

Department of Health
Rulemaking Hearing Rules
Board for Licensing Health Care Facilities

Chapter 1200-8-15
Standards for Residential Hospices

Amendments

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraphs (2), (10), (18), (19), (39), (49), and (63) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (10), (18), (19), (39), (49), and (63) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (10) Competent. A patient or resident who has capacity.
- (18) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.
- (19) Health Care Decision-maker. In the case of a patient or resident who lacks capacity, the patient's or resident's health care decision-maker is one of the following: the patient's or resident's health care agent as specified in an advance directive, the patient's or resident's court-appointed guardian or conservator with health care decision-making authority, the patient's or resident's surrogate as determined pursuant to Rule 1200-8-15-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (39) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or resident or other medical or surgical treatments to achieve the expressed goals of the informed patient or resident. In the case of the incompetent patient or resident, the patient's or resident's representative expresses the goals of the patient or resident.
- (49) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- (63) Surrogate. An individual, other than a patient's or resident's agent or guardian, authorized to make a health care decision for the patient or resident.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraphs (13), (29), and (30) and re-numbering the remaining paragraphs appropriately.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-15-.01, Definitions, is amended by adding the following language as twenty (20), new, appropriately numbered paragraphs, so that as amended, the twenty (20), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient or resident to make health care decisions while having the capacity to do so. A patient or resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient or resident shall have the burden of proving lack of capacity.
- () Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.
- () Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

- () Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.
- () Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally Informing. A communication by any effective means from the patient or resident directly to a health care provider.
- () Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.
- () Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's or resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient or resident.
- () Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's or resident's physician which states that in the event the patient or resident suffers cardiac or respiratory

arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities shall serve as a Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-15-.06, Basic Hospice Functions, is amended by deleting subparagraph (12)(n) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (12)(n) shall read:

- (12)(n) Any unused portions of prescriptions shall be turned over to the patient or resident only on a written order by the physician. A notation of drugs released to the patient or resident shall be entered into the medical record. All unused prescriptions left in a residential hospice shall be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the residential hospice.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-15-.08, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The residential hospice facility must be constructed, arranged, and maintained to ensure the safety of the patient or resident.
- (2) The condition of the physical plant and the overall residential hospice facility environment must be developed and maintained in such a manner that the safety and well-being of patients or residents are assured.
- (3) No new residential hospice facility shall hereafter be constructed, nor shall major alterations be made to existing residential hospice facilities, or change in residential hospice facility type be made without the prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new residential hospice facility is licensed or before any alteration or expansion of a licensed residential hospice facility can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.

- (4) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), the National Electrical Code, and the U.S Public Health Service Food Code as adopted by the Board for Licensing Health Care Facilities. When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (5) The codes in effect at the time of submittal of plans and specifications, as defined by these regulations shall be the codes to be used throughout the project.
- (6) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.
- (7) All construction shall be executed in accordance with the approved plans and specifications.
- (8) All new construction and renovations to residential hospices, other than minor alterations not affecting fire and life safety or functional issues, shall be performed in accordance with the specific requirements of these regulations governing new construction in residential hospices, including the submission of phased construction plans and the final drawings and the specifications to each.
- (9) In the event submitted materials do not appear to satisfactorily comply with 1200-8-15-.08 (4) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (10) Notice of satisfactory review from the department constitutes compliance with this requirement if construction begins within one hundred eighty (180) days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.
- (11) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.
- (12) Prior to final inspection, a CD Rom disc, in TIF or DMG format, of the final approved plans including all shop drawings, sprinkler, calculations, hood and duct, addenda, specifications, etc., shall be submitted to the department.

- (13) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot (1/8" = 1'), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. These plans shall be prepared by an architect or engineer licensed to practice in the State of Tennessee. The plans shall contain a certificate signed by the architect or engineer that to the best of his or her knowledge or belief the plans conform to all applicable codes.
- (a) Two (2) sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
 - (b) Review of plans does not eliminate responsibility of owner and/or architect to comply with all rules and regulations.
- (14) Specifications shall supplement all drawings. They shall describe the characteristics of all materials, products and devices, unless fully described and indicated on the drawings. Specification copies should be bound in an 8½ x 11 inch folder.
- (15) Drawings and specifications shall be prepared for each of the following branches of work: Architectural, Structural, Mechanical, Electrical and Sprinkler.
- (16) Architectural drawings shall include:
- (a) Plot plan(s) showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
 - (b) Floor plan(s) showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;
 - (c) Separate life safety plans showing the compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units. All fire and smoke walls must be identified;
 - (d) The elevation of each facade;
 - (e) The typical sections throughout the building;
 - (f) The schedule of finishes;

- (g) The schedule of doors and windows;
 - (h) Roof plans;
 - (i) Details and dimensions of elevator shaft(s), car platform(s), doors, pit(s), equipment in the machine room, and the rates of car travel must be indicated for elevators; and
 - (j) Code analysis.
- (17) Structural drawings shall include:
- (a) Plans of foundations, floors, roofs and intermediate levels which show a complete design with sizes, sections and the relative location of the various members;
 - (b) Schedules of beams, girders and columns; and
 - (c) Design live load values for wind, roof, floor, stairs, guard, handrails, and seismic.
- (18) Mechanical drawings shall include:
- (a) Specifications which show the complete heating, ventilating, fire protection, medical gas systems and air conditioning systems;
 - (b) Water supply, sewerage and HVAC piping systems;
 - (c) Pressure relationships shall be shown on all floor plans;
 - (d) Heating, ventilating, HVAC piping, medical gas systems and air conditioning systems with all related piping and auxiliaries to provide a satisfactory installation;
 - (e) Water supply, sewage and drainage with all lines, risers, catch basins, manholes and cleanouts clearly indicated as to location, size, capacities, etc., and location and dimensions of septic tank and disposal field; and,
 - (f) Color coding to show clearly supply, return and exhaust systems.
- (19) Electrical drawings shall include:
- (a) A certification that all electrical work and equipment are in compliance with all applicable local codes and laws, and that all materials are currently listed by recognized testing laboratories;

- (b) All electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current, and transformers when located within the building;
 - (c) The electrical system, which shall comply with applicable codes, and shall include:
 - 1. The fire alarm system; and
 - 2. The emergency power system including automatic services as defined by the codes.
 - (d) Color coding to show all items on emergency power.
- (20) Sprinkler drawings shall include:
- (a) Shop drawings, hydraulic calculations, and manufacturer cut sheets;
 - (b) Site plan showing elevation of fire hydrant to building, test hydrant, and flow data (Data from within a 12 month period); and
 - (c) Show "Point of Service" where water is used exclusively for fire protection purposes.
- (21) No system of water supply, plumbing, sewage, garbage or refuse disposal shall be installed nor shall any existing system be materially altered or extended until complete plans and specifications for the installation, alteration or extension have been submitted to the department and show that all applicable codes have been met and necessary approval has been obtained.
- (a) Before the facility is used, the water supply system shall be approved by the Tennessee Department of Environment and Conservation.
 - (b) Sewage shall be discharged into a municipal system or approved package system where available; otherwise, the sewage shall be treated and disposed of in a manner of operation approved by the Department of Environment and Conservation and shall comply with existing codes, ordinances and regulations which are enforced by cities, counties or other areas of local political jurisdiction.
 - (c) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and hand washing facilities shall be between 105°F. and 115°F.

- (22) The following alarms are required and shall be monitored twenty-four (24) hours per day:
- (a) Fire alarms; and
 - (b) Generators (if applicable)
- (23) A negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-15-.09, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any residential hospice facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The residential hospice facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire.
- (3) The residential hospice facility must be designed and equipped for the comfort and privacy of each hospice patient and or HIV care resident and family member(s) by providing physical space for private patient/family or resident/family visiting, accommodations for family members to remain with the patient and/or resident throughout the night, accommodations for family privacy following a patient's or resident's death, and decor which is home-like in design and function.
 - (a) Any condition on the residential hospice site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

- (b) Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair patients and/or residents.
- (c) Equipment and supplies for physical examination and emergency treatment of patients and/or residents shall be available.
- (d) A bed complete with mattress and pillow shall be provided. In addition, patients and/or residents units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
- (e) Individual wash cloths, towels and bed linens must be provided for each patient and/or resident. Linen shall not be interchanged from patient to patient or resident to resident until it has been properly laundered.
- (f) Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
- (g) Items of equipment coming into intimate contact with patients and/or residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and/or residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, disposable items are acceptable but shall not be reused.
- (h) The facility shall have written policies and procedures governing care of patients and/or residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any patient/resident area falls below 65°F. or exceeds 85°F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the Department shall be notified.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-15-.12, Patient/Resident Rights, is amended by deleting subparagraphs (1)(p) and (1)(q) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(p) and (1)(q) shall read:

- (1)(p) To refuse experimental treatment and drugs. The patient's/resident's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record;
- (1)(q) To have records kept confidential and private. Written consent by the patient and/or resident must be obtained prior to release of information except to persons authorized by law. If the patient and/or resident lacks

capacity, written consent is required from the patient and/or resident's health care decision maker. The residential hospice must have policies to govern access and duplication of the patient's and/or resident's record;

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients or Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential hospice shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient or resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients or residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient or resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient or resident could have made while having capacity.
- (3) The advance directive shall be in writing, signed by the patient or resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient or resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient or resident upon the death of the patient or resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.
- (4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient or resident lacks capacity, and ceases to be effective upon a determination that the patient or resident has recovered capacity.
- (5) A facility may use any advance directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

- (6) A determination that a patient or resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (7) An agent shall make a health care decision in accordance with the patient's or resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's or resident's best interest. In determining the patient's or resident's best interest, the agent shall consider the patient's or resident's personal values to the extent known.
- (8) An advance directive may include the individual's nomination of a court-appointed guardian.
- (9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's or resident's residence.
- (10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.
- (12) A patient or resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (13) A patient or resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
- (14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

- (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
- (b) A surrogate may make a health care decision for a patient or resident who is an adult or emancipated minor if and only if:
 - 1. the patient or resident has been determined by the designated physician to lack capacity, and
 - 2. no agent or guardian has been appointed, or
 - 3. the agent or guardian is not reasonably available.
- (c) In the case of a patient or resident who lacks capacity, the patient's or resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient or resident is receiving health care.
- (d) The patient's or resident's surrogate shall be an adult who has exhibited special care and concern for the patient or resident, who is familiar with the patient's or resident's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:
 - 1. the patient's or resident's spouse, unless legally separated;
 - 2. the patient's or resident's adult child;
 - 3. the patient's or resident's parent;
 - 4. the patient's or resident's adult sibling;
 - 5. any other adult relative of the patient or resident; or
 - 6. any other adult who satisfies the requirements of 1200-8-15-.13(16)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient or resident shall be eligible to serve as the patient's or resident's surrogate.

- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or resident or in accordance with the patient's or resident's best interests;
 2. The proposed surrogate's regular contact with the patient or resident prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the patient or resident during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If the patient or resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-8-15-.13(16)(c) thru 1200-8-15-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient or resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the patient's or resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate shall make a health care decision in accordance with the patient's or resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's or resident's best interest. In determining the patient's or resident's best interest, the surrogate shall consider the patient's or resident's personal values to the extent known to the surrogate.

- (k) A surrogate who has not been designated by the patient or resident may make all health care decisions for the patient or resident that the patient or resident could make on the patient's or resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient or resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's or resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient or resident is highly unlikely to regain capacity to make medical decisions.
 - (l) Except as provided in 1200-8-15-.13(16)(m):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's or resident's treating health care provider.
 - (m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the patient or resident by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (n) A health care provider may require an individual claiming the right to act as surrogate for a patient or resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (17) Guardian.
- (a) A guardian shall comply with the patient's or resident's individual instructions and may not revoke the patient's or resident's advance directive absent a court order to the contrary.
 - (b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.
 - (c) A health care provider may require an individual claiming the right to act as guardian for a patient or resident to provide written documentation

stating facts and circumstances reasonably sufficient to establish the claimed authority.

- (18) A designated physician who makes or is informed of a determination that a patient or resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's or resident's current clinical record and communicate the determination to the patient or resident, if possible, and to any person then authorized to make health care decisions for the patient or resident.
- (19) Except as provided in 1200-8-15-.13(20) thru 1200-8-15-.13(22), a health care provider or institution providing care to a patient or resident shall:
 - (a) comply with an individual instruction of the patient or resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient or resident; and
 - (b) comply with a health care decision for the patient or resident made by a person then authorized to make health care decisions for the patient or resident to the same extent as if the decision had been made by the patient or resident while having capacity.
- (20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:
 - (a) contrary to a policy of the institution which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or resident or to a person then authorized to make health care decisions for the patient or resident.
- (22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
- (23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-8-15-.13(20) thru 1200-8-15-.13(22) shall:

- (a) promptly so inform the patient or resident, if possible, and any person then authorized to make health care decisions for the patient or resident;
 - (b) provide continuing care to the patient or resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or resident or person then authorized to make health care decisions for the patient or resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient or resident to another health care provider or institution that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.
- (24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient or resident has the same rights as the patient or resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient or resident, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.
- (26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

- (29) The withholding or withdrawal of medical care from a patient or resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (30) Universal Do Not Resuscitate Order (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:
1. with the consent of the patient; or
 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
 3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the patient or resident is an adult who is capable of making an informed decision, the patient's or resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient or resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient or resident be resuscitated by the person authorized to consent on the patient's or resident's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient or resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's or resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient or resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-15-.14, Disaster Preparedness, is amended by deleting part (2)(a)7. in its entirety.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 22nd day of November, 2005 and will become effective on the 5th day of February, 2006.