

TITLE 7 HEALTH
CHAPTER 27 EMERGENCY MEDICAL SERVICES
PART 6 EMERGENCY MEDICAL SERVICES ADVANCE DIRECTIVES

7.27.6.1 ISSUING AGENCY: New Mexico Department of Health (DOH), Epidemiology and Response Division (ERD), Emergency Medical Systems Bureau (EMSB).
[7.27.6.1 NMAC - Rp, 7.27.6.1 NMAC, 12/12/2017]

7.27.6.2 SCOPE: This regulation applies to all people of New Mexico who have capacity, or by a person duly appointed under a durable power of attorney for health care, physicians, advanced practice nurses, or physician assistants, and emergency medical services personnel.
[7.27.6.2 NMAC - Rp, 7.27.6.2 NMAC, 12/12/2017]

7.27.6.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to the following statutory authorities:

A. the Department of Health Act, Section 9-7-6. E NMSA 1978, which authorizes the secretary of the department of health to make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions"; and

B. the Emergency Medical Services Act (as amended by Laws of 2003, Chapter 243), Section 24-10B-4I NMSA 1978, which authorizes the department of health to adopt "regulations pertaining to authorization of providers to honor advance directives to withhold or terminate care in certain pre-hospital or inter-facility circumstances, as guided by local medical protocols".

[7.27.6.3 NMAC - Rp, 7.27.6.3 NMAC, 12/12/2017]

7.27.6.4 DURATION: Permanent.
[7.27.6.4 NMAC - Rp, 7.27.6.4 NMAC, 12/12/2017]

7.27.6.5 EFFECTIVE DATE: December 12, 2017, unless a later date is cited at the end of a section.
[7.27.6.5 NMAC - Rp, 7.27.6.5 NMAC, 12/12/2017]

7.27.6.6 OBJECTIVE: These regulations will inform the public and New Mexico emergency medical services providers of the procedures to authorize the use of advance directives in pre-hospital and inter-facility settings.
[7.27.6.6 NMAC - Rp, 7.27.6.6 NMAC, 12/12/2017]

7.27.6.7 DEFINITIONS:

A. "**Advance directive**" means a written instruction, such as a living will, durable power of attorney for health care or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated.

B. "**Advanced Practice Nurse**" means a registered nurse who has completed the required education and training and received state of New Mexico approval to practice as a certified nurse midwife or advanced practice registered nurse.

C. "**Authorized health care decision maker**" means a person authorized under a durable power of attorney to make health care decisions on behalf of another, a court-appointed guardian or the parent of a minor or any other person authorized by law to make health care decisions for another.

D. "**Bureau**" means the emergency medical systems bureau of the epidemiology and response division of the department.

E. "**Capacity**" means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision.

F. "**Designee**" means a registered nurse, social worker, or other person who is designated and authorized by a physician, advanced practice nurse, or physician assistant to explain an EMS DNR order to a person who may execute the order.

G. "Durable power of attorney" means a document executed according to the provisions of Sections 45-5-501 through 45-5-502 NMSA 1978 of the New Mexico Probate Code, which designates an individual to make health care decisions for the person executing the document, or an advance health-care directive executed according to the provisions of Sections 24-7A-1 through 24-7A-18 NMSA 1978 of the New Mexico Uniform Health-Care Decisions Act, which designates an agent or surrogate to make health care decisions for an individual.

H. "Emergency medical services (EMS)" means the services rendered by emergency medical technicians or certified emergency medical services first responders in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

I. "EMS bracelet" means a bracelet, medallion or some other item of personal wear, approved by the bureau for indicating in a standard, readily-recognizable manner that the person has executed an EMS DNR order.

J. "EMS do not resuscitate (DNR) order" means an order issued by a physician, advanced practice nurse, or physician's assistant, and signed by the person or authorized health care decision maker, on a form approved by the bureau, indicating that resuscitative measures should not be performed.

K. "EMS personnel" means persons currently licensed or certified by the bureau to practice as emergency medical technicians (EMTs) or emergency medical services first responders in New Mexico.

L. "Medical control" means supervision provided by or under the direction of physicians to EMS personnel by written protocol or direct communications.

M. "New Mexico Medical Orders for Scope of Treatment (MOST) form" is a bureau approved advanced healthcare directive/healthcare decision that may be used either in conjunction with or as an alternative to the EMS DNR order; it must be signed by a physician, advanced practice nurse, or physician's assistant and by the patient or patient's healthcare decision maker.

N. "Physician" means a doctor of medicine or doctor of osteopathy licensed or otherwise authorized to practice medicine or osteopathic medicine.

O. "Physician's Assistant (PA)" means a person who has received the education, training and approval from the State of New Mexico to practice as a PA in New Mexico

P. "Pre-hospital setting" means any setting outside of a hospital where EMS personnel are called for assistance, including but not limited to long term care facilities, private homes or during transport.

[7.27.6.7 NMAC - Rp, 7.27.6.7 NMAC, 12/12/2017]

7.27.6.8 EMS DO NOT RESUSCITATE (DNR) ORDER:

A. Execution and duration of an EMS DNR order, including Section A of the MOST form.

(1) Any physician, advanced practice nurse, or PA may execute an EMS DNR order on behalf of any person with capacity, with the person's informed consent. The physician, advanced practice nurse, or PA or designee shall explain to the person the full meaning of the order, the available alternatives, how the order may be revoked, and answer any questions the person may have about the order. The person for whom the order is being executed shall sign the document, as well as the physician, advanced practice nurse, or PA. A registered nurse may sign the EMS DNR or MOST if a verbal order for the EMS DNR or MOST has been received from a physician, advanced practice nurse, or PA; the name of the physician, advanced practice nurse, or PA must be printed beneath the signature.

(2) If the person for whom an EMS DNR order is contemplated has appointed an agent under a durable power of attorney, and the person for whom the DNR order is contemplated lacks capacity, the physician, advanced practice nurse, or PA or designee may discuss the situation with the person's authorized health care decision maker, if any. The physician, advanced practice nurse, PA, or designee shall explain to the authorized health care decision maker the full meaning of the order, the available alternatives, how the order may be revoked, and answer any questions the authorized health care decision maker may have about the order. If the authorized health care decision maker gives informed consent to the order, the decision maker will sign the EMS DNR or MOST, as will the physician, advanced practice nurse, or PA. A registered nurse may sign the EMS DNR or MOST if a verbal order for the EMS DNR or MOST has been received from a physician, advanced practice nurse, or PA; the name of the physician, advanced practice nurse, or PA must be printed beneath the signature.

(3) An EMS DNR or MOST order shall remain in effect indefinitely unless revoked or unless an expiration date is specified in the document.

(4) An EMS DNR or MOST order shall be periodically reviewed by the person for whom the EMS DNR order is executed or by the authorized health care decision maker.

(5) A person for whom an EMS DNR order is executed may choose to wear an optional EMS bracelet indicating the existence of the order.

B. Revocation of an EMS DNR or MOST order.
(1) An EMS DNR or MOST order may be revoked at any time orally, by executing a subsequent order, or by performing an act which indicates an attempt to revoke the order, such as by burning, tearing, canceling, obliterating or destroying the order or any part of it, by the person on whose behalf it was executed or by the person's authorized health care decision maker.
(2) If an EMS DNR or MOST order is revoked, EMS personnel shall initiate appropriate resuscitation measures.

C. Execution and duration of a durable power of attorney.
(1) Any adult with decisional capacity may execute a durable power of attorney.
(2) A durable power of attorney shall remain in effect indefinitely unless revoked or unless an expiration date is specified in the document.

D. Revocation of a durable power of attorney: a durable power of attorney may be revoked at any time by executing a subsequent durable power of attorney or by performing an act which indicates an attempt to revoke the durable power of attorney, such as by burning, tearing, canceling, obliterating or destroying the document, or any part of it, by the person who executed it. It may also be revoked by an oral statement by the person who executed it.

[7.27.6.8 NMAC - Rp, 7.27.6.8 NMAC, 12/12/2017]

7.27.6.9 EMS PERSONNEL AND PROCEDURES:

A. Authorization of EMS personnel: EMS personnel shall follow EMS DNR orders, MOST form instructions or durable powers of attorney when encountering persons in pre-hospital settings in accordance with these regulations and local EMS medical protocols.

B. EMS procedures for verifying EMS DNR orders: EMS personnel shall comply with the following procedures when encountering a possible EMS DNR order:

(1) primary assessment - perform initial primary assessment, i.e., assess airway, breathing and carotid pulse;

(2) verification of identification - verify by:

(a) using a driver's license or other signed photo identification; or

(b) identification by a family member; or

(c) positive third party identification by someone who knows the person;

(3) verification of existence of the appropriately completed MOST form by the steps in Subsection D of 7.27.6.9 NMAC;

(4) verification of EMS DNR or MOST order - verify the existence of an EMS DNR or MOST order for the person, using the following indicators:

(a) EMS DNR order only: if a valid EMS DNR order is immediately accessible, proceed to Subsection C of 7.27.6.9 NMAC;

(b) intact EMS bracelet: if the person is wearing an EMS bracelet that is fully intact and not defaced, proceed to Subsection C of 7.27.6.9 NMAC;

(c) non-intact or defaced EMS bracelet with an EMS DNR order: if the person is wearing an EMS bracelet that is not fully intact or is defaced, but an EMS DNR order is immediately accessible, proceed to Subsection C of 7.27.6.9 NMAC;

(d) non-intact or defaced EMS bracelet without an EMS DNR order: follow the regular resuscitation protocol and ask family member(s) or others present to locate the EMS DNR order; if the EMS DNR order is located, proceed to Subsection C of 7.27.6.9 NMAC; if the EMS DNR order is not located, continue the regular resuscitation protocol and contact medical control for consultation;

(e) no EMS bracelet and no EMS DNR order: if the person is not wearing an EMS bracelet but there are other indications that the person is on DNR status, follow the regular resuscitation protocol and ask family member(s) or others present to locate the EMS DNR order; if the EMS DNR order is located, proceed to Subsection C of 7.27.6.9 NMAC; if the EMS DNR order is not located, continue the regular resuscitation protocol and contact medical control for consultation.

(5) if there is any question about the validity of an EMS DNR order or MOST form, or there is any indication of an attempted homicide, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

C. EMS procedures for implementing EMS DNR orders or MOST form instructions: if a person has a valid EMS DNR order or MOST form as evidenced by the steps in Subsection B of 7.27.6.9 NMAC, proceed as follows:

(1) for all persons: the following procedures may be initiated for the comfort of the person if they have not been refused by the person or by the authorized health care decision maker:

- (a) administering oxygen by mask or cannula;
- (b) suctioning;
- (c) managing airways except intubation and other advanced airway maneuvers;
- (d) administering analgesics, as authorized by the New Mexico scopes of practice;
- (e) controlling bleeding;
- (f) other care indicated on MOST form if utilized;
- (g) making patient comfortable; and
- (h) comforting family.

(2) for all persons in cardiac or respiratory arrest: - the following procedures shall be withheld:

- (a) external cardiac compressions;
- (b) artificial ventilations, intubation or other advanced airway maneuvers;
- (c) defibrillation/external cardiac pacing;
- (d) administration of cardiac medications; and
- (e) artificial respiration.

(3) if there is any question about the validity of an EMS DNR order, or there is evidence of an attempted homicide or suicide, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

D. EMS procedures for implementing the instructions on the MOST form or other durable powers of attorney:

(1) EMS personnel shall comply with the following procedures when encountering a MOST form, a DNR or advance directive form from any other source, or other durable power of attorney:

- (a) primary assessment - perform initial primary assessment, i.e., assess airway, breathing and carotid pulse;
- (b) verification of identification - verify, using a driver's license or other signed photo identification, by family member's positive identification, or identification by a person who knows the person, that the person is the one who executed the durable power of attorney; verify the identification of the person identified in the durable power of attorney as the authorized health care decision maker; if needed, contact medical control for consultation and then follow that person's instructions as authorized by the MOST form, other DNR form, other advance directive, or durable power of attorney.

(2) if there is any question about the validity of a MOST form, other DNR form, or other durable power of attorney, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

E. Relationship of EMS DNR orders to durable powers of attorney: Where a person has an EMS DNR order and a MOST form or other durable power of attorney, the most recent document shall prevail for EMS treatment only.

[7.27.6.9 NMAC - Rp, 7.27.6.9 NMAC, 12/12/2017]

7.27.6.10 ENFORCEABILITY AND PROGRAM ADMINISTRATION:

A. Enforceability of DNR orders and durable powers of attorney from other states: EMS personnel may honor DNR orders and durable powers of attorney that are executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction, or in compliance with the laws of New Mexico, to the extent the document is not inconsistent with the public policy of New Mexico.

B. Program administration: the bureau shall distribute, or arrange for the distribution of, EMS DNR order forms and relevant information to interested citizens and appropriate health care providers. These materials shall include specific guidance on how to obtain additional forms and the EMS bracelet.

[7.27.6.10 NMAC - Rp, 7.27.6.10 NMAC, 12/12/2017]

HISTORY OF 7.27.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center: DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico, filed 12/28/94.

History of Repealed Material:

DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico (filed 12/28/94) repealed 01/01/06.

7.27.6 NMAC, Emergency Medical Services - Emergency Medical Services Advance Directives, filed 12/16/2005 - repealed effective 12/12/2017.

Other History:

DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico (filed 12/28/94) was renumbered, reformatted and replaced by 7.27.6 NMAC, Emergency Medical Services Advance Directives, effective 01/01/06.

7.27.6 NMAC, Emergency Medical Services - Emergency Medical Services Advance Directives (filed 12/16/2005) was replaced by 7.27.6 NMAC, Emergency Medical Services - Emergency Medical Services Advance Directives, effective 12/12/2017.