



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
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CD-176100 Patient Rights and Responsibilities	Issued: 1/1/89 Effective: 1/1/89	Reviewed: 3/31/20 Revised: 2/16/15
Alisha Tafoya Lucero, Cabinet Secretary		

## AUTHORITY:

2009 NMSA 1978, Section 33-1-6, as amended.

## REFERENCES:

- A. National Commission of Correctional Health Care, *Standards and Guidelines for Delivering Services*, 2008.
- B. Joint Commission on Accreditation of Health Care Organizations, *Comprehensive Accreditation Manual for Ambulatory Care (CAMAC) Rights and Responsibilities of the Individual (RI) 2009*
- C. Annas, George J. 2004. *The Rights of Patients*, 3d ed. New York: New York Univ. Press.
- D. Pozar, George, *Legal Aspects of Health Care Administration*, 2nd Edition, Aspen Publishers, Inc., 1983.
- E. Mental Health and Development Disabilities Code, 2009 NMSA 1978, § 43-1-1 et. seq.
- F. MRB Standard of Care 87-02-02.
- G. Code of Federal Regulations 45 CFR 46.306, Permitted research involving prisoners, (a) (2) et al.
- H. New Mexico Administrative Code 7.27.6, *Advance Directives*
- I. *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987)
- J. Public Health Emergency Response Act [12-10A-1 NMSA 1978]
- K. New Mexico Corrections Department Policies *CD-172400, CD-172500, CD-171000, CD-173100, CD-150501, CD-150200 et al.*
- L. *Principles of Medical Ethics*, Association of American Physicians and Surgeons

## PURPOSE:

To establish the rights and responsibilities of imprisoned patients regarding the Health Services Bureau and the Behavioral Health Services Bureau of the New Mexico Corrections Department (NMCD).

## APPLICABILITY:

All staff and inmates of the NMCD institutions, especially to health and behavior health services personnel, medical vendor employees, health care providers and all employees' assigned duties related to the provision of health and behavior health services.

**FORMS:**

None

**ATTACHMENTS:**

None

**DEFINITIONS:**

- A. ACA: American Correctional Association
- B. Advance Directive: A written instruction, such as a living will, durable power of attorney for health care or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated.
- C. DNR: An order issued by a physician, and signed by the person or authorized health care decision maker, on a form approved by the bureau, indicating that resuscitative measures should not be performed.
- D. Inmates Rights: The legitimate elements of reasonable healthcare to be expected by any and all incarcerated inmates, including such matters as information disclosure, choice of providers, access to emergency service, participation in treatment decisions, respect and nondiscrimination, confidentiality of health information, right to fair hearing regarding complaints and appeals, as reasonably limited by the necessities imposed by incarceration.
- E. Patients' Responsibilities: The reciprocal obligations of the incarcerated patient to participate in their care and act with dignity and respect to the caregiver team.
- F. Practitioner: Physician (MD., DO, Optometrist, Psychiatrist), or Mid-level Practitioner (Physician Assistant (PA) or Nurse Practitioner (N.P.)) who provides medical services either directly or under a contract.

**POLICY:****A. Rights:**

1. The NMCD Health Services Bureau and the Behavioral Health Services Bureau shall ensure that all inmates are treated with dignity and respect and in a manner that recognizes their basic human rights.
2. Principles of confidentiality will be followed and patients will be afforded the opportunity to approve or refuse the release of information in accordance with applicable law. Patients will be advised of any limits to confidentiality necessary in the correctional setting.

3. Patients will be provided with information concerning their health status. When this is impossible due to the concerns for the mental illness or incapacity of the patient, it will be made available to a person designated by the patient or a legally appointed guardian.
4. Patients or their legally appointed guardians will be given the opportunity to participate in decisions involving their health care. In the event of their refusal to participate in proposed care, they shall be informed of the possible consequences of that refusal.
5. Information will be made available to all inmates including, but not limited to:
  - a) Patient's Rights;
  - b) Health care services available;
  - c) The procedure for gaining access to available services including after-hours and emergency care; and,
  - d) Conduct and responsibility of patients including refusal of treatment and noncompliance. Refusal of treatment or noncompliance with medical orders does not *per se* merit disciplinary action or imply insubordination or incompetence.
6. Research and experimental forms of treatment will be conducted only in accordance with ACA standards and Office for Human Research Protections Guidance on the Involvement of Prisoners in Research. Research activities will be adhere to the guidelines in CD-043700 "*Conducting Scientific Research.*" The patient will be informed of their right to refuse to participate and all relevant Department of Health and Human Services (HHS) regulations and other protections.
7. Inmates shall have the right to refuse periodic health examinations, diagnostic tests, and procedures, excepting those compelled by virtue of public health need and which affect the health of other inmates and staff. Exceptions include tuberculosis (TB) testing, such as by periodic purified protein derivative test (PPD), chest x-ray, and sputum examination for TB when indicated; these diagnostic tests may not be refused. Inmates shall not be exempted from the provisions of the Public Health Emergency Response Act [12-10A-1 NMSA 1978] or other public health provisions by virtue of their incarcerated status. CD-176000 HIV antibody screening of inmates will be done on an opt-out basis. HIV testing shall be performed on all inmates upon intake into the system and at any time when medically indicated or requested by the inmate.
8. Inmates shall not have the right to refuse movement within or transfer to another Corrections Department housing unit or infirmary where such transfer is judged by a Department physician to be in the best interest of the health and safety of the patient or others.
9. Consent to lifesaving treatment is implied and presumed on behalf of all incarcerated persons, unless they have prepared and executed advance directives, which are immediately available for the review of emergency responders and that person so completing the instructions was competent to do so at the time.

10. Emergency Medical Services (EMS) is charged with verification of DNR orders under New Mexico Administrative Code 7.27.6.9 upon arrival upon medical emergency scene. Delivery of, continuation or discontinuation of resuscitative efforts come under the control of Emergency Medical Services from their appearance at a medical emergency to emergency room or other destination.
11. In the case where an inmate is transferred to an emergency room and has come under the care of a physician, a mentally competent inmate may refuse treatment even when such treatment is judged to be essential to the inmate patient's life or health. In the case of a patient found to be confused and suspected to be mentally incompetent, decisions about treatment must have the approval of a court-appointed treatment guardian.
12. Decisions and actions concerning transfer and treatment of mentally ill patients shall be made in compliance with law and policy to assure protection of the rights of incarcerated persons with mental illness.
13. Policies and Procedures which cover involuntary treatment and the use of restraints, including but not limited to *CD-172400* regarding mental health treatment guardians, *CD-172500* involving involuntary psychiatric hospitalization, *CD-171000* Administration of Psychotropic Medication, *CD-173100* Transfer of Inmate with Acute Medical or Psychiatric Illness, *CD-170700* Use of Therapeutic Restraints and Therapeutic Seclusion, *CD-180106* Referrals to MHTC, and *CD-180600* Mental Health Treatment Center (MHTC), exist to protect inmates' legal rights in balance with the duties of the Department to protect the life and safety of the inmate, others and institutional property.
14. Inmates will be informed that the New Mexico Corrections Department NMCD Grievance Procedure, as detailed in *CD-150501*, *CD-150200* and elsewhere, is the proper method to voicing complaints, recommendations for changes in policies and procedures and public health concerns.
15. All appropriate information will be made available to patients in both English and Spanish, or other native language when available.

**B. Responsibilities:**

1. The inmate has the responsibility to provide, to the best of the inmate's knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications, and other matters relating to their health.
2. The inmate patient has the responsibility to report changes in his or her condition to the caregiver.
3. The inmate patient is responsible for making it known whether he or she clearly comprehends a contemplated course of action and what is expected of the inmate.

4. The inmate patient is responsible for following the treatment plan recommended by the practitioner primarily responsible for his or her care. This includes following the instructions of nurses and allied health personnel, and complying with follow-up care.
5. The inmate patient is responsible for keeping appointments and when he or she is unable to do so for any reason, for notifying the responsible practitioner to reschedule.
6. The inmate patient is responsible for his or her actions and medical consequences if he or she refuses treatment or does not follow the practitioners' instructions.
7. The inmate patient is responsible for following NMCD rules and regulations affecting patient care and conduct.
8. The patient must be considerate of the rights of others including health care personnel and for assistance in the control of noise and other behavior in clinic. The patient is responsible for being respectful of the property of other persons and of the health care facility.

**NO PROCEDURE FOLLOWS**

