



POLICY TITLE: ADVANCE DIRECTIVES POLICY NUMBER: 31.1 (AF) CHAPTER 31: END OF LIFE AND DEATH		PAGE <u>1</u> OF <u>5</u>
 STATE of MAINE DEPARTMENT of CORRECTIONS Approved by Commissioner: 		PROFESSIONAL STANDARDS: See Section VIII
EFFECTIVE DATE: August 15, 2003	LATEST REVISION: September 26, 2025	CHECK ONLY IF APA []

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Sections 1403.

II. APPLICABILITY

All Departmental Adult Facilities

III. POLICY

The Department recognizes the right of an adult resident to state their wishes for future medical treatment of a terminal condition or while in a persistent vegetative state and to specify interventions they consent to or refuse in the event they become incompetent or become incapacitated and unable to communicate their wishes.

IV. DEFINITIONS

1. Advance Directive – a witnessed written document, voluntarily executed by a resident, which states the resident's preferences regarding the providing, withholding, or withdrawal of life prolonging procedures in the event the resident becomes incompetent to make such decisions or becomes incapacitated and unable to communicate their wishes.
2. Competent – a resident is competent if they have the ability to understand the significant benefits and risks of, and alternatives to, proposed health care and to make and communicate a reasoned health care decision.
3. Health care provider – for purposes of this policy, physician, physician assistant, or nurse practitioner.
4. Persistent vegetative state – a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery.
5. Terminal condition – a progressively deteriorating illness or disease or injury that is life threatening and determined to be incurable. Death is anticipated from this condition or a complication thereof within six (6) months, regardless of the administration of life sustaining treatment.

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VI. ATTACHMENTS

Attachment A:	Advance Directive Information
Attachment B:	Advance Directive form (ERMA form)

VII. PROCEDURES

Procedure A: Advance Directive, General

1. During the orientation process, an adult resident shall be provided with the Advance Directive Information form (Attachment A) by designated intake staff.
2. The facility Chief Administrative Officer, or designee, shall ensure that information about advance directives is included in the handbook provided to residents.
3. A resident may request an Advance Directive form (Attachment B) from their case manager, who shall provide a copy of the form to the resident. The case manager shall direct the resident to the facility medical staff if the resident has any questions about the form.
4. In addition, a facility health care provider may initiate a discussion with any resident about the availability of an advance directive.
5. A facility health care provider may assist a resident in completing the Advance Directive form at any time during their incarceration.
6. The Advance Directive form shall not be completed by a resident for another resident.
7. An advance directive:
 - a. shall only be valid if the resident is competent at the time of signing the Advance Directive form;
 - b. shall become active when in the opinion of a facility health care provider, the resident has a terminal condition or is in a persistent vegetative state; or
 - c. if applicable, an Advance Directive shall become active while the resident is off-site if a community medical provider determines the resident has a terminal condition or is in a persistent vegetative state.

Procedure B: Review of an Advance Directive

1. If an adult resident has completed the Advance Directive form (Attachment B) and submitted it to facility medical staff, a facility health care provider shall review the resident's record to determine whether the resident is competent.

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2. If the facility health care provider has a concern about the competency of the resident, the resident shall be referred to appropriate mental health care staff for a determination of whether or not the resident is competent to complete an advance directive.
3. The facility health care provider shall meet with the resident to review the form, to include an explanation of when it will be activated, or, if applicable, to explain why the resident is not competent to complete an advance directive.
4. If a resident already has an advance directive that was completed with an off-site medical provider, a facility health care provider shall meet with the resident to complete the Advance Directive form approved by the Department (Attachment B), unless the advance directive may need to be activated before the resident is able to complete the Department's form and the facility health care provider determines the off-site advance directive should be complied with.
5. A facility health care provider shall meet at least annually with any resident who has an Advance Directive to review whether the resident wishes to continue with the directive as is, make changes, or revoke it in its entirety.

Procedure C: Activation of an Advance Directive

1. An Advance Directive shall not be activated in the case of a terminal condition or persistive vegetative state brought about by a suicide attempt or other self-injurious behavior, and all treatment decisions shall be made as if the resident had not signed an advance directive.
2. The Advance Directive shall be activated, when in the opinion of the facility health care provider, the resident has a terminal condition or is in a persistive vegetative state, as documented in the resident's electronic health care record, or, if applicable, an off-site medical provider determines the resident has a terminal condition or is in a persistive vegetative state.
3. The facility health care provider shall write an order, which will activate the Advance Directive.
4. The facility health care provider shall notify the facility Health Service Administrator (HSA), the facility Chief Administrative Officer, the Regional Medical Director, the Health Care Services Manager, or their designees, immediately of the activation of an Advance Directive.
5. The above staff shall then determine if it is appropriate for the resident to be in a hospital or in a Department infirmary or other facility housing unit.
6. If the medical care of a resident who has an Advance Directive is turned over to emergency medical service (EMS) personnel or a hospital, facility medical staff shall inform them of the existence of the Advance Directive, and a copy of the Advance Directive shall be given to them as soon as practicable except in the case of a terminal condition or a persistent vegetative state brought about by a suicide attempt or other self-injurious behavior.

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Procedure D: Revocation of an Advance Directive

1. An adult resident who is competent may revoke all or part of an Advance Directive at any time and in any manner that communicates an intent to revoke.
2. A resident may submit to facility medical staff a written revocation by completing a new Advance Directive form (Attachment B) indicating the interventions they are now consenting to.
3. An oral revocation made to non-medical staff shall be communicated to facility medical staff.
4. Any time a resident orally revokes an Advance Directive, or revokes it in writing without using the Advance Directive form, facility medical staff shall meet with the resident to have them complete a new Advance Directive form, unless the revocation of the Advance Directive may need to be complied with before the resident is able to complete the Department's form and the facility health care provider determines the resident is competent to make the revocation.
5. Once the resident has completed a new Advance Directive form, a facility health care provider shall review the resident's record to determine whether the resident is competent.
6. If the facility health care provider has a concern about the competency of the resident, the resident shall be referred to appropriate mental health care staff for a determination of whether or not the resident is competent to revoke an advance directive.
7. The facility health care provider shall meet with the resident to review the form, to include an explanation of when it will be revoked, or, if applicable, to explain why the resident is not competent to revoke an advance directive and, therefore, the Advance Directive previously signed remains current.

Procedure E: Documentation

1. Only an Advance Directive form approved by the Department (Attachment B) shall be accepted and placed into the resident's electronic health care record and labeled as an Advance Directive, except for an advance directive completed with an off-site medical provider as set out above.
2. The resident's electronic health record shall reflect:
 - a. all meetings related to the completion of the Advance Directive, the date and time the Advance Directive became activated, and any reviews of the Advance Directive; and
 - b. if applicable, all meetings related to the revocation of the Advance Directive and the date and time the Advance Directive was revoked.
3. The most recently dated Advance Directive (including a revocation that the resident is competent to make) is considered the current directive.
4. The facility Health Services Administrator (HSA), or designee, shall inform all medical staff as to which residents have a current Advance Directive (including a revocation).

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VIII. PROFESSIONAL STANDARDS

None

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