S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

April 16, 2007

Opinion No. 07-50

DMRS Providers/DNR Orders

QUESTION

Are the unlicensed direct care staff of providers in the communities that contract with the Division of Mental Retardation Services to provide services to persons with developmental disabilities required to comply with Universal Do Not Resuscitate Orders ("UDNRs") issued under Tenn. Code Ann. § 68-11-224?[1]

OPINION

No, such unlicensed direct care staff are not addressed by the provisions of Tenn. Code Ann. § 68-11-224.

ANALYSIS

Tenn. Code Ann. § 68-11-224 permits a physician to issue a UDNR "for a patient with whom the physician has a bona fide physician/patient relationship" with the consent of the patient or, if the patient is incapable of consenting, with the consent of persons authorized by law to consent for the patient or upon the physician's determination that the "provision of cardiopulmonary resuscitation would be contrary to accepted medical standards." Tenn. Code Ann. § 68-11-224(a). A UDNR is defined as:

> a written order that applies regardless of the treatment setting and that is signed by the patient's physician that states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Tenn. Code Ann. § 68-11-224(e)(5).

[1]This opinion does not address do not resuscitate orders that are not UDNRs (*see* Tenn. Code Ann. § 68-11-224(g)).

You have asked specifically whether the unlicensed direct care staff of providers in the communities that contract with the Division of Mental Retardation Services[2] to provide services to persons with developmental disabilities are required to comply with UDNRs. Tenn. Code Ann. § 68-11-224 does not include any provisions related to unlicensed direct care staff. Rather, Tenn. Code Ann. § 68-11-224(c) provides that:

> Universal do not resuscitate orders issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and applicable regulations, qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board 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 that are available to them in a form approved by the board.

(Emphasis added).

Clearly, unlicensed direct care staff are not "licensed health care practitioners." Nor do we believe that they are "health care providers," as this term is defined in Tenn. Code Ann. § 68-11-224. Tenn. Code Ann. § 68-11-224(e)(2) defines "health care provider" as having "the same meaning as ascribed to that term in [Tenn. Code Ann.] § 68-11-1802(a)(9), and shall include, but shall not be limited to, qualified emergency medical services personnel." Tenn. Code Ann. § 68-11-1802(a)(9) defines "health care provider" as "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 in practicing of a profession." We are not aware of any "laws of this state" that would authorize unlicensed direct care staff to "administer health care in the ordinary course of business in practicing of a profession."

Nor do we believe that unlicensed direct care staff reasonably can be considered to be "qualified emergency medical services personnel." Inasmuch as the above statutory definition of "health care provider" expressly includes "qualified emergency medical services personnel" but not unlicensed direct care staff, then, by implication, unlicensed direct care staff cannot be considered "qualified emergency medical services personnel." This conclusion is supported by the circumstances surrounding the enactment of 2004 Acts, Pub. Chap. 862, which resulted in the current language of Tenn. Code Ann. § 68-11-224. Prior to that enactment, Tenn. Code Ann. § 68-140-601, *et seq*. set out provisions permitting emergency medical services personnel, including licensed emergency medical technicians, licensed emergency medical technician-paramedics, and certified emergency medical first responders, to honor DNR orders when responding to calls for assistance without fear of liability. 2004 Acts, Pub. Chap. 862 repealed Tenn. Code Ann. § 68-140-601 *et seq*., but incorporated the provisions thereof into what is now Tenn. Code Ann. § 68-11-224.

---

[2]We understand that such unlicensed direct care staff would include personal assistants, job coaches or employment support staff, day or residential direct support staff, family-based providers, respite care staff, and van drivers or transportation staff. See *DMRS Provider Manual*, ch. 7.4.a. at http://www.state.tn.us/dmrs/provider_agencies/index.html.

It is also noteworthy that, in emergency medical services parlance, an "emergency medical first responder" means "a person who has completed required training and who participates in an organized program of mobile pre-hospital emergency medical care." Tenn. Comp. R. & Regs. 1200-12-1-.16(1)(a) (2006).

Tenn. Code Ann. § 68-11-224(e)(4) defines "qualified emergency medical service personnel" to include, but 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." Tenn. Code Ann. § 68-11-224(e)(4). "Emergency responder" is defined as a "paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of such person's proper function under law or rendering emergency care at the scene of an emergency." Tenn. Code Ann. § 68-11-224(e)(1). Based on the foregoing discussion, we do not believe these definitions may be reasonably read as including unlicensed direct care staff whose sole emergency training may consist of annual certification in cardiopulmonary resuscitation.

ROBERT E. COOPER, JR.
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

PAMELA A. HAYDEN-WOOD
Senior Counsel

Requested by:

Honorable Rob Briley
State Representative
32 Legislative Plaza
Nashville, TN 37243-0152