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AMEND
CHANGING CORRECTIONAL CULTURE

PROVIDING ACUTE CARE FOR SERIOUSLY ILL INCARCERATED PATIENTS

Frequently Asked Questions

July 8, 2020

This guide was drafted to help community clinicians in California provide excellent medical care for California Correctional Health Care Services (CCHCS) patients who require acute hospitalization during the COVID-19 pandemic.

Basic abbreviations and terms
CDCR = California Department of Corrections and Rehabilitation
CCHCS = California Correctional Health Care Services (the health care services arm of CDCR)
ACP = Advance Care Planning

Introduction to Health Care for Incarcerated Patients

What are the basic principles governing health care for incarcerated patients?

- Incarcerated patients are legally entitled to **reasonable medical care** under the 8th Amendment to the U.S. Constitution.
- Incarcerated patients have the **right to make their own medical decisions** and the right to make decisions about advance care planning (ACP). This includes the right to appoint a surrogate decision maker.
- Hospitalized incarcerated patients are **entitled to all the same services** as other patients, such as physical therapy and visits from social workers and chaplains.

ACP and Surrogate Decision Makers

How can community providers get ACP information about patients transferred from CDCR correctional institutions?

- If a patient has physician orders for life sustaining treatment (POLST) and/or an advance directive, a hard copy may be sent with them to the hospital.

Disclaimer: *The guidance in this document reflects current clinical best practices and does not constitute legal advice. If you have questions or concerns about an individual patient, we recommend involving your hospital's ethics committee and/or legal counsel.*

- CDCR has recently undertaken extensive efforts to ensure that the most medically complex patients have POLST forms completed with their primary care provider (PCP), so many patients with serious underlying health conditions may have a POLST form already completed.
- If documents sent by the prison do not include a POLST and/or advance directive (or do not specifically say that either exists) the community healthcare provider can check to determine if either document exists by contacting the sending prison.
- Contacting the prison:
    - Most hospitals that routinely care for CDCR/CCHCS patients have a contact list for the prison medical leadership which includes the Chief Medical Executive (CME) and the Chief Physician and Surgeon (CP&S). Contacting either of these physicians is appropriate if information is needed regarding a patient, including whether or not the patient has a POLST or advance directive.
    - Monday through Friday CDCR/CCHCS healthcare staff have daily calls with each contracted community hospital to discuss admitted CDCR/CCHCS patients.
    - When CDCR/CCHCS patients are hospitalized in community hospitals that do not already have established regular communication with CDCR/CCHCS healthcare staff, the goal is to establish such communication expeditiously.
    - If unsure of how to make initial contact with CDCR/CCHCS, contact the sending prison facility's Triage and Treatment Area (TTA), which is open and staffed 24/7. Healthcare staff there will be able to access a patient's electronic medical record to check for POLST or Advanced Directive for Health Care forms, and be able to provide contact information for the medical staff leadership at that facility.

How should a surrogate decision maker be established?

- Ideally a surrogate decision maker has been established during an outpatient ACP visit with a patient's PCP.
- Whether or not a patient arrives with ACP documentation, **community clinicians should address a patient's health care wishes upon hospitalization**, just as they would for any patient who may become critically ill. This includes asking a patient to appoint a surrogate decision maker. Incarcerated patients have the right to make their own medical decisions and assign their own surrogate decision makers.

What if a patient has not appointed a surrogate decision maker and now they lack the capacity to do so?

- If no POLST or advance directive exists and the patient does not have medical decision-making capacity, **the community hospital should follow their usual policy for unrepresented patients** to determine who can speak for the patient.

- CDCR custody staff (Wardens, custody officers/guards) do not make medical decisions for patients.[1]
- In California, for general medical decisions, case law (not a statute) authorizes decisions by the "closest available relative" and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient's values, demonstrates concern for the patient, had regular contact prior to the illness, is available to make decisions, and is able to understand the information and engage in meaningful contact.
- **CDCR/CCHCS Correctional and Healthcare staff can help** to locate family or friends who may serve as surrogate decision makers.
    - All incarcerated persons are asked to complete a **"Next of Kin" form** on an annual basis. While the person listed has not been chosen by the patient specifically for medical decision making, they may serve as a resource to explore if a possible surrogate exists.
    - When the designated next of kin cannot be contacted, **CDCR/CCHCS staff will assist** with trying to identify and/or locate a **potential surrogate decision maker**.

How can community clinicians speak to surrogate decision makers and/or other family to obtain or provide information regarding a patient's condition?

- For security reasons, **CDCR custody staff makes the initial contact** with a patient's family and/or surrogate decision maker. Subsequent to this initial contact, CCHCS healthcare staff provides ongoing medical information and updates to the family based on daily calls with the community hospital.
- Community providers are able to discuss the patient's condition directly with the family **only *after*** CDCR custody staff has approved phone contact with a family member and/or surrogate decision maker.
- If there are any questions or concerns about specific information that may be conveyed, the community hospital staff should get clarification from the CDCR Watch Commander, the Assistant Warden of Healthcare or CCHCS medical leadership.

What if correctional staff (e.g. correctional officers, "custody," or "guards") report that a critically ill patient is unable to have phone calls or visits with family?

- Some correctional staff serving as guards at a community hospital **may not be familiar** with what contact is allowed or not allowed.
- In this circumstance, ask to speak to the prison facility's Assistant Warden for Healthcare, or medical leadership to help clarify what is allowed. Both CDCR correctional custody and CCHCS medical leadership **strongly support communication with patient's family**, but processes and protocols *must* be followed to ensure safety and security for all involved.

[1] In some rare circumstances the medical director of a prison has been designated as a surrogate decision maker for an unrepresented patient by the court in a formal process (California Code, Penal Code - PEN § 2604). This process takes time and is not typically useful in urgent cases.

Communication with Family and Surrogate Decision Makers

Can community clinicians give medical updates (by phone) to a hospitalized patient's family members?
Yes, however, as stated above, for security reasons, contact should first be made by CDCR custody staff. Once CDCR custody staff has made initial contact with a family member and obtained security clearance, they will typically allow community clinicians to give updates by phone directly to that family member. **For security reasons community hospital clinicians should not reveal a patient's specific location nor any details about the patient's discharge plan.**

Are patients allowed to be in direct contact with their families while hospitalized? What if a patient is dying - or likely to die - while admitted to a community hospital?
Generally, direct contact or communication with family is not allowed. However, in settings of critical illness where death may be imminent, after correctional staff have given authorization, in-person or video visitation may be arranged.

What if community clinicians are not able to reach anyone at a correctional institution, but must contact a family member or surrogate decision maker in order to give urgent updates or make time-sensitive medical decisions?
Typically, community clinicians should not reach out directly to a patient's family without going through the processes described above. In an emergency, however, community clinicians may proceed, based on their clinical judgement, with necessary steps in order to provide reasonable medical care.

Clinical Trials

Are incarcerated patients able to participate in clinical research?
Yes. While incarcerated patients are *in community hospitals,* they (or their surrogate decision makers) can consent to participate in clinical research. Note that IRB modification may be required to allow study participation for incarcerated patients.

Resources

- Haber LA, Erickson HP, Ranji SR, Ortiz GM, Pratt LA. Acute Care for Patients Who Are Incarcerated: A Review. *JAMA Intern Med.* 2019;179(11):1561–1567. doi:10.1001/jamainternmed.2019.3881
- Scarlet S, DeMartino ES, Siegler M. Surrogate Decision Making for Incarcerated Patients. *JAMA Intern Med.* 2019;179(7):861–862. doi:10.1001/jamainternmed.2019.1386
- DiTomas M, Bick J, Williams B. Shackled at the End of Life: We Can Do Better. *Am J Bioeth*. 2019;19(7):61-63. doi:10.1080/15265161.2019.1618957

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Amend at UCSF is a health-focused correctional culture change program led by experts in medicine, infectious diseases, public health, and correctional health and policy that is providing correctional leaders, policymakers, and advocates the evidence-based tools they need to protect the health and dignity of those who live and work in jails and prisons during the COVID-19 pandemic.

For more information: https://amend.us/covid