
 <b>Department of Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE <b>Incarcerated Individual Hunger Strike</b>		NO. 4309
			DATE 10/18/2019
SUPERSEDES DIR #4309 Dtd. 12/26/17	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to) ACA Expected Practices 5-ACI-3B-14, 5-ACI-3D-08; Directives #4004, #4909; HSPM Items 1.30 and 7.01; CNYPC Manual	APPROVING AUTHORITY 		

- I. **POLICY:** The State has an obligation to prevent self harm caused by an incarcerated individual's refusal to eat. Incarcerated individuals have no constitutional right to starve themselves to death. Therefore, the State is authorized to force feed an incarcerated individual on a hunger strike in order to protect the health and welfare of the incarcerated individual, and to maintain rational and orderly procedures in our facilities. These needs outweigh an incarcerated individual's right of privacy and free expression. The Department will seek a Court Order requesting the ability to force feed any incarcerated individual on a hunger strike by whatever means necessary, including tube feeding, for as long as necessary.
- II. **DEFINITIONS**
- A. **Hunger Strike:** An incarcerated individual's voluntary failure to eat nine consecutive meals, regardless of whether or not the incarcerated individual has declared that he or she is on a hunger strike. A hunger strike will be considered ended when the incarcerated individual eats at least two meals per day for three consecutive days, and the provider has determined (by evaluation, vital signs, lab tests, etc.) that the incarcerated individual is medically stable OR when the Facility Health Services Director (FHSD) or designee, in consultation with the Regional Medical Director (RMD), determines that the incarcerated individual's current intake and nutritional status is adequate to maintain the incarcerated individual's health.
- B. **Base Weight:** The incarcerated individual's weight, documented either on the first day a hunger strike becomes known to Departmental staff, or during any period of reasonable health within the past five (5) years, whichever is lower.
- C. **Hunger Strike Team:** At a minimum, will include all of the following:
1. A Hunger Strike Team Leader (designated by the Superintendent from one of the following titles):
    - Deputy Superintendent for Administration
    - First Deputy Superintendent
    - Deputy Superintendent for Health
    - Deputy Superintendent for Reception
  2. OMH Unit Chief
  3. The FHSD or designated Facility Physician
- The Superintendent may also include any staff person the Superintendent feels is appropriate (e.g., the incarcerated individual's Offender Rehabilitation Coordinator, the Chaplain, or a Crisis Intervention Unit (CIU) person).

### III. PROCEDURE

- A. Identification and Assessment: Any incarcerated individual who is either refusing to eat, or who has been identified by the Department of Corrections and Community Supervision (DOCCS) or the Office of Mental Health (OMH) staff as being on a hunger strike, will be referred to Health Services and to the OMH staff for counseling and a clinical assessment to determine the cause of the incarcerated individual's refusal to eat. At this time, baseline medical data (weight, blood pressure, etc.) will be obtained, with the incarcerated individual's cooperation.
1. If Health Services determines that the incarcerated individual's refusal to eat is a result of a medical condition, the incarcerated individual shall be referred for appropriate follow-up care with Health Services and the hunger strike procedure set forth below shall stop.
  2. If OMH or Health Services determines that the incarcerated individual's refusal to eat is a result of a psychiatric condition, the incarcerated individual shall be referred for appropriate follow-up care with OMH staff, and the hunger strike procedure set forth below shall be implemented, unless otherwise directed in writing by OMH.
  3. If OMH or Health Services determines that the incarcerated individual's refusal to eat is a result of a political statement, demonstration, or any other reason, the hunger strike procedure set forth below shall be implemented.
- B. Reporting: Health Services staff shall promptly report to the FHSD or designee who will, in turn, notify the facility Superintendent of the name and condition of any incarcerated individual in the facility who has been identified as being on a hunger strike. In addition, the Superintendent or designee will notify via Outlook e-mail, the RMD, Regional Health Services Administrator (RHSA), Supervisor of Utilization Management (SUM), and the Director of Mental Health. At a minimum, the e-mail shall contain the following information: incarcerated individual's name and DIN, the hunger strike start date, the incarcerated individual's base weight, the incarcerated individual's purported rationale for the hunger strike, chronic medical and/or mental health conditions, the status of any current Court Orders, and any other pertinent comments.
- C. Phase I Response
1. To resolve a hunger strike, the Superintendent shall activate the Hunger Strike Team.
  2. Facility health care staff will monitor the incarcerated individual on hunger strike per Health Services Policy Manual (HSPM) #1.30, "Incarcerated Individual Hunger Strike Monitoring."
  3. The OMH staff will continue to evaluate the incarcerated individual on hunger strike per the Central New York Psychiatric Center (CNYPC) Outpatient Operations Policy and Procedure Manual: Services to DOCCS, "Incarcerated Individual Hunger Strike." (If necessary, the incarcerated individual will be transferred to a facility with OMH staff.)
  4. The Hunger Strike Team Leader will meet with the incarcerated individual and inform the incarcerated individual of Department policy regarding hunger strikes. The Leader will be responsible to create and maintain a hunger strike file. The incarcerated individual will also be counseled by a Physician regarding the physical consequences of a continued fast. The Leader will attempt to verify the incarcerated individual's purported rationale for the hunger strike.

A statement will be prepared for the incarcerated individual to sign, which shall include the incarcerated individual's purported rationale for the hunger strike and the incarcerated individual's intentions.

This will be placed in the hunger strike file. If the incarcerated individual refuses to sign, it will be documented on the statement and placed in the hunger strike file.

5. Admission to a DOCCS facility infirmary by the FHSD or designated Physician will be based on physical indications or a determination by the Superintendent that it is disruptive to the order of the facility for the incarcerated individual to remain in general population.
- D. Phase II Response: In the event that the incarcerated individual does not resume eating and their weight varies by 15% lower than the base weight or their physical condition (as determined by the FHSD or designated Physician) deteriorates. The following measures will be instituted:
1. The Superintendent, or designee, will notify the Deputy Commissioner/Chief Medical Officer, RMD, RHSA, SUM, Nurse Administrator for Utilization Review (SURN NA), the Director of Mental Health, the Office of Counsel, and the Deputy Commissioner for Correctional Facilities via Outlook E-mail.
  2. The Hunger Strike Team Leader will immediately notify the Watch Commander who in turn will notify the Communications Control Center (CCC) in accordance with Directive #4004, "Unusual Incident Report."
  3. Psychiatric evaluations will take place per CNYPC Outpatient Operations Policy and Procedure Manual: Services to DOCCS, "Incarcerated Individual Hunger Strike."
  4. The Hunger Strike Team Leader will meet with the incarcerated individual to discuss possible solutions to the problems which have contributed to the hunger strike. At this time, the Hunger Strike Team Leader will inform the incarcerated individual that court decisions, such as Van Holden vs. Chapman, 87 AD2d66 (4 Dept. 1982), have held that the State has an obligation to protect the health and welfare of the incarcerated individual.  
  
As held by the 8<sup>th</sup> Circuit court in the case of Martinez v. Turner, 977 F2d 421 (1992), force feeding is not a constitutional violation when an incarcerated individual's life or permanent health is in danger. The Hunger Strike Team Leader will inform the incarcerated individual that if he or she refuses to eat the Department will pursue appropriate legal action to institute force feeding.  
  
The script developed by the Office of Counsel (Attachment A), should be used for this purpose and its use in a hunger strike documented.
- E. Phase III Response: In the event that a satisfactory resolution cannot be obtained as outlined in Phase II, the following steps will be instituted:
1. The FHSD or Physician designee will complete an "Evaluation for Treatment over Objection," linked document in HSPM #7.01, for the incarcerated individual on hunger strike including current vital signs, weight loss, and other relevant medical data.  
  
Daily monitoring of the incarcerated individual's physical condition as required by HSPM #1.30 will determine the medical need for force feeding. An updated mental health status evaluation will be provided by OMH.

The "Evaluation for Treatment over Objection," linked document in HSPM #7.01 and the current mental health evaluation will then be reviewed by the RMD and subsequent to that review will be forwarded by the Superintendent, or designee, to the Central Office, Office of Counsel.

The Office of Counsel will contact the Attorney General's Office serving the county in which the facility is located for assistance with the required Court Order. The Superintendent, or designee, will stay in regular contact with the Office of Counsel and the Attorney General's Office until the required Court Order is obtained. Any Court Order authorizing force feeding must be placed in the medical record of the incarcerated individual. A copy of the Court Order must also be sent to the Office of Counsel for placement of the Order in the office's hunger strike folder.

2. The Superintendent, or designee, will submit a weekly report of the incarcerated individual's status to the Deputy Commissioner/Chief Medical Officer using the auto-routed "Weekly Hunger Strike Report," (WKLYHNGRRPT) SYSM E-Form.
3. Subsequent to any decision to force feed, the FHSD or Physician designee will advise the incarcerated individual of the process required and the potential consequences of the continued hunger strike. An attempt will be made to secure the incarcerated individual's consent to the process of force feeding. The incarcerated individual may accept to drink the designated nutritional supplement voluntarily. This does not constitute an end to the hunger strike.
4. Refusal of such consent will be documented in the incarcerated individual's medical record and the hunger strike file. The incarcerated individual will be informed that force feeding will be initiated regardless of the lack of his or her consent if, in the opinion of the responsible Physician, it is deemed medically necessary to sustain life and to prevent irreversible damage to life support systems.
5. Should force feeding or other medical treatment become necessary, the Hunger Strike Team Leader shall notify the facility Watch Commander, who will notify the CCC, CNYPC, and prepare the "Final Supplemental Unusual Incident Report" in accordance with Directive #4004, "Unusual Incident Report."
6. Consideration may be given to the temporary admission of the incarcerated individual to another facility infirmary or Regional Medical Unit (RMU), if such an admission is deemed by the Deputy Commissioner/Chief Medical Officer to be necessary to maintain the incarcerated individual's health during the force feeding process. Admission to another facility infirmary or an RMU will not impact the Court Order as any Order to force feed issued by a Justice of the State Supreme Court has jurisdiction Statewide and would remain in effect regardless of an incarcerated individual's current facility location.
7. Once a Court Order has been obtained for force feeding, the Superintendent or designee shall contact the Deputy Commissioner for Correctional Facilities via Departmental E-mail to secure permission for use of the restraint chair for the purpose of force feeding the incarcerated individual (see Directive #4909, "Restraint Chair").
8. Force feeding will be terminated if/when the incarcerated individual ends his or her declared hunger strike, and/or voluntarily consumes sufficient nutrition to sustain life and to prevent irreversible damage to life support systems, as determined by the responsible Physician (See HSPM 1.30).

If the incarcerated individual has been admitted to the RMU, he or she will be discharged and returned to a facility designated by the Office of Classification and Movement.

When it has been determined that an incarcerated individual's hunger strike has ended, the Hunger Strike Team Leader shall notify the facility Watch Commander, who will notify the CCC, the Deputy Commissioner/Chief Medical Officer, the DOCCS Director of Bureau of Mental Health, the SUM, and the SURN NA, and if the incarcerated individual is on the OMH caseload, the facility OMH Unit Chief, as well as prepare the "Final Supplemental Unusual Incident Report" in accordance with Directive #4004.

- F. Any questions or issues related to the implementation of this process should be referred to Central Office Health Services, Facility Operations, or the Office of Counsel.

### Incarcerated Individual Hunger Strike Script

The Law in New York is well settled that incarcerated individuals have no constitutional right to starve themselves to death. Therefore, the State is authorized to force feed an incarcerated individual on a hunger strike in order to protect the health and welfare of the incarcerated individual by providing "sufficient nutrition to sustain life and to prevent irreversible damage to life support systems" and to maintain rational and orderly procedures in our facilities. These needs outweigh an incarcerated individual's right of privacy and free expression. Furthermore, the State has a legitimate interest in preventing self harm and suicide. Since you have chosen to refuse to eat, the Department will be seeking a Court Order requesting the ability to force feed you for as long as necessary. Once issued, the Order will permit the Department to feed you by whatever means medically necessary, including tube feeding.