I. PURPOSE:

To establish written instructions to identify inmates who do not wish to be resuscitated in the event of respiratory or cardiac arrest.

These standards and responsibilities apply equally to both Department staff and Comprehensive Health Care Contractor (CHCC) staff.

II. DEFINITIONS:

A. **Advance directive**, refers to a witnessed written document or oral statement in which instructions are given by an inmate or in which the inmate's desires are expressed concerning any aspect of the inmate's medical care if the inmate is subsequently unable to make medical decisions, and/or it can express an inmate's wish to make an anatomical donation after death.

B. **Do not resuscitate order (DNRO)** is an order signed by the physician and inmate, health care surrogate or health care proxy to refuse cardiopulmonary resuscitation in the event of respiratory or cardiac arrest.

C. **End-stage condition** is an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

D. **Health care surrogate** is any competent adult expressly designated by an inmate to make health care decisions on behalf of the inmate upon a determination of the inmate's incapacity.

E. **Health Care Proxy** is a competent adult who has not been expressly designated by an inmate as his or her health care surrogate, but who, nevertheless, is authorized pursuant to section 765.401 of the Florida Statutes to make health care decisions for an incapacitated inmate.

F. **Incapacitated** means the inmate is physically or mentally unable to communicate a willful and knowing health care decision.

G. **Living Will** is:
   1. a witnessed document in writing, voluntarily executed by the inmate in accordance with Chapter 765, F.S.; or
   2. a witnessed oral statement made by the inmate expressing the inmate's instructions concerning medical care (including life-prolonging procedures) to be provided in the event that he or she becomes unable to make medical decisions.

H. **Persistent Vegetative State** is characterized by a permanent and irreversible condition of unconsciousness in which there is:

1. The absence of voluntary action or cognitive behavior of any kind; and
2. An inability to communicate or interact purposefully with the environment.

I. **Primary physician** is the physician (departmental or private) who has responsibility for the treatment and care of the inmate.

J. **Resuscitation** is the attempt to make the heart beat and lungs breathe again after they have stopped. This is done with Cardiopulmonary Resuscitation (CPR) electric shock to the chest, repeated chest compressions, mouth to mouth breathing or placement of a breathing tube down the throat and into the lungs and use of a ventilator.

K. **Terminal condition or illness** is a condition caused by injury, disease, or illness from which there is no reasonable probability of recovery and which, without treatment, can be expected to cause death.

III. SPECIAL INSTRUCTIONS REGARDING DO NOT RESUSCITATE ORDERS:

A. Resuscitation may be withheld or withdrawn from an inmate by a treating physician if evidence of an order not to resuscitate by the inmate's physician is presented to the treating physician. An order not to resuscitate, to be valid, must be on the form set forth in section 401.45, F.S. (Form DH 1896). The form must be signed by the inmate's physician and by the inmate. Verbal consent to a DNRO is not specifically authorized by section 401.45, F.S., or by rule 64J-2.018, Fla. Admin. Code. A competent inmate is allowed to make the decision and may voluntarily request and/or agree that a DNRO (DH 1896) be placed in their medical record.

B. If the inmate is incapacitated, the form must be signed by one of the following:

1. The inmate's health care surrogate or proxy as provided in chapter 765, F.S.;
2. A court-appointed guardian as provided in chapter 744, F.S.;
3. An attorney-in-fact under a durable power of attorney as provided in chapter 709, F.S. Court appointed guardians or attorneys-in-fact must have been delegated authority to make health care decisions on behalf of the inmate. See section IV below for information regarding determinations of incapacity.

C. The attending physician and one other credentialed physician MAY NOT enter a DNR order for an incapacitated inmate with no advance directive and no surrogate or proxy.

D. A DNRO functions solely for the purpose of withholding or withdrawing resuscitation and should not be confused with other advance directives such as living wills or designation of health care surrogate forms. For example, an inmate's living will may reflect an inmate's wish not to be resuscitated, but the inmate (1) must be in a permanent vegetative state or in a terminal condition or in an end-stage condition and (2) have no reasonable probability of recovering capacity before a living will's directive to withhold or withdraw of life-prolonging procedures may be given effect. A DNR order is a physician's order and means (only) "do not employ any resuscitative efforts in the event of the inmate's cardiac or

respiratory arrest." DNR does not mean "do not treat." All other prescribed treatments such as pain meds, fluids, and antibiotics should continue as ordered.

E. The inmate's primary physician may rely on a previously written health care directive such as a living will or the designation of a health care surrogate when determining whether a DNRO is appropriate. These directives must be substantially consistent with Chapter 765, F.S., Health Care Advance Directives, as discussed in HSB 15.02.15, Health Care Advance Directives.

F. DNRO forms are generally used by someone who is suffering from a terminal condition, end-stage condition or is in a persistent vegetative state.

G. The DNRO will be consistent with sound medical practice and will not in any way be associated with assisting suicide, voluntary euthanasia, or expediting the death of an inmate.

The inmate's physician/clinical associate should fully discuss the medical condition with the affected inmate.

H. If a DNRO is deemed appropriate, the physician is responsible for promptly documenting on the medical record the following information:

1. The disease and prognosis: The inmate's primary physician has determined that the inmate is suffering from a terminal illness or injury from which (to a reasonable degree of medical certainty) there can be no recovery and which makes death imminent.
2. The fact that CPR would serve only to artificially prolong the process of dying.
3. That the DNRO has or has not been agreed upon by the inmate.
4. That a “Do Not Resuscitate Order (DNRO),” DH 1896 has been completed on canary or yellow colored paper.

IV. DETERMINATIONS OF INCAPACITY

A. An inmate is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. “Incapacity” or “incompetent” means the inmate is physically or mentally unable to communicate a willful and knowing health care decision. Incapacity may not be inferred from the person’s voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

B. In light of section 765.204, F.S., capacity determinations for the purpose of obtaining consent for a DNRO from a health care surrogate, proxy, etc., may only take place at a hospital or other licensed facility identified in section 765.101, F.S. (hospitals, nursing homes, hospices, home health agencies, or health maintenance organizations licensed in this state, or any facility subject to part I of chapter 394.)

C. If an inmate’s capacity to make health care decisions for herself or himself or provide informed consent is in question, the attending physician shall evaluate the inmate’s capacity and, if the physician concludes that the inmate lacks capacity, enter that evaluation in the inmate’s medical record. If the attending physician has a question as to whether the

principal lacks capacity, another physician shall also evaluate the inmate's capacity, and if the second physician agrees that the inmate lacks the capacity to make health care decisions or provide informed consent, the hospital shall enter both physicians' evaluations in the inmate's medical record.

D. If the inmate has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the hospital shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced.

E. A health care surrogate's authority shall commence upon a determination that the inmate lacks capacity, and such authority shall remain in effect until a determination that the inmate has regained such capacity. Upon commencement of the surrogate's authority, a surrogate who is not the inmate's spouse shall notify the inmate's spouse or adult children of the inmate's designation of the surrogate. In the event the attending physician determines that the inmate has regained capacity, the authority of the surrogate shall cease, but shall recommence if the inmate subsequently loses capacity as described above.

F. In the event the surrogate is required to consent to withholding or withdrawing life-prolonging procedures in the absence of a living will, the decision to withhold or withdraw life-prolonging procedures from an inmate may be made by a health care surrogate designated by the inmate unless the designation limits the surrogate's authority to consent to the withholding or withdrawal of life-prolonging procedures.

G. If an incapacitated or developmentally disabled inmate has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the inmate by a health care proxy. See Section V. below for instructions regarding the appointment of a proxy.

H. Before exercising an incompetent inmate's right to forego treatment, a surrogate or proxy must be satisfied that:

1. The inmate does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the inmate.
2. The inmate has an end-stage condition, the inmate is in a persistent vegetative state, or the inmate's physical condition is terminal.

I. In determining whether the inmate has a terminal condition, has an end-stage condition, or is in a persistent vegetative state or may recover capacity, or whether a medical condition or limitation referred to in an advance directive exists, the inmate's attending or treating physician and at least one other consulting physician must separately examine the inmate. The findings of each such examination must be documented in the inmate's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

V. THE APPOINTMENT OF A HEALTH CARE PROXY IN ABSENCE OF ADVANCE DIRECTIVES OR A HEALTH CARE SURROGATE

A. If an incapacitated or developmentally disabled inmate has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions (including the execution of a DNRO form) may be made for the inmate by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

1. The judicially appointed guardian of the inmate or the guardian advocate of the person having a developmental disability as defined in section 393.063, Florida Statutes, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;
2. The inmate's spouse;
3. An adult child of the inmate, or if the inmate has more than one adult child, a majority of the adult children who are reasonably available for consultation;
4. A parent of the inmate;
5. The adult sibling of the inmate or, if the inmate has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;
6. An adult relative of the inmate who has exhibited special care and concern for the inmate and who has maintained regular contact with the inmate and who is familiar with the inmate's activities, health, and religious or moral beliefs; or
7. A close friend of the inmate.
8. A clinical social worker licensed pursuant to Chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the inmate's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the medical record.

B. Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the inmate would have made under the circumstances. If there is no indication of what the inmate would have chosen, the proxy may consider the inmate's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

C. Before exercising the incapacitated inmate's rights to select or decline health care, the proxy must comply with the provisions of sections 765.205[1] and 765.305[2], F.S., except that a proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the inmate would have chosen had the inmate been competent or, if there is no indication of what the inmate would have chosen, that the decision is in the inmate's best interest.

VI. PERSISTENT VEGETATIVE STATE:

A. For persons in a persistent vegetative state, as determined by the attending physician in accordance with currently accepted medical standards, who have no advance directive and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures may be withheld or withdrawn by a hospital under the following conditions:

1. The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

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[1] 765.205 Responsibility of the surrogate.—
(1) The surrogate, in accordance with the principal's instructions, unless such authority has been expressly limited by the principal, shall:
(a) Have authority to act for the principal and to make all health care decisions for the principal during the principal's incapacity.
(b) Consult expeditiously with appropriate health care providers to provide informed consent, and make only health care decisions for the principal which he or she believes the principal would have made under the circumstances if the principal were capable of making such decisions. If there is no indication of what the principal would have chosen, the surrogate may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.
(c) Provide written consent using an appropriate form whenever consent is required, including a physician's order not to resuscitate.
(d) Be provided access to the appropriate medical records of the principal.
(e) Apply for public benefits, such as Medicare and Medicaid, for the principal and have access to information regarding the principal's income and assets and banking and financial records to the extent required to make application. A health care provider or facility may not, however, make such application a condition of continued care if the principal, if capable, would have refused to apply.
(2) The surrogate may authorize the release of information and medical records to appropriate persons to ensure the continuity of the principal's health care and may authorize the admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400 or chapter 429.
(3) If, after the appointment of a surrogate, a court appoints a guardian, the surrogate shall continue to make health care decisions for the principal, unless the court has modified or revoked the authority of the surrogate pursuant to s. 744.3115. The surrogate may be directed by the court to report the principal's health care status to the guardian.

[2] 765.305 Procedure in absence of a living will.—
(1) In the absence of a living will, the decision to withhold or withdraw life-prolonging procedures from a patient may be made by a health care surrogate designated by the patient pursuant to part II unless the designation limits the surrogate's authority to consent to the withholding or withdrawal of life-prolonging procedures.
(2) Before exercising the incompetent patient's right to forego treatment, the surrogate must be satisfied that:
(a) The patient does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the patient.
(b) The patient has an end-stage condition, the patient is in a persistent vegetative state, or the patient's physical condition is terminal.

2. The guardian and the person's attending physician, in consultation with the medical ethics committee of the hospital where the inmate is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the inmate. If there is no medical ethics committee at the hospital, the hospital must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The ethics committee shall review the case with the guardian, in consultation with the person's attending physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery.

VII. PREGNANCY:

A. Pursuant to section 765.113(2), F.S., unless the inmate expressly delegates such authority to a surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a DNRO signed by a proxy or surrogate of an inmate diagnosed by the attending physician as pregnant shall have no effect prior to viability as defined in section 390.0111(4), F.S.

VIII. RELATED MEDICAL CARE:

A. An inmate with a DNRO is entitled to receive appropriate therapeutic efforts short of resuscitation, including such medication and/or procedures necessary to provide comfort and alleviate pain. The DNRO will not be justification for withholding procedures providing for the inmate's welfare or comfort.

IX. NOTIFICATION:

A. The primary physician is to ensure that the required documentation is completed and is placed in the health care record. The attending physician is also responsible to inform the following individuals in writing that an inmate has been placed on DNR status or when that status is revoked:

1. Chief Health Officer/ Institutional Medical Director;
2. Institutional Health Services Administrator;
3. Warden;
4. Chaplain;
5. Regional Medical Director;
6. Office of Health Services Chief Clinical Advisor; and
7. Direct Health Care Providers including the Director of Nursing.

B. Provision should be made to stamp DNR (in one-inch letters) which are clearly and plainly identifiable in the upper right-hand corner of the problem list.

C. An entry must be made on the GHO8 screen to note the medical encounter.

1. On the 2nd page of the GHO8 screen at the bottom of the page type "A" for add, then "DNR" or "DNRX" (Rescinded DNR Request), then the staff code of the provider, and beginning/ending dates of the pass (generally no longer than one year).

D. All questions concerning this issue shall be directed to the Chief Clinical Advisor or Chief of Health Services Administration for resolution. Should it be necessary, contact shall be made after hours to the Regional Medical Director or Department of Corrections Duty Officer.

X. REVOCATION OF DO NOT RESUSCITATE ORDER:

A. The form can be revoked at any time either orally or in writing by an inmate, or by the oral expression of a contrary intent by the inmate.

B. If a health care surrogate or health care proxy signed the DNRO they can revoke the form in writing, or by orally expressing a contrary intent.

XI. DEATH OF AN INMATE WITH A DO NOT RESUSCITATE ORDER:

A. Physician present at time of death will pronounce inmate's death.

B. If a physician is not present, the Nursing staff will notify the on-call physician of inmate's death by phone.

C. Nursing staff to notify Officer in Charge who in turn will notify the local County Sheriff's Department and Medical Examiner's Office (406.11, F.S., or Rule 11G-2, F.A.C.). Refer also to rule 33-602.112, Inmate Death Notification Process.

XII. RELEVANT FORMS AND DOCUMENTS:

A. DH 1896, DNRO (Official DOH form)
B. DC4-665, Living Will
C. DC4-666, Designation of Health Care Surrogate
D. HSB 15.02.15, Health Care Advance Directives
E. Florida Administrative Code rule 33-602.112
F. Florida Administrative Code rule 64B8-9.016
G. Florida Administrative Code rule 64J-2.018
H. Section 401.45, Florida Statutes, Denial of Emergency Treatment; Civil Liability.
I. Chapter 765, Florida Statutes, Health Care Advance Directives.
J. Chapter 744, Florida Statutes, Guardianship.
K. Chapter 709, Florida Statutes, Powers of Attorney and Similar Instruments.

Health Services Director Date

This Health Services Bulletin Supersedes:

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