DEPARTMENT OF CORRECTIONS

Policy Number:	**500.125**
Title:	**Offender Health Care Directive and Power of Attorney**
Effective Date:	**8/21/18**

PURPOSE: To provide guidelines and procedures for an offender or an offender's legal representative to exercise the offender's right to refuse or limit medical treatment. To provide guidelines and procedures for offenders to authorize medical and mental health treatment if they become incapacitated due to medical or mental illness.

APPLICABILITY: Incarcerated adult offenders in Minnesota correctional facilities

DEFINITIONS:

Decision-making capacity – the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a reasoned health care decision.

Health care agent – an individual age 18 or older, who is appointed to make health care decisions for an offender. A department employee (except for the DOC medical director), contractor, or another offender may not act as a health care agent for an offender.

Health care directive – a written instrument including one or more health care instructions, a health care power of attorney, or both.

Health care instruction – a written statement of the offender's values, preferences, guidelines, or directions regarding health care.

Health care power of attorney – an instrument appointing one or more health care agent(s) to make health care decisions on behalf of an offender.

Health care provider – a person or health care facility authorized by the state to administer health care.

Incapacitation – the inability to receive/evaluate or understand treatment about medical condition(s), prognosis, and risks and benefits of alternative treatments, and the inability to communicate a reasoned decision. Disagreement with a medical recommendation does not mean that an individual is incapacitated.

Legal representative – the parent(s) of a person who is under 18 years of age, a guardian or conservator, or a guardian ad litem who is authorized by the court to make decisions about services for a person.

Physician/attending physician – a person licensed to practice medicine and/or surgery by a state licensing authority. An attending physician is a physician with primary responsibility for the treatment and care of an offender.

Revocation – when an offender communicates, in any manner, the offender's wishes to discontinue or change a health care directive or a durable power of attorney for health care decisions.

Terminal illness and/or injury – a progressively deteriorating condition that is life threatening and determined to be incurable with current available technology. Death is anticipated from this illness or injury or a complication thereof within the foreseeable future, regardless of the administration of life-sustaining treatment.

PROCEDURES

A. At any time during the offender's incarceration, health care staff must provide the offender with a copy of the Health Care Directive/Power of Attorney packet (attached) upon request or if indicated.

1. The packet contains information concerning the right to accept or refuse medical treatment and the right to complete a Health Care Directive/Power of Attorney packet.

2. Offenders may complete one or more sections of the Health Care Directive/Power of Attorney packet (e.g. the written instructions and/ or the appointment of another person or other persons to make health care decisions for the offender).

3. When the offender completes any section of the Health Care Directive/ Power of Attorney packet, the offender must sign and date the document in the presence of two witnesses or a notary public:

a) The document must be executed by an offender with the capacity to do so with the signature of the offender or with the signature of another person authorized to sign on the offender's behalf.

b) The document must contain verification of the offender's signature or the person authorized to sign for the offender by a notary public, or two witnesses.

c) Persons ineligible to be witnesses:

(1) A person committed to the Commissioner of Corrections on the date signed; or

(2) A person appointed as the health care agent.

d) At least one witness must not be a health care provider employed by the DOC, a DOC-contracted health care provider, or an employee.

B. A health care directive is effective when:

1. It meets the required elements:

a) In writing;
b) Dated;
c) States the offender's name;
d) Executed and signed by an offender with the capacity to do so or by another person authorized to sign on the offender's behalf; and
e) Contains verification of the offender's signature or the person authorized to sign on the offender's behalf;

2. The offender, in the opinion of the attending physician, lacks the decision-making capacity to make health care decisions; and

3. DOC health care staff have received a copy of the directive before being held to its instruction.

C. Preparing a Health Care Directive/ Power of Attorney packet

1. DOC staff must provide an offender with a copy of the Health Care Directive/Power of Attorney packet, upon request or if indicated.

2. DOC staff may educate an offender on the offender's medical conditions and general information on health care and health care directives.

3. Unless authorized and trained, DOC staff must not assist an offender in the preparation of a Health Care Directive/Power of Attorney, except to witness a completed directive as described in Procedures A and B in this policy. Trained health services staff are authorized to assist offenders in completing a health care directive. Training records are maintained in supervisory files and/or in the electronic training management system.

4. Other resources available to assist an offender in completing a health care directive include:
   a) Legal aid;
   b) Personal attorney;
   c) Family members; and
   d) An agent/contractor of the DOC, designated to assist offenders in preparing health care directives.

D. Health care agent responsibilities

1. The agent has the same authority as the offender to receive information regarding proposed medical care.

2. The agent may review the offender's medical records, when the offender is unable to communicate the offender's medical wishes.

3. The agent may not delegate the agent's authority to make health care decisions to any other person, unless the power of attorney for health care expressly authorizes such transfer of authority.

4. An offender may name more than one health care agent to make decisions for the offender.
   a) Health care agents must act together and be in agreement when making decisions.
   b) If the health care agents are not acting together, then a majority rule prevails regarding health care decisions.

5. The agent, when the health care directive is in effect, may receive, review, and obtain copies of medical records and consent to the release of medical records, unless specified otherwise in the offender's health care directive.

6. If the named agent declines to accept the authority described in the health care directive, the agent must advise the offender (if possible) and the medical staff.

E. Revocation of a health care directive

1. An offender, with the capacity to do so, may revoke a health care directive in whole or in part at any time by:
   a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the health care directive or directing another in the presence of the offender to destroy

the health care directive, with the intent to revoke the health care directive in whole or in part.

b) Executing a statement, in writing and dated, expressing the offender's intent to revoke the health care directive in whole or in part.

c) Verbally expressing the offender's intent to revoke the health care directive in whole or in part in the presence of two witnesses who do not have to be present at the same time.

d) Executing a subsequent health care directive, to the extent the subsequent health care directive is inconsistent with any prior health care directive.

2. The effect of dissolution or annulment of marriage or termination of domestic partnership on appointment of a health care agent
Unless the offender has otherwise specified in the health care directive, the appointment by the offender of the offender's spouse or registered domestic partner as the health care agent under a health care power of attorney is revoked by the commencement of proceedings for dissolution, annulment, or termination of the offender's marriage or commencement of proceedings for termination of the offender's registered domestic partnership.

F. Duties of the health care provider

1. If a proxy or a health care agent, acting under Minn. Stat. Ch. 145B, directs the delivery of health care, nutrition, or hydration that, in reasonable medical judgment, has a significant possibility of sustaining the life of the offender, a health care provider must take all reasonable steps to ensure the provision of the directed health care, nutrition, or hydration if the provider has the legal and actual capability of providing the health care, either itself or by transferring the offender to the health care provider who has that capability.

2. Any transfer of an offender under Procedure F1 must be done promptly and, if necessary to preserve the life of the offender, by emergency means.

3. Procedure F1 does not apply if the offender has a health care directive to the contrary.

4. A health care provider who is unwilling to provide directed health care under Procedure F1, who has the legal and actual capability of providing, may transfer the offender to another health care provider who is willing to provide the directed health care, with the approval of the DOC medical director and director of health services.

5. The health care provider must continue to take all reasonable steps to ensure provision of the directed health care of an offender, until the actual transfer of the offender to another provider.

6. Department health care staff must report to their immediate supervisors any health care directed by a health care agent that they deem unreasonable, or inconsistent with the offender's previously expressed instructions.
   a) The health care supervisor notified of inappropriate health care agent actions must promptly try to resolve the conflict with the agent.
   b) The health care supervisor must notify the DOC administration of any unresolved conflict with health care agents/proxies.

G. Transmitting an offender's health care directive to an acute care facility
When an offender is transferred for inpatient, emergency, or other care, DOC health care staff must transmit or transfer a copy of an offender's health care directive to an acute care or other facility, as soon as possible.

H. Implementation of health care directives in an emergency situation
1. Emergency treatment is provided to all offenders in the absence of direct knowledge of a health care directive which is contrary.

2. The health care provider may terminate emergency treatment, such as cardio-pulmonary resuscitation (CPR), to an offender, when
   a) The DOC health care provider becomes aware the offender has a health care directive which is contrary;
   b) The offender is incapable of directing the offender's care; and/or
   c) The offender's health care agent does not indicate otherwise.

3. The health care directive applies to healthcare personnel who are aware of the content and validity of the directive.

4. First responders and healthcare personnel who are not aware or certain of the existence or specific details of a directive act to preserve and prolong life.

I. Conflicts or disagreements
1. Health care staff must immediately contact the central office health services administration for direction, if a conflict arises in the interpretation of an offender's health care.
2. Types of conflicts-
   a) Unwillingness of the health care provider to follow the provisions of the directive;
   b) The appointed health care agent is acting in conflict with the directive;
   c) The health care agent appears to be acting in a manner not in the best interests of the offender; or
   d) All other conflicts.

3. Central office health services retains documentation of these situations and the resolutions.

J. Mental health directive
1. An offender may make a declaration of preference, or instructions for intrusive mental health treatment, as a part of, or separate from, a health care directive.

2. The requirements of a mental health directive are the same as Procedure A1, except:
   a) A mental health directive must be signed by the offender and two witnesses or notarized, with the same restrictions as in the health care directive; and

   b) Mental health directive witnesses' signatures must include a statement that the witnesses believe the offender understands the nature and significance of the mental health declaration.

3. The physician or provider must comply with this directive to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments that are requested, and the applicable law.

4. The physician must obtain the offender's informal consent for all intrusive medical treatment, if the offender is capable of providing informal consent.

K. Medical record

1. The original or a copy of any health care directive must be retained in a prominent location in the offender's medical record.

2. Health care directives which are revoked and/or revised must also be retained in the offender's medical record unless destroyed by the offender. The old health care directives must be clearly labeled as revoked or invalid.

3. A copy of the current health care directive must be provided to the offender.

INTERNAL CONTROLS:

A. Health care directives are retained in the medical record.

B. Documentation of disagreements or conflicts is retained in central office health services.

C. Health care directive training is retained in supervisory files and/or in the electronic training management system.

ACA STANDARDS: None

REFERENCES: Minn. Stat. Ch. 145C and § 241.75; Ch. 145B
Policy 500.126, "Offender Health Care Decisions"

REPLACES: Division Directive 500.125, "Offender Health Care Directive and Power of Attorney," 8/2/16.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: Health Care Directive/Power of Attorney packet (500.125A)

APPROVALS:
Deputy Commissioner, Facility Services
Deputy Commissioner, Community Services
Assistant Commissioner, Facility Services
Assistant Commissioner, Operations Support