WYOMING DEPARTMENT OF CORRECTIONS

Policy and Procedure #4.316

Informed Consent and Right to Refuse Treatment

Authority: Wyoming Statute(s): 25-1-104; 25-1-105; 35-1-105 35-22-403 ACA Standard(s): 4-4397; 1-ABC-4E-48 NCCHC Standard(s): P-I-05	**Effective Date:** July 30, 2015 **Revision/Review History:** 6/01/14 8/21/13 08/13/12 07/25/11 **Summary of Revision/Review:** Updates existing policy pursuant to annual review.
Cross Reference of Policy: P&P #3.015, *Use of Force and Related Security Equipment*; P&P #4.304, *Tuberculosis Risk Management: Inmates*; P&P #4.315, *Administration of Psychotropic Medication*	**Supersedes Existing Policy :**
Approved: R.O. Lampert — 7-17-15 Robert O. Lampert, Director — Date	

APPROVED FOR INMATE DISTRIBUTION

REFERENCE

1. **ATTACHMENTS – None Noted**

2. **OTHER**

   A. *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990)

I. PURPOSE

A. Informed Consent and Right to Refuse Treatment. The purpose of this policy and procedure is to establish uniform guidelines by which inmates incarcerated in Wyoming Department of Corrections (WDOC) facilities are afforded informed consent on health care procedures and given the right to refuse medical treatment.

II. POLICY

A. General Policy. It is the policy of the WDOC that invasive medical procedures or any medical treatment where there is risk and benefit to the inmate require informed consent by the inmate and that mentally competent adult inmates have the right to refuse medical treatment.

1. State and federal informed consent standards shall be observed and documented for inmate care in a language understood by the inmate. In the case of minors, the informed consent of a parent, guardian, or legal custodian applies when required by law. When health care is rendered against the patient's will, it shall be in accordance with state and federal laws and regulations. Otherwise, any inmate may refuse (in writing) medical, dental, and mental health care. (ACA 4-4397, 1-ABC-4E-48; NCCHC P-I-05)

III. DEFINITIONS

A. Advance Directives: (*For this policy only.*) Expressions of the patient's wishes as to how future care should be delivered or declined, including decisions that must be made when the patient is not capable of expressing those wishes. Examples include living wills, which specify what the patient wants done; health care proxies, which specify who can make decisions for the patient when the patient is incapacitated; and a patient-initiated DNR order, which is a patient's specific refusal of certain extraordinary measures that may prolong life.

B. Do Not Resuscitate (DNR) Orders: (*For this policy only.*) A medical order written by a doctor. It instructs health care providers not to do cardiopulmonary resuscitation (CPR) if breathing stops or the heart stops beating.

C. Hospice/End of Life: (*For this policy only.*) A written plan for the provision of medical care and services which outline the instructions when terminally ill.

D. **Informed Consent:** (*For this policy only.*) The agreement by a patient to a treatment, examination, or procedure after the patient receives the material facts about the nature, consequences, and risks of the proposed treatment, examination, or procedure; the alternatives to it; and the prognosis if the proposed action is not undertaken.

E. **Patient-Initiated DNR:** (*For this policy only.*) A signed and notarized request from an inmate as part of an Advanced Directive providing direction that life-saving or other extraordinary measures be withdrawn in terminal cases and/or that no Cardio Pulmonary Resuscitation (CPR) be initiated should breathing and heart beat cease. These documents shall not be honored by the Department or the contracted medical provider in the event of suicide attempts, assaults or suspected assaults.

F. **Responsible Health Authority (RHA):** A physician, health administrator, or agency responsible for the facility's health care services, and arrangement of all levels of health care. The RHA assures quality, accessible, and timely health services for inmates.

IV. PROCEDURE

A. **Informed Consent.** Informed consent standards shall be observed and documented for inmate care in a language understood by the inmate.

1. For invasive procedures or any treatment where there is risk and benefit to the inmate, informed consent shall be documented on a written form containing the signatures of the inmate and health care services staff witness.

2. In the case of minors, the informed consent of a parent, guardian, or legal custodian applies when required by law.

3. Consents for off-site procedures shall be obtained by and are the responsibility of the off-site provider or consultant.

4. Inmates who may be released prior to resolution of their health care issue(s) shall be appropriately instructed by the contract medical provider for follow-up treatment as needed.

B. **Refusal of Treatment.** A mentally competent adult has the constitutional right to refuse medical treatment, including the direction that life-saving or other extraordinary measures be withdrawn in terminal cases.

1. If there is concern about the inmate's decision-making capacity, an evaluation shall be done by mental health services.

2. Inmates may refuse any medical, dental and/or mental health care. Refusal may include both diagnostic and therapeutic interventions.

i. An inmate does not waive his or her right to subsequent health care by refusing treatment at a particular time.

3. Mentally competent inmates shall be permitted to execute advanced directives, living wills, health care proxies and/or DNR's (Do Not Resuscitate) orders when provided with sufficient and appropriate information to make voluntary and informed decisions.

4. **Advanced Directives.** Advanced directives are permitted as allowed by law under W.S. §35-22-403 (Advanced Health Care Directives). Advanced Directives may be created at any time during incarceration. These documents will be made available through the law library and shall be initiated by the individual inmate. The inmate's case worker may provide assistance as necessary in completing the forms, but will not provide guidance as to the advanced directive scope. These documents do not require medical provider consultation or participation.

a. Any advanced directive must be signed in front of a notary who shall mark the document with the appropriate seal.

b. The contracted medical provider shall not provide or sign Advanced Directive forms.

c. Copies of these documents will be provided to the Warden and chaplain and be maintained in the medical and base file.

5. **Do Not Resuscitate (DNR) Order.** For purposes of this policy only, DNR is the specific order written by the licensed contracted medical provider related to a specific medical condition(s) or episode of care which may end in death. The order is written when the inmate patient desires no Cardio Pulmonary Resuscitation (CPR) should breathing and heart beat cease.

a. This voluntary declaration and medical order is made jointly between the inmate patient and the treating physician.

b. Copies of the specific medical order shall be provided to the facility Warden and chaplain and be maintained in the medical and base file.

6. Identifying Wrist Bands for Inmates with Advanced Directive/DNR.

a. Inmates who have completed the DNR process, and inmates who through the Advanced Directives process have provided direction through a Patient-Initiated DNR that life-saving or other extraordinary measures be withdrawn in terminal cases and/or that no Cardio Pulmonary Resuscitation (CPR) be initiated should breathing and heart beat ceases, shall receive a wrist band that clearly identifies the inmate and cannot be removed without damaging the wrist band. When resources permit, identifying wristbands may be replaced with other technology, such as a coded identification card or wrist band.

i. This band should be made from material that is reflective, colored, or is otherwise readily identifiable by staff.

ii. The band must be approved by the Deputy Administrator of Support Service who shall ensure all facilities are consistent.

iii. The band material should not allow removal without a specialized tool without damaging the band.

iv. In the event the inmate tries to remove the band without the special tool, it should be rendered unusable.

v. It shall be the inmate's responsibility to maintain the wrist band in usable condition.

vi. Inmates who wish to rescind their DNR must do so with the knowledge of the licensed medical care provider and prior to removal of the wrist band.

7. Hospice/End of Life Instructions For purposes of this policy only, this document contains specific instructions and desires related to end of life care and hospice programming for terminally ill inmates. The document is developed jointly between the inmate and the medical provider. Choices

for desired care as well as any treatments or life prolonging measures to be withheld will be clearly identified.

a. Copies of this document shall be provided to the facility Warden, and chaplain and be maintained in the medical and base file.

8. Any health evaluation or treatment refusal shall be documented and shall include the following:

i. description of the nature of the service being refused;

ii. evidence that the inmate has been made aware of any consequences to his or her health that may occur as a result of refusal;

iii. the signature of the inmate; and

iv. the signature and printed name (or stamp) of a health services staff witness with the date and time noted.

9. If the inmate does not sign the refusal form, a notation of the refusal to sign shall be documented.

i. Two (2) witnesses must sign, date and time the inmate's form. The witness shall include at least one (1) member of the health care services staff, and either a correctional officer or another health care services member.

10. In cases where a refusal of care may result in potentially serious consequences, the inmate shall be evaluated on an ongoing basis as clinically indicated by the physician.

i. The purpose of the ongoing evaluation shall be to educate and reinforce:

a. the benefits of care;

b. the risk of refusing care; and

c. to keep the patient apprised of his/her health status and the likely consequences of change or deterioration.

ii. Documentation of the evaluations shall be placed in the inmate's medical record.

iii. A mental health evaluation by a psychologist or psychiatrist shall be completed.

11. In cases where a refusal for treatment may pose a threat to the inmate or others, health care staff shall coordinate with correctional staff to facilitate a move to appropriate housing for observation and/or isolation.

12. In cases where refusal for care is likely to result in imminent danger of loss of life or limb:

i. The responsible health authority, the Prison Division Administrator, and the Attorney General's Office shall be notified;

ii. Health care services shall work in concert with WDOC administration and the Attorney General's Office if it is determined that a court order is indicated to intervene on behalf of the inmate.

iii. An external competency exam shall be conducted if recommended by the psychiatrist or the court.

13. When health care is rendered against the inmate's will, it shall be in accordance with state and federal laws, regulations or court order.

i. Any involuntary administration of psychotropic medication(s) shall be done in accordance with WDOC Policy and Procedure #4.315, *Administration of Psychotropic Medication*.

C. Tuberculosis Risk Management. Tuberculosis (TB) risk management for inmates shall be conducted in accordance with WDOC Policy and Procedure #4.304, *Tuberculosis Risk Management: Inmates*. The management of TB in a correctional facility is a public health concern and inmates do not have the right to refuse testing or treatment. Refusal by an inmate to cooperate with the testing, treatment, and/or prevention of TB may result in disciplinary action by WDOC and may constitute a misdemeanor in accordance with W.S. § 35-1-105.

1. The name(s) and associated information of any inmate refusing any TB testing or treatment shall be forwarded to the Prison Division Administrator in WDOC Central Office.

2. Refusal to submit to required TB testing or treatment by an inmate shall be considered a violation of the Code of Inmate Discipline for refusal of a direct order as well as for a violation of state law and may result in the involuntary administration of TB testing or treatment.

i. An inmate must first be found guilty of a conduct violation for refusing TB testing or treatment before the involuntary administration of testing or treatment may be authorized.

3. The inmate will be given three (3) chances to submit to voluntary testing or treatment before the Warden may consider involuntary administration of testing or treatment.

i. Any and all attempts to gain compliance from the inmate shall be thoroughly documented prior to the involuntary administering TB testing or treatment. Documentation may include conduct violations, written warnings about failure to comply, or videotaped refusal.

ii. The Warden shall personally meet with the inmate at least three (3) calendar days before the involuntarily administration of TB testing or treatment is to occur.

iii. The Warden shall review all documentation following his/her meeting with the inmate and determine if in his/her opinion ample fair notice has been given the inmate.

iv. If the inmate still will not comply, the involuntarily administration of TB testing or treatment may occur through the Warden's order.

a. Involuntary TB testing or treatment shall be considered a planned use of force and shall be exercised in accordance with WDOC Policy and Procedure #3.015, *Use of Force and Related Security Equipment*.

b. WDOC staff shall coordinate the administration of involuntary TB testing or treatment with the contract medical services provider. Only trained medical staff may perform the administration of TB testing or treatment.

c. The minimal amount of force necessary to administer the TB test or treatment will be used.

d. Medical staff shall examine the inmate following an involuntary administration of TB testing or treatment.

e. Involuntary administration of TB testing or treatment shall be videotaped and permanently preserved as evidence.

v. The WDOC attorney may petition the district court for an order requiring the inmate to comply with TB testing or treatment. The matter may also be referred to the local prosecuting attorney for additional proceedings, including the possibility of criminal charges.

V. TRAINING POINTS

A. When is informed consent necessary?

B. TRUE OR FALSE: An inmate waives his or her right to subsequent health care once he or she refuses treatment.

C. Name at least three (3) components of the documentation process when an inmate refuses treatment.

D. What steps are taken when an inmate's refusal of treatment poses a risk to other inmates?

E. What steps are taken when an inmate's refusal of treatment results in imminent danger of loss of life or limb?

F. TRUE OR FALSE: An inmate may provide direction that life-saving or other extraordinary measures be withdrawn in terminal cases and/or that no Cardio Pulmonary Resuscitation (CPR) be initiated should breathing and heart beat cease, as part of an Advanced Directives. However, such documents shall not be honored by the Department or the contracted medical provider in the event of suicide attempts, assaults or suspected assaults.