



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-172400 Mental Health Treatment Guardians	Issued: 5/22/92 Effective: 5/22/92	Reviewed: 2/28/20 Revised: 2/16/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. NMSA 1978, Sections 24-7A-1 to -18, 33-1-6 and 43-1-1 to -25, as amended.
- B. Policy *CD-010100*
- C. CFR Title 28: Judicial Administration, PART 549—MEDICAL SERVICES, Subpart E—Hunger Strikes, Inmate.
- D. Martinez v. Turner, 977 F.2d 421 (8th Cir. 1992)
- E. Commissioner of Correction v. Myers, 379 Mass. 255, 399 N.E.2d 452 (1979)

REFERENCES:

- A. ACA Expected Practice 45-6C-4404, *Performance Based Expected Practices for Adult Correctional Institutions 5th Edition*.
- B. National Commission on Correctional Health Care, *Standards and Guidelines for Delivering Services*, 2008.
- C. World Medical Association Declaration on Hunger Strikers, 43rd World Medical Assembly Malta, November 1991, as revised (<http://www.wma.net>)

PURPOSE:

To implement the Standards of Care established and approved by the New Mexico Corrections Department (NMCD) Medical Review Board and establish the Treatment Guardian/Consent to Treatment Regulations.

To establish guidelines for the medical management of inmates on a self-imposed hunger strike or starvation diet.

APPLICABILITY:

NMCD employees and contract employees involved in organization, management or operation of the adult health care program for inmates in all NMCD institutions and private facilities.

FORMS:

- A. **Inmate Acknowledgement of the Consequences of Refusing Food and/or Liquid** form (*CD-172402.1*)
- B. **Consent/Denial of Palliative Treatment** form (*CD-172402.2*)

ATTACHMENTS:

None

DEFINITIONS:

- A. *Adequate normal nourishment*: Replenishment or sustenance of nourishment and hydration by natural voluntary oral deglutition, at a rate and manner sufficient to prolong life indefinitely.
- B. *Artificial Nutrition And/Or Hydration*: Replenishment or sustenance of nourishment and hydration by use of instrument, or other than natural voluntary oral deglutition.
- C. *Capacity*: As defined for the purposes of this policy in New Mexico Statute §24-7A-11. Capacity, of the Uniform Health-Care Decisions Act [24-7A-1 NMSA 1978] means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision.
- D. *Competence*: Synonymous with capacity for purposes of this policy.
- E. *Force-Feeding*: The enteric nourishment and/or hydration of a person engaging in a hunger strike, whether currently conscious or unconscious.
- F. *Health Care Decision*: As defined for the purposes of this policy in New Mexico Statute §24-7A-1. Definitions subpart G, of the Uniform Health-Care Decisions Act [24-7A-1 NMSA 1978], a health-care decision means a decision made by an individual or the individual's agent, guardian or surrogate, regarding the individual's health care, including: selection and discharge of health-care providers and institutions; approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; directions relating to life- sustaining treatment, including withholding or withdrawing life-sustaining treatment and the termination of life support; and directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.
- G. *Health Services Bureau*: The bureau responsible for the administration of health services for the New Mexico Corrections Department.
- H. *Hunger Strike*: The voluntary refusal of food and/or water, including artificial nutrition and/or hydration, by an inmate possessing the capacity to make such decision, for the purpose of negotiating conditions of confinement or other changes.
- I. *Informed Consent*: Informed consent is the permission given by a competent client/inmate for a specified treatment, examination or procedure after receiving the material facts about the nature, consequences, risks, alternatives and level of confidentiality involved in the proposed technique.

- J. Life-Sustaining Artificial Nutrition And/or Hydration: Replenishment or sustenance of nourishment and/or hydration by use of instrument, or other than natural voluntary oral deglutition, at a rate and manner sufficient to prolong life indefinitely independent of voluntary oral deglutition.
- K. Mental Health Services Bureau: The bureau responsible for the administration of mental health services for the New Mexico Corrections Department.
- L. Palliative Artificial Hydration: Relief of dehydration by use of instrument, or other than natural voluntary oral deglutition, in less than a life-sustaining manner, solely to relieve or soothe the symptoms of starvation and/or dehydration, without remedying either condition.
- M. Palliative Medical Support: Medical intervention, such as intravenous hydration and thiamine supplementation, which serves to neither extend nor shorten the life, nor terminate the fast of a conscious or unconscious patient, but rather to ameliorate the symptoms of a terminal hunger fast.
- N. Personal Fast: Any fast, whether announced by inmate or noticed by staff, which is based upon claimed or evident religious or personal reasons and is without offered conditions under negotiation to extend or terminate the fast; especially if the fast is of an announced intended duration or selective in the avoidance of any certain class of foodstuffs (e.g. a Lenten fast, Ramadan, etc.).
- O. Psychiatry Services Bureau: The bureau responsible for the administration of psychiatric services for the New Mexico Corrections Department.
- P. Selective or Restrictive Personal Fast: A personal fast under which the inmate is not completely abstemious of nutrition and/or hydration (e.g. a Lenten fast, Ramadan, etc.).
- Q. Starvation Diet, Terminal Fast: Synonymous with hunger strike.
- R. Treatment Guardian: An individual appointed by an appropriate District court to give the legally required informed consent to treat inmates who are incapable of informed consent.
- S. Voluntary Oral Deglutition: A more precise medical definition of simple eating and drinking.

POLICY:

- A. The New Mexico Corrections Department shall petition the court for the appointment of a Mental Health Treatment Guardian to make a substitute decision for an inmate, if a mental health or developmental disabilities professional or physician, who is proposing the course of treatment, believes the inmate is incapable of informed consent to the proposed treatment.
- B. A transfer that results in an offender's placement in a non-correctional facility or in a special unit within the facility, specifically designated for the care and treatment of the severely mentally ill or developmentally disabled, shall follow due process procedures as specified by

federal, state, and local law prior to the move being affected. In emergency situations, a hearing is held as soon as possible after the transfer. [5-6C-4404]

C. Independence of Medical Personnel

Medical, mental health, and all other persons involved in inmate health and wellness are to remain independent from holding authority in any decisions on any political or other issues that may be motivating the hunger strike. Any personnel unable to remain independent are to excuse themselves from active participation in caring for the inmate's wellbeing.

D. Independence of Security and other Negotiating Personnel

No person holding authority over any decision or any political or other controversy, which has motivated the inmate to participate in a hunger strike, shall participate in medical decision making regarding inmate's medical or mental health care.

E. Compliance with directives regarding artificial nutrition and hydration

1. In Matters Of Conscience

In accordance with New Mexico Statute 24-7A-7 obligations of health-care provider, a health-care provider may, for reasons of conscience, decline to comply with an individual instruction or health-care decision. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the health-care institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

2. In Matters Of Futility

In accordance with New Mexico Statute 24-7A-7, Obligations of health-care provider, a health-care provider may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care. "Medically ineffective health care" means treatment that would not offer the patient any significant benefit, as determined by a physician.

3. In Matters Of Conflicting Standards

In accordance with New Mexico Statute 24-7A-7, Obligations of health-care provider, a health-care provider may decline to comply or provide health care contrary to generally accepted health-care standards applicable to the health-care provider or health-care institution.

F. Proceeding in matters of dispute regarding healthcare decisions, especially artificial nourishment or hydration.

In accordance with New Mexico Statute 24-7A-14, judicial relief, on petition of a patient, the patient's agent, guardian or surrogate, a health-care provider or health-care institution involved with the patient's care, or an individual described in Subsection B or C of Section 24-7A-5 NMSA 1978, the district court may enjoin or direct a health-care decision or order other equitable relief.

G. General presumption of competence

An inmate is presumed to be competent and medically well and fit enough to undertake a fast unless otherwise determined.

H. Personal Fasting

1. Medical obligations for care during personal fasting

The medical obligations regarding a personal fast are similar to that of hunger strikes; namely, to consider whether the fast is being undertaken for reasons of mental illness sufficient to render an inmate incompetent to enter into a personal fast; and to monitor the medical condition of the fasting inmate. The Department is aware of the balance between remaining unobtrusive in the inmate's personal fast while providing appropriate monitoring.

2. Coloration of Mental illness regarding personal fast

If there is clear and convincing presence of the inmate's initiation of the fast being colored by mental illness of sufficient gravity to bring the inmate's competence into question. The psychiatrist shall assess the inmate in the manner done for referral to the court under conditions of guardianship. The Office of General Counsel of New Mexico Corrections Department shall be informed of the concerns regarding this patient and the fast.

3. Time course of fast

No fast lasting less than five (5) days shall call for any special medical attention beyond that provided for any New Mexico Corrections Department inmate, unless the inmate has an underlying illness of such a nature and gravity that they might be irreparably harmed by a fast of even under five (5) days.

4. No prerogative for supplementation

Unless otherwise provided for, the inmate has no prerogative to ask for supplementary or other nourishment not provided for in the usual and ordinary meals, during a personal fast, unless it is medically indicated. There is no obligation to accommodate any dietary modifications demanded by an inmate on a personal fast, and such demands may be considered negotiated conditions to the fast, as described elsewhere.



NEW MEXICO CORRECTIONS DEPARTMENT

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CD-172401 Mental Health Treatment Guardians	Issued: 5/22/92 Effective: 5/22/92	Reviewed: 2/28/20 Revised: 2/16/15
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AUTHORITY:

Policy *CD-172400*

PROCEDURES: [5-6C-4404]

A. Establishment of Mental Health Treatment Guardian

1. In the event an inmate requires mental health treatment, and there exists a question as to the inmate's ability to provide informed consent, the mental health or developmental disabilities professional or physician will perform a mental health evaluation of the inmate, to include a review of relevant available records to determine if the inmate is competent to make treatment decisions.
2. If it is determined that the inmate is incapable of informed consent, a letter to the Department's legal counsel will be written to request legal counsel to petition the court to appoint a Mental Health Treatment Guardian. This letter should explain how the inmate meets the criteria for requiring a court-appointed guardian. Psychiatry staff shall be available to serve as witness in court proceedings.
3. The Psychiatry Services Bureau will make a diligent effort to determine if the inmate has any family or friends who would be willing and appropriate to serve as the Mental Health Treatment Guardian.
4. If involuntary medication is required while awaiting the court hearing, a physician may order this treatment on an emergency basis, if necessary, in order to prevent serious harm to the patient or others.
5. The Office of General Counsel will inform the Health Services Bureau and Psychiatry Services Bureau of those inmates who have been assigned a court-appointed Treatment Guardian, and forward a copy of the order to the Health Services Bureau and Psychiatry Services Bureau to be placed in the inmate's mental health file and medical file.

B. Existing Mental Health Treatment Guarding Review and Renewal

1. Contract medical vendor will track all existing Mental Health Treatment Guardianships for all facilities and maintain a central data base at their regional office.
2. The central data base will include the copy of the original petition, judge's order granting the guardianship, name and NMCD number of inmate, facility, and expiration date.

3. Sixty (60) days prior to the expiration date, the contract medical vendor regional office will notify the treating psychiatrist. The treating psychiatrist will review if there is a need for renewal of the treatment guardian.
4. By forty (40) days prior to the expiration date, the treating psychiatrist will notify the contract medical vendor regional office if a renewal petition will be requested or not. The NMCD Psychiatry Bureau Chief will subsequently be notified in writing of the decision to petition for a renewal or not.
5. After the review for appropriateness by the NMCD Psychiatry Bureau Chief, NMCD legal services will receive renewal petitions thirty (30) days prior to the expiration date.
6. Scheduling court hearings for treatment guardianship renewals will be done before the expiration date with sufficient time to have the judge hear the petition for renewal before the existing guardianship expires. This will ensure continuity of care and prevent need to discontinue medication due to an expired guardianship.
7. Inmates receiving psychotropic medications and deemed to lack capacity will need their medications discontinued if they have no current treatment guardianship or an expired treatment guardianship, unless, in accordance to New Mexico law, emergency medications may be given involuntarily while a petition for a treatment guardianship is initiated.



NEW MEXICO CORRECTIONS DEPARTMENT

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CD-172402 Hunger strikes and Personal Fasts	Issued: 5/22/92 Effective: 5/22/92	Reviewed: 2/28/20 Revised: 2/16/15
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AUTHORITY:

Policy *CD-172400*

PROCEDURES: [5-6C-4404]

A. Hunger Strikes

1. Initial Care of Hunger Striker:

The Warden and Health Services Administrator of the Facility shall be immediately notified whenever staff becomes aware that an inmate has not consumed food for seventy- two (72) continuous hours or has not ingested liquids for twenty-four (24) continuous hours.

a. Medical Assessment

- 1) Health care staff shall promptly perform a medical assessment to assess the inmate's physical health condition within twenty-four (24) hours of notification.
- 2) The medical assessment shall be documented in the inmate's health record; it shall also be documented in the inmate health record if the inmate refuses to participate in the assessment. The Medical Assessment shall include the measurement of weight, vital signs and urinalysis.

b. Medical information.

- 1) At the time of the medical evaluation, health care staff also shall counsel the inmate on the consequences of not eating or drinking and answer any questions the inmate has.
- 2) The inmate must be informed that permanent harm or death may ensue from hunger strike. The **Inmate Acknowledgement of the Consequences of Refusing Food and/or Liquid** form (*CD-172402.1*) shall be signed and dated by the inmate to acknowledge that they were fully informed of the consequences of their behavior.

- 3) If the inmate refuses to sign the form or refuses to allow the counseling to be provided, staff shall indicate that on the form.
- 4) The completed form shall be retained in the inmate's health record and a copy provided to the inmate.
- 5) The inmate will be asked to consent or refuse to accept or reject life-sustaining artificial nutrition and/or hydration and palliative care in the event that the inmate becomes incapable of deciding in the future, and will indicate such decision on the form.

c. Mental Health Evaluation.

- 1) Health care staff shall refer the inmate to a psychiatrist for a mental health evaluation. The psychiatrist shall promptly perform a face-to-face or telepsychiatry comprehensive mental health evaluation with special attention being made to the contribution made by any mental illness to the inmate's refusal to eat or drink.
- 2) The inmate shall be referred for, and receive, additional mental health services, including inpatient services, as necessary in accordance with NMCD policy.
- 3) All mental health evaluations and services, including any refusal by the inmate to participate, shall be documented in the inmate's health record.
- 4) If the psychiatrist determines that there is a reasonable likelihood that the inmate was not competent to choose to engage in a hunger strike, if unable to understand the risks of harm, nature of the choice, or other matter, due to the coloration of mental illness, the Office of General Counsel of the New Mexico Corrections Department shall be informed, and provisions elsewhere stipulated shall be undertaken for the care of the mentally ill patient.

2. Continuing Care

- a. Medical staff shall take and record weight and vital signs at least once every twenty-four (24) hours while the inmate is on a hunger strike.
- b. During a hunger strike, the staff shall deliver three (3) meals per day to the inmate's cell, or as otherwise authorized by the medical practitioner. A verbal offer of a meal will not suffice unless the inmate's actions pose a threat to staff safety. The meal tray will remain with the inmate until all of the unit food trays are collected.
- c. The staff shall also maintain a record of the inmate's liquid and solid intake; if possible, shut off the water into the inmate's cell/room in order to accurately

document liquid intake; remove all canteen items and private food supplies from the inmate's cell while the inmate is on a hunger strike.

- d. An inmate will not be allowed to make canteen purchases of food or items providing nourishment while under hunger strike management. Staff will ensure that the inmate does not have direct contact with other inmates in a way so as to receive nourishment or hydration by surreptitious means.
 - e. When an inmate removes himself/herself from the hunger strike by consuming food, the staff who witnessed the behavior will write an incident report. The hunger strike shall be considered to be ended.
3. Incapacity because of hunger strike

If the inmate becomes confused or incapacitated as a result of prolonged starvation, dehydration or inanition, the Office of General Counsel shall be contacted if the inmate's condition deteriorates to the point that they may experience permanent and serious ill effects of the hunger strike or if a Mental Health professional or Medical Practitioner (i.e., physician, physician's assistant, nurse practitioner) determines that the inmate does not have the capacity to make an informed decision. The Office of General Counsel shall determine whether legal intervention is warranted.

a. Force-feeding and artificial nutrition

The force-feeding or artificial nutrition of an inmate, competent or incompetent, terminates a hunger strike. The authority to order force-feeding or artificial nutrition of an inmate, competent or incompetent, in opposition to the healthcare directive of the inmate without judicial relief as described herein, is *ultra vires* and is not authorized by this Policy.

b. Palliative medical support

- 1) Palliative medical care, which seeks to relieve symptoms without terminating the hunger strike, is considered within the scope of good practice of medicine, and is authorized by this policy, unless the inmate explicitly orders the withdrawal of palliative measures.
- 2) Palliative medical support, even including non-resuscitative palliative hydration, thiamine and electrolyte infusion to the dying inmate, differs entirely in intent from life-sustaining artificial nutrition and/or hydration, and is permissible, even in the presence of express or implied directives by the inmate not to receive life-sustaining artificial hydration.
- 3) The **Consent for Palliative Treatment** form (CD-172402.2) shall be signed and dated by the inmate to indicate his/her consent or refusal thereof. If the inmate

refuses to sign the form or refuses to allow the counseling to be provided, staff shall indicate such refusal on the form. The completed form shall be retained in the inmate's health record and a copy provided to the inmate.

- 4) Implementation of palliative treatment shall then remain at the discretion of the provider, with the assumption that an inmate who wishes to die of a terminal fast usually recognizes palliative hydration as allowable and benign.

B. Personal Fasts

1. Immediate response

- a. Upon notification that an inmate has undertaken a personal fast, the date of beginning of the fast shall be noted in the medical record.
- b. Healthcare provider shall briefly review the medical record for the presence of serious illness that might lead to likely and immediate harm to a fasting inmate. In the presence of such illness, the personal fast will be immediately defined as a Hunger Strike/Terminal Fast. The inmate will be informed of the pressing medical concerns regarding a personal fast, and termination of the fast shall be recommended and documented.
- c. Mental Health and/or Psychiatry shall briefly review the medical record for the presence of a serious psychiatric illness that could clearly and convincingly render an inmate incompetent to undertake a personal fast. If there is evidence to Mental Health and/or Psychiatry of such illness, an establishment of competence in the manner described shall be undertaken.

2. Response on Day #6

- a. Sufficient nourishment and hydration.

On the sixth day after initiating a fast, a medical professional shall review the inmate's nourishment and hydration. If the fast is selective or restrictive, and the inmate takes sufficient nutrition and/or hydration to sustain life, the fast needs no further medical attention, and there are no special obligations for the Medical staff to attend to the fast. (e.g. Lenten fast.)

- b. Insufficient nourishment or hydration.

If the conditions of the fast are such that the fasting inmate does not intake sufficient nutrition and/or hydration to sustain life, then a physician or primary caregiver shall meet with the inmate, express the medical concerns regarding the personal fast, and enter into the chart that the fast is now a Hunger Strike/Terminal Fast, with the

appropriate conditions to apply. The conditions relevant to Personal Fast are no longer applicable under such circumstance.

c. Discretion for delay.

The Medical Director of New Mexico Corrections Department shall be informed of any personal fast at the sixth day, and may elect under due consideration to withhold or delay the definition of a personal fast as a Hunger Strike and/or Terminal fast.

Such decision will be provided to the Warden, Health Services Administrator, OGC, and to the Contracted Medical Director.

NEW MEXICO CORRECTIONS DEPARTMENT
Inmate Acknowledgement of the Consequences of Refusing Food and/or Liquid

Prolonged starvation can result in serious harm to a person's body and mind. When a person's intake falls far below his/her daily energy expenditure, a complex series of reactions are set in motion by the body in an effort to defend itself against this abnormal condition. These reactions go far beyond a simple loss of weight and an emaciated appearance. If these reactions are prolonged and severe enough, they can result in serious damage or death.

When there is a deficit in energy intake, the body draws on its own stores to maintain blood glucose, its main fuel. The body will first use whatever stored fat may be available. When fat stores are exhausted, the body will then begin to use muscle and organ tissue to produce energy. As this occurs, there is a wasting away of muscle and of tissue in the liver and intestines, the heart decreases in size and output, blood pressure and respiratory rates are reduced and cardio respiratory failure can eventually occur. Hair becomes dry and sparse and falls out easily. There is a loss of sex drive. Diarrhea may occur and hasten the wasting process. Apathy and irritability are common. Eventually the body enters a coma, usually followed by death.

Proteins are essential for maintenance of cellular function and when the body's proteins have been depleted to approximately one-half of their normal levels, death ordinarily ensues.

In addition to the above factors, many negative changes in the chemistry of the body also occur. Vitamin deficiencies occur, particularly the Vitamin B group and Vitamin C, and further weaken the body. Resistance to disease and infections decreases, making the body vulnerable to other illnesses.

I understand that my refusal to eat can bring about the above deleterious effects (as well as others) on my body and my well being. I understand that continued refusal to eat or drink may result in serious and possibly irreversible bodily changes and can eventually result in my death. Furthermore, I understand that the Corrections Department will do everything in its power to prevent the death of any person committed to its custody. However, I may die as a result of my hunger strike.

_____/_____
Inmate Name (Print / Sign) NMCD # Date

Inmate _____, NMCD# _____, has been advised of the above information regarding the deleterious effects of his/her continued refusal to eat by _____, but refused to sign the above form.

_____/_____
WITNESS Name (Print / Sign) Date

_____/_____
WITNESS Name (Print / Sign) Date

NEW MEXICO CORRECTIONS DEPARTMENT
Consent/Denial of Palliative Treatment

Please complete one of the following:

Consent for Palliative Treatment:

I have chosen to undertake a hunger strike. I request that the New Mexico Corrections Department and its medical staff provide me palliative care at the end of my life.

Palliative care does not shorten or prolong life. It provides comfort to the dying inmate.

I wish to receive palliative care if the medical doctor determines it is necessary.

_____/_____
Inmate Name (Print / Sign) NMCD # Date

_____/_____
WITNESS Name (Print / Sign) Date

Denial of Palliative Treatment:

I have chosen to undertake a hunger strike. I request that the New Mexico Corrections Department and its medical staff **DO NOT** provide me palliative care at the end of my life.

Palliative care does not shorten or prolong life. It provides comfort to the dying inmate.

I **DO NOT** wish to receive palliative care if the medical doctor determines it is necessary.

_____/_____
Inmate Name (Print / Sign) NMCD # Date

_____/_____
WITNESS Name (Print / Sign) Date

PLEASE INITIAL ONE

In addition to the indication above, I REFUSE_____ I ACCEPT_____ any life-sustaining artificial nutrition if I become incapable of making this decision in the future.