



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

References

Performance-Based Standards and Expected Practices for Adult Correctional Institutions, 5th Edition 5-ACI-6C-02, 5-ACI-6C-03, 5-ACI-6C-04 (M); North Carolina General Statutes 32A, 90-21.17, 90-321; North Carolina Department of Health and Human Services MOST Orders for Scope of Treatment (MOST)

North Carolina General Statute

[90-21.17\(c\)](#)

I. PURPOSE

(a) To establish an optional and nonexclusive procedure by which an individual having understanding and capacity to make and communicate, who is 18 years of age or older can control decisions regarding their medical care or may choose to have this right be exercised on behalf of the individual by an agent chosen by the individual. These rights include:

- (1) right to a natural death;
- (2) right to decide which end-of-life healthcare treatment can be given, withheld or withdrawn; and
- (3) right to authorize a legally competent representative as one’s healthcare agent, and to revoke such authority at any time.

II. GENERAL

(a) The North Carolina Department of Public Safety, Division of Prisons (NCDPS/DOP) recognizes that an individual’s rights include the right to a peaceful and natural death and that an offender or the offender’s representative has the fundamental right to control the decisions relating to the rendering of the offender’s own medical care, including the decision to have life-prolonging measures withheld or withdrawn in instances of a terminal condition.



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (b) At any time during an offender’s incarceration, they may ask for and be given information regarding how to exercise their right to self-determination relative to healthcare decision-making, by way of Medical Orders for Scope of Treatment (MOST), a Health Care Power of Attorney (HCPOA), and/or a Declaration of Desire for a Natural Death.
- (c) The MOST, Health Care Power of Attorney, and Declaration of Desire for a Natural Death may be revoked at any time by the offender, in any manner by which they are able to communicate their intent to revoke, so long as they are capable of making and communicating healthcare decisions.
- (d) MOST may suspend any conflicting directions in an offender’s previously executed HCPOA, living will, or other advance directive. Although there is no requirement that an offender have a MOST, if an offender comes into NCDPS/DAC with an already existing DNR or wants to initiate DNR status due to a terminal illness, they should be encouraged to initiate a MOST form. The MOST form not only provides the option of initiating DNR status, but also affords, on one form, additional end-of-life options for the offender to consider, i.e., it is a more comprehensive form.

III. DEFINITIONS

- (a) Offender: an incarcerated individual in one of the correctional institutions of the North Carolina Department of Public Safety, Division of Prisons, who is at least 18 years of age.
- (b) Cardiopulmonary Resuscitation (CPR): An intervention used to revive a person whose heart function stops (cardiac arrest), whose breathing stops (respiratory arrest), or whose heart function and breathing stop (cardiopulmonary arrest).
- (c) Declaration of Desire for a Natural Death/Advanced Directives/Living Will: A signed, witnessed, dated and proved document meeting the requirements of the North Carolina General Statutes. The document communicates the offender’s desire that their life not be prolonged by extraordinary means if their condition is determined to be terminal and incurable.



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (d) Do Not Resuscitate (DNR) order: A provider’s order written after discussion with the offender or offender’s representative regarding life-saving interventions used to revive the offender when they have no pulse and/or no breaths.
- (e) Health care: Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the offender’s physical or mental health or personal care and comfort, including life-prolonging measures.
- (f) Health Care Power of Attorney (HCPOA): A legal written instrument that is signed in the presence of two qualified witnesses and acknowledged before a notary public. This document appoints an individual to act for the offender in matters relating to health care for the offender. The HCPOA becomes active when the offender lacks sufficient understanding or capacity to make or communicate healthcare decisions.
- (g) Life-prolonging Measures: Medical procedures or interventions which, in the judgement of the attending provider, would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting vital functions. Measures include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures do not include care necessary to provide comfort or to alleviate pain.
- (h) Medical Orders for Scope of Treatment (MOST): This is a provider’s order that outlines a plan of care respecting the patient’s wishes concerning care at life’s end. Any section not completed on the MOST form indicates full treatment for that section. If the offender lacks sufficient understanding or capacity to make or communicate healthcare decisions the offender’s representative will be contacted.
- (i) Qualified witness: A witness in whose presence the offender has executed the health care power of attorney and/or the declaration of a desire for a natural death, who believes the offender to be of sound mind, and states that they
 - (1) are not related within the third degree to the offender nor to the offender’s spouse,
 - (2) are not a fellow inmate,



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (3) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the offender upon the offender’s death,
- (4) are not the attending provider or mental health treatment provider of the offender,
- (5) are not a licensed health care provider who is a paid employee of NCDPS or of a vendor contracted by NCDPS,
- (6) are not an employee or contractor of NCDPS, and
- (7) do not have a claim against any portion of the estate of the offender at the time of the offender’s execution of the HCPOA and/or Declaration of a Desire for a Natural Death document.
- (8) A qualified witness may include, but is not limited to the following categories:
 - (A) Community sponsors
 - (B) Non-employee visitors
 - (C) Attorney with Prison Legal Services
 - (D) Community college instructors
- (j) Terminal Condition/Illness: a disease or condition which cannot be cured and is likely to lead to death.

IV. PROCEDURES

(a) MEDICAL ORDERS FOR SCOPE OF TREATMENT (MOST)

- (1) A provider, MD, DO, PA, NP will discuss with the offender or offender’s representative their options, and educate them on the use and purpose of the MOST form. The basis for the order and the discussion must be documented in the offender’s health record at the time of order and discussion by the initiating



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

provider. The minimum requirements for provider documentation are defined below. The MOST form referenced in this policy is the MOST form developed by the North Carolina Department of Health and Human Services pursuant to NCGS 90-21.17 (c).

- (2) Treatment preference categories on MOST form include:
 - (A) Section A – Cardiopulmonary Resuscitation (CPR): Person has no pulse and is not breathing.
 - (B) Section B – Medical Interventions: Person has pulse and/or is breathing.
 - (i) Full Scope of Treatment: Use intubation, advanced airway interventions, mechanical ventilation, cardioversion as indicated, medical treatment, IV fluids, etc.; also provide comfort measures. Transfer to hospital if indicated.
 - (ii) Limited Additional Interventions: Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation or mechanical ventilation; also provide comfort measures. Transfer to hospital if indicated. Avoid intensive care.
 - (iii) Comfort Measures: Keep clean, warm and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Do not transfer to hospital unless comfort needs cannot be met in current location.
 - (C) Section C – Antibiotics
 - (D) Section D – Medically Administered Fluids and Nutrition
 - (E) Section E – Discussed with and agreed to by: The initiating provider will check the appropriate box indicating the person with whom the provider discussed the MOST form and who agreed with the order.



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (i) The provider must PRINT, Sign (Required) and document phone number.
- (ii) The offender or offender’s representative must Print, Sign and document their relationship to the offender; write “self” if offender signs.
- (iii) Signature of the offender’s representative is required and must either be on this form or on file.
- (iv) The offender’s representative’s contact information must be completed on the back of the MOST form.
- (v) The entire process must be documented in the electronic health record.

(b) Completing MOST:

- (1) MOST must be reviewed and prepared by a health care professional in consultation with the offender or offender’s representative.
- (2) MOST is a medical order and must be reviewed and signed by a licensed provider, MD, DO, PA, or NP to be valid.
- (3) Be sure to document the basis for the order in the patient’s health record.
Documentation must include:
 - (A) Provider discussed with patient (or patient representative) patient’s diagnosis, prognosis, wishes and goals for care, treatment preferences
 - (B) Patient appears to be of sound mind
 - (C) Patient has capacity to make medical decisions and communicate those decisions



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (D) Patient’s awareness and understanding, i.e., patient verbalizes they understand the MOST form and decisions indicated on the form
 - (E) Patient understands/is aware that MOST can be revoked at any time and how to revoke it.
 - (F) Patient (or patient’s representative) has given informed consent
- (4) The signature of the offender or the offender’s representative is required; however, if the offender’s representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the offender’s representative must be placed in the offender’s health record and “on file” must be written in the appropriate signature field on the front of the form or in the review section.

For example, if the offender is no longer able to make and communicate decisions, and the offender’s representative is not physically available at the location where the offender is, then the health care professional may prepare the form in consultation with the offender’s representative by telephone, electronic, or other means. A copy of the prepared form may then be sent via fax or other electronic means to the offender’s representative, who may then sign the form and send it back to the health care professional. The health care professional must then put the signed copy of the form in the medical record and write the words “on file” in the patient or patient representative signature block on the original MOST form. While not necessary, a copy of the signed MOST also may be attached to the original MOST.

- (5) Use of the original MOST form is required. The original form must be sent with the offender to medical appointments and brought back with the offender.
- (6) MOST is part of advance care planning, which also may include a living will and health care power of attorney (HCPOA). If there is a HCPOA, living will, or other advance directive, a copy should be attached, if available. MOST may suspend any conflicting directions in an offender’s previously executed HCPOA, living will, or other advance directive. It is a more comprehensive form, in that it provides various end-of-life options for the offender to consider.
- (7) MOST is a portable medical order that must be scanned into the offender’s health



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

record.

- (8) MOST cannot be copied.
- (9) Use of the MOST form must be documented in the Alert section of the electronic health record.
- (10) Note that having the MOST form does not mean patient has opted for a DNR. There are additional options included on the MOST form.
- (11) The original pink MOST form must be kept at the facility at which the offender is housed and sent with the offender when:
 - (A) Transferred
 - (B) Going to appointments
 - (C) Going to the local emergency room and/or Central Prison Urgent Care
 - (D) Going to the Triage Nurse facility
 - (E) Going to court
 - (G) The offender is leaving the facility at which he/she is designated
 - (H) Discharged/Released
 - (I) The Facility Nurse Manager, or designee, is responsible for notifying facility healthcare staff and correctional staff of the offender’s MOST order and the location of the original form.
- (c) **Reviewing MOST:**
 - (1) The MOST must be reviewed at least annually, or earlier if:
 - (A) The offender is admitted to or discharged from a health care facility;
 - (B) There is substantial change in the offender’s health status; or



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

(C) The offender’s treatment preferences change.

(2) The provider reviewing the MOST must complete all sections in the “Review of MOST” on the back of the form and discussion with the offender/offender’s representative must be documented in the electronic health record.

(3) **If MOST is revised or becomes invalid, draw a line through Sections A – E and write “VOID” in large letters.**

(d) **Revoking MOST:**

(1) The MOST may be revoked by the offender or the offender’s representative (if the offender lacks capacity) at any time.

(e) **HEALTH CARE POWER OF ATTORNEY**

(1) The offender may execute a “Health Care Power of Attorney” (HCPOA) to designate his/her health care agent. In the event the offender becomes unable to make healthcare decisions for themselves, the health care agent identified in the HCPOA is authorized to do so on his/her behalf. This HCPOA must be signed in the presence of two qualified witnesses and acknowledged before a notary public.

(f) **DECLARATION OF DESIRE FOR A NATURAL DEATH**

(1) An offender may communicate, through a “Declaration of Desire for a Natural Death,” their desire that their life not be prolonged by extraordinary means if their condition is determined to be terminal and incurable. This document must be signed in the presence of two qualified witnesses and acknowledged before a notary public.

(2) The role of the nurse/medical provider is to counsel the offender about the availability of and to provide medical information relating to the “Declaration of Desire for a Natural Death.”

(g) **PROCEDURE FOR THE HCPOA AND DECLARATION OF DESIRE FOR A NATURAL DEATH**



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (1) A notarized original and a notarized copy will be executed. The original document will be given to the offender and the notarized copy will be maintained in the health record.
- (2) At the offender’s request, the nurse/medical provider initiates a referral to the institution/unit designee responsible for implementing the Health Care Power of Attorney and/or the Declaration of Desire for a Natural Death (social worker, chaplain, and psychologist).

(h) REVOCATION

The offender may revoke their Health Care Power of Attorney at any time, in any manner in which they are able to communicate an intent to revoke, so long as they are capable of making and communicating health care decisions. The revocation of their Health Care Power of Attorney shall become effective only upon the offender’s communication to the attending qualified healthcare professional (MD, DO, NP, PA) and to his/her healthcare agent.

The offender may revoke their Declaration of Desire for a Natural Death in any manner by which the offender is able to communicate their intent to revoke in a clear and consistent manner, without regard to the offender's mental or physical condition.

(i) RECOGNITION OF DNR STATUS

- (1) A medical provider’s “No Code” or “Do Not Resuscitate (DNR)” order implements an offender’s desire to refuse cardiopulmonary resuscitation (CPR), *in the absence of MOST*. Only an attending qualified healthcare professional (MD, DO, NP, PA) shall issue No Code and DNR orders. All DNR orders must be written on the yellow DO NOT RESUSCITATE order sheet created by the North Carolina Department of Health and Human Services (NCDHHS), until such time when the transition from the yellow DNR form to the MOST form is implemented for the patient. DNR orders activated on the yellow form must be honored until the patient either revokes the DNR or makes the transition from the yellow DNR form to the MOST form. In the event of a Code, the nurse or responsible qualified healthcare professional must confirm the offender’s Do Not Resuscitate status or have confirmed the same within the previous 24 hours. That confirmation should include a determination that the order remains in effect as provided hereafter:



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (2) For a non-acutely ill legally competent offender, the DNR form may be provided to ensure their wishes are documented.
- (3) For an acutely-ill legally competent offender, informed consent must be given by the offender to any DNR or No Code order. Informed consent must be documented in the progress notes by the ordering qualified healthcare professional. Informed consent is achieved by discussion with the offender, healthcare agent, or authorized family member concerning the physician’s best medical judgment as to the likelihood the offender will survive after CPR, for how long, and with what quality of life, e.g., autonomy, ability to perform activities of daily living.
- (4) A legally incompetent offender may not give consent to a No Code or DNR order unless through their duly authorized agent or a court-appointed guardian who can do so on his/her behalf.
- (5) A Do Not Resuscitate Order must be reviewed periodically according to the offender’s clinical status. This review must be completed and documented by the qualified healthcare professional at least annually and documented in the offender’s health chart. Failure to review the DNR Order on an annual basis does not automatically revoke an existing DNR Order. The yellow DNR order sheet must accompany the offender whenever they are transferred within or outside of the facility.
- (6) When a Do Not Resuscitate (DNR) or “No Code” status exists for an offender (*either by way of a MOST form, or a Do Not Resuscitate (DNR) form*, Nursing Staff will:
 - (A) Verify DNR status is documented in a written order by the attending provider.
 - (B) Verify Do Not Resuscitate Order form or MOST form is scanned into the Electronic Health Record. Request DNR forms (MOST forms will be provided for this purpose) from the Health and Wellness Risk Manager.
 - (C) Email a request for a purple wristband from the Health and Wellness Risk Manager (DPS_AC_Admin_HealthSvcs_RiskMgmt@ncdps.gov) for the patient with a DNR or No Code order. Include offender’s name, OPUS



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

number, facility name, medical diagnosis. Note that, though purple bands will continue to be issued in all prison settings, there is an expectation in the outpatient setting that CPR will be initiated for any offender who becomes unresponsive and will be continued for the offender until their DNR status is verified via healthcare staff.

- (D) Verify offender’s identification using two offender identifiers.
- (E) Place wristband on offender’s left wrist, except in circumstances involving a restricted extremity.
- (F) Write name and OPUS number on the purple wristband.
- (G) Educate the offender regarding the purpose of the purple wristband; for an offender housed in an outpatient setting, inform them that CPR will be initiated if they become unresponsive until their DNR status is verified.
- (H) Instruct the offender not to remove the wristband and to wear it at all times.
- (I) Instruct the offender that if the wristband falls off or is removed, nursing staff must be notified ASAP.
- (J) Document on an Educational Clinical Encounter in the Electronic Health Record and note the application of the purple wristband and the education of the offender.
- (K) Add a “DNR” Alert in the Electronic Health Record.
- (L) Review the DNR status at least annually, or more frequently if:
 - (i) The offender is admitted or discharged from an inpatient healthcare facility.
 - (ii) The offender is scheduled for any invasive procedure.
 - (iii) The offender transfers to another facility; the receiving facility is responsible for reassessing and confirming purple wristband status.



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

(iv) There is a substantial change in the offender’s health status.

(v) The offender’s treatment preferences change.

(M) Note the offender’s refusal to wear a purple wristband on a Medical Treatment Refusal form and Clinical Encounter in the Electronic Health Record.

(j) REVOCATION OF DNR STATUS

(1) The revocation of Do Not Resuscitate (DNR) status occurs:

- (A) Whenever an offender or their duly authorized representative requests cancellation of the DNR order by notifying the attending medical provider or requesting nursing staff to notify the attending provider of such desire, or
- (B) Whenever an offender’s condition changes per the attending medical provider’s assessment to indicate CPR is more appropriate.

(2) The attending provider will:

- (A) Document reason for revocation of DNR status in the progress notes,
- (B) Write order in the electronic health record to “Discontinue Do Not Resuscitate Status,” and Nursing staff will process the order.

(3) The responsible nurse will, after receiving written provider’s order:

- (A) Notify *healthcare* staff on duty of change of offender’s DNR status and document on written shift report.
- (B) Obtain yellow DNR or pink MOST order sheet.
- (C) Mark the yellow DNR or pink MOST order sheet with a **bold black “X”** across entire page.



PRISONS
Health and Wellness Services
Policies and Procedures

Title	Offender Rights in Healthcare Decision-Making			
Section	AD V-8	Issue Date December 1, 2021	Supersedes Date New	

- (D) Record statement of order on yellow DNR or pink MOST order sheet along with date, time and nurse’s complete, legible signature.
- (4) Original copy of *marked* yellow DNR or pink MOST order sheet is to be scanned into HERO under Document Manager after completion of above.
- (5) Destroy original by shredding.
- (6) Document above actions in the electronic health record and remove the “DNR” alert.

 Todd E. Ishee
 Commissioner of Prisons

December 1, 2021

 Date