



# Operating Procedure

<b>Effective Date</b> November 1, 2016	<b>Number</b> 720.8
<b>Amended</b>	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 720.8 (11/1/13)	
<b>Authority</b> COV §32.1-291.1 et seq., §53.1-32, §53.1-40.1, §54.1-2981 et seq.	
<b>ACA/PREA Standards</b> None	
<b>Office of Primary Responsibility</b> Health Services Director	

**Subject**  
**ADVANCE DIRECTIVE AND DURABLE DO NOT RESUSCITATE ORDERS**

**Incarcerated Offender Access**  
Yes  No

**Public Access** Yes  No   
**Attachments** Yes  #1 No

## I. PURPOSE

This operating procedure provides guidance for the Virginia Department of Corrections to comply with the requirements of the Health Care Decisions Act, COV §54.1-2981 et seq.

## II. COMPLIANCE

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

## III. DEFINITIONS

**Advance Directive** - A witnessed written document, voluntarily executed by the offender declarant in accordance with COV §54.1-2983 or, a witnessed oral statement made by the declarant subsequent to the time the offender is diagnosed as suffering from a terminal condition and in accordance with COV §54.1-2983.

**Agent** - An adult appointed by the offender declarant under an advance directive, executed or made in accordance with COV §54.1-2983, to make health care decisions for the offender, including visitation, provided the advance directive makes express provisions for visitation and subject to physician orders and policies of the institution to which the offender is admitted. The offender 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 offender

**Capacity Reviewer** - A licensed physician or 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 offender 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 offender in the event of cardiac or respiratory arrest; for purposes of this procedure, cardiopulmonary resuscitation shall 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 shall not be construed as an "Advance Directive."

**Incapable of Making an Informed Decision** - The inability of an adult offender, 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, shall 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 offender no reasonable expectation of recovery from a terminal condition, and when applied to an offender in terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition; however, nothing in this act shall 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 shall include cardiopulmonary resuscitation.

**Persistent Vegetative State** - A condition in which an offender 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 Patient** - An offender 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 offender cannot recover and the offender's death is imminent or the offender is in a persistent vegetative state.

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

#### IV. PROCEDURE

##### A. Health Care Decisions Act

1. The DOC shall observe the expressed wishes of terminally ill offenders who execute an [Advance Medical Directive](#) 720\_F26 according to the Health Care Decisions Act or a properly executed *Durable Do Not Resuscitate Order* (DNR) advising that they choose not to be resuscitated.
2. At the request of a terminally ill offender, who is capable of making an informed decision, the offender and the attending physician shall execute and sign a *Durable Do Not Resuscitate Order*. This document shall be maintained in the offender's Health Record, and information regarding the order should be disseminated to all care providers.
3. In treating an offender 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 by the "Person Authorized to Consent on the Patient's Behalf" named in the *Durable Do Not Resuscitate Order* in executing a *Durable Do Not Resuscitate Order*.

4. If the next of kin or guardian is untraceable, a court order for a legal guardian shall be obtained.

#### B. Advance Directive

1. Any competent adult offender may, at any time, make a written [Advance Medical Directive 720\\_F26](#) authorizing the providing, withholding, or withdrawal of life-prolonging procedures in the event that the offender should have a terminal condition. A written *Advance Directive* may also appoint an agent to make health care decisions on behalf of the offender declarant under the circumstances stated in the *Advance Directive* if the offender shall be determined to be incapable of making an informed decision. The offender declarant, in the presence of two subscribing witnesses, shall sign a written *Advance Directive*.
2. Any competent adult offender who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive 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 offender declarant under the circumstances stated in the advance directive if the declarant shall be determined to be incapable of making an informed decision. An oral advance directive shall be in the presence of the attending physician and two witnesses who shall document the oral advance directive on an [Advance Medical Directive 720\\_F26](#).
3. If the offender is incapacitated or unable to provide informed consent, due to mental illness, intellectual disability, or any other mental or medical condition, a next of kin or appointed guardian may direct medical care or the withdrawal of medical care. If the next of kin or guardian is untraceable, a court order for a legal guardian shall be obtained.
4. It is the responsibility of the offender, next of kin, or guardian to provide notification to the physician that an *Advance Directive* has been made, and provide a copy.
5. A physician, psychiatrist, or licensed clinical psychologist shall be responsible for completing the [Assessment of Capacity for Health Care Directives 720\\_F25](#) in accordance with the Health Care Decisions Act (COV §54.1-2981 et seq.).

#### C. Durable Do Not Resuscitate Order

1. The attending physician that diagnoses a terminal illness shall discuss with the offender the option of a *Durable Do Not Resuscitate Order* (DNR) authorizing the withholding of cardiopulmonary resuscitation (cardiac compression, endotracheal intubation, and other advanced airway management, artificial ventilation, defibrillation and related procedures) from the offender in the event of the offender's cardiac or respiratory arrest. The physician should offer other medical interventions deemed necessary to provide comfort care or to alleviate pain.
2. The *Durable Do Not Resuscitate Order* must be the original order written on the special form provided by the Virginia Department of Health. Attachment 1 is a sample of this form with instructions. The Health Services Unit will maintain a stock of *Durable Do Not Resuscitate Order* forms and distribute them through the Regional Healthcare Administrators as needed.
3. The terminally ill offender or "Person Authorized to Consent on the Patient's Behalf" and the physician will sign the *Durable Do Not Resuscitate Order* and the physician will enter a DNR order. The original *Durable Do Not Resuscitate Order* should be maintained in the Health Record. If the offender is transferred to any other facility or healthcare organization, the original *Durable Do Not Resuscitate Order* will accompany the offender.
4. The *Durable Do Not Resuscitate Order* shall remain valid and in effect until revoked.
5. If the terminally ill offender suffers respiratory or cardiac arrest while a valid DNR order is in force, the attending nursing and medical staff shall do the following:
  - a. Verify the existence of a valid DNR order documenting the wishes of the offender NOT to be resuscitated.
  - b. Provide the offender with any other indicated medication intervention such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

- c. Provide the original documentation of the valid DNR order to transporting personnel if personnel of other agencies transport the offender.
6. At any time, an offender may revoke consent to a DNR order. The offender may verbally request CPR or other resuscitation measures and void the signed DNR order.
7. If the Facility Unit Head is appointed by a court as an authorized representative to make decisions for the offender regarding medical care according to COV §53.1-40.1, the Health Services Director in the Health Services Unit shall be consulted prior to making any decisions authorizing termination of life support measures.
8. If a conflict or disagreement develops between an offender and family members, the offender's wishes shall prevail as long as the offender is capable of making an informed decision. If there are questions as to the validity of the forms, the Health Services Director in the Health Services Unit shall be consulted.
9. If a terminally ill offender is transferred to another correctional facility or an outside healthcare facility, the original *Advance Directive* and *Durable Do Not Resuscitate Order* shall be forwarded with the offender. These documents shall be incorporated in the offender's Health Record if the receiving facility is a DOC facility. In the case of transfers to an outside medical facility, the information shall be sealed in an envelope and forwarded with medical information.

#### D. Implementation

1. The attending physician shall provide all terminally ill offenders admitted to any DOC infirmary information concerning the opportunity to have a *Durable Do Not Resuscitate Order*.
2. An attending physician may refuse to comply with the Advance Directives of a qualified offender declarant or the decision of a "Person Authorized to Consent on the Patient's Behalf". In such cases, the physician shall make a reasonable effort to transfer the care of the offender to another physician according to the provisions of COV §54.1-2987.

#### V. REFERENCES

Virginia Department of Health, Division of Emergency Medical Services, Regulations Governing Durable Do Not Resuscitate Orders, 12VAC5-66-10 through 80.

#### VI. FORM CITATIONS

[Assessment of Capacity for Health Care Directives](#) 720\_F25

[Advance Medical Directive](#) 720\_F26

#### VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years after the effective date.

*The office of primary responsibility reviewed this operating procedure in November 2017 and no changes are needed at this time.*

*Signature Copy on File*

*8/29/16*

N. H. Scott, Deputy Director of Administration

Date