

**Portable Do Not Attempt Resuscitation Orders**

**2016 Amendments to the Alabama Natural Death Act**  
 Developed with Support from Dr. Tom Geary and ADPH  
 Presented by Kenny Williamson Keith and Brandon Jackson

**HKH**  
 HARRICK KEITH & HOWES  
 EFFECTIVE. EFFICIENT. RESPONSIVE.

---

---

---

---

---

---

---

---

**Portable DNAR**

The Natural Death Act, *Ala. Code 22-8A-1 et seq.*, affirms the right of a competent adult to make certain decisions, including the decision to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness.

**DO NOT RESUSCITATE**

**HKH**  
 HARRICK KEITH & HOWES  
 EFFECTIVE. EFFICIENT. RESPONSIVE.

---

---

---

---

---

---

---

---

**Portable DNAR**

This Act recognizes and authorizes two rights:

1. The right to instruct one's physician, in writing, to provide, withhold, or withdraw life-sustaining treatment and artificially provided nutrition and hydration (e.g. Living Will);
2. The right to designate a health care proxy, through a statutorily mandated form, the power to make decisions on behalf of the adult person concerning the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration in certain situations.

**HKH**  
 HARRICK KEITH & HOWES  
 EFFECTIVE. EFFICIENT. RESPONSIVE.




---

---

---

---

---

---

---

---

**Recent Problems with DNR Orders**

- Until recently, there was no guidance on “Do Not Resuscitate (“DNR”) or “Do Not Attempt Resuscitation” (“DNAR”) orders.
- DNR Orders were “facility specific.” DNR Orders were not transferable from one health care facility to another creating redundant work for every new facility.





---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

- The Alabama Legislature amended the Natural Death Act in 2016 to add the definition of DNAR order and create a system for transferable DNAR orders.
- **ACT 2016-96:** Amended sections of the Natural Death Act “...to authorize health care providers, under certain conditions to follow a physician’s do not attempt resuscitation order duly entered in the medical record anywhere in the state, even if the person subject to the order has become incapacitated and is unable to direct his or her medical treatment.”





---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

A physician may enter a DNAR in a patient's medical record for a **competent** person based on:

1. The consent of the **Competent** person given while competent.





---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

A physician may enter a DNAR in a patient's medical record for an **incompetent** person based on:

**First Things First:**

- When entering a DNAR Order for an incompetent person, the statutorily mandated requirements still must be met prior to entering the DNAR Order.
- Two physicians** must examine the patient and make the determination and document in the medical record that the patient is (1) no longer competent (i.e. "no longer able to understand, appreciate, and direct his/her medical treatment and has no hope of regaining that ability") and (2) the patient has a terminal illness or is in a state of permanent unconsciousness.




---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

Once determined to be incompetent, a physician may enter a DNAR for an **incompetent** person based on:

- The instructions in an advance directive **if** the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability;
- Consent of a health care proxy (under an Advance Directive) or the instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in Section 22-8A-4(b)(1) (the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration).
- Consent of a Health Care Surrogate duly appointed using the written statutorily mandated process and form.




---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

The Act establishes the requirements for **Valid** DNAR orders:

- "The State Board of Health shall adopt by rule the form to be used for a portable DNAR order.
- Section 22-8A-3 Definitions:** A DNAR order entered in the medical record by a **physician using the required form** designated by the State Board of Health and substantiated by completion of all sections of the form.

**The Alabama Department of Public Health Form is Mandatory**




---

---

---

---

---

---

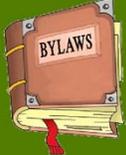
---

---

**2016 Natural Death Act Amendment**

**Are orders valid if written by a physician without privileges in your facility from a different part of the state?**

- **Suggestion:** Amend the facility bylaws and/or the policy and procedure statement of the facility to reflect acceptance of a valid DNAR order from any physician when a valid DNAR Order form is received –based on the provisions of the statute which applies to all facilities in the state.



**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

---

---

---

---

---

---

---

---

**2016 Natural Death Act Amendment**

**Provider Immunity:** These changes to the Act provide immunity for civil or criminal liability for a health care provider who issues or follows a valid Portable Physician DNAR Order in accordance with the statute.



**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

---

---

---

---

---

---

---

---

**Department of Public Health Portable DNAR Rule**

- In July 2016, the Alabama Department of Public Health developed a proposed rule and form for portable DNAR Orders. The rule allows a physician to enter a Portable Do Not Attempt Resuscitate order that transfers from one facility to the next facility if issued using a properly completed and executed form found in Appendix II of the rule.
- The rule and form became final on October 3, 2016.
- The rule is incorporated into Ala. Admin. Code R. 420-5-19, along with the rule and form for the completion of the Surrogate Health Care Decision Maker.

**HKH**  
HARRICK KATZ & HOWARD  
EFFECTIVE. EFFICIENT. RESPONSIVE.

---

---

---

---

---

---

---

---

## Portable DNAR

- Both of these forms are available on the web site of the Alabama Department of Public Health: [adph.org](http://adph.org)
- They are easily found at the top of the Laws/Regulations page




---

---

---

---

---

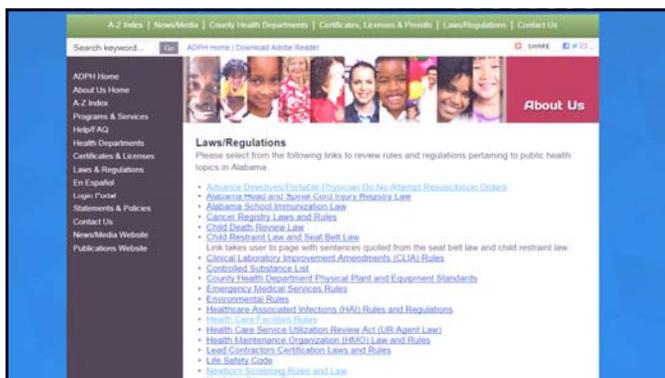
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

## Portable DNAR

- The new rule and ADPH will expect that whenever possible and appropriate, the stipulations of *Ala. Code 22-8A-1 et seq.* have been considered and met before the Portable DNAR form is implemented.
- What does this mean?:** You still need two physicians to examine a patient initially deemed incompetent by the attending physician and document that the patient is (1) Incompetent and (2) suffering from a terminal illness or in a state of permanent unconsciousness.




---

---

---

---

---

---

---

---

---

---

<b>Portable DNAR Form</b>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>
<p>The ADPH Portable DNAR Form has five sections.</p> <ol style="list-style-type: none"> <li>1. <u>Section I.</u> Patient/Resident Consent (Competent Residents)</li> <li>2. <u>Section II.</u> Incompetent Patient/Resident with DNAR Instructions in Advance Directive</li> <li>3. <u>Section III.</u> Health Care Proxy or Attorney-in-Fact Consent.</li> <li>4. <u>Section IV.</u> Surrogate Consent</li> <li>5. <u>Section V.</u> Physician Authorization</li> </ol>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>

---

---

---

---

---

---

---

---

<b>Portable DNAR Form Competent Resident</b>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>
<ul style="list-style-type: none"> <li>• A competent resident that wants resuscitative measures withheld executes <u>Section I</u>, certifying:             <ul style="list-style-type: none"> <li>• "I <u>(name)</u> direct that resuscitative measures be withheld from me in the event of cardiopulmonary cessation. I have discussed this decision with my physician, and I understand the consequences of this decision."</li> </ul> </li> <li>• The Physician executes <u>Section V.</u>, directing (1) that resuscitative measures be withheld and (2) implementation of all reasonable comfort care measures, such as oxygen and suction remain in place.</li> </ul>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>  

---

---

---

---

---

---

---

---

<b>Portable DNAR Incompetent Residents</b>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>
<ul style="list-style-type: none"> <li>• The next three sections of the Portable DNAR Form, Section II, Section III, and Section IV provide different ways to enter a Portable DNAR Order for an <u>incompetent</u> resident.</li> <li>• When a resident is incompetent, "The attending physician determines that the declarant is no longer able to understand, appreciate, and direct his or her medical treatment;..." <u>Section 22-8A-4(d)</u>.</li> <li>• Such change in cognitive condition triggers the requirement for <u>examination by two physicians</u>: "one of whom shall be the attending physician, and one of whom shall be qualified and experienced in making such diagnosis, have personally examined the declarant and have <u>diagnosed and documented in the medical record</u> that the declarant has either a <u>terminal illness or injury</u> or is in a <u>state of permanent unconsciousness</u>." <u>Section 22-8A-4(d)</u>.</li> </ul>	 <small>EFFECTIVE. EFFICIENT. RESPONSIVE.</small>  

---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents - Living Will**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive

- Advanced Directive in this section makes reference to the Living Will section of the statute.
- The signature which follows this section must be placed by someone who is authorized to attest to the following:




---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.

1. First: The: “..patient/resident is not competent or is no longer able to understand, appreciate, and direct his/her medical treatment and has no hope of regaining that ability.”




---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.

2. Second: “A duly executed Advance Directive for Health Care with instructions that no life sustaining treatment be provided was previously authorized by the patient/resident and is part of his/her medical record.”

**Note**: “Previously authorized” means executed by the resident while the resident was competent.




---

---

---

---

---

---

---

---

## Portable DNAR Form Incompetent Residents





**Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- It is not necessary that Section II be signed by a physician (Physician still must sign Section V).
- Anyone authorized to review the medical record and attest to the documentation in the medical record (nurse/administrator) could sign that these statements are true and correct based on physician documentation. Note: The Advance Directive must be in the medical record for reference.
- The two physician's still must document in the medical record, to a reasonable degree of medical certainty, the required elements:
  1. Resident's Incompetent
  2. Terminal illness or condition or state of permanent unconsciousness

---

---

---

---

---

---

---

---

---

---

## Portable DNAR Form Incompetent Residents





**Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- It is imperative that the sections of the Advance Directive that ask if the undersigned wants resuscitative efforts if terminally ill or in a state of permanent unconsciousness be marked "NO" on the Advance Directive form:
- Place your initials by either "yes" or "no":
  - I want to have life sustaining treatment if I am terminally ill or injured.  
 Yes  No
  - I want to have life-sustaining treatment if I am permanently unconscious.  
 Yes  No

---

---

---

---

---

---

---

---

---

---

## Portable DNAR Form Incompetent Residents





**Section II. Incompetent Patient/Resident with DNAR instructions in Advance Directive.**

- It is not necessary that the section of the Advance Directive in which the person, while competent, named a health care proxy reflect "YES" to either:
  - "\_\_\_\_ I want my health care proxy to follow only the directions as listed on this form.
  - "\_\_\_\_ I want my health care proxy to follow my directions as listed on this form and to make any decisions about things I have not covered in the form."

---

---

---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

**Section III. Health Care Proxy or Attorney-in-Fact Consent.**

- This section is executed the same as Section II.
- It will be executed by the attorney in fact or health care proxy designated by the resident when competent to make final decisions regarding end of life decisions.
- It will also be executed by the Physician under Section V.
- **You must have your two physician backup documentation in the medical record of incompetency and terminal illness/condition or permanent unconsciousness – THIS TRIGGERS THE POWER OF ADVANCE DIRECTIVE/POWER OF ATTORNEY.**




---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

**Section III. Health Care Proxy or Attorney-in-Fact Consent.**

- It is important to note that if using this section of the DNAR Form, you must have a copy of the Advance Directive or Power of Attorney In the medical record authorizing the designated attorney-in-fact or health care proxy to execute the DNAR Form with the executed DNAR Form.




---

---

---

---

---

---

---

---

**Portable DNAR Form  
Incompetent Residents**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

**Section IV. Surrogate Consent.**

- This section is also straightforward and requires the signature of the surrogate decision maker that directs that resuscitative measures be withheld from the patient/resident in the event of cardiopulmonary cessation.
- You must have a copy of a notarized Health Care Surrogate Form in the medical record attached to the Portable DNAR Form.
- The family member will appoint himself/herself as the Health Care Surrogate.
- **You must have your two physician backup documentation in the medical record of incompetency and terminal illness/condition or permanent unconsciousness – THIS TRIGGERS THE POWER OF THE SURROGATE TO ACT FOR THE RESIDENT.**




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & BOGNER  
EFFECTIVE. EFFICIENT. RESPONSIVE.

**Section V. Physician Authorization.**

- The Attending Physician executes Section V for every DNAR Order.
- For an in-hospital order, the addition of the **time** after the date when the order is signed is mandatory for compliance with CMS regulatory "Conditions Of Participation (COP)" for hospitals. This also represents **best practice** for signature of orders in all other settings.




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & BOGNER  
EFFECTIVE. EFFICIENT. RESPONSIVE.

**Section V. Physician Authorization.**

- This section clearly mandates that a physician sign the order.
- This would preclude a PA or CRNP or any other classification of health care provider signing a Portable DNAR order.




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & BOGNER  
EFFECTIVE. EFFICIENT. RESPONSIVE.

Facilities may make a copy of the form either single sided or double sided; or print the form on a colored paper; may add their corporate name or logo; may add an identifying number or a patient descriptive bar code or other facility specific emblem to the form - **but there can be no change to the specific, scripted language of the form itself.**




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

- This form is absolutely NOT a “Physician Orders for Life Sustaining Treatment (**POLST**)” form.
- There is no option on this form for the physician to order, for example: at patient request use external positive pressure resuscitation using Bi-PAP in the event of respiratory failure but no endotracheal intubation.
- There is no option for the physician to order, for example, chest compression and external cardiac shock with an AED for only 5 minutes for cardiac arrest; then stop if no response.




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

- The rule and form does not prevent, prohibit, or limit a physician from issuing a facility-specific written order, other than a portable physician DNAR order, not to resuscitate a patient in accordance with accepted medical practices in the event of cardiopulmonary cessation.
- A facility-specific DNAR order is not a portable physician DNAR order and does not transfer with the patient to another health care facility.




---

---

---

---

---

---

---

---

**Portable DNAR Form**

**HKH**  
HARRICK KEITH & HOWES  
EFFECTIVE. EFFICIENT. RESPONSIVE.

The Physician Portable DNAR rule is not part of any health care facility rule.

Thus: the state survey agency will not investigate the application of this rule; the completion of the form; or enforcing any section of this rule.

Complaints regarding failure to complete the form; failure to transfer the form to the receiving facility; failure to implement the DNAR form in the receiving facility - will not be accepted by the Department.

Complainants will be instructed that their only recourse is through civil litigation.




---

---

---

---

---

---

---

---

**Portable DNAR Form**

Failure by staff in any certified health care facility to document and follow the resident's wishes with respect to CPR in the event of cardiopulmonary cessation will be investigated and enforced exactly as is currently stipulated by CMS regulations.





---

---

---

---

---

---

---

---

**Portable DNAR Form**

- The Alabama Portable Physician Do Not Attempt Resuscitation (DNAR) Order form has replaced the longstanding Emergency Medical Services (EMS) DNAR order form.
- Information on this change is being communicated to all EMS services state-wide.
- The current form has replaced the old form on the Department's web site on the EMS home page under the heading: Forms.





---

---

---

---

---

---

---

---

**Any questions?**

**Thank You, Dr. Geary and the Alabama Department of Public Health!**

Kenny W. Keith, Esq.  
 Brandon A. Jackson, Esq.  
 Harbuck Keith & Holmes LLC  
 3595 Grandview Parkway, Suite 400  
 Birmingham, Alabama 35243  
 (205) 547-5540  
[kkeith@hkh.law](mailto:kkeith@hkh.law)  
[bjackson@hkh.law](mailto:bjackson@hkh.law)





---

---

---

---

---

---

---

---