



# Portable Do Not Attempt Resuscitation Orders

2016 Amendments to the Alabama  
Natural Death Act

# Portable DNAR



- The Natural Death Act, *Ala. Code 22-8A-1 et seq.*, contains provisions that affirm the right of competent adult persons to control the decisions relating to the rendering of their own medical care.

# Portable DNAR



- Such decisions include, without limitation, the decision to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness.

# Portable DNAR



This Act recognizes and authorizes two rights:

1. The right of a competent adult person to make a written declaration instructing his or her physician to provide, withhold, or withdraw life-sustaining treatment and artificially provided nutrition and hydration.

(Living will)

# Portable DNAR



2. The right to designate by lawful written form a health care proxy to make decisions on behalf of the adult person concerning the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration in instances of terminal conditions and permanent unconsciousness.



# Portable DNAR

- However, until recently, there has been no law or guidance for "Do Not Resuscitate" ("DNR") or "Do Not Attempt Resuscitation" ("DNAR") orders even though they are routinely used in health care settings throughout the state.



# Portable DNAR

- When a **Do Not (Attempt) Resuscitation** order was entered at one health care facility, it was enterprise/corporate specific. The order was no longer received as a valid order to be accepted and implemented by other providers after the discharge/transfer of a patient to another facility; for example, from a hospital in north Alabama to a long-term care setting in central Alabama.

# Portable DNAR



- And at every new encounter between a patient and a new health care facility or provider, the process of asking about and reviewing the Advance Directive and implementation of a facility specific DNR order had to start over from step one!



# Portable DNAR



- In the 2016 session, the Alabama Legislature passed an Act amending Alabama's Natural Death Act to address portable DNAR orders and to endorse the immediate acceptance and implementation of a valid DNAR order in separate and diverse health care settings.

# Portable DNAR



- ACT # 2016-96 amended sections of the Natural Death Act  
“...to authorize health care providers, under certain conditions to follow a physician’s do not attempt resuscitation order duly entered in the medical record anywhere in the state, even if the person subject to the order has become incapacitated and is unable to direct his or her medical treatment.”

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These amendments to the Code of Alabama added the definition of a “Do Not Attempt Resuscitate (DNAR)” Order and recognized that a physician may enter a DNAR in a patient's medical record based on:

# Portable DNAR



- 1.** the consent of the person, if the person is competent; or

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2. in accordance with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or

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**3.** with the consent of a health care proxy or surrogate functioning under the provisions in this chapter; or

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4. instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in Section 22-8A-4(b)(1).

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The statute defines several terms such as: a "Do Not Attempt Resuscitation (DNAR) Order" at:

**Section 22-8A-3 Definitions.**





# Portable DNAR

- Section 22-8A-3 Definitions.

(7) A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND."

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- Section 22-8A-3 Definitions.

(15) A DNAR order entered in the medical record by a physician using the required form designated by the State Board of Health and substantiated by completion of all sections of the form.

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- Section 22-8A-3 Definitions.

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

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The Act establishes the Validity of DNAR orders: **Section 22-8A-4.1**

A completed DNAR order that is properly entered and received is deemed a valid order.

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- How can an order written by a physician - even an out of town physician who does not have privileges at the receiving hospital, nursing home, or other licensed health care facility - be accepted by the receiving facility and made a part of the official medical record?

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**Suggestion:** amend the hospital bylaws and/or the policy and procedure statement of the facility to reflect acceptance of a valid DNAR order from any physician when a valid DNAR Order form is received –based on the provisions of the statute which applies to all facilities in the state.

# Portable DNAR



The Act establishes the requirements for a **Valid** DNAR orders:

“The State Board of Health shall adopt by rule the form to be used for a portable DNAR order.

# Portable DNAR



- The Act provides that both The State Board of Health and the Board of Medical Examiners may adopt rules to implement this act as amended.
- The Board of Medical Examiners has exclusive authority to adopt rules relating to **physicians** in implementing the act as amended.



# Portable DNAR



These changes to the Act provide immunity for civil or criminal liability for a health care provider who issues or follows a valid Portable Physician DNAR Order in accordance with the statute.

# Portable DNAR



- In July 2016, the Alabama Department of Public Health developed a proposed rule and form for portable DNAR Orders. The rule allows a physician to enter a Portable Do Not Attempt Resuscitate order that transfers from one facility to the next facility if issued using a properly completed and executed form found in Appendix II of the rule.

# Portable DNAR



- This was approved for public comment by the State Committee of Public Health. A public hearing was held and written comments were received. All comments were favorable and several excellent suggestions were incorporated into the form; response was made to all comments.

# Portable DNAR



- The rule and form became final on October 3, 2016.
- The rule is incorporated into Chapter 420-5-19 of the Alabama Administrative Code along with the rule and form for the completion of the Surrogate Health Care Decision Maker.

# Portable DNAR



- Both of these forms are available on the web site of the  
Alabama Department of Public Health: [adph.org](http://adph.org)
- They are easily found by clicking on “Laws/Regulations” in  
the green banner at the top of the home page.

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## Laws/Regulations

Please select from the following links to review rules and regulations pertaining to public health topics in Alabama.

- [Advance Directives/Portable Physician Do No Attempt Resuscitation Orders](#)
- [Alabama Head and Spinal Cord Injury Registry Law](#)
- [Alabama School Immunization Law](#)
- [Cancer Registry Laws and Rules](#)
- [Child Death Review Law](#)
- [Child Restraint Law and Seat Belt Law](#)

Link takes user to page with sentences quoted from the seat belt law and child restraint law.

- [Clinical Laboratory Improvement Amendments \(CLIA\) Rules](#)
- [Controlled Substance List](#)
- [County Health Department Physical Plant and Equipment Standards](#)
- [Emergency Medical Services Rules](#)
- [Environmental Rules](#)
- [Healthcare Associated Infections \(HAI\) Rules and Regulations](#)
- [Health Care Facilities Rules](#)
- [Health Care Service Utilization Review Act \(UR Agent Law\)](#)
- [Health Maintenance Organization \(HMO\) Law and Rules](#)
- [Lead Contractors Certification Laws and Rules](#)
- [Life Safety Code](#)
- [Newborn Screening Rules and Law](#)
- [Notifiable Disease Rules](#)

# Portable DNAR



Supp. 12/31/16 5-19-1

- Health

## STATE BOARD OF HEALTH ADMINISTRATIVE CODE CHAPTER 420-5-19 ADVANCE DIRECTIVES TABLE OF CONTENTS

- **420-5-19-.01 Advance Directives**
- **420-5-19-.02 Portable Physician Do Not Attempt Resuscitation Orders**
- **Appendix I Appendix II**
- **420-5-19-.01 Advance Directives.** Surrogate health care decision makers, as authorized by Act 97-187, shall complete the form attached hereto as Appendix 1 which, when properly completed and duly notarized, shall constitute the certification of the surrogate as required by the act. This form is to be used in fulfillment of the purposes of Act 97-187.
- **Author:** Rick Harris **Statutory Authority:** Act No. 97-187. **History:** **New Rule:** Filed August 20, 1997; effective September 24, 1997.
- **420-5-19-.02 Portable Physician Do Not Attempt Resuscitation Orders.**
- (1) **Definitions.**
- (a) **Do Not Attempt Resuscitation (DNAR) Order.** A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A DNAR order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND."

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- In addition one can enter the term: “DNAR” in the “Search Keyword” box in the left upper corner of the home page.
- This will also take you to “ADPH - Laws & Regulations”.
- Again. Click on this and you will get the rule and form.



# Portable DNAR



- The intent of the Board of Health is that the Portable DNAR Form follows the specific language in the Act 2016-96 which amended the Alabama Natural Death Act.

# Portable DNAR



- This act provides that, under the specific condition of **cardiopulmonary cessation**, that the wishes of the patient for cardiopulmonary resuscitation be followed, as instructed by the patient when competent, or in a written advance directive as signed by a decision maker authorized through the instruments provided in the Alabama Natural Death Act.

# Portable DNAR



- The new rule and form are suitable for use as the accepted DNAR form for every facility.
- The form can be used for any patient/resident regardless of his/her status with respect to “terminal illness” or “persistent vegetative state” at the time the form is signed.



# Portable DNAR

The form can be used for a patient/resident who has lost the capacity to understand, appreciate and direct his/her own medical care and treatment when:

1. there is an **advance directive** which mandates that this patient/resident has opted for DO NOT RESUSCITATE
2. When the patient/resident has appointed a **proxy** who directs that this person not be resuscitated

# Portable DNAR



3. when there is a **designated Attorney-in-Fact** who is specifically authorized to make decisions regarding the providing, withholding, or withdrawal of life-sustaining treatment
4. there is a **surrogate decision maker** having a form duly notarized allowing the surrogate to make decisions regarding the providing, withholding, or withdrawal of life-sustaining treatment

# Portable DNAR



The Rule is written understanding and asserting the following:

- that without prompt resuscitative measures, cardiopulmonary cessation does result in an immediate terminal condition as well as permanent unconsciousness.

# Portable DNAR



- Furthermore, the specific condition of cardiopulmonary cessation does not allow time for consultation and supplementary examination and observation to verify, in advance of cardiopulmonary cessation, the presence of a less acute terminal condition which is expected under normal circumstances to result in death in six months or less; or a pre-existing state of permanent unconsciousness.

# Portable DNAR



- Thus in this specific circumstance as authorized in Act # 2016-96, the instructions in a valid advanced directive can be implemented on the signature of **one physician**.



# Portable DNAR



- This DNAR form is limited and specific to **cardiopulmonary resuscitation**.
- For all other decisions regarding end of life care and treatment such as withholding or withdrawing artificially provided nutrition and hydration, or other specific instructions in an advance directive (for example those regarding dialysis), the facility and physicians must act in accord with the instructions contained in the Natural Death Act.

# Portable DNAR



- For a patient/resident who has lost the capacity to understand, appreciate and direct his/her own medical care and treatment, two physicians are required to implement the instructions for withholding or withdrawing artificially provided hydration and nutrition in an advance directive, or the instructions of the proxy, attorney-in-fact, or surrogate decision maker.



# Portable DNAR

- The form required for a **valid** DNAR Order, developed by the Department has five sections.
- **Section I Patient/Resident Consent.**
- This section is straightforward: a competent person declares:  
**“I (name) direct that resuscitative measures be withheld from me in the event of cardiopulmonary cessation. I have discussed this decision with my physician, and I understand the consequences of this decision.”**

# Portable DNAR



- **Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive**
- Advanced Directive in this section makes reference to the Living Will section of the statute.
- This section is to some extent complex and has two subdivisions.  
The signature which follows this section must be placed by someone who is authorized to attest:



# Portable DNAR

**Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

**1. First, that the: “..patient/resident is not competent or is no longer able to understand, appreciate, and direct his/her medical treatment and has no hope of regaining that ability.”**

# Portable DNAR



Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.

2. Secondly: “A duly executed Advance Directive for Health Care with instructions that no life sustaining treatment be provided was previously authorized by the patient/resident and is part of his/her medical record.”

# Portable DNAR



## **Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- It is not necessary that this section is signed by a physician.
- A person such as a licensed administrator, social worker or nurse who is authorized to review the medical record and attest to the documentation in the medical record could sign that these statements are true and correct.

# Portable DNAR



## **Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- It is therefore imperative that the written Advance Directive be incorporated in to the medical record in the health care facility when the DNAR order is implemented.



# Portable DNAR



## **Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- In addition, it is imperative that the sections of the Advance Directive that ask if the undersigned wants resuscitative efforts if terminally ill or in a state of permanent unconsciousness be marked “NO” on the Advance Directive form.



# Portable DNAR

- Place your initials by either “yes” or “no”:
- I want to have life sustaining treatment if I am terminally ill or injured.  
\_\_\_\_\_ Yes \_\_\_\_\_ No
- I want to have life-sustaining treatment if I am permanently unconscious. \_\_\_\_\_ Yes \_\_\_\_\_ No



# Portable DNAR

## Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.

- Also, it is not necessary that the section of the Advance Directive in which the person, while competent, named a health care proxy reflect “YES” to either:

“     I want my health care proxy to follow only the directions as listed on this form.

     I want my health care proxy to follow my directions as listed on this form and to make any decisions about things I have not covered in the form.”

The health care proxy must sign the form authorizing DNAR in **Section III**.



# Portable DNAR

## Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.

- Finally, the Advance Directive may give the health care proxy a “YES” for the option of:

“       I want my health care proxy to make the final decision, even though it could mean doing something different from what I have listed on this form.”

The decision of the health care proxy to direct that resuscitative measures be withheld in the event of cardiopulmonary cessation must be documented in

**Section III** of the form.

# Portable DNAR



- **Section III. Health Care Proxy or Attorney-in-Fact Consent.**
- This section is somewhat comparable to Section I in that it is rather straightforward and directs that resuscitative measures be withheld from the patient/resident in the event of cardiopulmonary cessation; signed by the attorney in fact or health care proxy designated by the person when competent to make final decisions regarding end of life decisions.

# Portable DNAR



## **Section III. Health Care Proxy or Attorney-in-Fact Consent.**

- It is important to note that this section of the form requires that the paperwork designating the attorney in fact or health care proxy be incorporated into the medical record of the facility in which the portable DNAR is completed.

# Portable DNAR



- **Section IV. Surrogate Consent.**
- This section is also straightforward and requires the signature of the surrogate decision maker that directs that resuscitative measures be withheld from the patient/resident in the event of cardiopulmonary cessation; and requires incorporation of the notarized Surrogate decision Maker Form into the medical record.

# Portable DNAR



- **Section V. Physician Authorization.**
- This section is the actual physician's order that all resuscitative measures be withheld; but that measures for the comfort of the patient and support of those in attendance be provided.



# Portable DNAR



- **Section V. Physician Authorization.**
- For an in-hospital order, the addition of the **time** after the date when the order is signed is mandatory for compliance with CMS regulatory “Conditions Of Participation (COP)” for hospitals. This also represents best practice for signature of orders in all other settings.

# Portable DNAR



- **Section V. Physician Authorization.**
- Many comments have been received since the rule and form became final - suggesting that the physician's NPI number or license number be written under her/his signature to facilitate future communication with the correct physician if this becomes necessary.

# Portable DNAR



- **Section V. Physician Authorization.**
- This section clearly mandates that a physician sign the order.
- This would preclude a PA or CRNP or any other classification of health care provider signing a Portable DNAR order.

# Portable DNAR



- Facilities may make a copy of the form either single sided or double sided; or print the form on a colored paper; may add their corporate name or logo; may add an identifying number or a patient descriptive bar code or other facility specific emblem to the form - **but there can be no change to the specific, scripted language of the form itself.**

# Portable DNAR



- This form is absolutely NOT a “Physician Orders for Life Sustaining Treatment (**POLST**)” form.
- There is no option on this form for the physician to order, for example: at patient request use external positive pressure resuscitation using Bi-PAP in the event of respiratory failure but no endotracheal intubation.
- There is no option for the physician to order, for example, chest compression and external cardiac shock with an AED for only 5 minutes for cardiac arrest; then stop if no response.



# Portable DNAR

- The rule and form does not prevent, prohibit, or limit a physician from issuing a facility-specific written order, other than a portable physician DNAR order, not to resuscitate a patient in accordance with accepted medical practices in the event of cardiopulmonary cessation.
- A facility-specific DNAR order is not a portable physician DNAR order and does not transfer with the patient to another health care facility.

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- Such facility specific DNAR orders may be more or less complex than the order noted on this form and may be in a format which is similar to a POLST form.

# Portable DNAR



- Suggestions for any substantive change to the wording of this form may be sent to:

Walter T. Geary Jr., M.D.

Assistant State Health Officer for Regulatory Affairs

201 Monroe St., Montgomery, AL 36104

or

[wt.geary@adph.state.al.us](mailto:wt.geary@adph.state.al.us)





# Portable DNAR

The Physician Portable DNAR rule is not part of any health care facility rule.

Thus: the state survey agency will not investigate the application of this rule; the completion of the form; or enforcing any section of this rule.

Complaints regarding failure to complete the form; failure to transfer the form to the receiving facility; failure to implement the DNAR form in the receiving facility - will not be accepted by the Department.

Complainants will be instructed that their only recourse is through civil litigation.

# Portable DNAR



- Failure by staff in any certified health care facility to document and follow the resident's wishes with respect to CPR in the event of cardiopulmonary cessation will be investigated and enforced exactly as is currently stipulated by CMS regulations.

# Portable DNAR



- The Alabama Portable Physician Do Not Attempt Resuscitation (DNAR) Order form has replaced the longstanding Emergency Medical Services (EMS) DNAR order form.
- Information on this change is being communicated to all EMS services state-wide.
- The current form has replaced the old form on the Department's web site on the EMS home page under the heading: Forms.