

HOUSE BILL 409

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Gregg Schmedes

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE UNIFORM  
HEALTH-CARE DECISIONS ACT RELATING TO ORDERS NOT TO RESUSCITATE  
FOR UNEMPANCIPATED MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 24-7A-1 NMSA 1978 (being Laws 1995,  
Chapter 182, Section 1, as amended) is amended to read:

"24-7A-1. DEFINITIONS.--As used in the Uniform Health-  
Care Decisions Act:

A. "advance health-care directive" means an  
individual instruction or a power of attorney for health care  
made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a  
power of attorney for health care to make a health-care  
decision for the individual granting the power;

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1           C. "capacity" means an individual's ability to  
2 understand and appreciate the nature and consequences of  
3 proposed health care, including its significant benefits, risks  
4 and alternatives to proposed health care and to make and  
5 communicate an informed health-care decision. A determination  
6 of lack of capacity shall be made only according to the  
7 provisions of Section 24-7A-11 NMSA 1978;

8           D. "emancipated minor" means an individual between  
9 the ages of sixteen and eighteen who has been married, who is  
10 on active duty in the armed forces or who has been declared by  
11 court order to be emancipated;

12           E. "guardian" means a judicially appointed guardian  
13 or conservator having authority to make a health-care decision  
14 for an individual;

15           F. "health care" means any care, treatment, service  
16 or procedure to maintain, diagnose or otherwise affect an  
17 individual's physical or mental condition;

18           G. "health-care decision" means a decision made by  
19 an individual or the individual's agent, guardian or surrogate,  
20 regarding the individual's health care, including:

21                   (1) selection and discharge of health-care  
22 practitioners and institutions;

23                   (2) approval or disapproval of diagnostic  
24 tests, surgical procedures, programs of medication and orders  
25 not to resuscitate;

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1 (3) directions relating to life-sustaining  
2 treatment, including an order not to resuscitate or other  
3 direction withholding or withdrawing life-sustaining treatment  
4 and the termination of life support; and

5 (4) directions to provide, withhold or  
6 withdraw artificial nutrition and hydration and all other forms  
7 of health care;

8 H. "health-care institution" means an institution,  
9 facility or agency licensed, certified or otherwise authorized  
10 or permitted by law to provide health care in the ordinary  
11 course of business;

12 I. "health-care practitioner" means an individual  
13 licensed, certified or otherwise authorized or permitted by law  
14 to provide health care in the ordinary course of business or  
15 practice of a profession;

16 J. "individual instruction" means an individual's  
17 direction concerning a health-care decision for the individual  
18 made while the individual has capacity;

19 K. "life-sustaining treatment" means any medical  
20 treatment or procedure without which the individual is likely  
21 to die within a relatively short time, as determined to a  
22 reasonable degree of medical certainty by the primary care  
23 practitioner;

24 L. "order not to resuscitate" means a physician's  
25 order that resuscitative measures shall not be provided to a

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1 person under a physician's care in the event that the  
2 individual is found with cardiopulmonary cessation. An "order  
3 not to resuscitate" includes a physician order written as "do  
4 not resuscitate", "do not allow resuscitation", "do not allow  
5 resuscitative measures", "DNAR", "DNR", "allow natural death"  
6 or "AND";

7 ~~[H-]~~ M. "person" means an individual, corporation,  
8 business trust, estate, trust, partnership, association, joint  
9 venture, government, governmental subdivision, agency or  
10 instrumentality or any other legal or commercial entity;

11 ~~[M-]~~ N. "physician" means an individual authorized  
12 to practice medicine or osteopathy;

13 ~~[N-]~~ O. "power of attorney for health care" means  
14 the designation of an agent to make health-care decisions for  
15 the individual granting the power, made while the individual  
16 has capacity;

17 ~~[O-]~~ P. "primary care practitioner" means a health-  
18 care practitioner designated by an individual or the  
19 individual's agent, guardian or surrogate to have primary  
20 responsibility for the individual's health care;

21 ~~[P-]~~ Q. "principal" means an adult or emancipated  
22 minor who, while having capacity, has made a power of attorney  
23 for health care by which the adult or emancipated minor  
24 delegates the right to make health-care decisions for the adult  
25 or emancipated minor to an agent;

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1           [Q-] R. "protected person" means an adult or  
2 emancipated minor for whom a guardian has been appointed;

3           [R-] S. "qualified health-care professional" means  
4 a health-care practitioner who is a physician, physician  
5 assistant, nurse practitioner, nurse, psychologist or social  
6 worker;

7           [S-] T. "reasonably available" means readily able  
8 to be contacted without undue effort and willing and able to  
9 act in a timely manner considering the urgency of the patient's  
10 health-care needs;

11          [F-] U. "state" means a state of the United States,  
12 the District of Columbia, the commonwealth of Puerto Rico or a  
13 territory or insular possession subject to the jurisdiction of  
14 the United States;

15          [H-] V. "supervising health-care practitioner"  
16 means the primary care practitioner, or if there is no primary  
17 care practitioner or if the primary care practitioner is not  
18 reasonably available, the health-care practitioner who has  
19 undertaken primary responsibility for an individual's health  
20 care; ~~and~~

21          [V-] W. "surrogate" means an individual, other than  
22 a patient's agent or guardian, authorized under the Uniform  
23 Health-Care Decisions Act to make a health-care decision for  
24 the patient; and

25          X. "unemancipated minor" means an individual who is

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1 under eighteen years of age and who:

2 (1) is not on active duty in the armed forces;

3 and

4 (2) has not been declared by court order to be  
5 emancipated."

6 SECTION 2. Section 24-7A-6.1 NMSA 1978 (being Laws 1997,  
7 Chapter 168, Section 13, as amended) is amended to read:

8 "24-7A-6.1. LIFE-SUSTAINING TREATMENT FOR UNEMANCIPATED  
9 MINORS--ORDERS NOT TO RESUSCITATE--

10 A. Except as otherwise provided by law, a parent or  
11 guardian of an unemancipated minor may make that minor's  
12 health-care decisions.

13 B. A parent or guardian of an unemancipated minor  
14 shall have the authority to withhold or withdraw life-  
15 sustaining treatment for the unemancipated minor, subject to  
16 the provisions of this section and the standards for surrogate  
17 decision-making for adults provided for in the Uniform Health-  
18 Care Decisions Act.

19 C. Subject to the provisions of Subsection B of  
20 this section, if an unemancipated minor has capacity sufficient  
21 to understand the nature of that unemancipated minor's medical  
22 condition, the risks and benefits of treatment and the  
23 contemplated decision to withhold or withdraw life-sustaining  
24 treatment, that unemancipated minor shall have the authority to  
25 withhold or withdraw life-sustaining treatment.

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1           D. For purposes of Subsection C of this section, a  
2 determination of the mental and emotional capacity of an  
3 unemancipated minor shall be determined by two qualified  
4 health-care professionals, one of whom shall be the  
5 unemancipated minor's primary care practitioner and the other  
6 of whom shall be a health-care practitioner that works with  
7 unemancipated minors of the minor's age in the ordinary course  
8 of that health-care practitioner's practice. If the  
9 unemancipated minor lacks capacity due to mental illness or  
10 developmental disability, one of the qualified health-care  
11 professionals shall be a person whose training and expertise  
12 aid in the assessment of functional impairment.

13           E. If the unemancipated minor's primary care  
14 practitioner has reason to believe that a parent or guardian of  
15 an unemancipated minor, including a non-custodial parent, has  
16 not been informed of a decision to withhold or withdraw life-  
17 sustaining treatment, the primary care practitioner shall make  
18 reasonable efforts to determine if the uninformed parent or  
19 guardian has maintained substantial and continuous contact with  
20 the unemancipated minor and, if so, shall make reasonable  
21 efforts to notify that parent or guardian before implementing a  
22 decision.

23           ~~[F. If there is disagreement regarding the decision~~  
24 ~~to withhold or withdraw life-sustaining treatment for an~~  
25 ~~unemancipated minor, the provisions of Section 24-7A-11 NMSA~~

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1 ~~1978 shall apply]~~

2           F. An order not to resuscitate or similar  
3 physician's order shall not be instituted, either orally or in  
4 writing, unless at least one parent or legal guardian of a  
5 patient or resident who is an unemancipated minor or  
6 prospective patient or resident who is an unemancipated minor  
7 has first been informed of the physician's intent to institute  
8 an order not to resuscitate and a reasonable attempt has been  
9 made to inform the other parent if the other parent is  
10 reasonably available and has custodial or visitation rights.  
11 This information shall be provided both orally and in writing  
12 unless, in reasonable medical judgment, the urgency of the  
13 decision requires reliance on only providing the information  
14 orally. The provision of this information shall be  
15 contemporaneously recorded in the patient's medical record,  
16 specifying by whom and to whom the information was given, the  
17 date and time of its provision and whether it was provided in  
18 writing as well. When only one parent has been informed, the  
19 nature of reasonable attempts to inform the other parent or the  
20 reason why such attempts were not made shall also be  
21 contemporaneously recorded in the patient's medical record.  
22 In the case of an unemancipated minor who, pursuant to  
23 Subsection C or Section 24-7A-11 NMSA 1978, is found to lack  
24 capacity to consent to an order not to resuscitate, either  
25 parent of an unemancipated minor or the unemancipated minor's

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1 guardian may refuse consent for an order not to resuscitate or  
2 similar physician's order for the unemancipated minor, either  
3 in writing or orally. Any such refusal of consent must be  
4 contemporaneously recorded in the patient's medical record. An  
5 order not to resuscitate or similar physician's order shall not  
6 be instituted, either orally or in writing, if there has been  
7 such a refusal of consent except in accordance with a court  
8 order issued pursuant to Subsection H of this section.

9 G. If the parents of an unemancipated minor patient  
10 lacking capacity to consent to an order not to resuscitate are  
11 unable to agree on whether to institute or revoke an order not  
12 to resuscitate or similar physician's order, either parent may  
13 institute a proceeding pursuant to Subsection H of this section  
14 to resolve the conflict based on a presumption in favor of the  
15 provision of cardiopulmonary resuscitation. Pending the final  
16 determination of these proceedings, including any appeals, an  
17 order not to resuscitate or similar physician's order shall not  
18 be implemented.

19 H. A parent or guardian may petition a district  
20 court of the county in which an unemancipated minor patient who  
21 lacks capacity to consent to an order not to resuscitate  
22 resides or in which the patient is receiving treatment for an  
23 order enjoining a violation or threatened violation of this  
24 section or to resolve a conflict. Upon receiving such a  
25 petition, the district court shall issue an order fixing the

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1 date, time and place of a hearing on the petition and order  
2 that notice of the hearing shall be given to such persons as  
3 the court shall direct. A preliminary hearing may be held  
4 without notice if the court determines that holding that  
5 hearing without notice is necessary to prevent imminent danger  
6 to the unemancipated minor patient's life. In the court's  
7 discretion, a hearing may be conducted in a courtroom, a  
8 health-care institution or at some other suitable place.

9 I. Upon the request of an unemancipated minor  
10 patient or resident or a prospective unemancipated minor  
11 patient or resident, a health-care institution or physician  
12 shall disclose in writing any policies relating to a patient or  
13 resident or the services a patient or resident may receive  
14 involving resuscitation or life-sustaining measures, including  
15 any policies related to treatments deemed non-beneficial,  
16 ineffective, futile or inappropriate, within the health-care  
17 institution. Nothing in this section shall require a health-  
18 care institution or physician to have a written policy relating  
19 to or involving resuscitation or life-sustaining or non-  
20 beneficial treatment for unemancipated minor patients or adult  
21 patients, residents or wards.

22 J. If a petition to prohibit the institution of an  
23 order not to resuscitate fails, which petition was filed  
24 because at least one parent and the health-care institution  
25 providing care to an unemancipated minor patient were unable to

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1 agree on matters relating to an unemancipated minor patient's  
2 order not to resuscitate, and the court decides that continued  
3 life-sustaining treatment is futile, the health-care  
4 institution shall make every reasonable effort to allow a  
5 parent, upon the parent's request, to transfer the  
6 unemancipated minor patient from the care of the health-care  
7 institution to either another health-care institution that is  
8 willing to provide life-sustaining treatment or to the  
9 unemancipated minor patient's home."

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