

N.J.A.C. 10:48B

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 48B. DECISION-MAKING FOR THE TERMINALLY ILL

Title 10, Chapter 48B -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 26:2H-53 et seq. and 26:6A-1 et seq.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2017 d.003, effective November 29, 2016.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

CHAPTER HISTORICAL NOTE:

Chapter 48B, Decision-Making for the Terminally Ill, was adopted as new rules by R.2003 d.421, effective November 3, 2003. See: 34 N.J.R. 4299(a), 35 N.J.R. 5098(a). Chapter 48B, Decision-Making for the Terminally Ill, expired on May 2, 2009. See: 41 N.J.R. 845(a).

Chapter 48B, Decision-Making for the Terminally Ill, was adopted as new rules by R.2009 d.203, effective June 15, 2009. See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 48B, Decision-Making for the Terminally Ill, was scheduled to expire on June 15, 2016. See: 43 N.J.R. 1203(a).

Chapter 48B, Decision-Making for the Terminally Ill, was readopted as R.2017 d.003, effective November 29, 2016. As a part of R.2017 d.003, Subchapter 7, Individuals Without Capacity to Make Medical Treatment Decisions for Whom BGS is Providing Guardianship, was renamed Individuals Without Capacity to Make Medical Treatment Decisions for Whom BGS is Providing Guardianship Services, effective January 3, 2017. See: Source and Effective Date. See, also, section annotations.

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 48B. DECISION-MAKING FOR THE TERMINALLY ILL > SUBCHAPTER 1. GENERAL PRINCIPLES

§ 10:48B-1.1 General principles

(a) Staff of the Division shall be guided by the following principles with respect to decision-making for terminally ill:

1. Concerning ethical issues:

i. The provision of appropriate end-of-life treatment for terminally ill individuals with developmental disabilities can raise some special ethical concerns. This is particularly the case for individuals with developmental disabilities who are receiving services from the State of New Jersey. On the one hand, the State has a special responsibility to protect individuals with developmental disabilities from all forms of discrimination, including medical treatment discrimination, based solely on the presence of a developmental disability. On the other hand, individuals with developmental disabilities who are terminally ill should not be subjected to medical interventions at the end-of-life simply because the State wishes to avoid the appearance of discrimination, that is, a perception that medical interventions are being withheld solely because of an individual's disabilities. Persons with developmental disabilities, as any other citizen, have the right to receive quality palliative care and the right to refuse medical treatment.

ii. Medical ethics has created a patient-centered framework for weighing the ethical obligation to provide interventions vs. the ethical decision to withhold and/or withdraw medical interventions. This framework identifies five major elements:

(1) The effectiveness of treatment;

(2) The benefit of the treatment;

(3) The burden of the treatment;

(4) The ratio of benefit to burden; and

(5) An understanding of the wishes, values and goals expressed by the individual or a surrogate acting on his or her behalf.

iii. To the extent possible, individuals with developmental disabilities who are receiving services from the State of New Jersey should receive the highest quality

medical treatment and assessment available, including end-of-life care. Individuals acting on their behalf should seek to weigh the benefits and burdens of treatment in considering the best interest of the individual, that is, they should strive to avoid under-treatment, as well as over-treatment at the end of life. Finally, in all instances, they should make every effort to protect and nourish the dignity of individuals with developmental disabilities confronting terminal illnesses.

2. Concerning palliative care:

i. Individuals with developmental disabilities who are terminally ill should have access to the highest quality of palliative care. Palliative care encompasses a comprehensive approach to meeting the multi-dimensional needs of terminally ill individuals. It includes the provision of the appropriate medical, emotional, physical, psychosocial and spiritual support and care for the terminally ill individual.

ii. A special dimension of a palliative care program is the provision of appropriate medications and therapies designed to alleviate the pain and suffering of the terminally ill individual. The provision of appropriate pain management for individuals with developmental disabilities who are terminally ill presents some special challenges because often the individual may be unable to adequately express the severity and locus of pain and suffering. Therefore, particular attention needs to be paid to this aspect of end-of-life care by health care professionals who are trained to meet this need.

iii. In some instances, individuals with developmental disabilities who are terminally ill may benefit from a hospice program capable of providing comprehensive end-of-life care. Terminally ill individuals should have access to hospice care whenever appropriate. A hospice program may be provided in virtually any type of living arrangement, including, but not limited to, a health care facility specifically designed for hospice care, in a hospital, in a long-term health care facility, in a developmental center, in a community residence as defined in N.J.A.C. 10:44A or 10:44B, or in a private home.

iv. Good end-of-life care for terminally ill individuals often requires the administration of care in a setting familiar to the individual. This can contribute immensely to the emotional and psychological wellbeing of the individual. Accordingly, the Division will seek to utilize generic and specialized resources towards providing appropriate hospice care to terminally ill individuals within developmental centers and community residences in New Jersey.

3. Concerning Ethics Committees:

i. Ethics Committee members shall have knowledge, experience and/or training regarding ethical issues pertaining to end-of-life care and the unique characteristics of individuals with developmental disabilities.

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

In (a)1iii, inserted "medical treatment and assessment available, including"; and added (a)3.

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 48B. DECISION-MAKING FOR THE TERMINALLY ILL > SUBCHAPTER 2. DEFINITIONS

§ 10:48B-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Advance directive" means a written document executed in accordance with the requirements of the New Jersey Advance Directive for Health Care Act, N.J.S.A. 26:2H-53 et seq. It is a written instruction stating the individual's general treatment philosophy and objectives, and/or the individual's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life sustaining medical treatment. It may also be used for the individual to name a health care representative to make medical decisions on behalf of the individual, if he or she loses capacity.

"Bureau of Guardianship Services (BGS)" means the unit within the Department of Human Services, which has the responsibility and authority to provide guardianship of the person to individuals in need of such services (N.J.A.C. 10:45-1.2).

"Capacity" means an individual's ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of each, and alternatives to any proposed health care, and to reach an informed decision on his or her own behalf. An individual's decision-making capacity is evaluated relative to the demands of a particular health care decision.

"Disability Rights New Jersey (DRNJ)" means the organization designated by the Governor to be the agency to implement, on behalf of the State of New Jersey, the Protection and Advocacy System established under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15041-15045.

"Do Not Resuscitate (DNR) Order" means a physician's written order not to attempt cardiopulmonary resuscitation in a hospital or out-of-hospital situation in the event the individual suffers cardiac or respiratory arrest.

"Emergency care" means immediate treatment provided to a sudden, acute and unanticipated medical crisis in order to avoid injury, impairment or death.

"Ethics Committee" means a multi-disciplinary standing committee, which shall be recognized by the Assistant Commissioner of Legal, Regulatory and Guardianship Services, or his or her designee, pursuant to N.J.A.C. 10:48B-3.1, and shall have a consultative role, when the Bureau of Guardianship Services is the guardian, in reviewing a recommendation for a "Do Not Resuscitate Order" (DNR) or for withholding or withdrawing an individual's life-sustaining medical treatment.

"Health care facility" means a hospital, a residential health care facility or nursing home, an assisted living facility, a developmental center, or a private residential facility licensed under N.J.A.C. 10:47. Community residences licensed under N.J.A.C. 10:44A or 10:44B are not health care facilities.

"Hospice" means a program, which is licensed by the New Jersey Department of Health to provide palliative services to terminally ill individuals in the individual's home or place of residence, including medical, nursing, social work, volunteer, and counseling services.

"Immediate family" means spouse, civil union partner as defined in P.L. 2006, c. 103, children, parents and siblings. Immediate family may also include individuals less closely related to the individual by blood or marriage, but who have been interested and involved with the individual's welfare.

"Life sustaining medical treatment (LSMT)" means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore or supplant a vital bodily function and thereby increase the expected life span of the individual.

"Medical practitioner" means a person who is certified as an advanced practice nurse (APN) pursuant to N.J.S.A. 45:11-45 et seq., or a physician licensed to practice medicine and surgery pursuant to Chapter 9 of Title 45 of the New Jersey Revised Statutes.

"Medically contraindicated" means that to a reasonable degree of medical certainty, CPR will be unsuccessful in restoring cardiac and respiratory function, or that the individual will experience repeated arrest in a short time period before death occurs or that CPR would impose unwarranted physical trauma on the patient in light of the individual's medical condition and the expected outcome of resuscitation for the individual.

"Palliative care" means a holistic approach to individual care, integrating medical, psychosocial, and spiritual elements, in the presence of an incurable progressive illness that is expected to end in death. Designed to decrease the severity of pain, suffering, and other distressing symptoms, palliative care recognizes that dying is part of living. Palliative care is provided to the individual, the family, and others involved in the individual's illness by an interdisciplinary healthcare team, including nurses, social workers, chaplains, and physicians. The expected outcome of palliative care is to enable the individual to experience an improved quality of life.

"Permanently unconscious" means a medical condition that has been diagnosed in accordance with currently accepted medical standards, and with reasonable medical certainty, as total and irreversible loss of consciousness and capacity for interaction with the environment. The term

"permanently unconscious" includes, but is not limited to, a persistent vegetative state or irreversible coma.

"Practitioners Order for Life Sustaining Treatment (POLST)" means a form of standardized medical order signed by a physician or advanced practice nurse that comports with New Jersey State laws and rules.

"Regional Long Term Care Ethics Committee" means a multi-disciplinary body of individuals, at least two of whom have completed the training program sponsored by the Office of the Ombudsman for the Institutionalized Elderly. Regional Long Term Care Ethics Committees provide to the long-term care community expertise of multi-disciplinary members who offer case consultation and support to residents and health care professionals who are facing ethical dilemmas (N.J.A.C. 8:39-5). Regional Long Term Care Ethics Committees also provide education for residents and families, health care professionals and the local community (N.J.A.C. 8:39-13.4). Regional Long Term Care Ethics Committees provide policy development to enhance facilities' ethical decision-making.

"Supportive care plan" means a plan of care to be developed by the health care facility for each individual for whom a Do Not Resuscitate (DNR) Order is proposed. The plan is individualized to meet the individual's needs and shall consider fluid/intravenous therapies, nutrition, symptom management/medication, invasive diagnostic and therapeutic procedures including, but not limited to, mechanical ventilation, kidney dialysis, pulmonary, arterial or venous catheters, transfusions, laboratory, x-ray and other tests. This plan shall also include non-medical interventions that address the individual's psychosocial and spiritual needs and may include complementary therapies, such as aromatherapy, music therapy, pet therapy, and the like.

"Terminally ill individual" means an individual receiving services from the Division, who is under medical care and has reached the terminal stage of an irreversibly fatal illness, disease, or condition and the prognosis of the treating practitioner and at least one other physician asserts that the medical prognosis indicates a life expectancy of one year or less if the irreversibly fatal illness, disease, or condition continues on its normal course of progression, based upon reasonable medical certainty.

"Treating practitioner" means the medical practitioner selected by, or assigned to, the individual who has primary responsibility for the treatment and care of the individual.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

In definition "Bureau of Guardianship Services (BGS)", substituted "Department of Human Services," for "Division of Developmental Disabilities"; in definition "Ethics Committee", substituted "recognized by the Assistant Commissioner of Legal, Regulatory and Guardianship Services," for "designated by the Division Director", inserted a comma following "designee" and

"N.J.A.C. 10:48B-3.1", and deleted "(BGS)" following "Bureau of Guardianship Services"; in definition "Immediate family", inserted "civil union partner as defined in P.L. 2006, c. 103,", and deleted the comma following "parents"; in definition "Permanently unconscious", inserted a comma following "standards" and "certainty", and inserted ", but is not limited to,"; in definition "Terminally ill individual", substituted "that the medical prognosis . . . reasonable medical certainty" for "there is no hope of cure. A continued life span of less than one year is projected"; added definitions "Disability Rights New Jersey (DRNJ)" and "Medically contraindicated"; deleted definition "New Jersey Protection and Advocacy, Inc. (NJP & A)"; and rewrote definition "Hospice".

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

Deleted definition "Attending physician"; in definition "Hospice", deleted "and Senior Services" following "Health", and inserted a comma following "volunteer"; in definition "Terminally ill individual", substituted "treating practitioner" for "attending physician", and inserted a comma following "disease" twice; and added definitions "Medical practitioner", "Practitioners Order for Life Sustaining Treatment (POLST)", and "Treating practitioner".

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 48B. DECISION-MAKING FOR THE TERMINALLY ILL > SUBCHAPTER 3. ETHICS COMMITTEES

§ 10:48B-3.1 Recognition of Ethics Committees

(a)The Assistant Commissioner or his or her designee shall recognize acute care hospital Ethics Committees and standing Ethics Committees to be independent of the Division of Developmental Disabilities that shall be available for consultation to BGS whenever end-of-life decision-making issues arise.

1. An Ethics Committee, other than an acute care hospital Ethics Committee, shall assure to the Division the following:

i. Knowledge, experience, and/or training regarding ethical issues pertaining to end-of-life care decision-making;

ii. The ability to be available for case consultation in a prompt and expeditious manner proportionate to the urgency of the situation; and

iii. Knowledge, experience, and/or training regarding the nature and characteristics of individuals with developmental disabilities.

2. While Hospital Ethics Committees are not required to assure to (a)1 above, they are expected to meet those requirements as part of the Ethics Committee protocol.

(b)After an Ethics Committee has been recognized by the Assistant Commissioner, or his or her designee, for end-of-life consultation, the chairperson of the Ethics Committee shall assure the continuing applicability of the elements contained under (a) above.

(c)A recognized ethics committee, whether it is an acute care hospital committee or otherwise recognized committee, shall include a pool of membership optimally drawn from different disciplines, such as the following:

1. A non-attending physician;

2. A non-attending nurse;

3. A social worker;

4. A member of the clergy;

5. An ethicist;

6. A lawyer;

7. At least one member of the community interested in and experienced with individuals with developmental disabilities; and

8. A licensed health care professional with expertise in the medical concerns of the individual.

(d) An absolute minimum of three of the committee members must participate in any ethics consultation.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Section was "Designation of Ethics Committees". Rewrote the section.

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

In (a)1ii, deleted ". An absolute minimum of three members of the Ethics Committee must be involved to provide consultation for any case regardless of the degree of urgency thereof" following "situation"; rewrote the introductory paragraph of (c); and added (d).

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§ 10:48B-4.1 Determination of terminally ill individual's capacity regarding either Do Not Resuscitate (DNR) orders or the withholding or withdrawing of life-sustaining medical treatment (LSMT)

(a) It is the treating practitioner's role to recommend a course of treatment for a terminally ill individual or an individual in a permanently unconscious state, including a Do Not Resuscitate (DNR) Order and/or the initiation, withholding, or withdrawing of life sustaining medical treatment (LSMT). In some instances, the treating practitioner may recommend a DNR order when the act of cardiopulmonary resuscitation is contraindicated due to the medical condition and/or age of the individual and could cause more physical harm than benefit.

(b) To the extent possible, Division staff shall provide to the treating practitioner any information or records pertinent to the issue of whether a terminally ill individual may or may not have the capacity to make medical treatment decisions, including documents such as a previous adjudication of incapacity or a determination that the individual has capacity to make medical treatment decisions.

(c) If the treating practitioner recommends a DNR Order or the initiation, withdrawal, or withholding of LSMT, the treating practitioner must determine whether the individual has the capacity to make these medical treatment decisions. In some instances, the individual may not have the capacity to make major medical decisions, but may have the capacity to express some preferences about treatment options in the face of a terminal illness. The treating practitioner should make an effort to determine the preferences of the individual, and these should be considered in the development of the final treatment plan. If an individual who lacks decision-making capacity clearly expresses or manifests the contemporaneous wish that medically appropriate measures utilized to sustain life be provided, that wish shall take precedence over any contrary recommendation or determination.

(d) The treating practitioner may consider information supplied by the Division staff, BGS, or other interested persons to determine whether the terminally ill individual has the capacity to make medical decisions.

(e) The treating practitioner shall determine whether the patient lacks capacity to make a particular health care decision. The determinations shall be stated in writing, shall include the

treating practitioner's opinion concerning the nature, cause, extent, and probable duration of the patient's incapacity, and shall be made a part of the patient's medical records.

(f)The treating practitioner's determination of a lack of decision-making capacity shall be confirmed by one or more physicians. The opinion of the confirming physician shall be stated in writing and made a part of the patient's record in the same manner as that of the treating practitioner. Confirmation of a lack of decision-making capacity is not required when the patient's lack of decision-making capacity is clearly apparent, and the treating practitioner and the legal guardian or health care representative agree that confirmation is unnecessary.

(g)If the treating practitioner or the confirming physician determines that a patient lacks decision-making capacity because of a mental or psychological impairment or a developmental disability, and neither the treating practitioner or the confirming physician has specialized training or experience in diagnosing mental or psychological conditions or developmental disabilities of the same or similar nature, a determination of a lack of decision-making capacity shall be confirmed by one or more physicians with appropriate specialized training or experience. The opinion of the confirming physician shall be stated in writing and made a part of the patient's record in the same manner as that of the treating practitioner.

(h)The treating practitioner will notify the individual, the guardian, or the immediate family when the individual is determined to lack capacity to make a particular healthcare decision, the right to appeal this decision, and how to appeal.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Section was "Determination of terminally ill individuals' capacity regarding either Do Not Resuscitate (DNR) Orders or the withholding or withdrawing of Life Sustaining Treatment (LSMT)". Rewrote (a); and added (h).

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

Substituted "treating practitioner's" for "attending physician's" and "treating practitioner" for "attending physician" throughout; in (a), inserted a comma following "withholding"; in (b), deleted "by the Chief Executive Officer (CEO) of a developmental center or Regional Administrator of a Division community services office" following "determination"; in (c), inserted a comma following "withdrawal", and substituted the second occurrence of "treating practitioner" for "physician"; in (d), inserted a comma following "staff"; in (e), inserted a comma following "nature"; and in (h), inserted a comma following "guardian" and following the second occurrence of "decision".

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§ 10:48B-5.1 Individuals with capacity to make medical decisions

If the treating practitioner has determined that a terminally ill individual has capacity to make informed major medical decisions on his or her own behalf, the individual shall make decisions regarding any proposed DNR Order and/or the withholding or withdrawing of LSMT.

History

HISTORY:

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

Substituted "treating practitioner" for "attending physician".

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§ 10:48B-6.1 Individuals without capacity to make medical treatment decisions for whom BGS is not providing guardianship services

(a)If the treating practitioner has determined that a terminally ill individual or an individual in a permanently unconscious state, not receiving guardianship services from BGS, lacks the capacity to make major medical decisions, decision-making in regard to medical treatment shall proceed according to the following guidelines:

- 1.If the individual has a guardian other than BGS and is in a healthcare facility operated or funded by the Division, a DNR Order or an order for the withholding or withdrawing of LSMT may be issued upon the recommendation of the treating practitioner and with the consent of the private guardian. An Ethics Committee review, independent of the healthcare facility, can occur if requested by the treating practitioner, the legal guardian, or an interested party. The head of service of the Division component responsible for the individual, or his or her designee, shall provide written notice of the entry of the order to Disabilities Rights New Jersey (DRNJ) no later than the next business day;
- 2.If the individual is in a health care facility not funded by the Division, decision-making regarding the issuance of a DNR Order or the withholding or withdrawing of LSMT shall be addressed in accordance with the policies, procedures, and practices of the health care facility; and
- 3.If it is determined and confirmed by a second physician that the individual lacks the capacity to make medical treatment decisions and the individual does not have a guardian appointed for him or her, an emergent application for the appointment of a guardian should be initiated.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

In the introductory paragraph of (a), inserted "or an individual in a permanently unconscious state"; and in (a)1, substituted "in a healthcare" for "a health care", inserted the second sentence, and substituted "Disabilities Rights New Jersey (DRNJ)" for "New Jersey Protection & Advocacy (NJP & A)".

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

In the introductory paragraph of (a), and in (a)1, substituted "treating practitioner" for "attending physician" throughout; and in (a)1, inserted a comma following the third occurrence of "guardian".

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§ 10:48B-7.1 Individuals without capacity to make medical treatment decisions for whom BGS is providing guardianship services

If the treating practitioner has determined that a terminally ill individual or an individual in a permanently unconscious state for whom BGS is providing guardianship lacks the capacity to make medical decisions, and the treating practitioner is recommending the withholding or withdrawing of LSMT, the recommendation shall be referred to an Ethics Committee recognized by the Assistant Commissioner or his or her designee, pursuant to N.J.A.C. 10:48B-3.1, for review.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Inserted "or an individual in a permanently unconscious state", deleted "a DNR Order or" following "recommending", and substituted "recognized" for "designated" and "Assistant Commissioner" for "Division Director".

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

Section was "Individuals without capacity to make medical treatment decisions for whom BGS is providing guardianship". Substituted the first occurrence of "treating practitioner" for "attending physician", and substituted the second occurrence of "treating practitioner" for "physician".

N.J.A.C. 10:48B-7.2

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§ 10:48B-7.2 Role and functions of Ethics Committees

The Chief of BGS or his or her designee shall solicit consultation from a recognized Ethics Committee whenever consent for withholding or withdrawing LSMT is being requested by the treating practitioner. The Ethics Committee shall meet as soon as possible depending upon the urgency of the situation.

History

HISTORY:

Amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Rewrote the section.

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

Substituted "treating practitioner" for "attending physician".

N.J.A.C. 10:48B-7.3

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§ 10:48B-7.3 Withholding or withdrawing life-sustaining medical treatment (LSMT) for individuals for whom BGS is providing guardianship services

(a) The following procedures shall be followed:

1. When a recommendation to authorize the withholding or withdrawal of LSMT is received by staff of BGS, the recommendation shall be referred to an Ethics Committee recognized by the Assistant Commissioner or his or her designee, pursuant to N.J.A.C. 10:48B-3.1, for review.

i. In preparation for presentation of a recommendation for withholding or withdrawing LSMT to an Ethics Committee recognized by the Assistant Commissioner or his or her designee, the Chief of BGS or his or her designee shall:

(1) Request a search of the individual's records to determine whether or not an advance directive or POLST exists;

(2) Obtain a description in writing from the treating practitioner of the diagnosis and prognosis of the individual, which substantiates the reasonableness of withholding or withdrawing potentially LSMT based upon the finding that such treatment would be more burdensome than beneficial, and contrary to the individual's best interest;

(A) The treating practitioner will include in the written description specific treatment recommendations for the individual.

(3) Obtain a second opinion that confirms the individual's diagnosis and prognosis; and

(4) Develop a profile detailing the relevant factors in a consideration to withhold or withdraw potentially LSMT including, but not limited to: permanently unconscious state, uncontrolled pain, severe and permanent physical and mental deterioration, or other similar criteria.

ii.When the information under (a)1i above has been gathered, BGS will request a review by a recognized Ethics Committee. In accordance with N.J.A.C. 10:48B-3.1(a) and 7.2(a), the Ethics Committee shall have a consultative role in reviewing a request to withhold or withdraw potentially LSMT.

iii.When considering a request to withhold or withdraw potentially LSMT, the members of the Ethics Committee shall consider:

- (1)**The recommendation of the treating practitioner, including the diagnosis, prognosis, and medical treatment plan for the individual;
- (2)**A confirmation of the diagnosis and prognosis of the individual by a second physician;
- (3)**The wishes of the individual as may have been expressed in an advance directive;
- (4)**The contemporaneous wishes of the individual, if available;
- (5)**The benefits and burdens to the individual of initiating or continuing potentially LSMT;
- (6)**The wishes of the individual's family members or other interested persons;
- (7)**The "best interest" standard as applied with respect to withholding or withdrawing LSMT, excluding consideration of any pre-existing, non-terminal developmental disability, the benefits or burdens to third parties or the cost of continuing medical treatment;
- (8)**Medical treatment support plan for the individual; and
- (9)**Any additional information deemed relevant to the decision.

iv.The Ethics Committee shall invite the Chief of BGS or his or her designee, as well as a representative of DRNJ, to attend the meeting.

v.If a majority of the members of the Ethics Committee agree that it would be appropriate to withhold or withdraw potentially LSMT, this recommendation shall be forwarded in writing to the chief of BGS or his or her designee immediately.

vi.If a majority of the members of the Ethics Committee agree that the withholding or withdrawing of LSMT would be inappropriate, or are unable to reach a consensus, this shall be reported to the chief of BGS or his or her designee. The chief of BGS or his or her designee will make the decision as to rendering or withholding consent.

History

HISTORY:

Recodified from N.J.A.C. 10:48B-7.4 and amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Section was "Withholding or withdrawing life sustaining medical treatment (LSMT) for individuals for whom BGS is providing guardianship services". Rewrote the section. Former N.J.A.C. 10:48B-7.3, Do Not Resuscitate (DNR) Orders for individuals receiving BGS services, recodified to N.J.A.C. 10:48B-7.5.

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

In (a)1i(1), inserted "or POLST"; and in (a)1i(2), (a)1i(2)(A), and (a)1iii(1), substituted "treating practitioner" for "attending physician".

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N.J.A.C. 10:48B-7.4

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 48B. DECISION-MAKING FOR THE TERMINALLY ILL > SUBCHAPTER 7. INDIVIDUALS WITHOUT CAPACITY TO MAKE MEDICAL TREATMENT DECISIONS FOR WHOM BGS IS PROVIDING GUARDIANSHIP SERVICES

§ 10:48B-7.4 Procedures for rendering decision

(a)If the Ethics Committee recommends withholding or withdrawing of LSMT and DRNJ participates in the meeting, the Chief of BGS or his or her designee may make a decision immediately following the meeting. If the Chief of BGS or his or her designee decides to withdraw or withhold LSMT and DRNJ does not express an objection, consent can be given at that time. BGS shall prepare a certification pursuant to (b) below.

(b)If DRNJ does not participate in the Ethics Committee meeting and the Ethics Committee recommends withholding or withdrawing LSMT, and the Chief of BGS or his or her designee concurs with the recommendation, the Chief or his or her designee shall prepare a certification outlining the following:

- 1.The recommendation of the Ethics Committee;
- 2.The request of the treating practitioner, including a diagnosis and prognosis and a medical treatment plan;
- 3.A second opinion from another physician;
- 4.A history of individual's abilities and a progression of his or her illness;
- 5.The disposition of the family members, if any;
- 6.The BGS guardian's observations of the individual;
- 7.The recommended medical treatment support plan;
- 8.The wishes of the individual in an advance directive or POLST, if one exists;
- 9.The recommendations of BGS staff; and
- 10.Any other information deemed relevant to the decision.

(c)The Chief of BGS or his or her designee shall forward the certification to DRNJ no later than the next business day. DRNJ shall notify BGS regarding any objection by way of a written communication no later than one business day after receipt of the certification. If

DRNJ raises no objection to BGS's determination, the Chief of BGS or his or her designee shall authorize the withholding or withdrawing of LSMT.

(d)If the Chief of BGS or his or her designee disagrees with, or has questions about, a recommendation of the Ethics Committee to withhold or withdraw potentially LSMT, he or she shall request a second review by the Ethics Committee in order to discuss the issues in question. If, after the second review, the Chief of BGS or his or her designee makes the decision not to consent to the request to withhold or withdraw LSMT, the order shall not be written. The Chief of BGS or his or her designee shall state in writing the reasons why consent has been denied. Copies of this statement shall be provided to the treating practitioner, the Ethics Committee, and DRNJ.

(e)Any interested party may seek resolution by a court of competent jurisdiction, in the event that he or she disagrees with the decision made by the Chief of BGS or his or her designee.

(f)In the event immediate family and/or DRNJ objects to the decision of the Chief of BGS or his or her designee to withhold or withdraw LSMT, the decision will not be implemented without a court order.

History

HISTORY:

Recodified from N.J.A.C. 10:48B-7.5 and amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Rewrote (a); added new (b); recodified former (b) through (d) as (c) through (e); in (c) and (d), substituted "Chief" for "chief" and "DRNJ" for "NJP & A" throughout; and added (f). Former N.J.A.C. 10:48B-7.4, Withholding or withdrawing life sustaining medical treatment (LSMT) for individuals for whom BGS is providing guardianship services, recodified to N.J.A.C. 10:48B-7.3.

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

In (b)2 and (d), substituted "treating practitioner" for "attending physician"; in (b)8, inserted "or POLST"; in (d), inserted a comma following the third occurrence of "Committee"; and in (f), substituted "immediate family" for "an interested party, including the Public Advocate".

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§ 10:48B-7.5 Do Not Resuscitate (DNR) Orders for individuals receiving BGS services

(a) The following procedures shall be followed when a recommendation has been made by the treating practitioner to execute a DNR Order for an individual for whom BGS is providing guardianship services:

1. The treating practitioner will submit a written recommendation for a DNR Order indicating the diagnosis and prognosis of the individual and the benefit or not if Cardiopulmonary Resuscitation (CPR) is instituted. If the individual is not terminally ill or permanently unconscious and the attending physician is recommending that CPR is medically contraindicated for the individual, the attending physician will specify in the written recommendation the reasons CPR is contraindicated.
2. The staff of BGS will search the records for an advance directive or seek information on a contemporaneous or previously expressed wish of the individual.
3. A second treating physician will indicate in writing his or her concurrence with the treating practitioner's recommendation for a DNR Order.
4. The staff of BGS will contact the next of kin or interested persons to establish their perception of the individuals' wishes or what is in the best interest of the individual.
5. The Chief of BGS, or his or her designee, may request consultation by a recognized Ethics Committee if the BGS staff seeks a recommendation regarding a DNR Order request. The Ethics Committee shall consider the request in accordance with N.J.A.C. 10:48B-7.3(a)1iii, except the committee will consider a DNR request.
6. If the Chief of BGS, or his or her designee concurs with the recommendation for a DNR Order, the Chief or his or her designee shall prepare a certification based upon the following:
 - i. The recommendation of the treating practitioner, including a diagnosis, prognosis, and a medical treatment plan;
 - ii. The concurrence and recommendations of a second treating physician;

iii.A brief history of the individual's abilities and description of the progression of the illness;

iv.The disposition of any family members or interested parties;

v.The observations by the BGS guardian of the individual;

vi.The recommended medical treatment support plan to include hospice or palliative care, as appropriate; and

vii.Any additional information deemed relevant to the decision.

7.Once the certification has been completed, the Chief of BGS or his or her designee shall communicate consent to the DNR Order to the treating practitioner and provide DRNJ with a copy of the certification no later than the next business day.

8.If an emergent request for a DNR Order is made by the treating practitioner and the Chief of BGS, or his or her designee, agrees with the request and concurs that the request meets the requirements of this chapter, consent will be given to the treating practitioner to enter a DNR order.

9.The Chief of BGS, or his or her designee, will prepare a certification pursuant to (a)6 above and send a copy to DRNJ, no later than the next business day.

(b)Any interested party may seek resolution by a court of competent jurisdiction, in the event that he or she disagrees with the decision made by the Chief of BGS or his or her designee.

(c)In the event an immediate family member and/or DRNJ, objects to the decision of the Chief of BGS or his or her designee to consent to a DNR Order, the decision will not be implemented without a court order.

History

HISTORY:

Recodified from N.J.A.C. 10:48B-7.3 and amended by R.2009 d.203, effective June 15, 2009.

See: 41 N.J.R. 845(a), 41 N.J.R. 2480(a).

Rewrote (a); and added (c). Former N.J.A.C. 10:48B-7.5, Procedures for rendering decision, recodified to N.J.A.C. 10:48B-7.4.

Amended by R.2017 d.003, effective January 3, 2017.

See: 48 N.J.R. 1409(a), 49 N.J.R. 99(a).

In (a), substituted "treating practitioner" for "attending physician" throughout; in (a)3, substituted "treating practitioner's" for "attending physician's"; in the introductory paragraph of (a)6, inserted a comma following "BGS"; in (a)6i, inserted a comma following "prognosis"; in (a)8, substituted the second occurrence of "treating practitioner" for "physician"; and in (c), substituted "immediate family member" for "interested party, including the Public Advocate"; and inserted "a" preceding "DNR".

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End of Document

N.J.A.C. 10:48B-8.1

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§ 10:48B-8.1 Palliative care

(a)Palliative care services, including hospice services, may be provided for an individual with a terminal or life-threatening illness. Consideration for admission into a hospice program may require that a DNR Order be in place. If so, all of the procedures for consent to a DNR Order delineated above under N.J.A.C. 10:48B-7 shall be followed prior to admission into a hospice program.

(b)Palliative care services, including hospice, may be provided in a health care facility specifically designed for hospice care, at a hospital, in a developmental center or in a community residence as defined in N.J.A.C. 10:44A or 10:44B.

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