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Scott Crow, Director Oklahoma Department of Corrections		Signature on File	

Inmate Living Will/Advance Directive for Health Care and Do Not Resuscitate (DNR) Consent

The Oklahoma Department of Corrections (ODOC) has implemented the guidelines required by the Oklahoma Advance Directive Act (63 O.S. § 3101. et seq.) and the “Oklahoma Do-Not-Resuscitate Act” (63 O.S. § 3131.1. et seq.).

The inmate’s right to refuse medical treatment is not absolute and, in all cases, will be weighed against legitimate governmental interests, including the security and orderly operation of correctional facilities.

I. Living Will/Advance Directive

The living will/advance directive allows individuals of sound mind, who are 18 years of age or older, the opportunity to execute advance directives regarding their medical care and provision of life-sustaining treatment. The document states how the individual wishes to be treated if he/she becomes incapacitated by illness, injury, or old age. Activation for a Living Will/Advance Directive and/or Do Not Resuscitate (DNR) will never be honored in situation of self-harm or assault.

A. In a living will/advance directive, the person retains control of some aspects of their own medical care and treatment in the event the person becomes incapacitated; and

- B. A health care proxy is designated to use their judgment in decisions affecting the medical care and treatment of the incapacitated individual in the event there is insufficient evidence of the incapacitated individual's wishes.

II. Health Care Proxy

The health care proxy is a person, 18 years old or older, appointed by the inmate as the legal person to make health care decisions for the inmate in the event the inmate can no longer do so.

- A. ODOC employees may NOT serve as a health care proxy for any inmate, unless:
 - 1. The inmate and the ODOC employee are currently married and the marriage existed prior to employment with the agency. The facility head/administrator of Institutions/Community Corrections will review a copy of the marriage license to confirm validity and date of marriage. The facility head/administrator of Institutions/Community Corrections or designee will notify the agency director's office when an inmate has named an employee/spouse as a health care proxy, or
 - 2. An ODOC employee is related to an inmate may serve as the Health Care Proxy if no other family members are available and it is approved by the facility head/administrator of Institutions/Community Corrections or designee.
- B. A currently incarcerated person may not serve as a health care proxy for any inmate.

III. Establishing the Living Will/Advance Directive

- A. The "Living Will/Advance Directive for Health Care" form ([DOC 140138A](#), attached) will be utilized to initiate an inmate's living will/advanced directive. During the orientation session at reception or upon transfers to other facilities and in accordance with [OP-140117](#) entitled "Access to Health Care," inmates will receive information about establishing a living will/advance directive for health care.
- B. The "Living Will/Advance Directive for Health Care" form ([DOC 140138A](#), attached) is the preferred form. However, an alternate form may be accepted after the ODOC office of General Counsel has reviewed the alternate form to determine any differences and approves the alternate form.
- C. An advance directive that is not in the form provided for by this procedure ([DOC 140138A](#), "Living Will/Advance Directive for Health Care," attached)

and that is executed in Oklahoma shall not be deemed to authorize the withholding or withdrawal of artificially administered nutrition and/or hydration unless it specifically authorizes the withholding or withdrawal of artificially administered nutrition and/or hydration in the declarant's own words or by a separate section, separate paragraph, or other separate subdivision that deals only with nutrition and/or hydration and which section, paragraph, or other subdivision is separately initialed, separately signed, or otherwise separately marked by the declarant.

- D. When an inmate establishes a "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) while in an outside hospital/health care facility, that outside facility may follow its own procedures and protocols.
- E. The responsibilities of the health services staff include being knowledgeable of the applicable laws and being available to provide information to the inmate upon request.
- F. A qualified health care professional may assist an inmate in completing the "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) at any time during their incarceration.
- G. If the inmate wishes to use a private attorney to prepare a "Living Will/Advance Directive for Health Care", this will be at the inmate's expense.
- H. The "Living Will/Advance Directive for Health Care," ([DOC 140138A](#), attached) must be signed by the inmate and witnessed by two individuals who are 18 years of age or older who are not legatees, devisees, or heirs at law. A currently incarcerated person may not act as a witness.
- I. The "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) or alternate form will be scanned into the electronic health record (EHR), in accordance with [OP-140106](#) entitled "Healthcare Record System." If a form other than the "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) is used, a determination will be made whether an authorization to release protected health information must be obtained in accordance with [OP-140108](#) entitled "Privacy of Protected Health Information" utilizing "Authorization for Release of Protected Health Information." ([DOC 140108A](#))
- J. As specified in the "Living Will/Advance Directive for Health Care," ([DOC 140138A](#), attached) the "attending physician" is defined as the physician who has primary responsibility for the treatment and care of the patient. "Another physician" is defined as an individual licensed to practice medicine in the state of Oklahoma.

IV. Activation of a Living Will/Advance Directive

- A. When it is determined that the inmate has become incapacitated by illness, injury, or old age, the attending physician and another physician, may determine that the terms of the “Living Will/Advance Directive for Health Care” ([DOC 140138A](#), attached) will be carried out. The attending physician or designee, will notify the correctional health service administrator (CHSA) or designee, facility head/administrator of Intuitions/Community Corrections or designee immediately by faxing the completed “Notification of Activation for a Living Will/Advance Directive and/or DNR” form ([DOC 140138B](#), attached).
- B. These officials will then determine if it is appropriate to transfer the inmate to an ODOC infirmary, hospital, or if the current setting is appropriate. The attending physician will write an order, which will activate the conditions of the living will/advance directive.
- C. In the event more than one valid advance directive has been executed and not revoked, the last advance directive so executed shall be construed to be the last wishes of the inmate and shall become operative.

V. Revocation of the Living Will/Advance Directive

The “Living Will/Advance Directive for Health Care” ([DOC 140138A](#), attached) may be revoked by the issuing inmate at any time. Revocation will be in writing with the inmate’s signature or initials. A verbal revocation will be accepted when expressed to the physician, other health care provider, or other witness and witnessed by another individual, regardless of the inmate’s physical or mental condition.

- A. Upon the inmate’s request to revoke the “Living Will/Advance Directive for Health Care” ([DOC 140138A](#), attached), the “Living Will/Advance Directive for Health Care” form ([DOC 140138A](#), attached) will be marked through and signed on each page as “Revoked by” with the inmate’s name and signature, and the date of the revocation.
 - 1. Should the inmate be unable to sign, a witness to the revocation by the inmate should sign in place of the inmate.
 - 2. If no witness is readily available, a staff member from the medical division will document the inmate’s verbal revocation in the medical record and record the name of at least one witness to the revocation.
- B. The revoked living will/advance directive and all living will/advance directive information will be removed from the inmate’s person/property immediately, and scanned into the EHR. A progress note will be documented in the EHR to account for the date and time the “Living Will/Advance Directive for Health Care” ([DOC 140138A](#), attached) was revoked.

VI. Reporting of a Living Will/Advance Directive

Each facility head/administrator of Institutions/Community Corrections or designee will be responsible for the dissemination of information to the appropriate staff regarding inmates with a living will/advance directive.

A copy of the "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) will be attached to the consultation form when the inmate is transported to an outside provider or with the transfer summary if being transferred to another facility.

VII. Medical Care for Inmates Unable to Consent to or Refuse Treatment (5-ACI-6C-04M)

In situations where an inmate has not prepared a living will, advanced directive, or a DNR; and is unable to actually consent, all providers may presume the inmate prefers life and will provide resuscitation as required. For procedures performed by outside providers, the outside provider will follow its own procedures for obtaining consent. ODOC medical and/or facility staff will provide family contact information if needed. If consent cannot be obtained by either the agency or the outside provider, the CHSA will contact the office of the General Counsel immediately to determine whether guardianship proceedings should be initiated.

VIII. Pregnant Inmates

The "Living Will/Advance Directive for Health Care" ([DOC 140138A](#), attached) or "Do Not Resuscitate Consent Form" ([DOC 140138C](#), attached) of a female inmate known to the attending physician to be pregnant will not be operative during the course of the pregnancy unless the pregnant patient has specifically authorized in her own words and documented on the DNR form that life-sustaining treatment and/or artificially administered hydration and/or nutrition shall be withheld or withdrawn. (63 O.S. § 3101.4)

IX. Do-Not-Resuscitate (DNR)

A. A "Do Not Resuscitate Consent Form," ([DOC 140138C](#), attached) states the inmate does not want cardiopulmonary resuscitation (CPR) administered in the event of cardiac or respiratory arrest (heart stops beating or if the inmate stops breathing).

1. A "Do Not Resuscitate Consent Form" ([DOC 140138C](#), attached) will be consistent with sound medical practice and not in any way associated with assisting suicide or mercy killings.
2. Any inmate with a "Do Not Resuscitate Consent Form" ([DOC 140138C](#), attached) in the medical record will receive maximal therapeutic efforts short of resuscitation.

B. Establishing a DNR

1. ODOC will utilize the “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) to establish an inmate’s DNR. All inmates entering ODOC will receive information about establishing a DNR consent form at reception or upon transfers to other facilities in accordance with [OP-140117](#) entitled “Access to Health Care.” The “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) is the preferred form. However, an alternate form may be accepted after ODOC office of General Counsel has reviewed the alternate form to determine any differences and approves the alternate version.
 2. When an inmate establishes a “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) while in an outside hospital/health care facility, that outside facility may follow their own procedures and protocols.
 3. The responsibilities of the health service staff include being knowledgeable of the applicable laws and being available to provide information to the inmate upon request regarding the DNR consent.
 4. A qualified health care professional may assist an inmate in completing the “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) at any time during their incarceration. This document cannot be completed by another inmate.
 5. If the inmate wishes to use a private attorney to prepare a “Do Not Resuscitate Consent Form” this will be at the inmate’s expense.
 6. The original form will be scanned into the EHR in accordance with [OP-140106](#) entitled “Healthcare Record System.” A “Do Not Resuscitate” indicator will be documented in the alert section of the inmate’s opening page in the EHR.
- C. The “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) must be signed by the inmate and witnessed by two individuals who are 18 years of age or older who are not legatees, devisees, or heirs at law. A currently incarcerated person may not act as a witness.
1. The physician will document the following information on a progress note in the EHR to accompany the “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached). The progress note will include:
 - a. The diagnosis;
 - b. The prognosis;
 - c. The inmate’s expressed wishes, accompanied by written documentation by the inmate when possible (i.e., a “Living

Will/Advance Directive for Health Care” ([DOC 140138A](#), attached);

- d. Consensual decisions and recommendations of the medical staff, consultants, with documentation of names; and
- e. References concerning the inmate’s competency, when the decision was based on their concurrence.

D. Reporting of a DNR

1. Each facility head or designee will be responsible for the dissemination of information to the appropriate staff regarding inmates with a “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached).
2. A copy of the “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) will be attached to the consultation form when the inmate is transported to an outside provider or with the medical transfer summary if being transferred to another facility.

E. Activation of a DNR

1. The CHSA and facility head/administrator of Institutions/Community Corrections will be notified within 24 hours by the attending physician or designee, that a DNR has been activated. Notification to these authorities will be accomplished by completing and faxing the “Notification of Activation for a Living Will/Advance Directive and/or DNR” ([DOC 140138B](#), attached).
2. Health care providers will, when presented with the original or copy of any “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) as provided under O.S. 63 § 3101., take appropriate actions to comply with the do-not-resuscitate request.

F. Revocation of the DNR

The “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached) may be revoked by the issuing inmate at any time. Revocation will be in writing with the inmate’s signature or initials. A verbal revocation will be accepted when expressed to the physician or other health care provider.

1. Upon the inmate’s request to revoke the “Do Not Resuscitate Consent Form” ([DOC 140138C](#), attached), the form will be marked through and signed on each page as “Revoked by” with the inmate’s name and signature, and the date of the revocation.

- a. Should the inmate be unable to sign the revocation, the physician or health care provider that witnessed the verbal revocation may sign the revocation on the inmate's behalf.
 - b. The completed revocation form will then be scanned into the EHR.
2. The DNR and all DNR information will be removed from the inmate's person/property immediately and scanned into the EHR. A progress note will be documented in the EHR to account for the date and time the "Do Not Resuscitate Consent Form" ([DOC 140138C](#), attached was revoked.

X. References

Policy Statement P-140100 entitled "Inmate Medical, Mental Health and Dental Care"

OP-140106 entitled "Healthcare Record System"

OP-140108 entitled "Privacy of Protected Health Information"

OP-140117 entitled "Access to Health Care"

63 O.S. § 3101. et seq. – "Oklahoma Advance Directive Act"

63 O.S. § 3101.4. (Advance directive-execution-specific nutrition/hydration provision)

63 O.S. § 3131.1. et seq. "Oklahoma Do-Not Resuscitate Act"

63 O.S. § 2200.1A, et seq. entitled "Oklahoma Uniform Anatomical Gift Act"

XI. Action

The chief medical officer is responsible for compliance with this procedure and for the annual review and revisions.

Any exceptions to this procedure require prior written approval from the agency director.

This procedure will be effective as indicated.

Replaced: OP-140138 entitled "Inmate Living Will/Advance Directive for Health Care and Do Not Resuscitate (DNR) Consent" dated October 28, 2020

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 140138A	“Living Will/Advance Directive for Health Care”	Attached
DOC 140138B	“Notification of Activation for a Living Will/ Advance Directive and/or DNR”	Attached
DOC 140138C	“Do Not Resuscitate Consent Form”	Attached
DOC 140108A	“Authorization for Release of Protected Health Information”	OP-140108