

 <p style="text-align: center;">ADMINISTRATIVE POLICIES AND PROCEDURES State of Tennessee Department of Correction</p>	Index #: 113.51	Page 1 of 7
	Effective Date: July 1, 2006	
	Distribution: A	
	Supersedes: 113.51 (4/15/04)	
Approved by: George M. Little		
Subject: CONSENT/REFUSAL OF TREATMENT		

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 41-51-102, TCA 32-11-101 et seq, TCA 33-6-1001 et seq, TCA 34-1-101 et seq., TCA 34-2-101 et seq., TCA 34-3-101 et seq., TCA 34-6-201 et seq, TCA 68-11-224 et seq, and TCA 68-11-1701 et seq
- II. PURPOSE: To establish guidelines for an inmate's informed consent or refusal of health care services.
- III. APPLICATION: Wardens, transportation officers, health administrators, health care staff, inmates, and privately managed institutions.
- IV. DEFINITIONS:
  - A. Advance Directive: An individual instruction or written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
  - B. Agent (for healthcare decisions): A fiduciary or legal surrogate. A fiduciary is a legal guardian or conservator, or an attorney-in-fact who has been granted a valid power of attorney for health care decisions pursuant to applicable law.
  - C. Central Dispatch Office (CDO): A function of the office of the Director of Classification Programs which coordinates and schedules inter-institutional transfers and offender transportation.
  - D. Central Transportation: A function of the Charles Bass Correctional Complex (CBCX) which coordinates, schedules, and performs local offender transportation in the Metro Nashville/Davidson County area.
  - E. Declaration for Mental Health Treatment: An advance healthcare directive authorized under State law, which permits an individual to specify the refusal or acceptance of certain mental health treatment interventions, for application in the event the individual lacks capacity to make a decision about a proposed mental health treatment intervention.
  - F. DSNF Scheduler: The DSNF employee(s) assigned to coordinate the scheduling of approved offender specialty consultation services and associated transportation services.
  - G. Exposure Incident: A specific contact (eye, mouth, mucous membrane, skin or parental contact) with blood or other potentially infectious material that results from the performance of an employee's duties or during a visit to a correctional institution.

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- H. Health Care: All preventive, pharmacological, and therapeutic actions taken to provide for the physical and mental well being of an individual. Health care includes medical, dental, psychiatric, nursing, mental health and allied health services.
- I. Informed Consent: The voluntary consent or agreement to a treatment, examination, or medical procedure given by the patient or the patient's agent after the receipt of material facts regarding the nature, consequences, risks, benefits, and alternatives concerning the proposed treatment, examination, or procedure.
- J. Legally Incompetent Person: A person from whom a court has suspended the power to make decisions regarding his/her own treatment and for whom the court has appointed a legal guardian or conservator to make such decisions.
- K. Legally Authorized Personal Representative: A legal guardian or conservator, or an attorney-in-fact who has been granted a valid power of attorney for health care decisions pursuant to applicable law.
- L. Mental Incapacity: A state in which a patient lacks the present ability to make rational decisions or give informed consent due to organic or cognitive mental impairment.
- M. Source Individual: Any inmate, living or dead, involved in an exposure incident.
- N. Treatment Review Committee (TRC): A group of licensed mental health professionals appointed by the Director of Mental Health to review the applications for involuntary treatment of an inmate who is mentally incapacitated. This team consists of one psychiatrist and two psychologists who are not directly involved in the treatment of the individual.
- V. POLICY: All inmates shall be accorded the same rights to informed consent, bodily integrity, and refusal of examination, treatment, and/or medical procedure as found in the community.
- VI. PROCEDURES:
  - A. Informed Consent:
    1. Routine Treatment: A signed consent is not required for routine examinations or treatment, such as those provided in the clinic during sick call, routine dental care, or dental hygiene procedures. The inmate has given implied consent by presenting himself/herself for services.
    2. Emergency Treatment: The informed consent requirement shall be waived when, in the opinion of the health provider, an emergency situation exists that requires immediate medical or psychiatric intervention to prevent loss of life or limb or to prevent the inmate from harming himself or others, and the inmate lacks the present ability to make an informed decision to consent to or refuse treatment.

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3. Special Procedures:

- a. The physician, dentist, or appropriate health professional shall explain the examination, treatment, or procedure, as well as alternatives and risks, to the inmate or the inmate's agent. This shall occur prior to the initiation of any examination, treatment, or medical procedure involving the invasion of a body cavity, placement on psychotropic medications, surgery, or intervention involving a risk to the individual's life or health status.
- b. The inmate or the inmate's agent shall sign Consent for Treatment, CR-1897, authorizing the examination, treatment, or procedure prior to receiving any type of invasive procedure or treatment beyond that of venipuncture. In addition to the health care provider, a member of the health care staff shall sign this form as witness to the consent. The completed form shall be filed in the inmate's health record.

4. Mental incapacity of patient:

- a. If it appears that an inmate lacks the present ability to make rational decisions due to mental incapacity, the provider will refer to the inmate's advance directive, if any. In matters of psychiatric care, a Declaration for Mental Health Treatment shall prevail, as provided in Policy #113.89.
- b. In the absence of an advance directive, the provider shall seek informed consent from the inmate's agent for health care decisions, if the inmate has such a representative. For general medical care, in the absence of effective consent from the inmate or from an agent, the provider may implement a decision on behalf of the inmate after consultation with another physician who is not involved in the inmate's care, as provided by the Tennessee Healthcare Decisions Act. The provisions of Policy #113.89 shall govern the issues of patient psychiatric care.
- c. Forced treatment over the inmate's refusal, however, shall only occur as provided by Section VI. (C) below. When appropriate, the provider will otherwise take steps in accordance with the procedure set forth below in (b-d) to begin appropriate legal process to address the inmate's continuing mental incapacity and the need for effective authority to conduct ongoing treatment.
- d. Notice of advance directive and/or agent for healthcare decisions:
  1. An inmate may make an advance directive at any time. When information is received that an inmate has made an advance directive, the Health Services Administrator/designee shall record the advance directive in the Health Record, and shall document the fact of the advance directive, and its location in the Health Record on the Major Medical Conditions Form, CR-1894.

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2. When information is received that an agent has been named for an inmate, the Health Services Administrator/designee shall document that an agent has been named. Such documentation shall include the name and telephone number of the agent and a secondary contact number, if available, on the Major Medical Conditions form, CR-1894. Additionally, the name and telephone number of the agent shall be documented in TOMIS conversation LCLA, Option 6 (Emergency Notification).
- e. Legal surrogates: An inmate may make an informal designation of another person to act as his or her surrogate, to make general health care decisions for the inmate, in the event of the inmate's incapacity. If the inmate has failed to designate a surrogate, the provider may identify an appropriate surrogate, in accordance with the provisions of the Tennessee Healthcare Decisions Act.
  - f. Authority of an agent for health care decisions:
    1. Providers may rely upon documentation of a legal representative's authority when such documentation is furnished by or through Tennessee Department of Correction (TDOC) legal counsel or has been otherwise verified by counsel. TDOC legal counsel must verify any document that purports to give an individual legal authority to make health care decisions for an inmate.
    2. An agent for health care decisions can make any decision that the inmate could make about healthcare services, except that the agent cannot revoke an advance directive or make a decision that is contrary to the advance directive.
    3. A conservator has no authority to revoke a valid appointment of an attorney in fact, or to override the decision of an attorney in fact.
    4. A surrogate's consent is effective only in the absence of other authority. A surrogate has no authority in matters of mental health treatment.
  - g. Recommendation for need for guardian or conservator: When it appears that an inmate lacks mental capacity and has no legally authorized representative, a physician, psychologist, or psychiatrist shall evaluate the inmate. If the evaluation concludes that the inmate is unlikely to give informed consent and unlikely to regain the capacity to give informed consent in the immediate future, the evaluating provider shall advise the Warden and TDOC legal counsel of the inmate's need for a guardian or conservator to make health care decisions for the inmate, in accordance with procedures outlined in the TDOC Mental Health Procedures and Treatment Manual.

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- h. Staff may encounter circumstances wherein an inmate's agent is deceased, incapacitated, unavailable, unresponsive, or (in the opinion of the provider) has wrongfully refused treatment. In these cases, the Health Services Administrator/designee shall advise the Warden and request that TDOC Legal Counsel determine whether a different agent shall be identified or appointed.
- i. Minor inmates: Most minors in the custody of the TDOC may consent to their own treatment. However, the exception occurs when a minor inmate appears to the health care provider to be incapable of consenting to a non-emergency treatment or procedure due to his lack of maturity and understanding. In this case, the health care provider shall attempt to obtain the written consent of the minor's parent or guardian. If the parent or guardian is unavailable or, in the opinion of the health care provider, wrongfully refuses treatment for the minor, the health administrator shall advise the Warden and request that TDOC Legal Counsel determine if legal process is necessary to provide continuing treatment. Emergency treatment may be provided to a minor patient without effective consent pursuant to VI. (A)(2).

B. Refusal of Treatment:

- 1. When an inmate chooses to refuse an examination, treatment, or procedure, a licensed health professional must advise the inmate of the potential health consequences of this refusal. Refusal of Medical Services, CR-1984, shall be completed and the health professional shall sign as a witness. The health professional shall notify the practitioner who ordered the treatment or referral of the inmate's refusal, and record the notification in the inmate's health record. CR-1984 is not required when an inmate does not come to self-initiated sick call at the institutional clinic.
- 2. If an inmate refuses to sign CR-1984, the health care provider shall write "patient refuses to sign". The form shall be signed by the health care professional and another staff witness.
- 3. In addition to placing CR-1984 in the Health Record, the refusal shall be documented on TOMIS conversation LIMA by the health staff at the institution at which the refusal occurred. The health staff shall immediately notify the DSNF Scheduler, the utilization management entity, Central Dispatch (if applicable), and the sending/receiving institution.
- 4. Generally, if an inmate refuses an outpatient appointment at DSNF or TPW, he/she shall not be transported to DSNF or TPW, as applicable. (See Policy #113.12.). Exceptions may be made if the inmate's health and well being are likely to deteriorate significantly without medical intervention, or if the facility's ability to effectively manage the inmate's care will be diminished without such intervention. The inmate may be transported to DSNF or TPW (as appropriate) in order to be housed in proximity to the enhanced services available should he/she decide to accept treatment.

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5. In cases where the refusal of treatment could potentially jeopardize the health and well being of other inmates and/or staff members, the inmate shall not be housed in the general population until a determination is made by the health professional as to his/her health status.
- C. Forced Treatment: Treatment beyond that required for maintaining the life of the inmate shall not be forced by health care staff, absent a court order, with the exception of the conditions referenced below. In all cases of forced treatment, complete documentation shall be entered in the inmate's health record and the Director of Health Services or Director of Mental Health shall be informed, in writing, within two (2) working days of the occurrence.
1. Involuntary psychiatric treatment as referenced in Policy #113.89, Psychotropic Medication/Involuntary Treatment.
  2. When the inmate is the source individual of an exposure incident and refuses to have blood drawn as required by the TDOC Exposure Control Plan, the health staff shall refer the matter to the Warden. If the Warden concurs with physician's order for the test and documentation supporting the necessity of the test, the Warden shall order the test to be performed.
- VII. ACA STANDARDS: 4-4397.
- VIII. EXPIRATION DATE: July 1, 2009.





TENNESSEE DEPARTMENT OF CORRECTION  
HEALTH SERVICES  
REFUSAL OF MEDICAL SERVICES

INSTITUTION \_\_\_\_\_

Date \_\_\_\_\_ 20 \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

This is to certify that I \_\_\_\_\_, \_\_\_\_\_  
(Inmate's Name) (TDOC Number)  
have been advised that I have been scheduled for the following medical services and/or have been advised to have  
the following evaluations, treatment, or surgical/other procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am refusing the above listed medical services against the advice of the attending physician and/or the Health Services staff. I acknowledge that I have been informed of the risks involved by my refusal and hereby release the State of Tennessee, Department of Correction, and their employees from all responsibility for any ill effects which may be experienced as a result of this refusal. I also acknowledge this medical service may not be made readily available to me in the future unless an attending physician certifies my medical problem as a medical emergency.

Signed: \_\_\_\_\_  
(Inmate) (TDOC number) (Date)

Witness: \_\_\_\_\_  
(Signature) (Title) (Date)

Witness: \_\_\_\_\_  
(Signature) (Title) (Date)

The above information has been read and explained to,

\_\_\_\_\_ but has refused to sign  
(Inmate's Name) (TDOC number)  
the form.

Witness: \_\_\_\_\_  
(Signature) (Title) (Date)

Witness: \_\_\_\_\_  
(Signature) (Title) (Date)