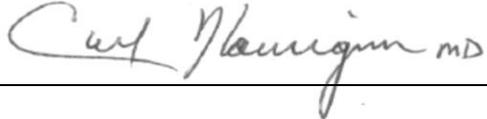


| | | | |
|---|---|----------------------|--------------------|
|  <p>NEW YORK STATE Corrections and Community Supervision</p> <p>DIRECTIVE</p> | TITLE | | NO. 4309 |
| | Inmate Hunger Strike | | DATE 12/26/2017 |
| SUPERSEDES DIR# 4309 Dtd. 02/02/2017 | DISTRIBUTION A B | PAGES PAGE 1 OF 6 | DATE LAST REVISED |
| REFERENCES (Include but are not limited to) HSPM Items 1.30 and 7.01; CNYPC Manual; Directive #4004; ACA Expected Practices 4-4224, 4-4281 | APPROVING AUTHORITY  | | |

I. **POLICY:** The State has an obligation to prevent self harm caused by an inmate's refusal to eat. Inmates have no constitutional right to starve themselves to death. Therefore, the State is authorized to force feed an inmate on a hunger strike in order to protect the health and welfare of the inmate, and to maintain rational and orderly procedures in our facilities. These needs outweigh an inmate's right of privacy and free expression. The Department will seek a Court Order requesting the ability to force feed any inmate on a hunger strike by whatever means necessary, including tube feeding, for as long as necessary.

II. **DEFINITIONS**

- A. **Hunger Strike:** An inmate's voluntary failure to eat nine (9) consecutive meals, regardless of whether or not the inmate has declared that he or she is on a hunger strike. A hunger strike will be considered ended when the inmate eats at least two (2) meals per day for three (3) consecutive days, and the provider has determined (by evaluation, vital signs, lab tests, etc.) that the inmate is medically stable OR when the Facility Health Services Director (FHSD) or designee, in consultation with the Regional Medical Director (RMD), determines that the inmate's current intake and nutritional status is adequate to maintain the inmate's health.
- B. **Base Weight:** The inmate'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 inmate's Offender Rehabilitation Coordinator, the Chaplain, or a Crisis Intervention Unit (CIU) person).

III. PROCEDURE

- A. Identification and Assessment: Any inmate 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 inmate's refusal to eat. At this time, baseline medical data (weight, blood pressure, etc.) will be obtained, with the inmate's cooperation.
1. If Health Services determines that the inmate's refusal to eat is a result of a medical condition, the inmate 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 inmate's refusal to eat is a result of a psychiatric condition, the inmate 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 inmate'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 inmate 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: inmate's name and DIN, the hunger strike start date, the inmate's base weight, the inmate'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 inmate on hunger strike per Health Services Policy Manual (HSPM) #1.30, "Inmate Hunger Strike Monitoring."
 3. The OMH staff will continue to evaluate the inmate on hunger strike per the Central New York Psychiatric Center (CNYPC) Outpatient Operations Policy and Procedure Manual: Services to DOCCS, "Inmate Hunger Strike." (If necessary, the inmate will be transferred to a facility with OMH staff.)
 4. The Hunger Strike Team Leader will meet with the inmate and inform the inmate of Department policy regarding hunger strikes. The Leader will be responsible to create and maintain a hunger strike file. The inmate will also be counseled by a Physician regarding the physical consequences of a continued fast. The Leader will attempt to verify the inmate's purported rationale for the hunger strike. A statement will be prepared for the inmate to sign, which shall include the inmate's purported rationale for the hunger strike and the inmate's intentions.

This will be placed in the hunger strike file. If the inmate 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 inmate to remain in general population.

D. Phase II Response: In the event that the inmate 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, "Inmate Hunger Strike."
4. The Hunger Strike Team Leader will meet with the inmate 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 inmate 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 inmate.

As held by the 8th Circuit court in the case of Martinez v. Turner, 977 F2d 421 (1992), force feeding is not a constitutional violation when an inmate's life or permanent health is in danger. The Hunger Strike Team Leader will inform the inmate 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 inmate on hunger strike including current vital signs, weight loss, and other relevant medical data. Daily monitoring of the inmate'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 #7.0 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 inmate. 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 inmate'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 inmate of the process required and the potential consequences of the continued hunger strike. An attempt will be made to secure the inmate's consent to the process of force feeding. The inmate 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 inmate's medical record and the hunger strike file. The inmate 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.
 6. Consideration may be given to the temporary admission of the inmate 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 inmate'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 inmate'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 inmate.
 8. Force feeding will be terminated if/when the inmate 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. If the inmate 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 inmate'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 inmate 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.

Inmate Hunger Strike Script

The Law in New York is well settled that inmates have no constitutional right to starve themselves to death. Therefore, the State is authorized to force feed an inmate on a hunger strike in order to protect the health and welfare of the inmate 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 inmate'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.