

CF OPERATING PROCEDURE
NO. 155-52

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, December 15, 2021

Mental Health/Substance Abuse

USE OF "DO NOT RESUSCITATE" (DNR) ORDERS IN
STATE MENTAL HEALTH TREATMENT FACILITIES

1. Purpose. This operating procedure describes the requirements for "Do Not Resuscitate" orders for residents served in the State Mental Health Treatment Facilities. The operating procedure is designed to ensure that the rights and intentions of residents who have a terminal or end-state condition or are in a persistent vegetative state are respected even if they are no longer able to participate actively in healthcare decisions concerning themselves.

2. Scope. Guidelines described in this operating procedure apply to all state mental health treatment facilities serving residents committed to the Department pursuant to Chapter 394, Florida Statutes (F.S.), or Chapter 916, F.S., including the Florida Civil Commitment Center.

3. References.

a. Chapter 394, F.S., Florida Mental Health Act.

b. Chapter 395, F.S., Hospital Licensing and Regulation, section 395.1041, F.S., Access to Emergency Services and Care.

c. Chapter 401, F.S., Medical Telecommunications and Transportation, section 401.45(3), F.S., Denial of Emergency Treatment; Civil Liability.

d. Chapter 709, F.S., Powers of Attorney and Similar Instruments, section 709.08, F.S., Durable Power of Attorney.

e. Chapter 744, F.S., Adjudication of Incapacity and Appointment of Guardians, section 744.331, Procedures to Determine Incapacity.

f. Chapter 765, F.S., Health Care Advance Directives:

(1) Section 765.101, F.S., Definitions;

(2) Section 765.113, F.S., Restrictions on Providing Consent;

(3) Section 765.302, F.S., Procedure for Making a Living Will; Notice to Physician;

(4) Section 765.306, F.S., Determination of Resident Condition;

(5) Section 765.401, F.S., The Proxy; and,

(6) Section 765.404, F.S., Persistent Vegetative State.

g. Rule 64B15-14.010, Florida Administrative Code (F.A.C.), Physician Practice Standard Regarding Do Not Resuscitate (DNR) Orders.

This operating procedure supersedes CFOP 155-52 dated October 15, 2018.

OPR: Mental Health

h. Rule 64J-2.018, F.A.C., Do Not Resuscitate Order (DNRO) Form and Resident Identification Device.

i. Current references for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care can be found at:

(1) American Heart Association (AHA):

<http://www.americanheart.org/presenter.jhtml?identifier=3035517>.

(2) American Red Cross (ARC):

<http://www.redcross.org/portal/site/en/menuitem.86f46a12f382290517a8f210b80f78a0/?vgnextoid=aea70c45f663b110VgnVCM10000089f0870aRCRD&vgnnextfmt=default>.

(3) American Safety and Health Institute (ASHI): <http://www.hsi.com/ashi>.

4. Definitions. For the purposes of this operating procedure, the following definitions shall be understood to mean:

a. Advanced Cardiac Life Support (ACLS). Evidence-based clinical interventions provided by specially trained health care providers that exceed cardiopulmonary resuscitation and include the provision of immediate post-resuscitation support and care. Interventions may include but are not limited to: establishing and maintaining an airway; assisting ventilation; initiating an intravenous access; reading and interpreting electrocardiograms; administering emergency medications; and defibrillation or other control of arrhythmias and dysrhythmias.

b. Advance Directive. A witnessed written document or oral statement by a clinically competent adult resident that informs the resident's physician of his or her health care wishes should he or she become incapacitated by a physical or mental illness. An advance directive must be witnessed by two individuals, one of whom is neither a spouse or blood relative of the person. An advance directive may include but is not limited to: the resident's wishes to provide, withhold, or withdraw life-prolonging procedures; to designate another individual to make treatment decisions if he or she becomes unable to make decisions; and/or to indicate the desire to make an anatomical donation after death. The resident's desires concerning any aspect of medical and mental health care may be included.

c. Cardiopulmonary Resuscitation (CPR). A combination of rescue breathing and chest compressions performed to support or restore ventilation and circulation in a resident experiencing cardiac arrest (systole, ventricular fibrillation, or pulseless electrical activity) or respiratory arrest (cessation of respiratory effort).

d. Decision-Making Capacity.

(1) The capacity of a resident to:

(a) Understand his/her medical condition;

(b) Appreciate the consequences (benefits and burdens) of various treatment options including non-treatment;

(c) Judge the relationship between the treatment options and his/her personal values, preferences and goals;

(d) Reason and deliberate about his/her options; and,

(e) Communicate his/her decision in a meaningful manner.

(2) The psychiatrist will evaluate and document the resident's decision-making capacity in the health record unless the court has determined the resident's incapacity and the court order indicating the resident's incapacity and court appointed guardian has been filed in the legal section of the health record.

e. Do Not Resuscitate (DNR) Order. A formal request by a resident or a resident's health care surrogate for the physician to order that no extreme measures are to be taken to save the resident's life if the resident goes into cardiac or respiratory arrest. A DNR order can specify how much intervention is desired prior to death (i.e., no use of cardiac drugs, no oxygen administration, no chest compressions, etc.). The specific requests must be discussed with the physician, and then written legibly by the physician in the presence of a witness. The DNR order is a legal document and is part of the physician's prescribed medical treatment plan for the resident. The order is signed by the physician and the resident or the resident's legal representative/health care surrogate. A guardian advocate appointed pursuant to Chapter 394, F.S., is not considered a legal representative for the purpose of completing a DNR order.

f. Do Not Resuscitate Order (DNRO) Form. The Department of Health (DOH), Bureau of Emergency Medical Services (EMS), recognized form (DH Form 1896) which is printed on yellow stock legal size paper (8 ½ X 14 inches). This DOH form was put into legislation to ensure the individuals' wishes about their own death would be honored. The form is recognized across healthcare settings and also allows EMS not to resuscitate a person who has the yellow form while they transport the person should the person go into cardiac or respiratory arrest.

g. End-Stage Condition. An irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and for which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

h. Ethics Committee. An advisory group appointed by the Facility Medical Director to review, on request, ethical or moral questions that may come up during a resident's care. Committee members may include doctors, nurses, social workers, an attorney, a chaplain, a medical ethics professional, and a member of the community.

i. Incapacity. The physical or mental inability of a resident to communicate with a willful and knowing health care decision based on a psychiatrist's determination, which must be documented and maintained in the resident's current health record. A resident is presumed to be clinically competent unless there is written documentation by the resident's psychiatrist to the contrary.

j. Life Prolonging Procedure. Any procedure, treatment, or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function when the treatment is applied to a resident in a terminal condition and serves only to prolong the process of dying. Life prolonging treatments **do not include** the administration of medication or performance of medical procedures when the medication or procedure is necessary to provide comfort or to alleviate pain.

k. Living Will (also called "declaration"). A witnessed document that states, as specifically as possible, the resident's instructions concerning life prolonging procedures such as what care and treatment the resident wishes under certain circumstances. Any resident with the capacity to make an informed decision can complete a living will at any time. A living will is one type of advance directive that allows a competent adult resident to express wishes regarding the full range of life prolonging procedures in the event they are in a terminal condition, an end-stage condition or in a vegetative state, and are incapacitated and unable to directly participate in treatment decisions. Living Wills may address situations other than cardiac or respiratory arrest and may address treatment measures that residents want to have undertaken, as well as procedures they do not want undertaken, depending upon any

number of conditions or situations that he or she elects to describe. The term does not mean “No Code” or “Do Not Resuscitate” (DNR).

l. Persistent Vegetative State. A permanent and irreversible condition of unconsciousness in which there is the absence of voluntary action or cognitive behavior of any kind and an inability to communicate or interact purposefully with the environment. The person may appear to be awake, but is totally unaware, can no longer think, reason, relate meaningfully with his/her environment, recognize the presence of family or friends, or feel emotions or discomfort. The higher levels of the brain are no longer functional.

m. Physician. The treating or primary physician who has the responsibility for the medical treatment and care of a resident.

n. Proxy. A competent adult who has not been expressly designated to make healthcare decisions for a particular incapacitated resident but who is authorized pursuant to section 765.401, F.S., to make health care decisions for the resident.

o. Psychiatrist. A physician who specializes in psychiatry and is certified to treat mental disorders. For the purpose of this operating procedure, the psychiatrist will determine if the residents have the capacity to make informed decisions regarding their healthcare and end of life treatments.

p. Surrogate. Any competent adult expressly designated by a resident to make health care decisions on behalf of himself or herself in the event of the resident’s incapacity.

q. Terminal Condition. A condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

5. General.

a. Capacitated residents have the right to refuse resuscitative measures. Capacitated residents also have the right to change their mind and revoke a DNR order. The form can be revoked by the resident at any time either in writing or by orally expressing a contrary intent. The resident’s decision to rescind the DNR order will be documented in the health record by the physician. The DNR order will be removed from the current health record and the words “CANCELLED BY THE RESIDENT” will be written across the order with the date the order was withdrawn by the resident.

b. A DNR order is reserved for a resident near death, in a persistent vegetative state, or with a terminal illness who, even if resuscitated, would not have any quality of life or would not have a long period before death would occur despite resuscitative efforts.

c. A resident does not need to have a Living Will before a DNR order can be entered.

d. A DNR order means (only) “do not employ any resuscitative efforts in the event of the resident’s cardiac or respiratory arrest”. A DNR order does not mean “do not treat”. All other prescribed treatments including but not limited to pain medications, fluids, and antibiotics should continue to be ordered.

e. Life support may not be withheld or withdrawn unless the resident or resident’s representative makes a request to withhold or withdraw life support. Physicians may not make this decision independently.

f. The resident/family/surrogate may revoke a facility DNR order or a Florida Department of Health Do Not Resuscitate Order (DNRO) at any time. The physician can rescind/cancel the order

based on: the decision of a competent resident; the decision of an incompetent resident's surrogate/proxy who has the authority to consent to withholding or withdrawing life prolonging procedures; or a change in the resident's condition so that the resident is no longer in a terminal, or end-stage condition, or in a permanent vegetative state. These changes must be noted in the resident's health record.

g. In the event the resident recovers and is discharged from the hospital, a DNR order shall expire upon discharge from the facility/hospital.

6. Procedure.

a. Residents Who Have a Living Will.

(1) Any competent adult resident may, at any time, make a living will or written declaration and direct the provision, withholding, or withdrawal of life prolonging procedures in the event that the resident has or develops a terminal condition, has an end-stage condition, or is in a persistent vegetative state. A living will must be signed by the resident in the presence of two witnesses, one of whom is neither a spouse nor a blood relative of the person. If the resident is physically unable to sign the living will, one of the witnesses must officially attest to the resident's signature in the resident's presence and at the resident's direction.

(2) It is the responsibility of the resident upon admission to notify the facility if a living will has been written prior to admission. In the event the resident is physically or mentally incapacitated at the time of his or her admission to the facility, any other person may notify and provide the physician or facility staff with the living will. The physician or facility staff will inform the interdisciplinary team and place the living will or a copy in the resident's health record.

(3) If a resident chooses to make a living will while receiving treatment at the facility, his or her capacity must be assessed by the treating psychiatrist prior to the resident completing the living will. The psychiatrist's assessment and determination will be documented in the resident's health record. If the psychiatrist has a question as to whether the resident has or lacks capacity, another psychiatrist must evaluate the resident's capacity and enter that evaluation in the resident's health record.

(4) A living will shall be honored if the resident is medically determined during hospitalization to be in a terminal condition, end-stage condition, or in a permanent vegetative state with no reasonable probability for recovering capacity.

b. Residents Who Have the Capacity to Make an Informed Decision for a DNR Order.

(1) The resident's psychiatrist will determine and document in the health record whether the resident has the capacity to make informed decisions regarding healthcare when an adult resident chooses to refuse treatment.

(2) An adult resident who has the capacity to make medical decisions has the right to refuse treatment and may choose not to be resuscitated in the event of cardiac or respiratory arrest.

(3) The physician shall document the resident's refusal of such treatment and enter a DNR order in the resident's health record when the physician determines the resident has a terminal or end-stage condition. The resident will sign and date the order with the physician.

(4) The DNR order will continue throughout the resident's hospitalization despite any subsequent incapacity. A resident may revoke the decision to refuse treatment as long as he or she

retains capacity to make medical decisions, whereupon the physician will document the resident's revocation in the chart and cancel the DNR order.

(5) The physician, the resident, and family (if family is available and approved by the resident) need to discuss the resident's wishes for medical care as his or her health declines. Residents often have strong feelings and beliefs about end-of-life care but may not wish to discuss these matters. The physician may need to encourage the resident to discuss his or her preferences so they are known and can be honored should the resident become unable to communicate at a later date. The physician will document these discussions in the health record.

(6) When an individual with a DNR order transfers from one state mental health treatment facility to another, the admitting physician, along with the resident (if deemed clinically competent) shall both reassess the validity of the DNR order to ensure the resident's wishes continue to be followed. For residents who are not deemed clinically competent, see paragraph 6c below.

c. Residents Who Do Not Have the Capacity to Make Informed Decisions Regarding Their Healthcare.

(1) If a clinically or legally incapacitated resident wrote a Living Will while he or she was capacitated that states the resident's desire not to be resuscitated in the event of cardiac or respiratory arrest, or the incapacitated resident's surrogate/proxy requests a DNR order:

(a) The DNR order may be written by the resident's physician after the physician and one other credentialed facility physician or privileged community physician separately examine the resident to determine whether the resident has a terminal condition, has an end-stage condition, or is in a persistent vegetative state.

(b) The findings of each physician's examination must be documented, signed, and filed in the resident's health record before life prolonging procedures may be withheld or withdrawn.

(2) The physician will obtain the signature of the resident's health care surrogate, or proxy as provided in Chapter 765, F.S., or court appointed guardian as provided in Chapter 744, F.S., or attorney in fact under a durable power of attorney as provided in Chapter 709, F.S., on the DNR order to indicate their agreement with the order. The court appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the resident.

(3) If an incapacitated resident does not have a living will, and does not have a healthcare surrogate designated to make a DNR decision, then the Florida proxy law identifies the persons legally authorized to make healthcare decisions (including DNR decisions) for the resident. In order of priority, the current Florida proxy law is as follows:

- (a) Judicially appointed guardian;
- (b) Spouse;
- (c) Adult child (majority of adult children reasonably available for consultation);
- (d) Parent;
- (e) Adult sibling (majority of adult siblings reasonably available for consultation);
- (f) Adult relative; then,
- (g) Friend.

(4) A DNR order cannot be requested on behalf of an incapacitated resident unless two physicians have documented a medical determination of a terminal illness, suffering from an end-stage condition, or in a persistent vegetative state.

(5) If a capacitated resident knows he/she is dying and has prepared a living will indicating his or her desire not to be resuscitated, the resident's physician, plus one other credentialed physician, and the resident should all sign a note in the resident's health record that they believe the resident has no reasonable probability of recovering once the resident has lost capacity. If the resident's family objects when the physician informs them that a DNR order has been written consistent with the resident's living will, the physician should promptly consult the facility's Ethics Committee, facility attorney, and the resident's case manager.

d. Residents Who Are in a Persistent Vegetative State. As determined by the physician in accordance with currently accepted medical standards, residents who have no advance directive and for whom there is no evidence indicating what the resident would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for the resident, life prolonging procedures may be withheld or withdrawn under the following conditions:

(1) The resident has a judicially appointed legal guardian representing his or her best interest with authority to consent to medical treatment; and,

(2) The legal guardian and the resident's physician, in consultation with the facility's Ethics Committee, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life prolonging procedures is in the best interest of the resident. If there is no Ethics Committee at the facility, the facility must have an arrangement with the Medical Ethics Committee of another facility or with a community-based Ethics Committee approved by the Florida Bio-Ethics Network. The Ethics Committee shall review the case with the guardian, in consultation with the resident's physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an Ethics Committee cannot be held liable in any civil action related to the performance of these duties.

e. Minor Residents.

(1) If the resident is a minor, only a parent or legal guardian may act as the proxy for a DNR order.

(2) The resident's physician and one other credentialed physician of the facility must evaluate the resident's condition and note in the chart that the resident is in a terminal condition or in an end-stage condition or in a permanent vegetative state.

(3) The physician should discuss the minor's condition with the parent or legal guardian to obtain their consent and signature on a DNR order if there is no reasonable medical probability for recovery.

f. DNR Considerations.

(1) Florida law does not support futility alone (without direction from a living will, a proxy or surrogate) as a basis for issuing a DNR order for a resident in a terminal condition.

(2) Resuscitation efforts should be initiated when in doubt or when a DNR order is not present.

(3) If a resident, with a DNR order entered, is inadvertently resuscitated and placed on a ventilator, the resident (if capacitated) or the surrogate/proxy can request the life prolonging procedures be withdrawn.

(4) Only the person that signed the DNR order (resident, healthcare surrogate, or healthcare proxy) may revoke the order.

g. DNR Order Form.

(1) To be valid, an order not to be resuscitated must be on the form set forth in section 401.45, F.S. The form must be signed by the resident's physician and by the resident, or, if the resident is incapacitated, the resident's health care surrogate, or proxy as provided in Chapter 765, F.S., or court appointed guardian as provided in Chapter 744, F.S., or attorney in fact under a durable power of attorney as provided in Chapter 709, F.S. The court appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the resident.

(2) The facility's physicians will use the DOH DNRO Form (DH Form 1896) for documenting DNR orders. The instructions must be clearly written and legible. The form or a copy of the form (on yellow paper) will be transported with the resident should the resident leave the facility grounds.

(3) Per Florida Administrative Code 64J-2.018, **the DNR Order form MUST be printed on yellow stock paper to be a legally-recognized form.** The shade of yellow does not have to be an exact duplicate. The order has to be completely legible for it to be honored.

(a) The form can be obtained for free by writing to:

Florida Department of Health
Division of Emergency Medical Operations, Office of Trauma
4052 Bald Cypress Way, Bin C-18
Tallahassee, FL 32399-1738

(b) The form may also be obtained from the Department of Health by phone at (850) 245-4440, ext. 2780, or by contacting the local EMS provider.

(4) If a person presents with a "Florida Do Not Resuscitate Order" (DNRO) on admission and it is on the DOH, Bureau of EMS DH Form 1896, the Florida DNRO is to be honored by the facility only upon confirmation by resident/family/surrogate that the DNRO is to remain in effect.

h. Additional Documentation. In addition to the required use of DH Form 1896, physicians must document an order on the physician's order sheet which indicates that a DNR order is active. The order is signed and dated.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

MADELEINE NOBLES
Director, State Mental Health Treatment Facilities, Policy and Programs

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

No substantive changes have been made in this operating procedure.