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CLIENT ADVISORY

Virginia Board of Health Issues New Durable Do Not Resuscitate Order Rules

The Virginia Board of Health recently published the final version of amendments to the Durable Do Not Resuscitate Order (Durable DNR) regulations. The revised regulations went into effect on July 20, 2011. All health care providers should be aware of the revised regulations and ensure that their policies and procedures comply with the new rules.

The revised regulations make a number of substantial changes to how DNR Orders are implemented and honored by incorporating a number of new definitions, allowing the limited use of different types of DNR Orders, allowing the use of legible photocopies of DNR Orders, and specifying that the standardized Durable DNR Order form will be available from the Office of Emergency Medical Services (EMS) website.

Acceptable Durable DNR Order Forms

While the revised regulations encourage use of original Durable DNR Order forms, the new rules allow for copies of the goldenrod, standardized Durable DNR Order form to be used as an original. In addition, "Other DNR Orders" – such as those entered into at a nursing facility level that include the same information but omit a patient's signature – may follow the patient between settings and be honored outside a health department licensed, behavioral health department licensed or state operated facility, all defined as a "qualified health care facility." Thus, qualified health care personnel may honor a legible photocopy of a Durable DNR Form or Other Durable DNR Order inside or outside of a licensed hospital, nursing home, or correctional facility.

Availability of the Durable DNR Order Form

The new regulations specify that the standardized Durable DNR Order forms will be accessible via download from the Office of Emergency Medical Services (EMS) Website. Under the previous rules, health care providers could only obtain forms through a written request to the Office of EMS. The Office of EMS still needs to post revised information as of this date, but expects the new information and forms will be posted online in the beginning of August.

Durable DNR Jewelry

The new rules clarify that Durable DNR jewelry, such as a bracelet or necklace, may be honored in place of a Durable DNR Order. To obtain such jewelry, an original Durable DNR form must be provided to a vendor approved by the Virginia Office of EMS. Jewelry must contain the words "Do Not Resuscitate," the ordering physician's name and phone number, and the date the Durable DNR Order was issued.

This Client Advisory is for general educational purposes only. It is not intended to provide legal advice specific to any situation you may have. Individuals desiring up-to-date and fact-specific legal advice should consult legal counsel.

Physician Duties in Issuing Durable DNR Orders

The new rules expand and clarify the duties of physicians in issuing Durable DNR Orders. Physicians must now follow the process below in issuing Durable DNR orders:

- Explain the circumstances under which qualified health care personnel may follow a Durable DNR Order
- Explain how to and who may revoke the Durable DNR Order
- Document the patient's full legal name
- Document the execution date of the Durable DNR Order
- Obtain the signature of the patient or the person authorized to consent on the patient's behalf on the patient's copy, medical record copy, and the copy used for obtaining Alternate DNR jewelry
- Make sure the issuing physician's name is clearly printed and the form is signed
- Record the contact telephone number for the issuing physician
- Issue the original Durable DNR Order form and the Alternate DNR jewelry copies to the patient and maintain the medical record copy in the patient's medical file

Durable DNR Implementation Procedures

The new rules also clarify how health care professionals should implement Durable DNR Orders by specifying the following order of procedures for implementing a Durable DNR Order:

- Perform initial patient assessment and intervention. This includes routine patient assessment and resuscitation until a valid Durable DNR Order can be confirmed
- If the patient is within a qualified health care facility, or in transit between two qualified health care facilities, any qualified health care personnel may honor an Other DNR Order
- Determine that the Durable DNR form or DNR jewelry is not altered
- Verify, through driver's license or other identification with photograph and signature or by positive identification by a family member or person who knows the patient, that the patient in question is the one for whom the Durable DNR Order, DNR jewelry, or Other DNR Order was issued
- If the Durable DNR Order or Other DNR Order is intact, unaltered, and verified as issued for the patient, healthcare personnel may consider it valid

For patients for whom a valid DNR Order is produced, the rules clarify the distinctions between resuscitative measures versus interventions intended to provide comfort care or alleviate pain. The new rules define cardiopulmonary resuscitation as the following procedures:

- Cardiac Compression
- Artificial ventilation
- Defibrillation
- Endotracheal intubation or other advanced airway management including supra-glottic devices such as the LMA, or other airway devices that pass beyond the oral pharynx, such as the Combi tube, PTL, etc.
- Administration of related procedures or cardiac resuscitation medications as prescribed by the patient's physician or medical protocols

The Rules define procedures to provide comfort care or alleviate pain as the following:

- Airway management, including positioning, nasal or pharyngeal airway placement
- Suctioning

- Supplemental oxygen delivery devices
- Pain medications or intravenous fluids
- Bleeding control
- Patient positioning
- Other therapies deemed necessary to provide comfort care or alleviate pain

If there is a misunderstanding with family members or others present at the patient's location or if there are other concerns about following a DNR Order, the rules advise contacting the patient's physician or EMS medical control for guidance.

Revocation of a Durable DNR Order

The new rules simplify the process of revoking a Durable DNR Order by stating that if a patient expresses to a health care provider or practitioner the desire to be resuscitated in the event of a cardiac or respiratory arrest, such an expression shall revoke the practitioner's authority to follow any type of DNR order. If the DNR order was executed upon the request of a patient, no one other than the patient has the authority to revoke a Durable DNR Order. If the patient is a minor or is otherwise incapable of making an informed decision and the Durable DNR Order was issued upon the request and with the consent of a person authorized to consent for the patient, then only that authorized person may revoke the Durable DNR Order.

Documentation

Documentation requirements for Durable DNR Orders are also specified in the new rules. When following any type of DNR Order for a patient admitted to a licensed health care facility, health care personnel must document care rendered or withheld as required by facility policies and procedures. When following a Durable DNR Order or Other DNR Order for a patient who is not admitted to a licensed health care facility or who is in transit from a health care facility, the rules require qualified health care personnel to document the care rendered or withheld in the following manner:

- Use standard patient care reporting documents (i.e. patient chart, pre-hospital patient care report)
- Describe assessment of patient's cardiac or respiratory arrest status
- Document which type of DNR Order was used to confirm DNR status and that it was intact, not altered, not canceled or not officially revoked
- Record the name of the patient's physician who issued the Durable DNR Order or Other DNR Order
- If the patient is being transported, keep the DNR Order with the patient

Conclusion

All licensed health care providers should review their DNR order implementation policies and procedures to ensure they conform to the new rules. To avoid any issues, providers that interact with EMS units should coordinate with those units and other facilities. If your organization needs assistance in further interpreting the new rules or reviewing policies and procedures regarding Durable DNR Orders, please contact Peter Mellette (peter@mellettepc.com), Harrison Gibbs (harrison@mellettepc.com), or Nathan Mortier (nathan@mellettepc.com). Mellette PC can be reached by phone at (757) 259-9200.