

Floor Amendment to SB 74

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

2
3 II. All persons have a right to make health care decisions ***and to refuse health care***
4 ***treatments***, including the right to refuse cardiopulmonary resuscitation. It is the purpose of the
5 "Do Not Resuscitate" provisions of this chapter to ensure that the right of a person to self-
6 determination relating to cardiopulmonary resuscitation is protected, and to give direction to
7 emergency services personnel and other health care providers in regard to the performance of
8 cardiopulmonary resuscitation. ***Recognizing this right, the refusal of health care treatments***
9 ***is not sufficient to demonstrate that a person lacks capacity to make health care decisions.***
10

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

12
13 ***IV. This chapter seeks to simplify and clarify the process by which a person may***
14 ***execute a health care advance directive by combining in one form the durable power of***
15 ***attorney for health care document and the living will, either of which (or both) may be***
16 ***executed by the person. The law recognizes that it is preferable for a person to choose an***
17 ***agent under a durable power of attorney for health care document who can make decisions***
18 ***in real time and under then existing circumstances regarding health care decisions that***
19 ***best reflect the person's values, as articulated orally or in writing by the person. The law***
20 ***also recognizes that a person may wish to execute a living will that sets forth their wishes***
21 ***about end of life care that would be used by an agent or surrogate as guidance in***
22 ***implementing the person's wishes. The law further recognizes that a person may wish to***
23 ***grant greater power and authority to their named agent than to a surrogate and honors***
24 ***any limitations placed on a surrogate in a person's advance directive.***
25

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

27
28 [V.] VI. "Capacity to make health care decisions" means the ability to understand and
29 appreciate generally the nature and consequences of a health care decision, including the significant
30 benefits and harms of and reasonable alternatives to any proposed health care. The fact that a
31 person has been diagnosed with mental illness, brain injury, or intellectual disability, ***or has***

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1 *declined a recommended medical procedure or therapy*, shall not mean that the person
2 necessarily lacks the capacity to make health care decisions.

3
4 Amend RSA 137-J:2, XXVIII-XXIX as inserted by section 1 of the bill by replacing them with the
5 following:

6
7 ~~[XXIII.]~~ **XXVIII.** "Witness" means a competent person 18 years or older who is present when
8 the principal signs an advance directive.

9
10 Amend the introductory paragraph RSA 137-J:7, I as inserted by section 2 of the bill by replacing it
11 with the following:

12
13 I. A qualified patient's attending ~~[physician, PA, or APRN]~~ **practitioner**, or a qualified
14 patient's health care provider or residential care provider, and employees thereof, ~~[having knowledge~~
15 ~~of the qualified patient's advance directive]~~ shall ~~[be bound to]~~ follow, as applicable, ~~[the dictates of~~
16 ~~the qualified patient's living will and/or]~~ the directives of a qualified patient's designated agent **or**
17 **surrogate** to the extent they are consistent with this chapter and the advance directive, and to the
18 extent they are within the bounds of responsible medical practice.

19
20 Amend RSA 137-J:10, II as inserted by section 2 of the bill by inserting after subparagraph (b) the
21 following new subparagraph:

22
23 *(c) The use of this chapter to authorize any health care decision rejected by the*
24 *patient based primarily, substantially, or solely on a finding that the patient is not capable*
25 *of making a health care decision because the patient has refused that procedure or*
26 *therapy.*

27
28 Amend RSA 137-J:14, I as inserted by section 5 of the bill by replacing it with the following:

29
30 I. The advance directive shall be signed by the principal in the presence of either of the
31 following:

32 (a) Two or more subscribing witnesses, neither of whom shall, at the time of execution,
33 be the agent **or surrogate**, the principal's spouse or heir at law, or a person entitled to any part of
34 the estate of the principal upon death of the principal under a will, trust, or other testamentary
35 instrument or deed in existence or by operation of law, or attending ~~[physician, PA, or APRN]~~
36 **practitioner**, or person acting under the direction or control of the attending ~~[physician, PA, or~~
37 ~~APRN]~~ **practitioner**. No more than one such witness may be the principal's health or residential

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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**.

Amend RSA 137-J:15, I(a) as inserted by section 5 of the bill by replacing it with the following:

(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;

Amend the bill by replacing section 7 with the following:

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

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1 “agent” becomes the person who can make decisions for you. If you get better, you will make your
2 own healthcare decisions again.

3 • With few exceptions(*), when you are unable to make your own medical decisions, your agent will
4 make them for you, unless you limit your agent's authority in Part I.B of the durable power of
5 attorney form. Your agent can agree to start or stop medical treatment, including near the end of
6 your life. Some people do not want to allow their agent to make some decisions. Examples of what
7 you might write in include: “I do NOT want my agent . . .

8 - to ask for or agree to stop life-sustaining treatment (such as breathing machines, medically-
9 administered nutrition and/or hydration (tube feeding), kidney dialysis, other mechanical devices,
10 blood transfusions, and certain drugs).”

11 - to ask for or to agree to a Do Not Resuscitate Order (DNR order).”

12 - to agree to treatment even if I object to it in the moment, after I have lost the ability to make
13 health care decisions for myself.”

14 • The law allows your agent to put you in a clinical trial (medical study) or to agree to new or
15 experimental treatment that is meant to benefit you if you have a disease or condition that is
16 immediately life-threatening or if untreated, may cause a serious disability or impairment (for
17 example new treatment for a pandemic infection that is not yet proven). You may change this by
18 writing in the durable power of attorney for health care form:

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

21 ○ “I don’t want to participate in medical studies or experimental treatment even if the treatment
22 may help me or I will likely die without it.”

23 • Your agent must try to make the best decisions for you, based on what you have said or written in
24 the past. Tell your agent that you have appointed them as your healthcare decision maker. Talk to
25 your agent about your wishes.

26 • In the "living will" section of the form, you can write down wishes, values, or goals as guidance for
27 your agent, surrogate, and/or medical practitioners in making decisions about your medical
28 treatment.

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

31 • You must sign this form in the physical presence of 2 witnesses or a notary or justice of the peace
32 for it to be valid. The witnesses cannot be your agent, spouse, heir, or anyone named in your will,
33 trust or who may otherwise receive your property at your death, or your attending medical
34 practitioner or anyone who works directly under them. Only one witness can be employed by your
35 health or residential care provider.

36 • Give copies of the completed form to your agent, your medical providers, and your lawyer.

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* 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.

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1 II. LIVING WILL

2 If you would like to provide written guidance to your agent, surrogate, and/or medical practitioners
3 in making decisions about life sustaining medical treatment if you cannot make your own decisions,
4 you may complete the options below.

5 CHOOSE ITEM A OR B. Initial your choice:

6 If I suffer from an advanced life-limiting, incurable and progressive condition:

7 _____ A. I wish to have all attempts at life-sustaining treatment (within the limits of generally
8 accepted health care standards) to try to extend my life as long as possible, no matter what burdens,
9 costs or complications may occur.

10 OR

11 _____ B. I do NOT wish to have any life-sustaining treatment attempted that I would consider to
12 be excessively burdensome or that would not have a reasonable hope of benefit for me. I wish to
13 receive only those forms of life-sustaining treatment that I would not consider to be excessively
14 burdensome AND that have a reasonable hope of benefit for me. The following are situations that I
15 would consider excessively burdensome: (Cross out and initial any of the below statements # 1-4 if
16 you **disagree**.)

17 1. I do not wish to have life-sustaining treatment attempted if I am actively dying (medical
18 treatment will only prolong my dying).

19 2. I do not wish to have life-sustaining treatment attempted if I become permanently unconscious
20 with no reasonable hope of recovery.

21 3. I do not wish to have life-sustaining treatment attempted if I suffer from an advanced life-
22 limiting, incurable and progressive condition and if the likely risks and burdens of treatment would
23 outweigh the expected benefits.

24 4. Other situations that I would consider excessively burdensome if I suffer from an advanced life-
25 limiting, incurable and progressive condition: *(I have attached __ additional pages titled "Living Will*
26 *Burdens"):*

27 _____
28 _____

29 In these situations, I wish for comfort care only. I understand that stopping or starting treatments
30 to achieve my comfort, including stopping medically-administered nutrition and hydration, may be a
31 way to allow me to die when the treatments would be excessively burdensome for me.

32
33 III. SIGNATURE

34 I have received, reviewed, and understood the disclosure statement, and I have completed the
35 durable power of attorney for health care and/or living will consistent with my wishes. I have
36 attached __ pages to better express my wishes.

37 Signed this __ day of _____, 20__

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1 Principal's Signature: _____

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

4 THIS ADVANCE DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC
5 OR A JUSTICE OF THE PEACE.

6 We declare that the principal appears to be of sound mind and free from duress at the time this
7 advance directive is signed and that the principal affirms that the principal is aware of the nature of
8 the directive and is signing it freely and voluntarily.

9 Witness: _____ Address (city/state): _____

10 Witness: _____ Address (city/state): _____

11 STATE OF NEW HAMPSHIRE

12 COUNTY OF _____

13 The foregoing advance directive was acknowledged before me this ____ day of _____, 20____, by
14 _____ (the "Principal").

15 _____

16 Notary Public/Justice of the Peace

17 My commission expires:

18

19 Amend RSA 137-:35, I(a) as inserted by section 12 of the bill by replacing it with the following:

20

21 (a) The patient's spouse, or civil union partner or common law spouse as defined by RSA
22 457:39 *if the principal were currently deceased*, unless there is a divorce proceeding, separation
23 agreement, or restraining order limiting that person's relationship with the patient.