Policy

Every patient is presumed to consent to the administration of cardiopulmonary resuscitation (CPR) in the event of arrest, unless the Medical Orders for Life-Sustaining Treatment (MOLST) order form is completed by the attending physician upon the informed consent of the patient (or patient's surrogate or health care agent) obtained in accordance with this policy.

At the time consent to a DNR order is first obtained, or as soon thereafter as practical, patients (or their surrogates or health care agents) must be provided with an approved written summary of the State regulation on DNR orders which this policy implements ("Do Not Resuscitate Orders-A Guide for Patients and Families"). Before obtaining consent to a DNR order, the attending physician also must provide the patient (or surrogate or health care agent) with appropriate information regarding the patient's diagnosis and prognosis, the reasonably foreseeable risks and benefits of CPR, and the consequences of a DNR order.

A DNR order is an order only for the withholding of CPR and not for withholding any other treatment or care. The patient with a DNR order is to continue to receive support, counseling, appropriate comfort care, and other indicated medical care. Specific orders detailing the care the patient is to receive are to be documented on the patient's order sheet concurrently with the DNR order. A DNR order will permit resuscitation in order to reverse a condition caused by the administration of anesthesia.

Description

1. Patient Consent

   Except as provided in Sections 2 and 3 below, the patient must consent expressly to a DNR order before it may be issued. Such consent is to be obtained at or about the time the order is issued. Consents which have been given earlier may be used only if a contemporaneous consent cannot be obtained because the patient has lost the capacity to give it. Consent given prior to hospitalization may take a similar written form or be given orally, but if oral, it is to be uttered in the presence of two adult witnesses, at least one of whom is a physician affiliated with the hospital.

2. Therapeutic Exception

   A DNR order may be issued without express consent of an adult with the capacity to give it only if all of the following conditions are met:

   a. the attending physician and second physician determine upon personal examination that the patient would suffer immediate and severe injury from a discussion of CPR, and state in the chart their reasons for making this determination.

   b. the attending physician ascertains the patient's wishes to the fullest extent possible without subjecting the patient to immediate and severe injury; and,

   c. consent is obtained from a surrogate or health care agent (as prescribed below for patients without capacity) or the patient has previously consented to a DNR order.

   If a DNR order is issued pursuant to this exception, the attending physician must regularly reassess the patient's risk of injury and consult with the patient as soon as the medical basis for not doing so ceases.

3. Surrogate or Heath Care Agent

   a. Determining Patient Capacity

      Every patient is regarded as having capacity to make an informed decision regarding CPR, unless the patient is determined to lack that capacity in accordance with the procedures described in this policy. A patient lacks capacity only if he lacks the ability to understand and appreciate the nature and consequences of a DNR order, including the benefits and disadvantages of such an order, and to reach an informed decision about it. The fact that a patient has been determined to lack capacity to make other decisions (e.g., a conservator of the patient's assets has been appointed) does not establish lack of capacity for a decision in this matter, nor does a determination of a lack of capacity to make this decision affect the patient's capacity to make any other.

   b. Documenting a Patient's Lack of Capacity

      A determination that an adult patient lacks the appropriate capacity to consent to a DNR order is made to a reasonable degree of medical certainty by the attending physician and a second physician. They must determine upon personal examination (and record in the patient's chart) the cause and nature of the incapacity, as well as its extent and probable duration.

      Cases involving mental illness or developmental disability- If lack of capacity is based on a mental illness, the second physician must be a board-certified or board-eligible neurologist or psychiatrist. If the mental illness diagnosis is based on dementia, the second physician does not have to be a psychiatrist. If lack of capacity is based on a developmental disability, the concurring determination must be made by a physician or psychologist who is on an approved list of experienced specialists in the field.

   c. Notice of Determination that Patient Lacks Capacity

      Once the lack of capacity has been determined, notice of this determination is to be given promptly to a) the patient, if there is any indication that the patient can comprehend the notice; and b) the identified surrogate or health care agent (see below)

      Patients given this notice are simultaneously given a copy of the DNR Guide for Patient's and Families.

   d. Selecting a Surrogate or Health Care Agent

      The following persons may act as surrogates for adults who have been determined to lack capacity (listed in order of priority):

      - A person designated by the patient on a health care proxy form when the patient had capacity to do so;
      - A court-appointed guardian or committee (however, it is not necessary that such a person be appointed in order to make resuscitation decision)
      - The spouse;
      - An adult son or daughter; (18 years or older)
      - A parent;
      - An adult brother or sister; (18 years or older)
      - Any adult who has a close personal relationship with the patient and attests to that fact on an affidavit form approved by the Hospital.

When a person on this list is not reasonably available or willing to make a decision, the authority falls to the person of the next highest priority. Once identified, the identity of this surrogate or health care agent shall be noted in the patient's chart.

e. Disputes

A process is available to attempt resolution of any dispute:

1. If the attending physician or house officer objects to writing a DNR order, the patient shall be transferred to another attending physician or the case should be immediately referred to the Ethics Committee.

2. Disputes regarding DNR orders must be referred to the Highland Hospital Ethics Committee for review. Refer to policy entitled, "Management of Ethical Issues".

3. No physician, health care professional, participant in the Ethics Committee process or any other person employed by or under contract with the hospital shall be subject to criminal prosecution, civil liability, or be deemed to have engaged in unprofessional conduct for carrying out in good faith a decision regarding cardiopulmonary resuscitation or for acts performed as a participant in the dispute mediation system.

f. No Surrogate or Health Care Agent Available

If no one on the surrogate list is available, the attending physician may issue a DNR order without a court order only if he determines (and records in the chart) that resuscitation would be medically futile (as defined below), and this determination is confirmed in writing after personal examination by a second physician.

g. Minors

For minor patients, the surrogate must be a custodial parent or legal guardian. (Note: Persons under 18 who have been married or have had children are regarded as adult patients). If the minor patient also has capacity (i.e., is sufficiently mature and alert) to make a decision about CPR, then the patient's own consent must be obtained as well. The attending physician, consultation with the custodial parent or legal guardian, will determine if the minor has such capacity.

Reasonable efforts are to be made to notify a non-custodial parent before a DNR order is issued if it is determined that this parent has maintained substantial and continuous contact with the minor and if there is reason to believe that this parent has not been informed. If that other parent objects, refer to section e-"Disputes".

h. Medical Condition

Consent for a DNR order may be obtained from a surrogate on behalf of an adult or minor patient only if:

- The patient has a near-term terminal condition [death expected with one (1) year]; or
- The patient is permanently unconscious; or
- Resuscitation would be medically futile (i.e., would be unsuccessful or patient would experience repeated arrest in a short period of time leading to death in any event); or
- Resuscitation would impose an extraordinary burden on the patient in light of the patient's condition and the expected outcome of resuscitation; or, in the absence of any of the medical conditions listed above,
- The surrogate must have been appointed for an adult patient by virtue of the health care proxy law (i.e. health care agent)

A determination that one of these medical conditions exists must be made by the attending physician and a second physician who has personally examined the patient. The determination must be made to a reasonable degree of medical certainty and entered in the patient's chart. (Note: The determination may not be made by a physician who is also acting as the patient's surrogate or health care agent.)

i. Obtaining and Documenting the Surrogate's or Heath Care Agent's Consent

The surrogate or health care agent should understand that the basis of decision is to be the patient's wishes (including religious and moral beliefs) or, if those are unknown, the patient's best interest. The surrogate or health care agent is to be given the same rights as the patient to access medical records and information regarding the patient.

A surrogate's, health care agent's, or parent's consent to a DNR order may be given orally or in writing. If made in writing, it must be signed and dated in the presence of one adult witness, who must also sign the document. If oral consent is given for an incompetent patient or for a child, it must be given in the presence of two adults, one of whom must be a physician affiliated with the Hospital. The parent's, heath care agent's, or surrogate's decision must be recorded in the medical record, as well as the names of the two witnesses. Telephone consents may only be used in urgent situations. Refer to policy 4.0 Consent-Oral Consent.

j. Notice to Patient

The adult patient without capacity is to be given notice of the decision to issue a DNR order upon a surrogate or health care agent's consent if there is any indication that the patient could comprehend the notice, unless it is determined (in the manner prescribed above for patients with capacity) that the notice would cause immediate and severe injury to the patient. If the patient objects upon receiving the notice, the DNR order is not to be issued

4. Issuing the Order

Once a consent has been given, the attending physician will record this in the chart and complete the appropriate MOLST form immediately or as soon as he determines that the medical preconditions specified in the consent are met (and that fact is recorded in the chart), unless the physician has knowledge of an objection. Refer to section e, "Disputes". If the attending physician himself objects to issuing a DNR order for which consent has been given, he must promptly make that objection and follow the process outlined in section e, "Disputes: part 1.

5. Periodic Review

At least once every seven (7) days, the attending physician will review the chart of the patient for whom a DNR order has been issued and document in the chart that this was done. DNR orders for alternate level of care (ALC) patients shall be reviewed each time the patient is required to be seen by a physician, but in no case less often than every sixty (60) days. Non-hospital DNR orders must be reviewed each time the patient is seen by the physician, but not less often than every 90 days. If the physician determines on review that a DNR order is no longer appropriate due to an improvement in the patient's condition, the physician will immediately notify the patient or the patient's surrogate or health care agent. If that person declines to revoke the consent, the physician should immediately attempt to arrange a transfer of the care of the patient to another physician or follow the process outlined in Section e, "Disputes."

DNR orders are not automatically cancelled when the patient undergoes a procedure in the Operating Room.

6. Surgery for a DNR Patient:

   a. A patient or proxy decision to refuse intraoperative resuscitation during surgery is compatible with maximal therapeutic efforts short of arrest. This decision does not imply limits on other forms of care, such as intensive care.

   b. Before surgery the DNR order remains in effect only if a specific decision to maintain DNR status during surgery is documented in the medical record. This requires that the attending physician or house officer specifically discusses the applicability of the DNR order during the surgical procedure with persons who originally consented to the DNR order. Salient features of the discussion must be documented in the progress notes section of the medical record.

      If the patient desires to have the DNR order honored in the operative setting, a written do-not-resuscitate order must be written by the surgeon or anesthesiologist. Communication must take place among relevant staff regarding plans to honor an intraoperative DNR order.

   c. A DNR order in effect during surgery permits resuscitation in order to reverse a condition caused by administration of anesthesia while the patient is under the care of an anesthesiologist.

   d. After surgery, DNR orders like all pre-existing orders to a surgical procedure done under anesthesia must be reordered on the patient's order sheet.

   e. Physicians and other health care professionals who, for reasons of conscience, are unable to honor a patient's refusal of resuscitation must withdraw from the case so that others can assume responsibility. In cases where a physician (either the surgeon, anesthesiologist, or attending physician of record) intends to withdraw, a discussion of this matter must take place with the patient or health care agent or surrogate. The physician must assure the patient that he or she will not be abandoned, and that care will be assumed by others willing to honor the patient's refusal.

7. Revocation

   a. By the Patient

      A patient with capacity may revoke his/her designation of a surrogate or health care agent or his/her consent to a DNR order at any time by any written or oral declaration to a member of the medical or nursing staff or by any other act which shows an intent to revoke.

   b. By the Surrogate or Health Care Agent

      Surrogates or health care agents also may revoke at any time consents which they have given, but they must do that either in a dated and signed writing or in an oral statement made to the attending physician in the presence of at least one adult witness. Once consent is revoked, the physician will immediately include the revocation in the patient's chart, cancel the order, and notify the nursing staff.

c. Return of Patient's Capacity

If a patient for whom a surrogate's or health care agent's consent to a DNR order has been given subsequently attains capacity to make his own decisions, or if the medical condition permitting a surrogate or health care agent to consent to a DNR order ceases, the order is to be cancelled immediately and reissued only with the express consent of the patient.

8. Transfer Patients

For patients presenting with a completed MOLST form from another institution, the form should be reviewed on admission for continued appropriateness and record such review on section F of the MOLST form. Document the date for instituting the DNR on the order renewal form (1097R). For patients with no prior completed MOLST form at Highland and non-MOLST DNR documentation from another institution, the DNR order will be honored until the attending physician at Highland examines the patient. A new MOLST order then must be issued if DNR status is to remain in effect. If the DNR order is cancelled, notification must be given to the person who consented and to the HH staff responsible for the patient's care.

Whenever the patient has been transferred from a mental hygiene facility, that facility's director is to be given prompt notice of determinations regarding capacity and notice prior to the issuance of a DNR order, but such notification is not to delay issuance of an order. If the facility director disagrees with any determination or order, refer to section e, "Disputes".

For patients transferring from Highland to another facility, the original MOLST documentation will be maintained at Highland and a legible copy will be sent to the facility.

9. Non-Hospital DNR Orders

A non-hospital order not to resuscitate may be issued while a patient is hospitalized, to take effect after hospitalization. It may also be issued by a physician in his or her office for a person who is not in a hospital. Such an order may only be issued on DOH Form 3474. Emergency medical services personnel and Hospital emergency services personnel must comply with such an order subject to paragraph f. below. Consent to issue such an order must be obtained form the patient or surrogate as follows:

a. Consent from a Patient with Capacity

Consent from the patient may be obtained as follows:

- For a hospitalized or non-hospitalized patient, in writing, dated, and signed in the presence of at least two witnesses eighteen years of age or older, who must also sign the consent as witnesses;
- For a non-hospitalized patient, orally, to the attending physician alone (attending physician is the physician who has primary responsibility for the treatment of the patient);
- For a hospitalized patient, orally in the presence of at least two witnesses eighteen years of age or older, one of whom is a physician affiliated with the Hospital in which the patient is being treated.

b. Surrogate Consent to Non-Hospital DNR Orders for a Patient Lacking Capacity (See Section 3 relative to capacity determinations.)

- Patient With a Health Care Agent- consent may be obtained orally to the attending physician or may be obtained in writing from the health care agent. If in writing, it must be dated and signed in the presence of an adult witness who must also sign the consent as a witness.

- Patient Without a Health Care Agent and Minors- Before an attending physician may issue a non-hospital DNR order, the attending physician, with the concurrence of another physician, who has personally examined the patient, must make the following determination: The attending physician must determine that the patient lacks capacity and that one or more of the following apply: (1) the patient has a terminal condition; or (2) the patient is permanently unconscious; or (3) resuscitation would be medically futile; or (4) resuscitation would impose an extraordinary burden for the patient in light of his/her medical circumstances. Once such determination is made, and concurred with by another physician, consent may be obtained as follows:

  - For a minor: A parent's consent, and the consent of the minor if the minor has capacity, must be obtained orally or in writing. If oral, it must be witnessed by two adults, one of whom is the patient's physician. If written, it must be witnessed by an adult who shall also sign the consent as a witness.

  - For a Patient With a Surrogate who is not a Health Care Agent: Consent may be given orally or in writing. If in writing, it must be witnessed by an adult who shall also sign the consent as a witness. If oral, it must be made in the presence of two adults, one of whom must be the attending physician.

c. Consent for Patients Without Surrogates

For patients who lack capacity and who have no surrogate, the attending physician may issue a non-hospital DNR order only if CPR would be medically futile. Note: "medically futile" is limited to the situation where CPR will be unsuccessful in restoring cardiac and respiratory function or where the patient will experience repeated arrest in a short time period before death occurs. Another physician, who has personally examined the patient, must concur in this determination.

d. Issuance and Review

- For all non-hospital DNR orders, DOH Form 3474 must be completed. The order must be documented in the patient's medical record. A bracelet will be developed by and available from the Department of Health to patients who have consented to non-hospital DNR orders.

- The order must be reviewed for appropriateness by the attending physician each time the patient is examined, whether in the Hospital or not, but no less than every ninety (90) days, provided that the review need not occur more than once every seven (7) days. The attending physician shall record the review in the patient's medical record. A registered nurse who provides direct care to the patient may record the review in the record at the direction of the physician. In such a case, the attending physician shall include a confirmation of the review in the patient's medical record within fourteen (14) days of such review.

e. Revocation

Non-hospital DNR orders may be revoked in the same manner as all other orders (see Section 7of this policy). Any health care professional informed of a revocation shall immediately notify the attending physician. The attending physician shall record the revocation in the patient's medical record, cancel the order, and make diligent efforts to retrieve the form issuing the order and the standard bracelet.

f. Compliance

- If a patient with a non-hospital DNR order is admitted to the Hospital, the order shall be treated in the same way as an order not to resuscitate for a patient transferred from another hospital (see section 8 of this policy).

- Emergency personnel must verify the existence of the order either by seeing an executed DOH form or by seeing an identifying bracelet worn by the patient. If either of these items is found, the DNR order must be followed unless:

  - ❖ Emergency personnel believe in good faith that consent has been revoked or the order has been cancelled; or
  - ❖ Family members or others on the scene (excluding emergency personnel) object to the order and physical confrontation appears likely; or
  - ❖ Hospital emergency service physicians determine that other significant and exceptional medical circumstances warrant disregarding the order.

References

NYS Public Heath Law, Sections 2960-2978
New York State Form 3473
10 NYCRR §405.43
"Do Not resuscitate Orders- A Guide for Patients and Families" (PAS 150)
MOLST (Section A-E) Form 1097A
MOLST Supplemental Documentation Form 1097B
Order Renewal Form 1097R

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