

GEORGIA DEPARTMENT OF CORRECTIONS



Standard Operating Procedures

Policy Name: Advance Directives

Policy Number: 507.04.87

Effective Date: 02/15/2022

Page Number: 1 of 12

Authority:
Commissioner

Originating Division:
Health Services Division
(Physical Health)

Access Listing:
Level I: All Access

I. Introduction and Summary:

Offenders will have the right to make a written directive instructing the Attending Physician to withhold or withdraw Life-Sustaining Procedures in the event of a Terminal Condition and to designate a person to make health care decisions for them in the event they are unable to make decisions for themselves. This policy is applicable to all facilities that house Georgia Department of Corrections (GDC) offenders to include private and county prisons.

II. Authority:

- A. O.C.G.A.: §§31-32-1 through 12;
- B. GDC Standard Operating Procedure (SOP): 507.04.89 Do Not Resuscitate (DNR) Orders;
- C. 42 C.F.R. § 489.100 through 104 (Patient Self-Determination Act (PSDA)); and
- D. NCCHC 2018 Adult Standard: P-F-07;

III. Definitions:

- A. **Advance Directive** - A document in which a patient states choices for medical treatment or designates who will make treatment choices if the patient should lose Decision-Making Capacity (e.g., Living Will, Durable Power of Attorney for Health Care, Do Not Resuscitate Orders).
- B. **Attending Physician** - The physician who is selected by or assigned to a patient in a Health Care Facility and who has the primary responsibility for the treatment and care of the patient. Where more than one (1) physician share such responsibility, any such physician may act as the Attending Physician.
- C. **Competent Adult** - Any person who is of sound mind, 18 years of age or older.
- D. **Coma** - A profound state of unconsciousness caused by disease, injury, poison, or other means and for which it has been determined that there exists no Reasonable

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Expectation of regaining consciousness. The procedure for establishing a Coma is as follows: two (2) physicians, one (1) of whom must be the Attending Physician, who, after personally examining the Declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

1. The Declarant has been in a profound state of unconsciousness for a period of time sufficient for the Declarant's physicians to conclude that the unconscious state will continue; and
2. There exists no Reasonable Expectation that the Declarant will regain consciousness.

E. **Declarant** - a person who has executed the Advance Directive. For purposes of this SOP, the Declarant would be the offender.

F. **Decision-Making Capacity** - The ability to understand and appreciate the nature and consequences of options and choices available regarding health care decisions including the benefits and disadvantages of such choices, and to reach an informed decision regarding available choices.

G. **Durable Power of Attorney for Health Care (DPAHC)** - A type of written Advance Directive in which an individual names another person to make health care decisions in the event the individual loses Decision-Making Capacity.

H. **Living Will** - A type of written Advance Directive voluntarily executed by the Declarant (offender) in accordance with the requirements of OCGA section 31-32-3 or 31-32-4.

I. **Health Care Facility** - A facility that is licensed as a hospital or nursing home or Georgia Department of Corrections (GDC) Facilities providing 24-hour skilled nursing care.

J. **Life-Sustaining Procedures** - Any medications, machines, or other medical procedures or interventions, which, when applied to a patient in a Terminal

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Condition or in a Coma or Persistent Vegetative State with no Reasonable Expectation of regaining consciousness or significant cognitive function, would serve only to prolong the dying process and where, in the judgement of the Attending Physician and a second physician, death will occur without such procedures or interventions. The term "Life-Sustaining Procedures" may include, at the option of the Declarant, the provision of nourishment and hydration, but shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

K. Persistent Vegetative State - A state of severe mental impairment in which only involuntary bodily functions are present and for which there exists no Reasonable Expectation of regaining significant cognitive function. The procedure for establishing a Persistent Vegetative State is as follows: two (2) physicians, one (1) of whom must be the Attending Physician, who, after personally examining the Declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

1. The Declarant's cognitive function has been substantially impaired; and
2. There exists no Reasonable Expectation that the Declarant will regain significant cognitive function.

L. Reasonable Expectation - The result of prudent judgment made on the basis of the medical judgment of a physician.

M. Terminal Condition - An incurable or irreversible condition caused by disease, illness, or injury that, regardless of the application of Life-Sustaining Procedures, would produce death in a relatively short period of time. The procedure for establishing a Terminal Condition is as follows: Two (2) physicians, one (1) of whom must be the Attending Physician, who, after personally examining the patient, document in the health record the results of their examination that:

1. There is no Reasonable Expectation for improvement in the condition of the patient; and

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2. Death of the patient from these conditions will occur as a result of such disease, illness, or injury.

N. **Responsible Health Authority** - An individual (who may or may not be a physician) designated to ensure the provision of appropriate health care for offenders. When this authority is other than a physician, medical judgments rest with a designated licensed responsible physician.

IV. Statement of Policy and Applicable Procedures:

A. Informing offenders of rights and options concerning Advance Directives:

1. Upon admission to a Georgia Department of Corrections (GDC) Diagnostic Facility, and during the initial diagnostic evaluation, health care personnel will ask offenders if they have an Advance Directive (Living Will or DPAHC). A notation will be made Receiving Screening Form (P25-0001.01) or other approved form as to whether or not the offender has executed an Advance Directive.
2. If the offender does not have an Advance Directive and desires additional information, an Information Sheet will be provided to the offender (Form P84-0001.01).
3. If the offender does not wish to discuss the matter further, no additional information will be provided.

B. Offender has executed an Advance Directive prior to admission:

1. Advance Directives executed prior to admission to GDC must comply with the requirements of Georgia law in order to be legally valid. If the validity of the document is in question, the Office of Health Services should be contacted for guidance.
2. If an offender has executed an Advance Directive prior to admission to GDC, and the Advance Directive is in the offender's possession, a physician will

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review it for completeness, then initial and date it again. A copy of this Advance Directive will be made and placed in the consent section of the health record. The original document will be returned to the offender.

3. If the offender does not have the Advance Directive in their possession, the offender will be directed to obtain the document in order to make a copy for the health record. The terms of the Advance Directive will not be followed until the facility has received a copy, a copy has been provided to an outside provider to which the GDC has referred the offender, or a new Advance Directive has been executed.

C. Executing an Advance Directive after admission to a GDC facility and prior to admission to a GDC or Community Health Care Facility:

1. Advance Directive Documents:

- a. Advance Directive documents (e.g., Durable Power of Attorney for Health Care and Living Will), which are legally valid in the State of Georgia, will be kept in the law libraries at all times or in the medical record area of all GDC facilities.
- b. An Advance Directive shall be in writing and signed by the offender or by some other person in the offender's presence and by the offender's express direction. An Advance Directive shall be attested and subscribed in the presence of the offender by two (2) witness of sound mind and at least eighteen (18) years of age. If signed in a GDC Health Care Facility, the Attending Physician must also witness the execution of the document.
 - i. Neither witness can be a person who:
 - 1) Was selected to serve as the Declarant's health care agent;
 - 2) Will knowingly inherit anything from the Declarant or otherwise knowingly gain a financial benefit from the Declarant's death;

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- 3) Is directly involved in the Declarant's health care; and
 - 4) Not more than one (1) of the witnesses may be an employee, agent, or medical staff member of the Health Care Facility in which the Declarant is receiving health care.
- c. An agent under an Advance Directive shall not have the authority to make a particular health care decision different from or contrary to the offender's decision, if any, if the offender is able to understand the general nature of the health care procedure being consented to or refused, as determined by the offender's Attending Physician based on such physician's good faith judgment.
 - d. No GDC facility will be permitted to develop, modify, or alter the Advance Directive documents. Any modification or alteration of the documents will render such document void and of no effect.
2. Executing a Living Will:
- a. Any competent offender may at any time voluntarily execute a Living Will directing that, should the offender have a Terminal Condition, Life-Sustaining Procedures be withheld or withdrawn.
 - b. If the offender is not an inpatient in a GDC Medical Facility, in order to be legally valid, a Living Will must be signed by the offender in the presence of at least two (2) Competent Adults who, at the time of the execution of the Living Will, to the best of their knowledge:
 - i. Are not related to the offender by blood or marriage;
 - ii. Would not be entitled to any portion of the estate of the offender upon their decease under any testamentary will of the offender, or codicil thereto, and would not be entitled to any such portion by operation of

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law under the rules of descent and distribution of this state at the time of the execution of the Living Will;

- iii. Are neither the Attending Physician nor an employee of the Attending Physician nor an employee of the hospital or skilled nursing facility in which the offender is a patient;
 - iv. Are not directly financially responsible for the offender's medical care; and
 - v. Do not have a claim against any portion of the estate of the offender.
- c. No GDC or vendor employee will serve as a witness for Living Wills. Employees of legal service organizations may provide assistance and serve as witnesses.
 - d. The original Living Will document, once executed, should remain in the offender's possession.
 - e. A copy of a Living Will should be filed in the consent section of the health record.
 - f. The clinician should list "Living Will" and the date executed on the Problem List.
3. Executing a Durable Power of Attorney for Health Care (DPAHC):
- a. An offender may appoint another person to make medical decisions for himself/herself should Decision-Making Capacity be lost.
 - b. An offender may select any Competent Adult with the exception of any GDC or contract health care employee. It is best if the offender chooses someone who is knowledgeable regarding the offender's wishes, values, and in whom there is trust and confidence and who is willing to take the

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responsibility for making decisions should the need arise. An offender may act as DPAHC for another offender, if the offender is a spouse, legal guardian, son, or daughter 18 years or older, parent, or brother or sister 18 years or older.

- c. The DPAHC has the legal right to make decisions regarding the patient's medical treatment including the right to decline treatment or direct that it be withdrawn, the donation of anatomical gifts, authorization of an autopsy and disposition of the remains, unless that decision is in direct conflict with Federal or State law.
 - d. Once executed, the original DPAHC should remain in the offender's possession.
 - e. A copy of the DPAHC document should be filed in the consent section of the health record.
 - f. The clinician should record "Durable Power of Attorney for Health Care" and the date executed on the Problem List.
 - g. If both a Living Will and DPAHC are in effect, the DPAHC takes precedence so long as the agent is reasonably available to make medical decisions for the offender patient.
 - h. If for any reason the Attending Physician believes that the DPAHC is not acting in the best interest of the patient, the Attending Physician will inform the Warden/Superintendent and seek a court order to have the person(s) removed as the DPAHC. The Attending Physician will request the court to appoint a guardian to act on the patient's behalf.
4. No offender will be required at any time to execute an Advance Directive as a condition for receiving health services. Nor will failure to execute an Advance Directive result in the withholding of any health services.

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D. Execution of an Advance Directive following admission to a GDC Health Care Facility:

1. When an offender is admitted to a GDC infirmary or skilled nursing facility, the health record will be reviewed for the presence of an Advance Directive. If one is present, the expressed directives will be interpreted to be the desires of the patient.
2. If the patient requests to execute an Advance Directive after admission to a GDC Health Care Facility, the patient will be given a copy of the Living Will and DPAHC documents.
3. The Advance Directive will be executed according to the terms of the document, including the facility physician's presence at the time the document is signed and to sign the witness statement.
4. Upon execution of an Advance Directive, the Attending Physician or designee will document the Advance Directive and date on the Problem List and verbally notify all health care personnel responsible for caring for the patient.
5. An Advance Directive will not be executed if Decision-Making Capacity of the patient is in question at the time it is requested. The final determination regarding Decision-Making Capacity will be made by the Attending Physician and documented in the health record.

E. Transfers of patients between GDC and Community Health Care Facilities:

1. If a patient with an Advance Directive is transferred from a GDC Facility and admitted as an inpatient to a Community Health Care Facility, a copy of the Advance Directive will be sent with the patient.
2. If a patient returns from a Community Health Care Facility after being admitted as an inpatient and has executed an Advance Directive during the stay, a copy

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of the Advance Directive will be provided to the GDC and placed in the health record.

3. The Responsible Health Authority will ensure that contracts with Community Health Care Facilities require the submission of a copy of any Advance Directive or revocation of an Advance Directive that is executed by the offender while in the Community Health Care Facility to the GDC.

F. Revoking Advance Directives:

1. An Advance Directive may be revoked by the offender at any time, without regard to the offender's mental or physical condition, by any of the following methods:
 - a. By completing a new Advance Directive that has provisions which are inconsistent with the provisions of a previously executed Advance Directive, Living Will, or DPAHC; provided that such revocation shall only extend so far as the inconsistency exists between the documents and any part of a prior document that is not inconsistent with a subsequent document shall remain unrevoked;
 - b. By being obliterated, burned, torn, or otherwise destroyed or defaced in a manner indicating an intention to revoke;
 - c. By a written revocation of the Advance Directive signed and dated by the offender or by a person acting at the direction of the offender; or
 - d. By an oral or any other expression of the intent to revoke the Advance Directive in the presence of a witness eighteen (18) years of age or older who, within thirty (30) days of the expression of such intent, signs and dates a writing confirming that such expression of intent was made.
2. Unless the Advance Directive expressly provides otherwise, if, after executing an Advance Directive, the offender marries, such marriage shall revoke the designation of a person other than the offender's spouse as the offender's agent

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to make health care decisions for the offender; and if, after executing an Advance Directive, the offender/patient's marriage is dissolved or annulled, such dissolution or annulment shall revoke the offender's former spouse as the offender's agent to make health care decisions for the offender.

3. The written revocation will be signed, dated and a copy filed in the consent section of the health record.
4. The clinician will document on the Problem List that the Advance Directive is revoked with the date of revocation.
5. The Attending Physician or designee will be responsible for notifying all health care staff responsible for the patient's care that the Advance Directive has been revoked.

G. Duties of health care providers when Advance Directives are in effect, including conflict resolution:

1. Health care providers caring for patients with Advance Directives will follow the expressed wishes of the patient with regard to the withholding of Life-Sustaining Procedures if specifically designated by the patient.
2. If a conflict should arise during the implementation of this policy, the GDC Statewide Medical Director and contract vendor Statewide Medical Director will be contacted for guidance.
3. If after consultation, further ethical or legal guidance is needed, the contract vendor Ethics Committee will be consulted for advice.

H. Advance Directive training for health care providers:

1. All licensed health care providers will receive training regarding Advance Directives.

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2. This training should be initiated during orientation and upon any changes in procedure thereafter.

V. **Attachments:** None.

VI. **Record Retention of Forms Relevant to this Policy:** None.