	DEPARTMENT OF CORRECTIONS AND REHABILITATION CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: January 01, 2024	POLICY NO.: COR.10.F.07
		SUPERSEDES (Policy No. & Date): COR.10.1G.12 (10/20/15); COR.10.1I.04 (07/28/09)	
	SUBJECT: CARE FOR THE TERMINALLY ILL		Page 1 of 11

1.0 PURPOSE

The purpose of this policy is to ensure that facilities address the needs of incarcerated individuals who have been diagnosed with a terminal illness, including protecting their rights regarding end-of-life decisions.

2.0 SCOPE

This policy and procedure shall apply to all correctional facilities, their assigned personnel, and contract staff within the Department of Corrections and Rehabilitation (DCR).

3.0 REFERENCES, DEFINITIONS & FORMS

.1 References

a. Department of Corrections and Rehabilitation, Policy and Procedures, COR.10.1G.11, Medical Release.

b. Hawaii Administrative Rules, Title 16, Chapter 85, Subchapter 4, Informed Consent.

c. Hawaii Administrative Rules, Title 23, Chapter 700, Hawaii Paroling Authority.

d. Hawaii Revised Statutes §327E, Uniform Health-Care Decisions Act (Modified).

e. Hawaii Revised Statutes §327K, Provider Orders for Life-Sustaining Treatment.

f. Hawaii Revised Statutes §327L, Our Care, Our Choice Act.

g. Hawaii Revised Statutes §671-3, Informed consent.

h. A Provider's Guide to POLST (Provider Orders for Life-Sustaining Treatment). Kōkua Mau, (2023)

i. Position Statement: Medical Orders for Life-Sustaining Treatment in Correctional Settings, National Commission on Correctional Health Care, (2022).

j. Standards for Health Services in Prisons. National Commission on Correctional Health Care, (2018).

k. Standards for Health Services in Jails. National Commission on Correctional Health Care, (2018).

l. Standards for Mental Health Services in Correctional Facilities. National Commission on Correctional Health Care, (2015).

.2 Definitions:

a. Advance Health Care Directive: Expressions of the incarcerated individual's wishes as to how future care should be delivered or declined, including decisions that must be made when the incarcerated individual is not capable of expressing those wishes. Advance directives may be used by any incarcerated individual regardless of health status.

b. Best Interest: The benefits to the incarcerated individual resulting from a treatment outweigh the burdens to the incarcerated individual resulting from that treatment and shall include:

1. The effect of the treatment on the physical, emotional, and cognitive functions of the incarcerated individual;

2. The degree of physical pain or discomfort caused to the incarcerated individual by the treatment, or the withholding or withdrawal of the treatment;

3. The degree to which the incarcerated individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

4. The effect of the treatment on the life expectancy of the incarcerated individual;

5. The prognosis of the incarcerated individual for recovery, with and without the treatment;

6. The risks, side effects, and benefits of the treatment or the withholding of treatment; and

7. The religious beliefs and basic values of the incarcerated individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

c. Capacity: An individual's ability to understand the significant benefits, risks, and alternatives to proposed medical or mental health care or treatment and to make and communicate a health care decision.

d. Informed Consent: The agreement by a patient to a treatment, examination, or procedure after the patient receives the material facts about the nature, consequences, risks and benefits of the proposed treatment, examination, or procedure; the alternatives to it, and the prognosis if the proposed action is not undertaken.

e. Guardian: A judicially appointed guardian having authority to make health care decisions for an individual.

f. Hospice: A specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an incarcerated individual who is experiencing the last phases of life due to the existence of a terminal illness, and provide supportive care to the family of the incarcerated individual.

g. Interested Persons: An incarcerated individual's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the incarcerated individual, an adult sibling or adult grandchild of the incarcerated individual, or any adult who has exhibited special care and concern for the incarcerated individual and who is familiar with the incarcerated individual's personal values.

h. Medical Release: The release of an incarcerated individual from custody before the end of the incarcerated individual's sentence, or prior to adjudication of charges, because of the incarcerated individual's terminal condition.

i. Palliative Care: Medical care and support services aimed at providing comfort, including adequate pain management. Treatment is focused on symptom control and quality-of-life issues rather than attempting to cure conditions.

j. Provider: A nurse practitioner, physician assistant, or physician.

k. Provider Orders for Life-Sustaining Treatment (POLST): A portable medical order that gives incarcerated individuals more control over their end-of-life care, as it documents the current, "right now," treatment orders. It specifies the types of treatments a seriously ill or medically frail incarcerated individual wishes to receive towards the end of life.

l. Surrogate: An individual, other than an incarcerated individual's agent or guardian, authorized to make a health-care decision or to act as a Medicaid authorized representative for the incarcerated individual.

m. Terminal Illness: An incurable and irreversible disease or condition that will result in death within six (6) months.

.3 Forms:

a. Provider Orders for Life-Sustaining Treatment (POLST) - Hawai'i, developed by Kōkua Mau (attached)

b. DCR 0450, Health Care Request (attached)

c. DCR 0458A, Advance Health Care Directive (attached)

4.0 POLICY

.1 Advance Health Care Directives and Provider Orders for Life-Sustaining Treatment (POLST) shall be available.

.2 The department shall address the needs of incarcerated individuals who have been diagnosed with a terminal illness, including the provision of palliative care, through the availability of in-reach services by a certified hospice vendor.

a. Enrollment in a hospice program, and the election to receive palliative care, is the incarcerated individual's informed choice.

b. Qualified health care professionals providing in-reach hospice services have received training in palliative care techniques.

c. Incarcerated workers or volunteers providing services in the hospice program are properly trained and supervised.

.3 When a provider determines that care in a community setting is medically preferable, a recommendation shall be made to the appropriate legal authority regarding the benefit, or necessity of the incarcerated individual's transfer or medical release.

5.0 PROCEDURES

.1 Advance Care Planning.

a. A qualified health care professional shall ask incarcerated individuals whether they have an Advance Health Care Directive and/or POLST no later than during the initial health assessment and whether they would like to discuss the Advance Health Care Directive and/or POLST with a provider. Responses shall be documented in the health record.

1. If the incarcerated individual provides a fully executed Advance Health Care Directive and/or POLST, then it should be honored.

2. If the incarcerated individual reports having an Advance Health Care Directive and/or POLST that is available at a retrievable location, then health care staff shall attempt to obtain the document.

3. When an incarcerated individual with a fully executed Advance Health Care Directive and/or POLST transfers between correctional facilities, the receiving facility is to honor the Advance Health Care Directive and/or POLST.

4. An incarcerated individual who would like to discuss the Advance Health Care Directive and/or POLST for advance care planning shall be referred to a provider.

b. An incarcerated individual may request to discuss the Advance Health Care Directive and/or POLST for advance care planning with a provider at any point while in custody by submitting a Health Care Request form [DCR 0450].

c. When an incarcerated individual has been diagnosed with a serious or terminal illness, has been admitted to the infirmary for a serious medical need, or has been identified as frail, a provider shall discuss the POLST with the incarcerated individual.

d. Before executing an Advance Health Care Directive or POLST:

1. The provider shall inform the incarcerated individual about their diagnosis and prognosis, care options (both in the facility and in other institutions), end-of-life choices (e.g., resuscitation, intubation, medications, nutritional support, comfort measures), the consequences of choosing an advance directive, and, if applicable, the availability of palliative care services through the hospice program.

2. The provider shall inform the incarcerated individual that, while capable of doing so, the incarcerated individual may change their mind about their Advance Health Care Directive and/or POLST.

3. Clinicians should presume an incarcerated individual has decision-making capacity, unless the incarcerated individual's physical condition renders this objectively impossible, such as when an incarcerated individual is unconscious or in a coma. If a question about decision-making capacity arises, a provider, psychiatrist, or psychologist shall assess the incarcerated individual for capacity to consent to medical care, and/or capacity to execute a health care advance directive, depending on the reason for referral.

4. An incarcerated individual, who would like to designate an agent to act as their health care power of attorney, shall provide the name and contact information of the person selected to allow health care staff to contact and verify the person's willingness to serve as their health care power of attorney.

   a) An employee of the department or an incarcerated individual, unless related by blood or marriage, shall not be designated as the agent with power of attorney for health care decisions for an incarcerated individual.

   b) Witnesses for the power of attorney for health care shall not be a health care provider, an employee of the department, an incarcerated individual, or the agent.

5. An incarcerated individual may designate or disqualify any individual to act as a surrogate for the POLST by personally informing the treating provider or designee, Medical Director, Physician Manager, Psychiatrist Manager, or Responsible Physician.

e. A fully executed Advance Health Care Directive and/or POLST shall be filed in the health record. The POLST shall be stored in a secured location and be readily available in the event of an emergency.

f. In the event of the need for urgent or emergent medical services, health care staff shall provide the Advance Health Care Directive and POLST to first responders and treating facilities.

g. Incarcerated individuals who are sixty-five (65) years of age or older, who have been diagnosed with a chronic medical disorder, is seriously ill, frail, and/or identified by a provider as clinically recommended, should review their Advance Health Care Directive and/or POLST at least annually with their provider.

h. A provider shall communicate with the legally authorized representative whom the incarcerated individual has identified, especially when there is a change in the incarcerated individual's health status.

i. Qualified health care professionals shall clearly document in the health record, regardless of whether the incarcerated individual agrees to or declines advance directives, all discussions and decisions about end-of-life care.

.2 Surrogacy Ladder.

In the event of a need for end-of-life decisions where the incarcerated individual lacks capacity to consent to medical care and the incarcerated individual does not have a fully executed Advance Health Care Directive or POLST to guide medical decision-making, the provider shall adhere to the following:

a. In emergency circumstances, clinicians shall treat and stabilize the incarcerated individual's acute emergency condition based on implied consent.

b. Identification of a Surrogate Decision-Maker.

1. The provider or designee shall make reasonable efforts to locate as many interested persons as practicable, and the provider or designee may rely on such individuals to notify other family members or interested persons.

2. Upon locating interested persons, the provider or designee shall inform interested persons of the incarcerated individual's lack of decisional capacity and that a surrogate decision-maker should be selected for the incarcerated individual.

3. Interested persons shall make reasonable efforts to reach a consensus as to who among them shall make health-care decisions on behalf of the incarcerated individual. The person selected to act as the incarcerated individual's surrogate should be the person who has a close relationship with the incarcerated individual and who is the most likely to be currently informed of the incarcerated individual's wishes regarding health-care decisions.

4. If any of the interested persons disagrees with the selection or the decision of the surrogate, or, if after reasonable efforts the interested persons are unable to reach a consensus as to who should act as the surrogate decision-maker, then any of the interested persons may seek guardianship of the incarcerated individual by initiating guardianship proceedings. Only interested persons involved in the discussions to choose a surrogate may initiate such proceedings with regard to the incarcerated individual.

c. Unrepresented Incarcerated Individual.

When an incapacitated incarcerated individual has no advance directive and no interested person to act as a surrogate to guide medical decision-making, health care staff shall initiate guardianship proceedings.

.3 Identification of Terminal Illness

a. Incarcerated individuals who have been diagnosed with a terminal illness shall be considered for medical release in accordance with COR.10.1G.11.

b. When an incarcerated individual has been diagnosed with a terminal illness, the provider shall submit a referral to the Special Utilization Review Panel (SURP) for an independent review of the patient's condition, likely prognosis, treatment history, and available therapeutic options. The review shall determine whether the incarcerated individual could benefit from aggressive cure-oriented treatment or is dying and could benefit from a hospice program that emphasizes comfort measures.

c. The provider shall inform the incarcerated individual of the SURP recommendations. The incarcerated individual shall decide whether to enroll in a hospice program and/or receive palliative care services. When an incarcerated individual is incapacitated, the incarcerated individual's Advance Health Care Directive and/or POLST shall be honored. In the absence of an advance directive, the legally authorized representative shall evaluate and consent to or refuse admission to the program for the incapacitated individual.

d. The provider shall determine whether the hospice and/or palliative care services can be provided at the facility.

1. When hospice and/or palliative care services have been determined to be within the facility's scope of practice or is available through an appropriate in-reach service:

a) Nursing staff shall contact a certified hospice program vendor to assess the needs of the incarcerated individual and provide hospice and/or palliative care services.

b) A provider shall review the hospice vendor assessment and recommendations, and order appropriate end-of-life services as clinically indicated.

c) The Clinical Services Administrator or designee shall arrange with security staff to receive medical equipment the hospice vendor deems necessary for the provision of hospice and/or palliative care services.

d) The Clinical Services Administrator or designee shall notify the Warden and the Chief of Security of the incarcerated individual's terminal condition to facilitate visitation, as appropriate. Incarcerated family in the same facility as the incarcerated individual shall be included in visitation, when appropriate.

e) The hospice vendor shall supply all medications and medical equipment necessary to maintain the incarcerated individual's comfort and pain relief.

f) The Clinical Services Administrator shall ensure appropriate and sufficient health care staff, including staff assigned by the hospice vendor, are available to provide necessary services.

Nursing staff shall receive periodic instruction in hospice care by the assigned hospice nurse. Nursing staff shall remain in close contact with the assigned hospice nurse and participate in the development and implementation of a plan of care.

g) Incarcerated workers or volunteers may be used to perform certain tasks, but they are not a substitute for professional health care staff. Incarcerated workers who perform duties as part of the hospice program and/or the palliative care services shall be screened for emotional stability and intellectual ability, trained in tasks they are expected to perform, and supervised by a qualified health care professional.

2. When hospice and/or palliative care services have been determined to be NOT within the facility's scope of practice or is NOT available through an appropriate in-reach service:

a) The provider shall order the transfer of the incarcerated individual to a facility where such services are available.

b) The sending facility Clinical Services Administrator shall notify and brief the receiving facility Clinical Services Administrator about the pending transfer.

c) The sending facility Clinical Services Administrator shall notify the facility Warden of the order to transfer and the need to arrange appropriate transportation.

d) The receiving facility Clinical Services Administrator shall notify the Warden of the order to transfer and prepare to provide ordered care accordingly.

APPROVAL RECOMMENDED:

JAN 0 1 2024

Deputy Director for Corrections Date

APPROVED:

JAN 0 1 2024

DIRECTOR Date

STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY
HEALTH CARE DIVISION

HEALTH CARE REQUEST

☐ **MEDICAL** ☐ **MENTAL HEALTH** ☐ **DENTAL** ☐ **MEDICAL RECORDS**

RECEIVED

Name: _____ SID #: _____

Facility/Housing: _____

Concern: _____

_____

_____

Incarcerated Individual Signature: _____ Date: _____

Seen by Qualified Health Care Professional: Yes / No Appointment made w/: _____

Comments: _____

_____

Health Care Staff Signature, Title: _____

COMPLETED

PSD 0450 (7/23) *CONFIDENTIAL*

STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY
HEALTH CARE DIVISION

Original- Health Care *Yellow Copy- Incarcerated Individual*

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

ADVANCE HEALTH CARE DIRECTIVE

_____

Name SID DOB Facility

PART I. INSTRUCTIONS TO THE PATIENT

The following people must be present to complete an Advance Directive:

a. There must be two (2) independent witnesses. The witnesses cannot be relatives or Health Care employees or anyone else who will be involved in your health care.

OR

There must be a Notary Public to notarize the document.

b. If you do not agree with the choices below or wish to add other instructions, including body and organ donations, you may add pages. Any additional pages must be signed by you and witnessed by two independent people or notarized

c. Once the Advance Directive is signed, witnessed or notarized the original document is filed in your medical record and you will be given a copy.

d. An Advance Directive may be amended or revoked at any time. You must inform the medical provider that you wish to amend or revoke your Advance.

PART II. PATIENT'S STATEMENT OF PRINCIPLE

The following choices on prolonging life, artificial nutrition and hydration, and relief from pain apply only if:

a. I am close to death and life support would only postpone the moment of my death

OR

b. I am in an unconscious state such as an irreversible coma or a persistent vegetative state and it is

not probable that I will ever become conscious

OR

e. I have brain damage or a brain disease that makes me permanently unable to make health care decisions and communicate those decisions

CHOICE TO PROLONG OR NOT TO PROLONG LIFE

_____ YES I want to have my life prolonged within the limits of generally accepted health care standards that apply to my condition.

_____ NO I do not want my life prolonged.

ARTIFICIAL NUTRITION AND HYDRATION BY TUBE INTO STOMACH OR VEIN

_____ YES I do want artificial nutrition and hydration.

_____ NO I do not want artificial nutrition and hydration.

RELIEF FROM PAIN

_____ YES I want treatment to relieve my pain or discomfort.

_____ NO I do not want treatment to relieve my pain or discomfort.

_____

Patient Print Full Name Signature Date

_____

Witness Print Full Name Signature Date

_____

Witness Print Full Name Signature Date

NOTARY PUBLIC

State of Hawaii, _____County. On this _____ day of _____, in the year _____, before me appeared _____ _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribe to this instrument and acknowledge that he or she executed it.

_____

SEAL Notary Public State of Hawaii Date

My Commission Expires: _____