DEPARTMENT OF CORRECTIONS

Policy Number:	**500.126**
Title:	**Offender Health Care Decisions**
Effective Date:	**8/21/18**

PURPOSE: To provide procedures for making offender health care decisions in the event the offender lacks decision-making capacity.

APPLICABILITY: Adult facilities and health services

DEFINITIONS:

Decision-making capacity – as defined in Minn. Stat. § 145C.01, subd. 1b.

Health care – as defined in Minn. Stat. § 241.75, subd. 1(b).

Health care agent – as defined in Minn. Stat. § 145C.01, subd. 2.

Health care decision – as defined in Minn. Stat. § 145C.01, subd. 5.

Health care directive – as defined in Minn. Stat. § 145C.01, subd. 5a.

Health care provider – as defined in Minn. Stat. § 145C.01, subd. 6.

Next of kin – spouse/common law spouse, children or grandchildren 16 years old or older (by birth or adoption), parents, siblings, or other blood relatives living in the same household at the time of the offender's incarceration.

Reasonably available – as defined in Minn. Stat. § 145C.01, subd. 9.

PROCEDURES:

A. The DOC medical director or physician designee is authorized to make health care decisions for offenders incarcerated in a DOC adult facility, if an offender's attending physician determines that the offender lacks decision making capacity and:

1. There is not a documented health care agent designated by the offender or the health care agent is not reasonably available to make the health care decision.

2. There is a documented health care directive (on file with the DOC), the decision is consistent with that directive.

3. The decision is consistent with reasonable medical practice and other applicable laws.

4. The DOC medical director has made a good-faith attempt to consult with the offender's next of kin or emergency contact person in making the decision to the extent those persons are reasonably available.

B. When the attending physician of an offender determines the offender lacks decision-making capacity, the attending physician must:

1. Document the reasons for the determination of incapacity in the offender's medical record.

2. Make a reasonable effort to contact the offender's health care agent to make decisions on behalf of the offender.

3. If the offender has not designated health care agent or the agent is not reasonably available, contact the DOC medical director and provide:
   a) A summary of the offender's medical diagnosis(es);
   b) Current condition;
   c) Proposed treatment alternatives and prognosis;
   d) Attempts to contact the offender's health care agent and/or next of kin; and
   e) A conclusion as to the urgency of the decision request.

C. Upon notification from the attending physician that the offender lacks decision-making capacity and a medical decision is needed, the DOC medical director:
   1. Provides the attending physician an estimate of when a decision will be made. The estimate of time is based upon the offender's condition and the attending physician's conclusion as to the urgency of the decision request. When an immediate decision is not required to preserve life, limb, sight, or to prevent substantial harm or adverse consequences, the DOC medical director:
      a) Must make a good faith attempt to contact the offender's agent, if one is named in the offender's health care directive on the DOC record, or next of kin.
      b) May consult with individual DOC staff who are familiar with the offender's case to obtain information that may be helpful in the decision-making process.
      c) May convene a committee of appropriate DOC staff and other interested parties to review the facts and make recommendations for appropriate health care decisions.
      d) May seek consultation with the appropriate hospital bioethics committee.

   2. Provides the attending physician a decision verbally followed by written documentation in a timely fashion based upon the urgency of the case.

   3. Documents the actions in the offender's medical and administrative records.

D. Disagreement regarding health care
   When the DOC medical director and the next of kin are not in agreement with respect to a health care decision, the DOC medical director must notify the commissioner of corrections, who may bring a petition for appointment of a guardian with authority to make health care decisions for the offender.

INTERNAL CONTROLS:

A. Reasons for a determination of lack of decision-making capacity is documented in the offender's medical record by the attending physician.

B. A copy of the process leading up to the decision to designate the medical director as the health care decision maker is maintained in the medical director's file in central office.

C. The DOC medical director's medical decisions are documented in the offender's medical file and in administrative records.

ACA STANDARDS: None

REFERENCES: Minn. Stat. § 241.75; Ch 62D; Ch. 145B, and Ch. 145C
Policy 500.125, "Offender Health Care Directive and Power of Attorney"

REPLACES: Division Directive 500.126, "Offender Health Care Decisions," 11/19/13.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

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