills that is established for durable powers of attorney for health care and surrogacy; and the clarification of when treatment can be given over objection. Overall, the changes in SB 74 will make the process easier to understand from the perspective of principals, agents and surrogates, and easier for health care providers to carry out.

There are two aspects of SB 74 that prevent us from affirmatively supporting the bill as it currently stands, however.

The first is the way the bill defines POLSTs. We understand that POLSTs are designed for people who are at the end of life, and SB 74 appears to treat POLSTs in their sense as a means for conveying a DNR instruction (in essence, as an equivalent to an ordinary pink DNR form.) To that degree, we would not have an issue with the use of a POLST in appropriate circumstances. The definition of POLST that the bill employs, though, contains a reference to "serious illness or frailty" (RSA 137-J:2, XXI; p. 4 line 31). This definition is different than the one found in RSA 137-L:2, VII, and it goes into broader territory than the "actively dying" situation that RSA 137-J rightly addresses. It would be useful to clarify how POLST is going to be used here and how the term should best be defined.

The second issue is the way that SB 74 addresses the situation of a person who is permanently unconscious. I should emphasize that, while language on this issue is being reenacted in SB 74, the

problem is one that ultimately arose from the existing law and it is not being introduced for the first time in SB 74.

RSA 137-J applies to two categories of principals: those who are "actively dying", and those who are "permanently unconscious." *See, e.g.*, RSA 137-J:1, I (b) (page 1, line 16). When medical treatments are withheld or withdrawn from a person in the former category, death comes as a result of the underlying illness.

It is a far different situation for someone who is permanently unconscious, however. RSA 137-J:20, II, for example, creates an option for medically administered food and water to be withheld from a person who is permanently unconscious (RSA 137-J:2, XV classifies medically administered nutrition and hydration as "life-sustaining treatments".) As the distinct category "permanently unconscious" illustrates, this person is not near death; indeed, he or she might have many decades left to live. In such a case, the withholding of food and water is not being done to allow the death of a person who is actively dying; rather it is being done to affirmatively end the person's life.

We believe that fundamental human dignity calls for people to be provided with basic care such as food and water until the body ceases to be able to assimilate food and water in the later stages of the dying process. Therefore, we continue to be troubled that RSA 137-J (under current law and under the amended version proposed in SB 74) carves out a provision for people who are permanently unconscious.

Thank you for your kind consideration of our views and for your service to the people of the State of New Hampshire.

Very truly yours,

Robert E. Dunn, Jr., Esq.
Director, Office of Public Policy

New Hampshire Hospital Association

SENATE HEALTH AND HUMAN SERVICES COMMITTEE

January 28, 2021

SB 74 – Relative to Advance Directives for Health Care Decisions

Testimony

Good afternoon, Chairman, and members of the committee. My name is Paula Minnehan, Senior VP, State Government Relations with the New Hampshire Hospital Association (NHHA), representing all 26 of the state's community hospitals as well as all specialty hospitals.

The NHHA is in strong support of SB 74. We want to thank Senator Sherman for agreeing to sponsor this important piece of legislation. We also want to thank the co-sponsors, including Senators Bradley and Whitley. I will provide you with a bit of background on the work of the NH Health Care Decisions Coalition and why they believe RSA 137-J needed to be amended. The bill before you today is the result of many months of thoughtful work by the members of the coalition, some of whom are with us today and will be testifying on this bill. They are experts in their various professions of palliative care medicine, health care law and caring for patients. I also have with me today my colleague, Brian Kugel who works for the Foundation for Healthy Communities (FHC, an affiliate of NHHA) and is the chair of the NH Health Care Decisions Coalition. I will have Brian speak in a minute to explain what the focus of the Coalition and its work.

Before that, though, I would like the committee to understand that the Coalition worked over the summer to draft some modifications to the statute to achieve several goals:

- Make the language of the various forms (Living Will, Durable Power of Attorney for Health Care) clearer and use consumer-friendly language.
- Remove time constraint on surrogacy and add surrogate in addition to agent throughout the statute.
- Add "practitioner" in place of listing the types of health care providers currently in statute.
- Include POLST or other sets of physician orders as allowable forms of portable DNR orders.
- Remove restriction that a surrogate or agent cannot authorize electroconvulsive shock therapy (ECT)
- Clarify that a Living Will is honored only if no agent or surrogate is named.
- Establish 18 years old as the minimum age for surrogacy and being an agent.

- Updates terminology to reflect what is currently used in medical settings.

In addition, Senator Sherman asked that the statute use gender neutral terminology, so those changes were incorporated into this draft.

While we have attempted to reach out to many interested stakeholders, some that will be testifying today, to explain what we tried to accomplish in this bill, we have not been able to connect with everyone. We understand this statute is of interest to many and we want to make sure that all parties are comfortable with the changes contemplated in this bill.

I do want to make clear, though, that we did not attempt to change long standing policy relative to this statute and, as Senator Sherman indicated when he agreed to sponsor the bill, he does not want to weaken the statute. We just want to make it easier for patients and their loved ones to understand the forms and to complete them to properly express their wishes and for the providers that care for these patients to follow their wishes.

NHHA is in strong support of SB 74 and we ask that you support the bill. Thank you for the opportunity to provide our comments.

Now, if you would oblige, I would now like to ask my colleague, Brian Kugel, to speak with the committee.

Foundation *for*
Healthy Communities

Good Afternoon Chairman and members of the committee,

My name is Brian Kugel, and my employer is the Foundation for Healthy Communities. I chair the NH Health Care Decisions Coalition, on which I have served for over twenty years. We publish the Advance Care Planning guide, which contains the standard forms for Advance Directives in this state*, and we publish Portable DNR and POLST forms. We also train medical personnel in technique for helping patients to consider appointing Health Care agents, how to decide if a Living Will is something they want and how to complete the necessary forms. We do a similar training for guiding appropriate patients, a more select population, to consider whether a POLST form would help them to express their preferences regarding anticipated care options.

Because I wear these hats, I am frequently consulted or informed when any of the existing statute's provisions are confusing, contradictory, or frustrating to real-life patients. I have seen the process of several modifications to this statute, and know how hard our legislators work to "get it right", and while each set of amendments has significantly improved the utility of this statute, the true test is in the experience of health care consumers (That's all of us!) in real time. The changes proposed in this bill reflect corrections to problems encountered by real people. This explains both the wide variety of proposed changes, as well as the deep edits in some other areas. If these changes are adopted, they will prevent real, not theoretical problems in the future.

The Coalition's goal is to make it possible for every individual to guide the response of the Health Care system to their own individual preferences, and to do that in a sensible way. I believe that is the goal of our elected leaders as well. I thank you for your commitment to that goal and respectfully request that you approve the legislation before you.

I am available for questions, if needed.

Respectfully,

Brian Kugel MSW

Concord, NH

bkugel@healthynh.org, phone 603-396-6351

*provided at cost, or free for download

Thank you for the opportunity to testify in favor of Bill SB 74. My name is Philip Lawson, and I am a physician practicing in NH since 1997, 19 years as a family physician with Ammonoosuc Community Health Services in Littleton; and now 23 years as an Emergency Department physician and Palliative Care Consultant for Littleton Regional Healthcare. Over this tenure, I have served on a number of related boards at the local and state level and continue to volunteer teaching facilitators to assist in medical decision making using Advance Directives and POLST forms. Over my career, I have had to privilege of assisting patients in some of their most vulnerable moments in a variety of settings: clinic, community, emergency department, hospital and home (yes, I still make home visits).

Much has changed in healthcare since ~~SB 74~~ the original Durable Power of Attorney statute was drafted in 1991. Physicians have become, with rare exception, employed by hospitals and other health care centers. Physicians have accepted Nurse Practitioners and Physician Assistants as colleagues. Medical practitioners no longer follow patients across the continuum of care, instead working within more confined silos. And in these environments, where providers no longer have decades of relationship with a patient and their family, regulation and oversight have become commonplace drivers of medical care. ~~SB 74~~The current statute: RSA 137-J, ~~Written Directives for Medical Decision-Making for Adults Without Capacity to Make Health Care Decisions,~~ as interpreted by institutions now, more than ever, drives medical decisions for patients who have lost capacity to make their own decisions. While we still meet with patients and families to share decision making, and struggle to honor each person's values and goals, ~~SB 74~~RSA 137-J, as written, provides ~~many~~ barriers to best possible care. Revision is timely and I commend Senator Sherman and the co-sponsors in moving this vital piece of legislation forward.

As the NH Health Decisions Coalition began to work on bringing the ~~the~~ statute up to date months ago, we focused in on a few key goals:

1. To improve choice for patients
2. To remove barriers that confuse more than support best possible care
3. To produce documents that can be easily understood and are respectful of all

I want to briefly discuss 34 parts of the proposed statute and then will be available on or offline for questions:

a) We believe in honoring the inherent value of human life at all times ~~and hold strongly that quality of life is only defined by an individual or their chosen decision maker~~. It is ~~still~~ the accepted standard that those permanently unconscious, disabled, or with what some might consider poor or even unacceptable quality of life will be fully treated as any other person, including receiving medically administered nutrition and hydration and any life sustaining treatment unless they or their surrogate clearly have stated otherwise. But we also understand that dying is a fundamental and necessary part all life. ~~SB 74~~ ~~T~~the current statute must honor all persons' values in regards to how they wish to experience the natural process of dying. J:7 III and J:10 I-II as presently written do not do this and instead drives the application of medically administered nutrition and hydration for all persons except in very specific circumstances of "irreparable harm" or the very limited clauses of the present DPOAH and Living Will. The present law suggests that every frail patient not eating or drinking enough requires a feeding tube and an IV unless they are actively dying or permanently unconscious and have stated that in a directive. Like other life sustaining medical treatment, t~~T~~he application of medically administered hydration or nutrition should be based on the benefits and burdens as defined by the values and goals of the individual patient and their family. The draft of a

new living will (as contemplated in SB 74) allows patients to state what burdens would be excessive for them, and at what point they would not want this sort of life sustaining treatment, widening choice and honoring individual values.

b) In all other jurisdictions where I and my colleagues have worked, appropriately appointed surrogate decision makers have authority for all decisions, unless specifically limited by a person. The requirement of a treatment against objection clause (J:15, IV), while well meaning in our "Live Free or Die" state; in practice causes confusion and is frequently misinterpreted by patients and those assisting them~~, providing barriers to best care~~. For those who have not completed AD's or not signed this clause, we are not legally able to treat, including for pain or other forms of suffering. For example an 84 yo this week who suffers from dementia became disoriented and combative after a surgical procedure. Even at his wife's direction, to her horror, we could not legally treat him over his objection to calm his delirious state because he left this section blank on his AD. I ~~encounter~~ find @ 25% of the~~my~~ patients I see in consultation leave~~ing~~ this blank because they misunderstand its meaning, not because they do not want treatment against objection after loss of capacity. Also, we have had patients who have lost the ability to make decisions in our hospital for weeks and even months pending guardianship as no other health care setting can accept them. People can choose that they do not want treatment against objection after loss of capacity; but ~~against objection despite available surrogates or DPOAH's. Patients should have the ability to stipulate this limitation~~consistent with the rest of the statute, the default should be an expectation that patients trust their agent to make the best possible decision based on their values as described in the rest of the statute. ~~; but it should not be the default.~~

—POLST and Portable DNR (J26 V,VI and J27 Ib,c) orders are indispensable to emergency physicians like me, as frail patients are transferred often with little information, for example from nursing facilities. They have become essential tools in patient centered care in the emergency setting; and including them in this statute will further their use and legitimacy, avoid overtreatment as well as help target treatment ~~targeted~~ to a person's ~~previously~~ stated values and goals.

c) _

e) ~~Our EMS providers have had to suffer the trauma of applying CPR in obviously futile circumstances against the express direction of loved ones due to J25; and the addition of J25 I (e) will give some leeway to withhold CPR in obviously inappropriate and futile situations.~~

We all want our lives to include the best possible care, and the best possible quality of life for the longest possible time. We also only die once, giving us only have one opportunity to care for each person at the end of life well. Please consider these changes that will allow the people of this state best possible care when they can no longer advocate for themselves.

Thank you and please reach out through any of my contact methods listed to discuss any part of this important legislative improvement.

Sincerely submitted,

Philip Lawson

philiplawson14@gmail.com

603-965-6895 (mobile)

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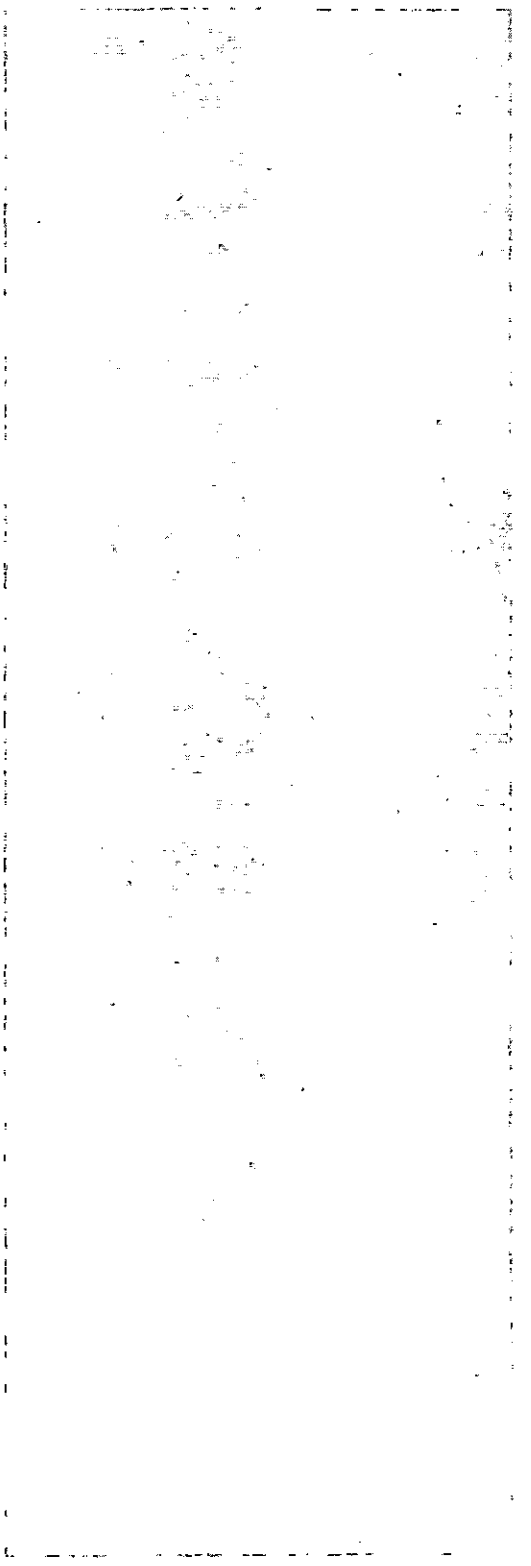
Commented [PM1]: Phil, Eric Jager is not testifying and he believes the bill does not go far enough re. EMS providers ability to stop CPR. I would suggest you not include this point as I think some might be uncomfortable with "give some leeway to withhold CPR".....

603-549-8229 (pager)



CHAPTER 276
SB 549-FN - FINAL VERSION

03/10/2016 0904s
03/10/2016 0933s
11May2016... 1606h
06/01/2016 2120EBA

2016 SESSION

16-2983
06/10

SENATE BILL ***549-FN***

AN ACT relative to public-private partnerships for transportation infrastructure projects and establishing the public-private infrastructure oversight commission.

SPONSORS: Sen. Lasky, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Daniels, Dist 11; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Sen. Hosmer, Dist 7; Sen. Kelly, Dist 10; Sen. Pierce, Dist 5; Sen. Reagan, Dist 17; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Sen. Woodburn, Dist 1; Rep. Cloutier, Sull. 10; Rep. M. O'Brien, Hills. 36

COMMITTEE: Transportation

ANALYSIS

This bill authorizes the commissioner of the department of transportation to enter into certain contracts with private entities.

This bill also establishes the public-private partnership infrastructure oversight commission.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 276
SB 549-FN - FINAL VERSION

03/10/2016 0904s
03/10/2016 0933s
11May2016... 1606h
06/01/2016 2120EBA

16-2983
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to public-private partnerships for transportation infrastructure projects and establishing the public-private infrastructure oversight commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

276:1 Purpose Statement. Public-private partnerships allow for the sharing of resources to finance, design, build, operate, and maintain transportation infrastructure projects and are especially effective when limited financial resources are available. Such partnerships provide for shared financial responsibilities between the private sector and a public agency. To accomplish that, a clear and succinct law needs to be implemented that considers our infrastructure requirements, delineates responsibilities and commitments, and identifies risks and rewards of both parties. Public-private partnership legislation is designed to address these issues in order to attract the needed investment to sustain and promote growth while maintaining our transportation infrastructure.

276:2 New Paragraph; Transportation Administration; Powers of Commissioner. Amend RSA 228:21 by inserting after paragraph II the following new paragraph:

III. The commissioner, upon the approval of the governor and council and the capital budget overview committee, may enter into agreements with private entities for design-build-finance-operate-maintain or design-build-operate-maintain services for transportation infrastructure projects under RSA 228:107 through RSA 228:115, provided that such projects shall be approved as part of the state 10-year transportation improvement program in accordance with RSA 240.

276:3 New Subdivision; Public-Private Partnership Projects. Amend RSA 228 by inserting after section 106 the following new subdivision:

Public-Private Partnership Projects

228:107 Public-Private Partnership Infrastructure Oversight Commission Established. There is established a public-private partnership transportation infrastructure oversight commission to consider and recommend to the commissioner of transportation projects that may be suitable for delivery using design-build-finance-operate-maintain or design-build-operate-maintain services. The commission shall act as an advisory board during the execution of a public-private partnership project, supporting the department in the development of a request for proposals and in the preparation of agreements for public-private partnership projects.

228:108 Membership.

I. The commission established in RSA 228:107 shall have the following members: 2 members who shall reside in different geographic regions of the state, to be appointed by the governor for terms of 2 years; 2 members to be appointed by the president of the senate for terms of 2 years; 2 members to be appointed by the speaker of the house of representatives for terms of 2 years; and one member to be appointed by the state treasurer, who shall not be an employee of the state treasurer, for a term of 2 years. The commissioner, or designee, shall serve as a non voting member of the commission.

II. Each member of the commission shall be an expert with experience in the fields of transportation law, public policy, public finance, management consulting, transportation, or organizational change; provided that one of the members appointed by the governor shall be an expert in the field of public finance, and one member appointed by the governor shall be an expert in the field of transportation. The governor shall appoint a chairperson from among the members. The members may be eligible for reappointment; however, no member shall serve for more than 3 terms.

III. No person shall be appointed a voting member of the commission who is registered or was registered within the prior one-year period with the secretary of state as a lobbyist under RSA 15; no voting member shall have been a member or employee of the general court or an employee of the executive branch for a period of 6 months prior to his or her appointment; and no member shall have been employed by an organization that has business before the commission, for a period of at least one year prior to his or her appointment.

IV. The commissioner shall call the first meeting within 90 days of the effective date of this section.

V. Members of the commission shall receive mileage at the state employee rate when attending to the duties of the commission.

228:109 Duties.

I. The commission shall:

(a) Establish a general framework for public-private partnership contracts that establishes a process for the submission and evaluation of all such projects and provides a format and forms to enable the bidder to comply with the requirements including terms and conditions.

(b) Provide for the submission of unsolicited proposals, including setting qualification criteria for unsolicited proposals and establishing a process for evaluating unsolicited proposals.

(c) Provide a method and structure for using public advisors for strategic planning, proposal evaluations, and project monitoring and utilize public professionals on a case-by-case basis.

(d) Perform an analysis to determine whether a project is suitable for a public-private partnership whenever the department notifies the commission of its intent to pursue a public-private partnership contract.

(e) Hold a minimum of 2 publicly noticed hearings per project to establish whether public-private partnership is the appropriate procurement method. Such notice shall be provided at least 14 days prior to the hearing date. The commission shall allow for a 30-day public comment period following the publicly noticed hearing.

(f) Make recommendations to the commissioner, subject to the approval of the governor and council and the capital budget overview committee, concerning the use of public-private partnerships for certain projects.

(g) Upon approval of the governor and council and the capital budget overview committee, the commission shall support the department in the development of a request for proposals.

(h) Provide criteria for qualifications to bid per project, including but not limited to, adequate equipment to perform, financial stability, and proven record on projects of this type.

(i) Assure that any public-private partnership agreement is advanced in accordance with the department's design, permitting, and right of way acquisition process and complies with all federal and state design criteria.

(j) Estimate the costs associated with hiring qualified private and public support personnel to advance and oversee any public-private partnership contract.

(k) Hold a minimum of one publicly noticed hearing per project to solicit public feedback concerning the draft request for proposals. Such notice shall be provided at least 14 days prior to the hearing date. The commission shall allow for a 30-day public comment period following the publicly noticed hearing.

II. Once the commission is satisfied that the request for proposals is complete, governor and council approval shall be obtained before it is released by the department.

228:110 Procedure. Whenever the department notifies the commission that it is contemplating the use of a public-private partnership contract for design-build-finance-operate-maintain or design-build-operate-maintain services, the department shall submit a written request to the commission for its consideration. The commission shall provide an initial written response to the request to consider a public-private partnership contract within 15 days. No request for proposals shall be issued by the department for a public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services without the commission's written recommendation and concurrence by governor and council of both the procurement method and content of the request for proposals.

228:111 Commission Report. The commission shall issue the following reports:

I. Within 6 months of the first meeting of the commission a copy of the framework establishing the process for the submission and evaluation of public-private partnership projects shall be provided to the chairpersons of the public works and highways committee and the senate transportation committee and the governor and council. The framework shall include the process

for the submission of both solicited and unsolicited proposals and a process for evaluating such proposals. It shall also include how public advisors may be utilized for planning, evaluating, and monitoring of projects.

II. Annually thereafter, a report on the work of the commission shall be provided to the individuals listed in paragraph I, including but not limited to, the number of projects reviewed, the recommendations for such projects, and the number of requests for proposals being developed.

228:112 Project Reports.

I. For each request to establish a public-private partnership contract for design-build-finance-operate-maintain or design-build-operate-maintain services, the commission shall report on issues surrounding the project including, but not limited to:

(a) The impact on current state employees.

(b) The policy and regulatory structure for overseeing a privately operated transportation facility and ongoing legislative oversight.

(c) Issues of taxation, profit-sharing, and resolution of new revenue producing ideas.

(d) Advertising and marketing.

(e) Use of new technologies.

(f) Lease terms and termination clauses.

(g) Additional responsibilities by both the private infrastructure operator and the state during the lease period.

(h) The financial valuation of the state transportation facility.

(i) Issues of public concern.

(j) The anticipated advantages of entering into the anticipated public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services.

II. The report shall be delivered within 30 days of the commission's recommendation concerning the use of design-build-finance-operate-maintain or design-build-operate-maintain services to the chairpersons of the public works and highways committee and the senate transportation committee and the governor and council.

228:113 Contributions from Other States. When a project involves one or more other states, the commissioner may receive and accept capital contributions and funding from such other states and may approve the transfer of support personnel and experts.

228:114 State and Federal Funding. Any public-private partnership projects shall be approved as part of the state 10-year transportation improvement program in accordance with RSA 240.

228:115 Liability Insurance. Any contract for public-private design-build-finance-operate-maintain or design-build-operate-maintain services shall provide for securing and maintaining a liability insurance policy for contractors and engineers in the design phase of a project which shall be limited to 10 percent of the cost of such project. A certificate of liability compliance shall be included in the bid. Any such contract shall require a bond under RSA 447:16 for the design-build

and bonds, letters of credit, or other forms of security for the operations and maintenance phases of the project.

276:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 16, 2016

Effective Date: August 15, 2016

Voting Sheets

Senate Health and Human Services Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB74

Hearing Date: 1/28/21

Executive Session Date: 3/24/21

Motion: Amendment 0854s **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	X			X	
Sen. Gray, Vice Chair	X			X	
Sen. Avard	X			X	
Sen. Sherman	X	X		X	
Sen. Whitley	X		X	X	

Motion: OTPA **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair	X			X	
Sen. Gray, Vice Chair	X			X	
Sen. Avard	X			X	
Sen. Sherman	X	X		X	
Sen. Whitley	X		X	X	

Motion: _____ **Vote:** _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair					
Sen. Gray, Vice Chair					
Sen. Avard					
Sen. Sherman					
Sen. Whitley					

Motion: _____ **Vote:** _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Bradley, Chair					
Sen. Gray, Vice Chair					
Sen. Avard					
Sen. Sherman					
Sen. Whitley					

Reported out by: Sen. Sherman

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Thursday, March 25, 2021

THE COMMITTEE ON Health and Human Services

to which was referred **SB 74**

AN ACT relative to advance directives for health care decisions.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1022s

Senator Tom Sherman
For the Committee

Kirsten Koch 271-3266

HEALTH AND HUMAN SERVICES

SB 74, relative to advance directives for health care decisions.
Ought to Pass with Amendment, Vote 5-0.
Senator Tom Sherman for the committee.

Docket of sb74		
01/19/2021	S	Introduced 01/06/2021 and Referred to Health and Human Services; SJ 3
01/21/2021	S	Remote Hearing: 01/28/2021, 01:15 pm; Links to join the hearing can be found in the Senate Calendar; SC 8
03/25/2021	S	Committee Report: Ought to Pass with Amendment # 2021-1022s, 04/01/2021; SC 17
04/01/2021	S	Committee Amendment # 2021-1022s, RC 24Y-0N, AA; 04/01/2021;
04/01/2021	S	Ought to Pass with Amendment 2021-1022s, RC 24Y-0N, MA; OT3rdg; 04/01/2021; SJ 10
04/13/2021	H	Introduced (in recess of) 04/09/2021 and referred to Health, Human Services and Elderly Affairs HJ 7 P. 99
04/20/2021	H	Public Hearing: 05/03/2021 10:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/91978983838 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
05/05/2021	H	Executive Session: 05/17/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95933161404
05/25/2021	H	Majority Committee Report: Ought to Pass (Vote 16-5; RC) HC 26 P. 23
05/25/2021	H	Minority Committee Report: Inexpedient to Legislate
06/03/2021	H	FLAM # 2021-1846h (Rep. M. Pearson): AA VV 06/03/2021
06/03/2021	H	Lay on Table (Rep. Silber): MF VV 06/03/2021
06/03/2021	H	Ought to Pass with Amendment 2021-1846h: MA VV 06/03/2021
06/10/2021	S	Sen. Bradley Moved to Concur with the House Amendment, MA, VV; 06/10/2021; SJ 19
07/07/2021	H	Enrolled (in recess of) 06/24/2021
07/07/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 74 **Senate Committee:** HHS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

___ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

X - amendment # 2021-1022s X - amendment # 2021-0854s Sherman

___ - amendment # _____ X - amendment # 2021-0857s Sherman

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Kirsten Koch 7/26/21

Committee Aide **Date**

Senate Clerk's Office AK