

Out-of-Hospital Do-Not-Resuscitate Orders

Questions and Answers

This information is provided to persons who may qualify for an out-of-hospital DNR order, their families, and physicians about out-of-hospital DNR orders, bracelets and necklaces authorized by Pennsylvania law. Please note that the out-of-hospital DNR orders, bracelets and necklaces issued under the repealed DNR Act remain valid and are to be followed. The information provided in this document applies to out-of-hospital DNR orders, bracelets and necklaces issued under the former DNR Act and the Act. Differences between the two laws that continue to matter are noted.

Background

Do-Not-Resuscitate Act. In June of 2002 Pennsylvania enacted the Do-Not-Resuscitate Act (DNR Act) (P.L. 409, No. 59) (20 Pa.C.S. §§ 54A01-54A13). The DNR Act empowered a terminally ill person or the person's surrogate to secure an out-of-hospital do-not-resuscitate (DNR) order and, at the person's option or the option of an authorized representative, an out-of-hospital DNR bracelet or necklace. These items direct emergency medical services (EMS) personnel in the out-of-hospital setting not to provide the person for whom they are issued with cardiopulmonary resuscitation (CPR) in the event of the person's cardiac or respiratory arrest. The DNR Act also specified the circumstances under which an appropriate representative of a person who issued a declaration under the Advance Declaration for Health Care Act (former Living Will Act) would be able to secure an out-of-hospital DNR order, bracelet or necklace for the person if the person became permanently unconscious. These provisions, supplemented by Department of Health regulations (28 Pa. Code §§ 1051.1-1051.101), went into effect March 1, 2003, and were amended February 7, 2004.

Out-of-Hospital Nonresuscitation Act. On November 29, 2006, Pennsylvania enacted a statute (P.L. 1484, No. 169) that repealed the DNR Act and replaced it with the Out-of-Hospital Nonresuscitation Act (Act) (20 Pa.C.S. §§ 5481-5488). The effective date of the Act is January 28, 2007. The Act empowers a person with an end-stage medical condition or an appropriate representative of that person to secure an out-of-hospital DNR order and, at the person's option or the option of an authorized representative, an out-of-hospital DNR bracelet or necklace. These items, just as those that were issued under the former DNR Act, direct EMS personnel in the out-of-hospital setting not to provide the person for whom they were issued with CPR in the event of the person's cardiac or respiratory arrest. The Act also specifies the circumstances under which an appropriate representative of a person who issued a living will under the Living Will Act (20 Pa.C.S. §§ 5441-5447) is able to secure an out-of-hospital DNR order, bracelet or necklace for the person. (The Living Will Act replaced the Advance Declaration for Health Care Act. Hereafter, the repealed Advance Declaration for Health Care Act will be referred to as "the former Living Will Act" and a declaration issued under that statute will be referred to as a "living will," the same as a living will under the Living Will Act.)

What is an out-of-hospital do-not-resuscitate (DNR) order?

An out-of-hospital DNR order is a written order that is issued by a person's attending physician that directs EMS providers to withhold CPR from the person in the event of that person's cardiac or respiratory arrest. Thus, if an ambulance is called to attend to a person for whom an out-of-hospital DNR order has been issued and the ambulance crew observes the out-of-hospital DNR order with original signatures with the person, or observes that the person is wearing an out-of-hospital DNR bracelet or necklace, the ambulance crew will not attempt CPR unless it is appropriately

communicated to a member of the crew that the out-of-hospital DNR order has been revoked.

What does “cardiac or respiratory arrest” mean?

Cardiac or respiratory arrest is the process, which occurs when a person’s heart or breathing, or both, stop.

What is CPR?

CPR – cardiopulmonary resuscitation – refers to the medical procedures used to restart a person’s heart and breathing when the person suffers cardiac or respiratory arrest. CPR may involve simple efforts such as mouth-to-mouth resuscitation and external chest compression. Advanced CPR may involve insertion of a tube to open the person’s airway or to assist breathing, injection of medications, or providing an electrical shock (defibrillation) to resuscitate the heart.

Why would a person want an out-of-hospital DNR order?

CPR, when successful, restores heartbeat and breathing and allows persons to resume their previous lifestyle. The success of CPR depends on the person’s overall medical condition. Age alone does not determine whether CPR will be successful, although illnesses and frailties that go along with age often make CPR less successful. When a person has an end-stage medical condition or is in a terminal condition, CPR may not work or may only partially work, leaving the person brain-damaged or otherwise in a worse medical state than before the heart stopped. To avoid this possibility, some persons prefer to be cared for without aggressive efforts at resuscitation when they suffer cardiac or respiratory arrest. Also, some persons who have an end-stage medical condition or who are in a terminal condition perceive death by cardiac or respiratory arrest to be a natural conclusion of their life and simply do not wish to receive CPR to prolong their life. Additionally, for the same reasons, some persons may not want to receive CPR should they become unconscious without a known medical possibility of returning to consciousness.

Who is permitted to request an out-of-hospital DNR order for themselves?

A person who has an end-stage medical condition who is competent and 18 years of age or older or, if under 18 years of age, has graduated from high school, has been married or is emancipated, may request an out-of hospital DNR order for himself or herself.

Are there circumstances in which a person is permitted to request an out-of-hospital DNR order for another person?

Yes. If a person qualifies to request an out-of-hospital DNR order for himself or herself, no other person may request an out-of-hospital DNR order for that person unless that person has conferred that right upon another person. That right may be conferred by a health care power of attorney. However, there are also circumstances under which a person who qualifies to receive an out-of-hospital DNR order is not competent (able to make and communicate health care decisions) to request one. Also, the person may not yet be 18 years of age or emancipated, or have graduated from high school or been married. In these situations there are circumstances in which another person may request an out-of-hospital DNR order for that person.

What are the circumstances in which a person is permitted to request an out-of-hospital DNR order for another person?

As already noted, a person who qualifies to request an out-of-hospital DNR order for himself or herself may confer that right to another person by issuing a health care power of attorney that grants that right to another person. Also, a person who is of sound mind and 18 years of age or older or, if under

18 years of age, has graduated from high school, has been married or is emancipated, may prepare a living will that grants another person the right to request an out-of-hospital DNR order for that person if and when the living will becomes operative. Also, the living will may make clear the person's wishes that he or she would want an out-of-hospital DNR order should the living will become operative, but not name a person to request the order. In that event, a person qualified by law to carry out the wishes expressed in the living will would have authority to request an out-of-hospital DNR order for the person who issued the living will. Further, if a person 18 years of age or older or, if under 18 years of age, has graduated from high school, has been married or is emancipated, becomes permanently unconscious or has an end-stage medical condition and is incompetent, and has not issued a living will or a health care power of attorney that empowers another person to request an out-of-hospital DNR order, there is a process under Pennsylvania law under which another person may qualify to become that person's health care representative and request an out-of-hospital DNR order for that person. Additionally, a parent or legal guardian of a child who is under 18 years of age and does not meet the alternative criteria to the age standard to request an out-of-hospital DNR order for himself or herself, may request an out-of-hospital DNR order for the child, but only if the child has an end-stage medical condition. There may be other circumstances in which a person may request an out-of-hospital DNR order for another person. We encourage you to seek the advice of an attorney if you have questions in that regard.

Are there circumstances in which a person seeking an out-of-hospital DNR order for another person may only secure the order if there is a determination that the person for whom the order is sought is in a terminal condition?

Yes. One of these circumstances is when the person seeking an out-of-hospital DNR order for another person is doing so pursuant to a living will issued under the former Living Will Act. That statute did not permit a living will to become operative when the person who issued the living will has an end-stage medical condition unless the person was also in a terminal condition. Notwithstanding the passage of the current Living Will Act, living wills issued under the former Living Will Act continue to be valid. Other circumstances are when a living will issued under the current Living Will Act or a health care power of attorney convey the wishes of the person who issued it that that person be in a terminal condition for an out-of-hospital DNR order to be secured. Also, while a living will issued under the current Living Will Act and a health care power of attorney issued under current law may be drafted to authorize pursuit of an out-of-hospital DNR order for the person who issued that advance directive for health care if that person has an end-stage medical condition, the person who issued it may nevertheless have drafted it to require that a terminal condition be the operative factor. There are other circumstances in which a person must be in a terminal condition for another person to secure an out-of-hospital DNR order for that person. We encourage you to seek the advice of an attorney if you have questions in that regard.

What does "has an end-stage medical condition" mean?

An "end-stage medical condition" is an incurable and irreversible medical condition in an advanced state caused by injury, disease, or physical illness that will, in the opinion of the attending physician, to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. If a patient having an end-stage medical condition serves as the reason for which an out-of-hospital DNR order is sought for that patient, the attending physician must make the determination that the patient has an end-stage medical condition before the physician may issue an out-of-hospital DNR order for the patient. All persons who are in a terminal condition have an end-stage medical condition.

What does “permanently unconscious” mean?

“Permanently unconscious” is a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma. If a patient being permanently unconscious serves as the reason for which an out-of-hospital DNR order is sought for the patient, the attending physician must make the determination that the patient is permanently unconscious and the patient must have previously executed a living will which provides that no CPR be administered in the event of the person’s cardiac or respiratory arrest if the person becomes permanently unconscious, or authorizes a surrogate or other authorized representative of the person to make that decision under those circumstances.

What does “in a terminal condition” mean?

A “terminal condition” is defined in the repealed DNR Act as an incurable and irreversible medical condition in an advanced state caused by injury, disease, or physical illness which will, in the opinion of the attending physician, to a reasonable degree of medical certainty, result in death regardless of the continued application of life-sustaining treatment.

What does “surrogate” mean and what is the significance of the term?

For purposes of the repealed DNR Act and the regulations that were adopted pursuant to that act, a surrogate is an individual who has, or individuals who collectively have, legal authority to request an out-of-hospital DNR order for another person or to revoke that order. Under the Act the term “surrogate” is limited to a health care agent or health care representative as those terms are defined in the Health Care Agents and Representatives Act (20 Pa.C.S. §§ 5451-5465). This does not include all persons who fall under the former definition of “surrogate.” However, the Act permits persons other than surrogates, by virtue of their special relationship to the person for whom an out-of-hospital DNR order is sought, to also make a request for an out-of-hospital DNR order for that person. An example of such a person is a parent of a child who has an end-stage medical condition who is under 18 years of age and who is not emancipated, who has not graduated high school or been married, and who does not have a court-appointed guardian. Yet another example is a court-appointed guardian for an adult who has an end-stage medical condition and who the court concludes is unable to meet essential requirements for his or her physical health or safety because the person does not have the ability to receive and evaluate relevant information effectively or communicate relevant decisions. However, other than when a person is relying upon the definition of “surrogate” in the Act to qualify to ask for an out-of-hospital DNR order for another person, the focus should be on whether that person, by virtue of a special relationship to the person for whom the out-of-hospital DNR order is sought, has legal authority to request an out-of-hospital DNR order for that person. We encourage you to seek the advice of an attorney if you have a question regarding who can serve as a surrogate or other authorized representative for another person to request an out-of-hospital DNR order for that person.

Who may issue an out-of-hospital DNR order for a person?

Only the person’s attending physician may issue an out-of-hospital DNR order for that person.

Who is an attending physician?

An attending physician is a physician who has primary responsibility for the treatment and care of the person. More than one physician may have primary responsibility for the medical care and treatment

of a person. A physician who is requested to issue an out-of-hospital DNR order for a person needs to make a good faith judgment as to whether the physician is an attending physician of the person based upon the medical care the physician provides to the person. If the physician determines that the circumstances of the physician-patient relationship do not enable the physician to determine whether he or she qualifies as the patient's attending physician, the physician will attempt to supplement that knowledge with information the physician secures after making reasonable inquiries of the person or the person's surrogate or other authorized representative regarding the medical care the person is receiving from other physicians.

Who is required to comply with an out-of-hospital DNR order?

The Act requires EMS providers to comply with an out-of-hospital DNR order.

Who are EMS providers?

EMS providers are individuals licensed, certified, recognized, or otherwise authorized under the Emergency Medical Services Act (35 P.S. §§ 6921-6934) to provide medical care on an emergency, out-of-hospital basis. They are most frequently associated with ambulance services. EMS personnel who administer emergency treatment include EMTs (emergency medical technicians), EMT-paramedics (paramedics), prehospital registered nurses, ambulance attendants, first responders and health professional physicians. EMS providers also include individuals given good Samaritan civil immunity protection under Pennsylvania law (42 Pa.C.S. § 8331.2) when using an automated external defibrillator. Physicians who provide medical command to EMS personnel must also honor an out-of-hospital DNR order when apprised of it by EMS personnel.

How does a person, the person's surrogate, or other authorized representative of the person obtain an out-of-hospital DNR order?

The person, the person's surrogate, or other authorized representative of the person must contact the person's attending physician and request an out-of-hospital DNR order. The attending physician will determine if the person for whom the order is sought qualifies for an out-of-hospital DNR order and, if the person does qualify, the attending physician may issue the order for the person. An attending physician may only issue an out-of-hospital DNR order on a form that is available from the Department's vendor. Before completing, signing and dating an out-of-hospital DNR order, the attending physician will ensure that the person for whom it is issued is identified in the order, that all other provisions of the order have been completed, and that the person, surrogate, or other authorized representative of the person, as applicable, has signed the order.

How does a person, the person's surrogate, or other authorized representative of the person obtain an out-of-hospital DNR bracelet or necklace?

In addition to issuing an out-of hospital DNR order, the attending physician also may secure and issue an out-of-hospital DNR bracelet or necklace, or both, for the person, if desired. The value of these items is that when the person wears the bracelet or necklace EMS providers will be able to easily identify the fact that an out-of-hospital DNR order exists for the person and is operative should the person experience cardiac or respiratory arrest. The physician will purchase the bracelets and necklaces from the Department's vendor and may charge the patient a fee for the item or items.

What if the attending physician refuses to issue an out-of-hospital DNR order?

An attending physician will not issue an out-of-hospital DNR order if the person requesting the order is not qualified to ask for it or if the person for whom it is requested is not qualified to receive it. If the attending physician is not willing to issue an out-of-hospital DNR order for a person who qualifies for

the order, the physician must explain the reason to the person, surrogate, or other authorized representative of the person, as appropriate. The physician will explain that an out-of-hospital DNR order may be issued only by a physician who has primary responsibility for the treatment and care of the person. The physician will also make every reasonable effort to assist the person, surrogate, or other authorized representative of the person to secure the services of another physician who is willing to issue an out-of-hospital DNR order for the person and who will undertake primary responsibility for the treatment and care of the person in addition to or instead of the physician from whom the out-of-hospital DNR order was originally sought.

If a person has executed a living will providing for no CPR in the event of cardiac or respiratory arrest, does an out-of-hospital DNR order also need to be issued?

No, but if the person has an out-of-hospital DNR order it is easier for an EMS provider to comply with a person's decision to not receive CPR should the person have an end-stage medical condition, be in a terminal condition or become permanently unconscious. The Living Will Act does not permit an EMS provider to withhold CPR when the order to withhold CPR is authorized in a living will unless the provider first contacts and secures approval from a physician who provides the EMS provider with medical direction. While an EMS provider is waiting for the physician's direction, the EMS provider is obligated to initiate CPR even if contrary to the person's wishes stated in a living will. However, if an out-of-hospital DNR order, necklace or bracelet is displayed with the individual, EMS providers do not need to contact a physician prior to withholding CPR. A person should wear an out-of-hospital DNR bracelet or necklace issued for that person to quickly communicate to EMS providers that an out-of-hospital DNR order is in effect. This alleviates the necessity for locating the actual order.

What if both a living will and an out-of-hospital DNR order are present when EMS providers arrive to assist a person with cardiac or respiratory arrest?

The EMS provider will comply with the out-of-hospital DNR order (or bracelet or necklace).

May an attending physician issue an out-of-hospital DNR order for a patient who is pregnant?

Yes, but in order for an attending physician to issue an out-of-hospital DNR order for a patient the physician knows or should know is pregnant, requirements need to be met that do not apply to the issuance of an out-of-hospital DNR order for a patient who is not known to be pregnant. An obstetrician must also examine the patient and both the attending physician and the obstetrician must certify on the patient's medical record that, to a reasonable degree of medical certainty, the provision of life-sustaining treatment will have one of the following consequences:

- (i) It will not maintain the pregnant woman in such a way as to permit the continuing development and live birth of the unborn child.
- (ii) It will be physically harmful to the pregnant woman.
- (iii) It will cause pain to the pregnant woman which cannot be alleviated by medication.

The patient's attending physician is not required to perform a pregnancy test unless the physician has reason to believe that the woman may be pregnant.

May an EMS provider comply with an out-of-hospital DNR order for a pregnant patient?

Yes, but if an EMS provider knows that the patient is pregnant the EMS provider may not comply with an out-of-hospital DNR order unless the EMS provider confirms that the attending physician and an

obstetrician have certified on the patient's medical record that, to a reasonable degree of medical certainty, the provision of life- sustaining treatment will have one of the following consequences:

- (i) It will not maintain the pregnant woman in such a way as to permit the continuing development and live birth of the unborn child.
- (ii) It will be physically harmful to the pregnant woman.
- (iii) It will cause pain to the pregnant woman which cannot be alleviated by medication.

What if there is a question about the validity of an out-of-hospital DNR order at the time of cardiac or respiratory arrest?

If an EMS provider is uncertain regarding the validity or applicability of the out-of-hospital DNR order, bracelet or necklace, the provider will administer CPR in the event of a person's cardiac or respiratory arrest unless the medical command physician under whose direction the provider functions directs the withholding of CPR. That physician will ask the provider to explain the reason for uncertainty. Based upon the information provided, the medical command physician will make a good faith assessment of whether the described circumstances constitute a revocation, and then direct the EMS provider to withdraw or continue CPR based upon that assessment. However, if the EMS provider is uncertain regarding the validity of an out-of-hospital DNR order, the EMS provider may begin providing CPR before contacting the physician.

How can uncertainty be avoided regarding whether an out-of-hospital DNR order should be followed?

For an out-of-hospital DNR order to be effective, it needs to be displayed with the person. However, the best way to ensure that the order will be followed is for the person to wear an out-of-hospital DNR bracelet or necklace. If an EMS provider sees an out-of-hospital DNR order in a remote location or a hidden place such as a dresser drawer, or observes an out-of-hospital DNR bracelet or necklace not on the person, the EMS provider may believe that the person or the person's surrogate or other authorized representative of the person has acted to revoke the order, or may be uncertain regarding whether such person acted to revoke the order. Having just an order will not prevent unwanted CPR if the order is not immediately seen by an EMS provider with the person when the person experiences cardiac or respiratory arrest. Wearing a bracelet or necklace increases the likelihood that an EMS provider will be aware of the person's wishes to not receive CPR in the event an EMS provider is called to attend to the person.

Is a hospital required to comply with an out-of-hospital DNR order?

No, unless an EMS provider has been dispatched at the hospital's request to provide EMS to the patient in the hospital, which is not likely. The hospital will probably have other procedures in place for the issuance of a DNR order. However, in all settings, including personal care facilities and nursing facilities, EMS providers, if they are summoned, are required to comply with out-of-hospital DNR orders. Also, EMS providers are not permitted to recognize DNR orders that do not meet the appearance requirements as set forth in the Act for out-of-hospital DNR orders and as otherwise prescribed by the Department. Therefore, persons qualified to receive an out-of-hospital DNR order who leave a facility such as a nursing home or a hospital, who do not wish to receive CPR if they experience cardiac or respiratory arrest, should be sure to obtain an out-of-hospital DNR order from their attending physician if they want EMS providers to be aware of and follow their wishes.

May an out-of-hospital DNR order be revoked by the person for whom it is issued?

Yes. An out-of-hospital DNR order may be revoked by the person for whom it is issued, whether

requested by that person, the person's surrogate, or other authorized representative of the person. Revocation may be accomplished by destroying or not displaying the order, bracelet or necklace, or by conveying the decision to revoke the out-of-hospital DNR order to an EMS provider verbally or otherwise prior to the time the person experiences respiratory or cardiac arrest. Neither the person's physical condition nor incompetence preceding cardiac or respiratory arrest will be considered to void the person's decision to revoke the out-of-hospital DNR order.

May a surrogate or other authorized representative of the person for whom an out-of-hospital DNR order has been issued revoke an out-of-hospital DNR order?

A surrogate or other authorized representative of the person may revoke an out-of-hospital DNR order only if the out-of-hospital DNR order was issued at the request of a surrogate or other authorized representative of the person. Also, a person who acted as another person's surrogate or other authorized representative when requesting an out-of-hospital DNR order may not revoke the order if that person loses the legal authority to serve as the other person's surrogate or other authorized representative. However if a person's surrogate or other authorized representative requested an out-of-hospital DNR order for the person, and then is later replaced by another surrogate or other authorized representative of the person, the replacement surrogate or other authorized representative does have the authority to revoke the out-of-hospital DNR order. An example of this would be a court appointed guardian asking for an out-of hospital order for a person and that court-appointed guardian later being replaced by another court-appointed guardian.

Does the decision to revoke an out-of-hospital DNR order need to be communicated to the physician who issued the order for that decision to be effective?

No, the decision is effective without communicating it to the physician who issued the out-of-hospital DNR order.

What responsibility does a person have if the person loses authority to act for another person as the surrogate or other authorized representative of the person?

If capable of doing so, that person shall apprise a replacement surrogate or other authorized representative of the person, if any, of the dependent person's out-of-hospital DNR items and of other pertinent information related to those items. The former surrogate or other authorized representative of the person shall also provide to the replacement surrogate or other authorized representative of the person, or the patient if the patient is no longer represented by another person, the name of the physician who issued the out-of-hospital DNR order and any information that person has to help the patient or the new surrogate or other authorized representative of the person locate the physician. The former surrogate or other authorized representative shall also make a reasonable effort to contact the physician to apprise the physician of the change in that person's status as well as the name of the replacement surrogate or other authorized representative of the person, if any, and any information that person has to help the physician locate the patient and the patient's current surrogate or other authorized representative of the person.

What responsibility does a replacement surrogate or other authorized representative of the person have to the physician who issued the out-of-hospital DNR order?

If made aware of the out-of-hospital DNR order and given information regarding the physician who issued the order, the replacement surrogate or other authorized representative of the person shall make a reasonable effort to contact the physician to apprise the physician of the change in surrogate or other authorized representative of the person unless the newly empowered person is able to

confirm that the former surrogate or other authorized representative of the person has already made the disclosure.

What if the physician who issued the out-of-hospital DNR order later determines that the diagnosis that the person is in a terminal condition, has an end-stage medical condition or is permanently unconscious was in error?

That physician will make every reasonable effort to contact the person or the person's surrogate or other authorized representative of the person to communicate the misdiagnosis and to request the return of the out-of-hospital DNR items to the physician for destruction by the physician.

What if a person wears a bracelet or necklace that is not approved by the Department?

EMS providers are not authorized to comply with an out-of-hospital DNR order, bracelet or necklace that has not been approved by the Department. This includes out-of-hospital DNR orders, bracelets or necklaces issued under other states' laws, unless those states' out-of-hospital DNR requirements have been approved by the Department as being consistent with those that apply in Pennsylvania. Currently, no other state's out-of-hospital DNR order, bracelet, or necklace has been approved by the Department.