

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 1/4/2012	NUMBER: I-71.1
	Replaces: 9/15/2010	
	Formulated: 7/85 Reviewed: 07/18	Page 1 of 2
OFFENDER'S RIGHT TO REFUSE TREATMENT, DEPARTMENT'S RIGHT TO COMPEL TREATMENT		

DEFINITIONS:

- I. *Capacity* refers to the ability of a patient to make his or her own medical decisions. The *capacitated* patient has the ability to both understand information relevant to a medical decision and to appreciate the consequences of that decision. Patients are considered to be *capacitated* unless assessed otherwise and documented by the physician or psychiatrist.
- II. *Incapacity* refers to the inability of a patient to make his or her own medical decision. The *incapacitated* patient lacks the capacity to both understand information relevant to a medical decision and to appreciate the consequences of that decision. This is a clinical assessment made by a physician or a psychiatrist.
- III. *Competency* refers to the ability of a person to provide for his or her own needs. A person is considered to be *competent* unless declared otherwise by a judge in a court of law.
- IV. *Incompetency* refers to a person who is unable to provide for his or her own needs. A person can be declared to be *incompetent* by a judge in a court of law.

PURPOSE: To delineate a patient's right to refuse medical treatment and the department's authority to compel medical treatment of an offender.

POLICY: Any offender may elect to refuse offered treatment unless it is determined that the individual lacks the capacity to make that decision. Legal authority to compel medical treatment is permitted if an offender's refusal to accept medical care jeopardizes the State's interest in (1) protecting and preserving life, or (2) preventing suicide.

PROCEDURE

- I. An offender may refuse all diagnostic and treatment recommendations but may be isolated when his condition is a danger or potential danger to himself, the staff or population. The refusal should be written in black ink and demonstrate the patient is making an informed decision. Included in the documentation should be service or treatment offered, the condition for which service or treatment is indicated, and list of potential adverse outcomes that may result from refusing care that a reasonable person would want to know. All refusals must be documented on a Refusal of Treatment or Services form (HSM-82) Attachment B, and filed or scanned in the offender's health record.
- II. If there is reason to suspect that an offender is incapacitated and medical judgment indicates treatment or diagnosis is necessary, reasonable and important, then a psychiatric assessment of the offender's medical decision making capacity must be

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made. In life threatening emergencies, the capacity assessment is made by the available senior medical staff. If time allows, two physicians, one of whom should be a psychiatrist, will perform the capacity assessment. The reason for performing the capacity assessment must be documented in the health record.

- III. To compel treatment requires agreement by two physicians, one of whom may be a psychiatrist, and one of whom has no involvement in the proposed treatment. Compelled psychotropic medication enforcement will be in accordance with the Mental Health Services Manual. Compelled examination, treatment and procedures must be reviewed by the Division Director of Health Services or designee (see Attachment A).

Reference: ACA Standards for Adult Correctional Institutions 4th edition, Standard 4-4397 (Ref. 3-4372), Informed Consent (Mandatory)
 Marc Tunzi, MD., Natividad Medical Center, Salinas, California, *Am Fam Physician.* . Jul 15; 64(2):299-308.
 Robert Arnold MD. Decision Making Capacity, 2nd Edition, Fast Facts and Concepts. Medical College of Wisconsin, End of Life/Palliative Education Resource Center, July 2006; 54.
 Robert Vogt, JD, former chairman of the Academy of Correctional Health Professionals, NCCHC article, "When an Inmate Refuses Medical Care", *Correctcare*, Summer 2005.