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PATIENT SELF-DETERMINATION ACT, NATURAL DEATH ACT, ADVANCE DIRECTIVES ACT		

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PURPOSE: To outline the mechanism to implement the Federal Patient Self-Determination Act of 1990, the Texas Natural Death Act and the Texas Advance Directives Act.

POLICY: All competent and capacitated inmate have the right to make certain decisions about their health care. Accordingly, it is Correctional Managed Health Care (CMHC) policy to discuss with inmate their rights under state law to control medical treatment that artificially postpones the dying process if they should develop or have developed an incurable and irreversible injury, disease or an illness judged to be terminal.

DEFINITIONS: **Advance Directives** are instructions relating to the provision of health care. The following are types of Advance Directives:

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(1) Directive to Physicians (Directive) – Instructions to the health care provider of the offender’s desires, if known, regarding the administration, withholding or withdrawing of life-sustaining treatments under specific circumstances. The directive can be signed years in advance, but it does not go into effect until the occurrence of a terminal condition as certified by two physicians, one who whom is the attending physician, which meets the legal requirements of the Natural Death Act or the Advance Directives Act.

(a) **A living will** is a written statement expressing whether or not a person wants to accept life-sustaining medical treatment and/or specifying which life- sustaining medical treatment the person would accept and under what conditions. This directive is signed by the competent/capacitated offender, but goes into effect after the offender is both (i.) unable to make medical decisions and (ii.) has been certified by two physicians to have a terminal or irreversible condition.

(b) **The Texas Department of State Health Services (TDSHS) Out-Of-Hospital Do-Not-Resuscitate (OOH-DNR) Order** is another type of advance directive which allows inmate to indicate that they do not want cardiopulmonary resuscitation (CPR) if they suffer cardiac arrest. The intent is to forgo resuscitation attempts and to permit the offender to have a natural death with peace and dignity.

(c) **Do Not Resuscitate (DNR) Order** – An order by the physician not to initiate a life-sustaining procedure, treatment or intervention that uses mechanical or artificial means to sustain, restore or supplant a spontaneous vital function. This is typically applied to a person with a terminal condition and is intended to prevent artificially prolonging the natural process of dying.

(i) **Outpatient Facility (or out-of-hospital setting)** – Any setting in which an offender is not admitted to a hospital. For the purpose of this policy, the following are considered outpatient facilities: outpatient hospice, inpatient hospice, infirmaries, clinics, emergency room, nursing home, convalescent care, assisted living and all correctional housing units. A Physician’s DNR Order may be honored by health care personnel, such as a licensed nurse or person providing health care services in an out-of-hospital setting, **except for Emergency Medical Services (EMS) personnel.** EMS personnel shall honor only a properly executed or issued TDSHS OOH-DNR order or proper DNR identification device.

(ii) **Acute Care Hospital In-patient Facility** - This setting includes general hospitals and specialty hospitals. The OOH-DNR Order does

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not apply in this setting. The DNR Order must be signed by the physician and placed in the health record, along with any life-sustaining treatments or procedures the offender either does or does not desire.

(2.) The Health Care Power of Attorney, also known as a **durable power of attorney** or a **proxy**, is a type of advance directive which provides for someone else, to make decisions for the offender when he or she is unable. It is broader than a living will because it includes all medical decisions, not just those pertaining to life- sustaining medical treatment. It is signed by the competent/capacitated offender, but does not go into effect until the offender has been certified in the health record by the attending physician that the offender is incapacitated. It is left to the appointed family member or close friend to determine what the offender would want.

Life-Sustaining Treatment – A medical procedure or intervention that uses mechanical or other artificial means to sustain, restore or supplant a vital function. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate an offender’s pain.

Terminal Condition –An incurable or irreversible condition caused by injury, disease or illness that according to reasonable medical judgment would produce death within six months or less if the condition runs its normal course, and in which the application of life-sustaining procedures would serve only to postpone the moment of the offender’s death.

Out-of-Hospital Do-Not-Resuscitate (OOH-DNR) Identification device – is an identification device specified by Health and Safety Code Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an OOH-DNR Order or on whose behalf an OOH-DNR Order has been executed or issued. An OOH- DNR device, as approved by the Texas Department of State Health Services, must be an intact, unaltered, easily identifiable **plastic identification OOH-DNR bracelet**, with the word "Texas" (or a representation of the geographical shape of Texas and the word "STOP" imposed over the shape) and the words "Do Not Resuscitate". This bracelet is to be honored by health care personnel in lieu of the original OOH DNR order form.

Qualified Witnesses – Both witnesses must be competent and capacitated adults.

One of the witnesses must meet the qualifications in HSC 166.003(2):

- (1) Not be designated by the offender to make a treatment decision;
- (2) Not be related to the offender by blood or marriage;
- (3) Not be entitled to any part of the offender’s estate after the offender’s death;

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- (4) Not have a claim at the time of the issuance of the directive against any part of the offender's estate after the offender's death;
- (5) Not be the attending physician;
- (6) Not be an employee of the attending physician; or,
- (7) Not be an employee of a health care facility where the offender is located, if the employee is providing direct patient care to the offender or is an officer, director, partner, or business office employee of the health care facility or any parent organization of the health care facility.

Qualified Relatives - means those competent and capacitated adult persons meeting requirements of HSC 166.088 and 166.039 who are authorized to make medical decisions on behalf of the offender who is incompetent or otherwise mentally or physically incapable of communication, when there is no legal guardian or medical power of attorney. In order of priority:

- (1) the offender's spouse;
- (2) the offender's reasonably available adult children;
- (3) the offender's parents or
- (4) the offender's nearest living relative.

Capacity - Refers to the ability of a patient to make his or her own medical decisions. The *capacitated* offender has the ability to both understand information relevant to a medical decision and to appreciate the consequences of that decision. Inmate are considered to be *capacitated* unless assessed otherwise and documented by the physician or psychiatrist.

Incapacity - Refers to the inability of an offender to make his or her own medical decisions. The *incapacitated* offender 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.

Competency - Refers to the ability of an offender to provide for his or her own needs. An offender is considered to be *competent* unless declared otherwise by a judge in a court of law.

Incompetency - Refers to an offender who is unable to provide for his or her own needs. An offender can be declared to be *incompetent* by a judge in a court of law.

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PROCEDURE:

I. Directive to Physician

- A. A Directive is a legal document that must be completed and signed as directed on the form. This document requires the individual signing the document to be competent and capacitated. Individuals witnessing the execution of this document are not related to the offender or directly involved in the offender’s care. (See Attachment A)
- B. All inmate entering a medical inpatient or infirmary setting or hospice program shall be given the opportunity to complete and execute a Directive. The opportunity to complete and execute a Directive should also be offered to all inmate diagnosed as having a terminal condition no matter their housing situation.
- C. The executed Directive shall be filed in all of the offender’s applicable medical and health records. A copy of the executed Directive must be scanned into the electronic health record that is available to TDCJ prison unit medical departments.
- D. In cases of medical emergencies, the facility health services staff, when possible, shall notify outside receiving medical facilities of the existence of a Directive.
- E. An offender can revoke a Directive verbally, in writing or by physically destroying the document at any time. The attending physician or the physician’s designee shall record in the offender’s health record the time, date and place of the revocation, and, if different, the time, date and place that the physician received notice of the revocation.

The attending physician or the physician’s designees shall also enter the word “VOID” on each page of the copy of the directive in the offender’s health record and the corrected document will be placed in the electronic health record.

- F. Documentation of the offender’s request to revoke the Directive shall be recorded in all applicable health records. The copy of the Directive that was scanned into the electronic health record that is available to TDCJ prison unit medical departments shall be deleted with a notation to the record of the time, date and place of the revocation.
- G. Once a Directive has been revoked, the offender shall be treated as if a Directive never existed. The medical staff is immediately obligated to initiate all life-sustaining treatment if indicated by the offender’s immediate needs.

II. Hospital DNR Order – Applies ONLY to TDCJ Hospital Galveston and Free World Hospitals.

- A. A hospital-based DNR order is valid only if it is placed in the physician orders’ section of the offender’s hospital health record and is signed by a physician. The DNR order shall state which resuscitative measures are not to be carried out in the event of a cardiac arrest. The signing physician

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shall document in the health record the conversation the doctor had with a competent and capacitated offender in which the decision to not resuscitate was made.

A new DNR order must be signed by a physician and placed in the physician orders section of the offender’s health record each time the offender is admitted to hospital. (Please see OOH-DNR Order discussed in Section III.C., regarding the discharge of any hospitalized offender with a standing DNR order.)

- B. An offender can revoke a DNR order verbally, in writing or by physically destroying the document at any time. Documentation of the offender’s request to revoke a DNR order shall be recorded in the orders section of the offender’s hospital health record. The attending physician or the physician’s designee shall record in the offender’s health record the time, date and place of the revocation, and, if different, the time, date and place that the physician received notice of the revocation. The attending physician or the physician’s designees shall also enter the word “VOID” on each page of the copy of the DNR order in the offender’s health record.
- C. Documentation of the offender’s request to revoke the DNR order shall be recorded in all applicable health records with a notation of the time, date and place of the revocation. If a DNR order was scanned into the offender’s electronic health record, the scanned record shall be deleted with a notation to the record of the time, date and place of the revocation.
- D. Once a DNR order has been revoked, the offender shall be treated as if a DNR order never existed. The medical staff is immediately obligated to initiate all life-sustaining treatment if indicated by the offender’s immediate needs.

III. OOH-DNR Order

- A. An OOH-DNR Order form (Texas Health and Safety Code, Chapter 166) is a legal document that must be completed and signed as directed on the form. (See Attachment B) Once the document has been properly completed and signed, the physician verifying the DNR request will enter into the patient electronic health record the order “Patient has DNR”.
- B. An OOH-DNR Order is automatically revoked for a person known to be pregnant or in the case of unnatural or suspicious circumstances.
- C. Hospital staff shall ensure that a hospitalized offender with a standing DNR order has an executed OOH-DNR Order as part of the discharge paperwork or any traveling health records.
- D. An OOH-DNR Order shall be honored outside a hospital if the offender is wearing a Texas Department of State Health Services approved and intact OOH-DNR identification bracelet or if the completed original standard form or a copy of the completed standard form is available to the staff caring for and transporting the offender.
- E. An offender’s executed OOH-DNR Order does not expire, and it is valid at any time an offender

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is not admitted to a hospital. An existing, executed OOH-DNR Order does not have to be re-executed each time the offender leaves a hospital and returns to an outpatient setting as long as the original OOH-DNR Order has not been revoked by the offender.

- F. In cases of a medical emergency in which an offender with an executed OOH-DNR order is transported or treated by emergency medical technicians (EMT) or treated by the staff of an outside receiving medical facility, the facility health services staff shall, when possible, notify the EMT and the outside receiving medical facilities of the existence of an OOH-DNR order.
- G. As per current law, when an offender is being transported to another facility inside or outside the Agency, the transport team is obligated to perform all usual resuscitative efforts if indications to do so arise during transport unless the offender has a fully executed OOH-DNR Order form in his possession or is wearing an approved and intact OOH-DNR identification bracelet.
- H. An offender can revoke an OOH-DNR Order verbally, in writing or by physically destroying the document at any time. Documentation of the offender's request to revoke the OOH-DNR Order shall be recorded in all applicable health records. The attending health care personnel shall record the time, date and place of the revocation, and, if different, the time, date and place that the health care personnel received notice of the revocation. The health care personnel shall also enter the word "VOID" on each page of the copy of the OOH-DNR Order in the offender's health record. Health care personnel shall also remove the offender's OOH-DNR identification bracelet. If an OOH-DNR Order was scanned into the offender's electronic health record, the scanned record shall be deleted with a notation to the record of the time, date and place of the revocation.

The physician verifying the DNR request will enter into the patient electronic health record the order "DNR" rescinded". Healthcare personnel shall enter the word "VOID" on each page of the copy of the OOH-DNR Order in the offender's health record. Healthcare personnel shall also remove the offender's OOH-DNR identification bracelet or other signage indicating an active DNR status. If an OOH-DNR Order was scanned into the offender's electronic health record, the scanned record shall be printed and the word "VOID" written across the form with a notation of the record of the time, date, and place of the revocation. Once voided, the voided OOH-DNR form will be scanned into the electronic health record and the previously scanned OOH-DNR form will be discarded.

- I. Once an OOH-DNR Order has been revoked, the offender shall be treated as if an OOH-DNR Order never existed. Upon such revocation, the medical staff is immediately obligated to initiate all life-sustaining treatment and transfer the offender to acute care if indicated by the offender's immediate needs.

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IV. Incompetent/Incapacitated Inmate and DNR Orders

- A. If an offender in an inpatient or outpatient facility is incompetent, incapacitated, comatose or otherwise mentally or physically incapable of communication and unable to consent, then the offender’s legal guardian, Health Care Power-of Attorney or qualified relative (as defined above) and physician may make a treatment decision.

- B. If the offender is unable to make medical decisions the physician must document in the health record that the offender is incapacitated and record any conversations with the Health Care Power of Attorney or family members regarding DNR decisions.

- C. When an offender is not capable of making medical decisions, has no available family or legal guardian, does not have a fully executed Directive, and has not specifically refused consideration of a DNR order prior to incapacitation, then two physicians (one of which is not treating the offender) shall personally examine the offender and enter a dated and timed statement of the offender’s medical condition in the progress notes of the health record including but not limited to:
 1. The offender’s diagnosis and prognosis and the diagnostic procedures confirming same, including a statement that the offender has a terminal condition caused by injury, disease or illness, which without the application of life-sustaining procedures would produce death
 2. Current physical examination
 3. Brief summary and dates of the treatment and results
 4. Statement of treatment alternatives
 5. Description of current life-sustaining procedures being used
 6. Statement clearly reflecting the decision to withdraw life-support

Reference: Federal Patient Self Determination Act of 1990
Texas House Bill 2098 (1989)
Texas Natural Death Act (1999), Texas Human Resources Code, §102.003, Rights of the Elderly
Texas Advance Directives Act (1999) Texas Health and Safety Code, Chapter 166 Texas Senate Bill 1260 (1999)
Texas Administrative Code 157.25
The University of Texas Medical Branch Handbook of Operating Procedures, Policy 9.115.5
Texas Department of State Health Services STANDARD OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS, Figure: 25 TAC §157.25 (h)(2), Publications No. EF01-11421, Revised July 1, 2009
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;