



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 113.51

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Effective Date: October 1, 2012

Distribution: A

Supersedes: 113.51 (7/1/09)

Approved by: Derrick D. Schofield

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, privately managed institutions, and healthcare contract providers.
- IV. DEFINITIONS:
 - A. Advance Directive: An individual instruction or written statement relating to the subsequent provision of health care for the individual in which the inmate expresses his/her choice(s) regarding healthcare services to apply in the event he/she is no longer capable of expressing a choice. Advance directives may include, but not be limited to, a living will or a durable power of attorney for health care.
 - B. Attorney-in-Fact for Healthcare: An individual specifically named by an inmate through a written "power of attorney" to act for the inmate in the event he or she becomes incapable of making health care decisions for him/herself.
 - 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. 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, in the event the individual lacks capacity to make a decision about a proposed mental health treatment intervention.
 - E. DSNF Scheduler: The DSNF employee(s) assigned to coordinate the scheduling of approved offender specialty consultation services and associated transportation services.
 - F. Exposure Incident: A specific contact (eye, mouth, mucous membrane, skin or parenteral 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.
 - G. 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.

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- H. Healthcare Agent: 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.
 - I. Informed Consent: The voluntary consent or agreement to a treatment, examination, or medical procedure given by the inmate or the inmate's agent after the disclosure of facts regarding the nature, consequences, risks, benefits, and alternatives concerning the proposed treatment, examination, or procedure.
 - J. Legal Surrogate: An individual who is informally designated by or on behalf of an inmate to act as a proxy to make general health care decisions for that inmate in the event the inmate becomes incapacitated.
 - K. Limited Conservator: An individual appointed by a court to make health care decisions for an inmate who no longer has the ability to do so because of his or her physical or mental health status.
 - L. Mental Incapacity: A state in which an inmate lacks the present ability to make rational decisions or give informed consent due to organic or cognitive mental impairment.
 - M. Power of Attorney for Healthcare: A document signed by an inmate giving an individual the power to make health care decisions on the inmate's behalf should the inmate become unable to make such decisions.
 - N. Source Individual: Any inmate, living or dead, involved in an exposure incident.
 - O. Utilization Management Entity: The person(s) or contractor approved by the Tennessee Department of Correction (TDOC) to process all requests for inpatient and outpatient specialty care.
- 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 capability to make an informed decision to consent to or refuse treatment.

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3. Special Procedures:

- a. Prior to any medical procedure, the licensed health professional shall provide a thorough explanation of the procedure to the inmate or the inmate's agent, including alternative medical procedures. This shall include any examination, treatment, or medical procedure involving the invasion of a body cavity, placement on psychotropic medications, surgery or potential health consequences.
- 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. Advance Directive and/or Healthcare Agent:

- a. If it appears that an inmate lacks the capability 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, the provider shall refer to Policy #113.89.
- b. In the absence of an advance directive, the provider shall seek informed consent from the inmate's healthcare agent, 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 inmate psychiatric care.
- c. Forced treatment following the inmate's refusal shall only occur as provided by Section VI.(D) of this policy. "Forced Treatment" does not include, however, the implementation of an order for medical restraint in accordance with generally accepted standards of medical care. When appropriate, the provider will otherwise take steps in accordance with the procedure set forth in Section (g) below to begin the 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 Problem List, CR-1894.

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2. When information is received that a healthcare 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 Problem List, 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: If an inmate has not designated a legal surrogate, the provider may identify an appropriate surrogate in accordance with the provisions of the Tennessee Healthcare Decisions Act.
 - f. Authority of the healthcare agent for healthcare 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) General Counsel or has been otherwise verified by counsel. The General Counsel must verify any document that purports to give an individual legal authority to make health care decisions for an inmate.
 2. A healthcare 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 to confirm his/her mental capacity. 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 General Counsel of the inmate's need for a guardian or conservator to make health care decisions for the inmate.
 - h. Staff may encounter circumstances wherein an inmate's healthcare 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 the General Counsel determine whether a different agent shall be identified or appointed.

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- 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 General Counsel determine if legal process is necessary to provide continuing treatment. Emergency treatment may be provided to a minor inmate without effective consent pursuant to Section VI.(A)(2) of this policy.

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. The health professional shall document on the Refusal of Medical Services, CR-1984 and sign as a witness. Documentation shall demonstrate that the inmate has been advised of potential health consequences. The health professional shall notify the provider who ordered the treatment and document the refusal and provider notification in the medical record on the Problem Oriented-Progress record, CR-1884. 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 "inmate refuses to sign". The form shall be signed by the health care professional and another staff witness.
3. In the event an inmate refuses an offsite appointment, the health staff shall immediately notify the DSNF Scheduler, the utilization management entity, the Central Dispatch Office (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, unless the referring physician deems the appointment/procedure to be a medical necessity. (See Policy #113.12) Such exceptions shall be considered 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. Should the inmate decide to accept treatment, he/she shall be transported to DSNF or TPFW so that he/she is housed in proximity to the required services that are available.
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 regarding the inmate's health status.

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C. Acceptance of Treatment Following a Refusal

1. Inmates shall have the right to accept treatment following a refusal of treatment.
2. In the event an inmate changes his/her mind and decides to accept treatment after refusing, the Consent for Treatment, CR-1897 shall be signed, witnessed and filed in the inmate's health record. This cancels the initial refusal of treatment. The inmate shall sign up for sick call to reinitiate the process. In accordance with Policy #113.15, if there is no plan for a designated period of time to follow up documented in the health record, the sick call encounter is chargeable.
3. If a significant amount of time has passed since the inmate initially refused treatment, the provider shall re-evaluate the inmate to determine whether the previous treatment recommended to the inmate remains appropriate.
4. The provider shall explain to the inmate and document in the health record any changes in the treatment plan. The inmate's acceptance of treatment shall be documented in the progress notes.

D. 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. The exceptions are:

1. 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 the physician's order for the test and documentation supporting the necessity of the test, the Warden shall order the test to be performed. In all cases of forced treatment, complete documentation shall be entered in the inmate's health record and the Directors of Health Services and Mental Health Services shall be informed, in writing, within two working days of the occurrence.
2. Involuntary psychiatric treatment as referenced in Policy #113.89.

VII. ACA STANDARDS: 4-4397.

VIII. EXPIRATION DATE: October 1, 2015.



**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)