



Virginia Department of Corrections

Health Services

Operating Procedure 750.1

Advance Directive and Durable Do Not Resuscitate Orders

Authority:

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

The content owner reviewed this operating procedure in July 2022 and necessary changes are being drafted.

The content owner reviewed this operating procedure in May 2023 and determined that no changes are needed.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

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DEFINITIONS

Advance Directive - A witnessed written document, voluntarily executed by the inmate declarant at any time, in accordance with COV §54.1-2983, or a witnessed oral statement made by the declarant when diagnosed with a terminal condition by the declarant's attending physician, in accordance with COV §54.1-2983, which provides guidance for medical and healthcare decisions in the event the inmate becomes incompetent to make such decisions.

Agent - An adult appointed by the inmate declarant under an advance directive, executed or made in accordance with COV §54.1-2983, to make health care decisions for the inmate, including visitation, provided the advance directive makes express provisions for visitation and subject to physician orders and policies of the institution to which the inmate is admitted. The inmate declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to COV §32.1-291.1 et seq.

Attending Physician - The primary physician who has responsibility for the treatment and care of the inmate.

Capacity Reviewer - A licensed physician or licensed clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

Cardiac Arrest - Cessation (halt) of a functional heartbeat.

Declarant - An adult inmate who makes an advance directive, as defined in this operating procedure, while capable of making and communicating an informed decision.

Durable Do Not Resuscitate Order - An original physician's order written on the special form provided by the Virginia Department of Health, issued pursuant to COV §54.1-2987.1, to withhold cardiopulmonary resuscitation, including artificial respiration and defibrillation, from a particular inmate in the event of cardiac or respiratory arrest; for purposes of this procedure, cardiopulmonary resuscitation will include cardiac compression, endotracheal intubation, and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "Advance Directive" and "Durable Do Not Resuscitate Order" are used in this procedure, a "Durable Do Not Resuscitate Order" is not and will not be construed as an "Advance Directive."

Incapable of Making an Informed Decision - The inability of an adult inmate, due to mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment to make an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent, or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this operating procedure, persons who are deaf, dysphasic, or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, will not be considered incapable of making an informed decision.

Life-Prolonging Procedure - Any medical procedure, treatment, or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; or is otherwise of such nature as to afford an inmate no reasonable expectation of recovery from a terminal condition, and when applied to an inmate in terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition; however, nothing in this act will prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with COV §54.1-2971.01 and §54.1-3408.1. For purposes of COV §54.1-2988, §54.1-2989, and §54.1-2991 the term also will include cardiopulmonary resuscitation.

Persistent Vegetative State - A condition in which an inmate has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflex activity of muscles and nerves for a low level of conditioned response; and from which, to a reasonable degree of medical probability, there can be no recovery.

Physician - A person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

Qualified Declarant - An inmate who has made an advance directive in accordance with this operating procedure and either has been diagnosed and certified in writing by the attending physician, and a second physician or

licensed clinical psychologist after personal examination to be incapable of making an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of treatment, in accordance with COV §54.1-2986; or has been diagnosed and certified in writing by the attending physician to be afflicted with a terminal condition.

Respiratory Arrest - Cessation (halt) of breathing.

Terminal Condition - A condition caused by injury, disease, or illness from which, to a reasonable degree of medical probability, an inmate cannot recover and the inmate's death is imminent or the inmate is in a persistent vegetative state.

Witness - A person who is not a spouse or blood relative of the inmate; employees of health care facilities and physician's offices, who act in good faith, will be permitted to serve as witnesses for the purpose of this operating procedure.

PURPOSE

This operating procedure provides guidance for the Virginia Department of Corrections (DOC) to comply with the requirements of the *Health Care Decisions Act*, COV §54.1-2981 et seq. (the Act) and 12VAC5-66, *Regulations Governing Durable Do Not Resuscitate Orders*. Should this operating procedure or any part herein conflict with the referenced law, the Act will prevail.

PROCEDURE

I. Health Care Decisions Act

- A. The DOC will observe the expressed wishes of inmates who execute an *Advance Medical Directive* or a properly executed *Durable Do Not Resuscitate (DNR) Order* according to the *Health Care Decisions Act*, advising that they choose not to be resuscitated. (changed 9/1/21)
- B. At the request of a terminally ill inmate, who is capable of making an informed decision, the inmate and the attending physician will execute and sign a DNR order. This document will be maintained in the inmate's Health Record and information regarding the order will be disseminated to all care providers.
- C. In treating an inmate that is incapable of making an informed decision due to a mental illness, intellectual disability, or other mental disorder, or physical disorder which precludes communication or impairs judgment and the making of an informed consent, the treating physician may be guided on execution of the DNR order by the "Person Authorized to Consent on the Patient's Behalf" named in the DNR order.
- D. If the next of kin or guardian is untraceable, a court hearing may be scheduled pursuant to the *Health Care Decisions Act*, COV §54.1-2981 et seq., to determine the inmate's legal standing.

II. Advance Directive

- A. Any competent adult inmate may, at any time in the presence of two subscribing witnesses, make a written *Advance Medical Directive* authorizing the providing, withholding, or withdrawal of life-prolonging procedures.
 1. A written *Advance Directive* may also appoint an agent to make health care decisions on behalf of the inmate declarant under the circumstances stated in the *Advance Directive*, should the inmate becomes incapable of making an informed decision.
 2. Any competent adult inmate diagnosed by his attending physician as being in a terminal condition may make an oral advance directive in the presence of the attending physician and two witnesses to authorize the providing, withholding, or withdrawing of life-prolonging procedures, or to appoint an agent to make health care decisions on behalf of the inmate declarant under the circumstances stated in the advance directive should the declarant become incapable of making an informed decision, per COV §54.1-2986, *Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions*.
 3. An oral advance directive will be documented by those present and witnessing an *Advance Medical Directive*.
- B. If the inmate is incapacitated or unable to provide informed consent due to mental illness, intellectual disability, or any other mental or medical condition, a substitute decision maker as outlined in COV § 54.1-2986, *Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions*, may direct medical care or the withdrawal of medical care. If there is no substitute decision maker, a court order for consenting to this *Advance Directive* may be obtained pursuant to COV § 53.1-40.1. (*Medical and mental health treatment of prisoners incapable of giving consent*).
- C. It is the responsibility of the inmate, next of kin, or guardian to provide notification to the physician that an *Advance Directive* has been completed, and provide a copy.

- D. The attending physician and a Capacity Reviewer will be responsible for completing the *Assessment of Capacity for Health Care Directives 750_F6* in accordance with the *Health Care Decisions Act*, COV §54.1-2981 et seq.

III. Durable Do Not Resuscitate Order

- A. An inmate, at any time, may discuss with the attending physician the option of a DNR order authorizing the withholding of cardiopulmonary resuscitation (cardiac compression, endotracheal intubation, and other advanced airway management, artificial ventilation, defibrillation, and related procedures) from the inmate in the event the inmate's cardiac or respiratory arrest.
- B. The attending physician who diagnoses a terminal illness will discuss with the inmate the option of a DNR order authorizing the withholding of cardiopulmonary resuscitation (cardiac compression, endotracheal intubation, and other advanced airway management, artificial ventilation, defibrillation and related procedures) from the inmate in the event of the inmate's cardiac or respiratory arrest. The physician must offer other medical interventions deemed necessary to provide comfort care or to alleviate pain to the extent permissible by applicable law.
- C. The DNR order should be the original order written on the special form provided by the Virginia Department of Health (VDH). The VDH provides a downloadable *Durable Do Not Resuscitate Order* with instructions. Attachment 1 is a sample of this form with instructions. (changed 9/1/21)
- D. The terminally ill inmate or "Person Authorized to Consent on the Patient's Behalf" and the physician will sign the DNR order and the physician will enter a DNR order. The original DNR order will be maintained in the inmate's Health Record. If the inmate is transferred to any other facility or healthcare organization, the original DNR order will accompany the inmate.
- E. The DNR order will remain valid and in effect until revoked.
- F. If the terminally ill inmate suffers respiratory or cardiac arrest while a valid DNR order is in force, the attending nursing and medical staff will do the following:
1. Verify the existence of a valid DNR order documenting the wishes of the inmate not to be resuscitated.
 2. Provide the inmate with any other indicated medication intervention such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
 3. Provide the original documentation of the valid DNR order to transporting personnel if personnel of other agencies transport the inmate.
- G. At any time, an inmate may revoke consent to a DNR order. The inmate may verbally request cardiopulmonary resuscitation or other resuscitation measures and void the signed DNR order.
- H. If a conflict or disagreement develops between an inmate and family members, the inmate's wishes will prevail as long as the inmate is capable of making an informed decision. If there are questions as to the validity of the forms, the Health Services Director or designee will be consulted.
- I. If a terminally ill inmate is transferred to another correctional facility or an outside healthcare facility, the original *Advance Directive* and DNR order will be forwarded with the inmate. These documents will be incorporated in the inmate's Health Record if the receiving facility is a DOC facility. In the case of transfers to an outside medical facility, the information will be sealed in an envelope and forwarded with medical information.

IV. Implementation

- A. The attending physician will provide all terminally ill inmates admitted to any DOC infirmary information concerning the opportunity to have a DNR order. In addition, the attending physician may discuss the need for an *Advance Directive* when an inmate is terminally ill.
- B. An attending physician may refuse to comply with the *Advance Directives* of a qualified inmate declarant or the decision of a "Person Authorized to Consent on the Patient's Behalf". In such cases, the physician

will make a reasonable effort to transfer the care of the inmate to another physician according to the provisions of COV §54.1-2987, *Transfer of patient by physician who refuses to comply with advance directive or health care decision*.

REFERENCES

Advance Medical Directive

12VAC5-66, *Regulations Governing Durable Do Not Resuscitate Orders*.

COV §32.1-291.1 et seq., *Revised Uniform Anatomical Gift Act; short title*.

COV §53.1-40.1, *Medical and mental health treatment of prisoners incapable of giving consent*.

COV §54.1-2971.01, *Prescription in excess of recommended dosage in certain cases*.

COV §54.1-2981 et seq., *Health Care Decisions Act*.

COV §54.1-2983, *Procedure for making advance directive; notice to physician*.

COV §54.1-2987.1, *Durable Do Not Resuscitate Orders*.

COV §54.1-2986, *Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions*.

COV §54.1-2988, *Immunity from liability; burden of proof; presumption*.

COV §54.1-2989, *Willful destruction, concealment, etc., of declaration or revocation; penalties*.

COV §54.1-2991, *Effect of declaration; suicide; insurance; declarations executed prior to effective date*.

COV §54.1-3408.1, *Prescription in excess of recommended dosage in certain cases*.

ATTACHMENTS

Attachment 1, *Durable Do Not Resuscitate Order* (VDH Sample)

FORM CITATIONS

Assessment of Capacity for Health Care Directives 750_F6