

**ADVANCE CARE PLANNING AND  
MANAGEMENT OF ADVANCE DIRECTIVES**

**1. REASON FOR ISSUE.** This Veterans Health Administration (VHA) Handbook establishes procedures for enabling health care staff to fulfill their obligation to support advance care planning for veterans.

**2. SUMMARY OF CONTENTS.** This VHA Handbook defines the obligations of health care staff to help veterans consider the types of health care decisions that might need to be made in the future and presents VHA's requirements for the management of advance directives. This Handbook defines Department of Veterans Affairs (VA) national policy to address new developments, the revision of VA Form 10-0137, "VA Advance Directive," and implementation of iMedConsent™ throughout VHA. It encompasses advance care planning for the full range of health care decisions that may be relevant for patients who have lost decision-making capacity.

**3. RELATED DIRECTIVE.** VHA Directive 1004 to be published.

**4. RESPONSIBLE OFFICE.** The National Center for Ethics in Health Care (10E) is responsible for this Handbook. Questions may be addressed to [vhaethics@va.gov](mailto:vhaethics@va.gov) or telephone 202-501-0364.

**5. DOCUMENTS RESCINDED.** VHA Handbook 1004.2, dated July 31, 2003, is rescinded.

**6. RECERTIFICATION.** This Handbook is scheduled for recertification on or before the last working day of January 2012.

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## **ADVANCE CARE PLANNING AND MANAGEMENT OF ADVANCE DIRECTIVES**

### **1. PURPOSE**

This Veterans Health Administration (VHA) Handbook establishes procedures for enabling health care staff to fulfill their obligation to support advance care planning for veterans.

### **2. BACKGROUND**

a. Department of Veterans Affairs (VA) policy on advance care planning is based on ethical and legal standards regarding the rights of all patients. These standards reflect a broad public consensus that:

(1) All adult patients who have decision-making capacity have the right to accept or refuse proposed medical treatments or procedures, regardless of the expected consequences; and

(2) For patients who have lost decision-making capacity, the health care preferences they stated in advance need to be honored to the extent permitted by clinical and professional standards, and the law.

b. Passage of the Patient Self-Determination Act (PSDA) in 1990 codified into Federal law the right of all patients with decision-making capacity to state their treatment preferences in advance, and the related responsibilities of health care organizations. The PSDA applies only to those health care organizations that participate in Medicare and Medicaid, but it provides the model and context for VA policy on advance care planning. Specifically, the PSDA requires health maintenance organizations, hospitals, home care agencies, and nursing homes to assure that each patient receives, upon admission or enrollment, written information regarding their right to accept or refuse medical treatment, and an opportunity to express, in an advance directive, their preferences concerning future medical care. The PSDA further requires health care providers to ask each patient if they have an existing advance directive and, if not, to offer assistance in completing one. PSDA concepts, which were incorporated into policy in 1991, are carried forward and elaborated in this Handbook and in VA Final Rule, Medical: Advance Health Care Planning (Title 38 Code of Federal Regulations (CFR) § 17.32).

c. VA policy regarding advance care planning is consistent with the Department's commitment to ensure that patients' values, goals, and treatment preferences are respected and reflected in the care they receive. VA is committed to creating a health care environment that promotes patient-centered care and shared decision making, an ongoing collaborative process between practitioners and patients or their surrogates, to which the practitioner contributes knowledge of medicine and the patient contributes values, preferences, and health care goals. Practitioners who speak with their patients about their preferences are better equipped to faithfully interpret those preferences if, or when, the patient loses decision-making capacity.

d. Patients and health care providers need encouragement, assistance, and resources for thinking and talking about patients' preferences regarding future health care choices. Patients need information and guidance to understand the implications of their preferences and to express them unambiguously. For those who wish to complete an advance directive and for those who have already done so, policies and mechanisms are needed to ensure appropriate identification, documentation, and handling. Thus, VHA staff has an important role in advance care planning.

e. At the same time, staff needs to recognize that advance care planning may occur without any action on their part, outside of health care settings. Numerous educational materials, forms, and registry services are widely available in print and online to assist veterans in their private deliberations, or in conversations with trusted advisers and/or loved ones.

### 3. SCOPE

This Handbook provides procedures for protecting the right of all VHA patients to express, in advance, their health care preferences in case they lose decision-making capacity. It defines the obligations of health care staff to help veterans consider the types of health care decisions that might need to be made in the future, and presents VHA's requirements for the management of advance directives. It encompasses advance care planning for the full-range of health care decisions that may be relevant for patients who have lost decision-making capacity. **NOTE:** *Related issues such as the assessment of decision-making capacity, surrogate decision making, and informed consent are covered in VHA Handbook 1004.1.*

### 4. DEFINITIONS

a. **Advance Care Planning.** Advance care planning is a process for identifying and communicating an individual's values and preferences regarding future health care for use at a time when that person is no longer capable of making health care decisions. It may occur in or outside of health care settings, can be done by anyone with decision-making capacity, and may or may not involve health care professionals directly. Advance care planning may, but does not necessarily, result in a written advance directive document.

b. **Advance Directive.** An advance directive is a written statement by a person who has decision-making capacity regarding preferences about future health care decisions in the event that individual becomes unable to make those decisions. Although verbal statements may also be extremely useful in determining the prior preferences of a patient who subsequently loses decision-making capacity, statements that have been committed to writing in a formal advance directive document are accorded special authority, as described in this Handbook. **NOTE:** *An advance directive is not to be used as the basis for decision making while the patient has decision-making capacity. The existence of an advance directive never precludes the requirement to discuss treatment options with a patient who has decision-making capacity.*

c. **Types of Advance Directives.** The various types of advance directives are:

(1) **Durable Power of Attorney for Health Care (DPAHC).** A DPAHC is a type of advance directive in which an individual designates another person (i.e., a "Health Care Agent") to make health care decisions on the individual's behalf.

(2) **Living Will.** A living will is a type of advance directive in which an individual indicates personal preferences regarding future treatment options. A living will typically includes preferences about life-sustaining treatment, but it may also include preferences about other types of health care (e.g., mental health treatment, blood transfusions, pain management). **NOTE:** *Living wills must not be confused with care plans (e.g., palliative care plans) or orders (e.g., treatment limitation orders), which are written by health care professionals.*

(3) **Mental Health (or Psychiatric) Advance Directive.** A mental health or psychiatric advance directive is for patients whose future decision-making capacity is at risk due to mental illness. In this type of directive, the individual indicates preferences about future mental health care (e.g., hospitalization, medications, restraints, and/or electroconvulsive therapy). **NOTE:** *Within VA, preferences regarding mental health care may be recorded on VA Form 10-0137, VA Advance Directive: Living Will & Durable Power of Attorney for Health Care.*

(4) **State-Authorized Advance Directive.** A state-authorized advance directive is a non-VA DPAHC, living will, mental health directive, or other advance directive document that is legally recognized by a particular State. The validity of State-authorized advance directives is determined pursuant to applicable State law. For the purposes of paragraph 4c(4), “applicable State law” can mean the law of the State where the advance directive was signed, the State where the patient resided when the advance directive was signed, the State where the patient now resides, or the State where the patient is receiving treatment. VA works to resolve any conflict between those State laws regarding the validity of the advance directive by following the law of the State that gives effect to the wishes expressed by the patient in the advance directive. Although some States place restrictions on the content or applicability of advance directives, such restrictions do not apply in VA. **NOTE:** *Questions about the validity of a State-authorized advance directive in VA need to be referred to VA Regional Counsel or to the Office of General Counsel (OGC).*

(5) **Department of Defense (DOD) Advance Medical Directive.** A DOD-authorized advance directive is drafted for members of the armed services and/or military dependents by a military attorney. This may include a DPAHC and/or a living will. Federal law exempts such advance directives from any requirement of form, substance, formality, or recording that is provided for under the laws of an individual State. Federal law requires that this type of advance directive be given the same legal effect as an advance directive prepared and executed in accordance with the laws of the State concerned (see Title 10 United States Code (U.S.C.) § 1044c, and DOD Directive 1350.4).

(6) **VA Advance Directive.** A VA advance directive is a completed VA Form 10-0137, VA Advance Directive: Living Will & Durable Power of Attorney for Health Care. **NOTE:** *VA Form 10-0137 may, or may not, be recognized by non-Federal health care facilities.*

d. **Decision-Making Capacity.** Decision-making capacity is a clinical judgment about a patient’s ability to make a particular type of health care decision at a particular time. In clinical practice (and law), a patient’s decision-making capacity is generally presumed; however, when the patient’s medical condition and/or observed behavior raises questions about the patient’s

decision-making capacity, the responsible practitioner must make an explicit determination based on assessment of the patient's ability to do all of the following:

- (1) Understand the information that is provided about one's health status and treatment options;
- (2) Appreciate how this information applies to one's own situation (including the potential consequences of alternative treatment decisions);
- (3) Manipulate the information to draw a logical conclusion and;
- (4) Communicate the decision.

***NOTE:** In contrast, "competence" is a legal determination made by a court of law. Patients who have been judicially determined to be incompetent are incapable of giving consent as a matter of law. Such persons are deemed to lack decision-making capacity for the purpose of giving informed consent. If a practitioner believes that a patient who is legally incompetent does in fact have the capacity to make a particular health care decision, the practitioner must discuss this with the legal guardian and seek advice from the local ethics program and/or Regional Counsel (see VHA Handbook 1004.1).*

e. **iMedConsent™.** iMedConsent™ is a commercial software product that facilitates proper completion and documentation of the informed consent process for treatments and procedures that require signature consent. The program also facilitates electronic completion of VA Form 10-0137. ***NOTE:** This program will eventually be operational for all clinical services in all VA medical centers, outpatient facilities, and nursing homes.*

f. **Surrogate Decision Maker (Surrogate).** The surrogate is the individual(s) authorized to make health care decisions on behalf of a patient who lacks decision-making capacity. The authorized surrogate may be the Health Care Agent, the legal guardian, or the next-of-kin (see VHA Handbook 1004.1 for information about surrogate selection, hierarchy, and the surrogate's role in health care decision making).

(1) **Health Care Agent (HCA).** An HCA is a person selected by the patient and named in a DPAHC to make health care decisions on the patient's behalf if, or when, that individual can no longer do so. In VHA, an HCA is first in the hierarchy of surrogate decision makers and is authorized to make decisions about all types of health care on the patient's behalf.

(2) **Legal Guardian or Special Guardian (Guardian).** A guardian is an individual appointed by a court of appropriate jurisdiction to make health care decisions for a person who has been declared legally incompetent. The terms "guardian" and "conservator" are used synonymously. ***NOTE:** Some State laws may limit the authority of a guardian to specific types of health care decisions. While State-imposed limitations do not apply in VA, specific court-imposed limitations to the authority of a guardian do apply in VA.*

## 5. PROGRESS NOTE TITLES

To ensure that advance directives and related discussions with patients can be easily identified in the health record, three distinct progress note titles have been established. The note titles must be included in the Crises, Warnings, Allergies and/or Adverse Reactions and Directives (CWAD) postings of the Text Integration Utility (TIU) in Veterans Health Information Systems and Technology Architecture (VistA), and must be used as follows:

a. **“Advance Directive.”** The “Advance Directive” note title is used to document the entry of an advance directive document into the patient’s record (either scanned or completed electronically). This title must be used only to document the filing of an advance directive.

b. **“Rescinded Advance Directive.”** The “Rescinded Advance Directive” note title is used to document the patient’s revocation of an advance directive and the invalidity of the associated directive (see par. 11 for information about managing the rescission process and appropriate documentation).

c. **“Advance Directive Discussion.”** The “Advance Directive Discussion” note title is used to document an advance care planning discussion between the practitioner and patient. Discussion about an advance directive that is already in the health record may be documented either with a note titled “Advance Directive Discussion,” or in an addendum to the “Advance Directive” note associated with the subject directive.

## 6. ADVANCE DIRECTIVE NOTIFICATION AND SCREENING

a. **Content.** Consistent with the PSDA, VA requires notification and screening regarding advance directives. These functions, which may be performed by the admitting clerk or other designated staff, must include:

### (1) Notification

(a) Patients must be given written notification stating their right to accept or refuse medical treatment, to designate an HCA, and to document their treatment preferences in an advance directive.

(b) Patients must be informed that VA does not discriminate against patients based on whether or not they have an advance directive (see App. B).

### (2) Screening

(a) Patients must be asked whether they have an advance directive. If so, the screener must ask for a copy of the document for filing in the patient’s health record (see subpar. 10a).

(b) Patients must be asked whether they want more information about advance directives and/or assistance in completing the advance directive forms. If so, the screener must direct the patient to the requested assistance.

b. **Timing.** Advance directive notification and screening is required at:

(1) Check-in for a patient's first primary care appointment, unless there is documentation of advance directive notification and screening within the last year;

(2) Each admission to a VHA inpatient facility (including hospital, nursing home, or domiciliary facility); and

(3) Each admission to home care or hospice care.

c. **Documentation.** For all patients in all settings, compliance with the requirements for advance directive notification and screening must be documented in the patient's health record.

## 7. RESPONSIBILITIES OF THE FACILITY DIRECTOR

a. **Facility Director.** The facility Director, or designee, is responsible for:

(1) Developing written facility procedures consistent with this Handbook.

(2) Identifying those VHA staff responsible for conducting notification and screening regarding advance directives, and for ensuring their appropriate training.

(3) Identifying those VHA staff responsible for providing patients with information about advance directives and assistance in completing advance directive forms, and for ensuring their appropriate training.

(4) Supporting Information Technology (IT) systems that enable the requirements of this Handbook. ***NOTE: National reminders and templates to facilitate compliance with this policy are under consideration.***

(5) Establishing a patient scheduling and referral system that leads to efficient coordination of the requirements of this Handbook.

(6) Ensuring that clinical staff know and follow the content of this Handbook.

## 8. RESPONSIBILITIES OF THE PRIMARY CARE PRACTITIONER

Primary care practitioners are responsible for:

a. Raising the issue of advance care planning with all patients who have decision-making capacity, explaining that they do this with all their patients. These conversations may be brief, or more extensive, depending on the patient's circumstances. For patients who request more information and/or assistance completing advance directive forms, the primary care practitioner may personally provide the information and/or assistance, or make a referral to another qualified individual (see par. 9).

b. Giving patients pertinent educational materials (e.g., Refer patients to the “Your Life, Your Choices” module in MyHealthVet at the web site <http://www.myhealth.va.gov>, or provide written material such as App. C).

c. Encouraging patients to discuss their preferences for future health care with their loved ones.

d. Explaining the potential benefits of advance care planning in general, and of advance directives in particular, especially for patients who are at high risk of losing decision-making capacity (e.g., patients with cerebrovascular disease, early dementia, or other serious mental or life-limiting illnesses).

e. Highlighting the particular benefits of appointing an HCA, especially if a problem related to surrogacy is anticipated (e.g., patients who have no family, patients who would want a surrogate other than the person authorized in VHA Handbook 1004.1, or patients with multiple surrogates at the same priority level who may disagree with each other).

f. Describing the limitations of advance directives. *NOTE: Pertinent information is contained in the references cited in par. 8b, and in par. 14.*

g. For patients who already have an advance directive in the health record, reviewing the advance directive with the patient to help ensure it is up to date, and that it states the patient’s intentions clearly (see par. 10c).

h. If the patient has more than one advance directive in the record, asking the patient to indicate which one(s) remains active and which, if any, needs to be rescinded because of changes in the patient’s preferences (see par. 11).

i. Initiating conversations about advance care planning periodically (at intervals no longer than three years), whenever the primary care practitioner observes a significant change in the patient’s health status, and at the earliest opportunity after a new or revised advance directive is entered into the patient’s record. In addition, primary care practitioners need to initiate these conversations more frequently with patients who are at high risk of losing decision-making capacity (e.g., patients with cerebrovascular disease, early dementia, or other serious mental or life-limiting illnesses).

j. Documenting that the required advance care planning discussion occurred and summarizing the significant content.

(1) When the discussion results in the patient completing an advance directive, the advance directive must be filed or scanned with a progress note titled “Advance Directive.”

(2) Documentation of the discussion that led to the filing of an advance directive can be in the form of an addendum to the “Advance Directive” note associated with that advance directive or in a separate note titled “Advance Directive Discussion.”

(3) When there is discussion, but no advance directive, the note needs to have the title “Advance Directive Discussion.”

(4) When the discussion concerns an existing advance directive, documentation can be in the form of an addendum to the “Advance Directive” note associated with that directive or may be made in a separate note titled “Advance Directive Discussion” (see par. 5).

## 9. PATIENT-REQUESTED ADDITIONAL INFORMATION ABOUT ADVANCE DIRECTIVES AND/OR ASSISTANCE IN COMPLETING ADVANCE DIRECTIVE FORMS

VA must provide additional information about advance directives and/or assistance in completing forms for all patients who request this service. This assistance may be provided by social workers, or others who are appropriately trained, and must be available to patients in all clinical settings.

a. **Content.** Designated practitioners need to ensure that the patient understands the meaning of advance care planning and advance directives, including the information listed in subparagraphs 8b to 8f. For patients who already have an advance directive, practitioners also need to cover points in paragraph 8g and 8h. Possible clinical scenarios and treatment options need to be discussed with attention and sensitivity to the patient’s individual circumstances, needs, and culture. Patients may be directed to the exercises in “Your Life, Your Choices” (available on My HealthVet at the web site <http://www.myhealth.va.gov>), or other published resources.

b. **Forms.** If requested, appropriately trained staff must assist the patient in completing:

(1) **VA Form 10-0137.** VA Form 10-0137 (revised December 2006) is a combined DPAHC (Part II) and living will (Part III). A veteran who does not want to specify treatment preferences may still designate an HCA to make treatment decisions on their behalf. Additionally, a veteran may specify treatment preferences without designating an HCA. VA Form 10-0137 is available electronically on the VA Forms website at <http://vaww.va.gov/vaforms>, in iMedConsent™ (“Shared” category), and with a link on the National Center for Ethics in Health Care web site at <http://vaww.ethics.va.gov>, and My HealthVet at <http://www.myhealth.va.gov>. **NOTE:** VA recognizes State-authorized forms and DOD advance directives to the extent they are consistent with VA policy.

(a) To provide further information about their treatment goals, specific treatment preferences, etc., patients may attach one or more additional page(s), each of which must be initialed and dated, to VA Form 10-0137. This may consist of blank sheets on which patients write what they wish or pages from existing documents (e.g., worksheets from “Your Life, Your Choices” or other available sources). To ensure that the document filed in the patient’s record is complete, VA Form 10-0137 and any supplemental pages must be scanned (or filed) together, to create a single document.

(b) VA Form 10-0137 must be signed by the patient in the presence of two witnesses. Clinical employees of the VA facility in which the patient is being treated may not sign as witnesses unless they are family members or employees from the Chaplain Service, Psychology Service, or Social Work Service. Non-clinical employees (e.g., Medical Administration,

Voluntary Service, Environmental Management Service) may serve as witnesses. Neither witness may knowingly be named as a beneficiary in the patient's will, be appointed as HCA in the advance directive, or be financially responsible for the patient's care. Witness attestation means only that the individual saw the patient sign the form.

(2) **State-Authorized Advance Directive Form.** Patients may wish to have a State-authorized advance directive instead of, or in addition to, a VA advance directive. This is especially appropriate for patients who live in a State where a VA advance directive may not be recognized.

(3) **VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information.** Patients who have information in their health record that is protected by 38 U.S.C. § 7332 (specifically, information related to alcohol or substance abuse, Human Immunodeficiency Virus (HIV) infection, and/or sickle cell anemia) need to be offered an opportunity to complete VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information, for the purpose of authorizing the future release of 7332-protected information to surrogate decision makers.

c. **Timing.** Appointments for information pertinent to advance care planning and/or completion of forms needs to occur promptly after the request is made.

d. **Documentation.** Document that the patient-requested advance care planning discussion occurred and summarize the significant content.

(1) When the discussion results in the patient completing an advance directive, the advance directive must be filed or scanned with a progress note titled "Advance Directive."

(2) Documentation of the discussion that led to the filing of an advance directive can be in the form of an addendum to the "Advance Directive" note associated with that advance directive or in a separate note titled "Advance Directive Discussion."

(3) When there is discussion, but no advance directive, the note needs to have the title "Advance Directive Discussion."

(4) When the discussion concerns an existing advance directive, documentation can be in the form of an addendum to the "Advance Directive" note associated with that directive or may be made in a separate note titled "Advance Directive Discussion" (see par. 5).

## 10. MANAGEMENT OF ADVANCE DIRECTIVE DOCUMENTS

Required procedures for filing and managing advance directive documents include:

a. **Filing the Advance Directive in the Patient's Electronic Health Record.** Advance directive forms that are submitted by the patient in hard copy (on paper) need to be promptly scanned into the patient's health record through VistA Imaging with an accompanying progress note titled "Advance Directive." Alternatively, staff may use the iMedConsent™ program to help patients electronically complete VA Form 10-0317, and directly save the signed advance

directive in VistA Imaging. The facility's iMedConsent™ administrator must ensure that the progress note automatically generated by iMedConsent™ is titled "Advance Directive." **NOTE:** *If the facility is not yet scanning advance directive forms, see VHA Handbook 1907.1, for proper filing procedures.*

b. **Advance Directive CWAD Posting.** The "Advance Directive" note title must be configured to generate a CWAD posting to alert staff that the patient has an advance directive on file (see VHA Handbook 1907.1). This note title must only be used for notes documenting the scanning of a hard copy advance directive document and notes automatically generated when iMedConsent™ saves an advance directive document to VistA. **NOTE:** *A CWAD posting must also be generated by an "Advance Directive Discussion."*

c. **Updating or Modifying an Advance Directive.** If a patient wants to update or revise a VA advance directive, a new one needs to be created and documented, and the old directive must be rescinded (see par. 11).

d. **Providing a Copy of the Advance Directive to the Patient.** Upon completion of an advance directive, a paper copy must be offered to the patient. If the document is completed or provided in hard copy (paper) form, the original needs to be given to the patient. If the advance directive is completed using iMedConsent™, a printed copy of the completed, signed document must be offered to the patient. Once the advance directive is entered in the patient's health record, requests for copies must follow the procedures specified in Handbook 1605.1.

e. **Advising Patients to Share Copies of Advance Directives.** In addition to their VA health care provider, patients need to be advised to give copies of their advance directive to their designated HCA, family members and loved ones, and any non-VA health care providers who may be involved in their care.

## 11. RESCISSION OF AN ADVANCE DIRECTIVE

a. A patient who has decision-making capacity may revoke their advance directive at any time. Revocation occurs when the patient, or another person acting at the patient's direction and in the patient's presence, cancels, defaces, tears, or otherwise destroys the paper document; or by the patient's written or verbal statement expressing intent to revoke.

b. A patient may have more than one valid advance directive. For example, a patient who lives in New York may wish to have a New York state-authorized advance directive in addition to a VA advance directive. However, a patient may not have more than one VA advance directive at the same time. If a new VA Form 10-0137 is entered in the record, all previous versions of VA Form 10-0137 are invalidated. Furthermore, the responsible practitioner must take action to rescind the previous VA Form 10-0137. To ensure that the patient's electronic health record is clear, whenever a patient revokes an advance directive, the responsible practitioner must do all of the following:

(1) Write an addendum to the "Advance Directive" progress note associated with the directive that the patient is revoking stating that the directive signed on DATE was revoked and describing the discussion with the patient that resulted in revocation;

(2) Request that the responsible party (typically, the Chief, Health Information Management Service) change the progress note title associated with the advance directive which the patient revoked to “Rescinded Advance Directive;” and

(3) File a new advance directive, if applicable, with the note title “Advance Directive.”

c. The medical center Director, or designee, is responsible for establishing and promoting clear, efficient channels of communication to facilitate the re-titling of revoked advance directive documents (see VHA Handbook 1907.1 for re-titling procedures and guidance). Notes titled “Rescinded Advance Directive” must remain in the CWAD postings.

## 12. IMPLEMENTATION OF ADVANCE DIRECTIVES

a. **Prerequisites.** Prior to acting upon any advance directive, VA practitioners must carry out the following five steps. *NOTE: Decisions regarding the limitation or withdrawal of life-sustaining treatments are the responsibility of the attending physician and may not be delegated to another practitioner.*

(1) Determine that the patient lacks the capacity to make the particular decision in question. Patients are presumed to have decision-making capacity unless an appropriate clinical evaluation determines that the patient lacks decision-making capacity, the patient is a minor, or the patient has been ruled incompetent by a court of law (see Handbook 1004.1).

(2) Ensure that the advance directive appears to be valid for use in VA. Note the following points regarding validity in VA (each of which applies to the extent that the advance directive does not conflict with clinical or professional standards or VA policy):

(a) VA recognizes and honors throughout its health care system any valid VA advance directive, any State-authorized medical or mental health advance directive that is valid in one or more States under applicable State law (see par. 4), and any valid DOD advance directive.

(b) If a patient has more than one valid advance directive (e.g., a VA advance directive and a State-authorized advance directive), both apply. If valid directives contain conflicting information, the most recent one (as determined by examination of the date applied by the patient at the time the document was signed) prevails.

(c) A patient’s record may contain an advance directive that has been revoked. If more than one “Advance Directive” note is in the CWAD postings, practitioners must take extra care to check the validity of each advance directive. If the patient has more than one VA Form 10-0137, only the most recent form remains valid (see par. 11).

(3) Personally read the advance directive in its entirety.

(4) Ensure that the relevant clinical criteria that may be described in the directive are met (e.g., “If I am unconscious, in a coma, or in a persistent vegetative state and there is little or no chance of recovery,” or “if I have pain or other severe symptoms that cannot be relieved”).

(5) Identify the authorized surrogate decision maker, if any, as specified in VHA Handbook 1004.1, and follow the decision-making process in subparagraph 12b.

b. **Decision-Making Process.** The process of decision making for patients who lack decision-making capacity is the same whether or not the patient has an advance directive. This needs to be a collaborative process between the surrogate, if any, and the clinical team. The surrogate's decision must be based on substituted judgment, or, if the patient's values and wishes are unknown, on the patient's best interests (see VHA Handbook 1004.1).

(1) **Patients Who Have an Authorized Surrogate**

(a) If the patient has designated an HCA, the responsible practitioner, or designee, must contact that person to act as the patient's surrogate. If the patient has not designated an HCA, the authorized surrogate must be identified as specified in VHA Handbook 1004.1.

(b) Irrespective of any advance directive, the practitioner must obtain informed consent for treatments and procedures, as specified in VHA Handbook 1004.1.

(c) If the advance directive includes a living will, the responsible practitioner must review that document with the authorized surrogate. The purpose of this review is to establish whether or not the criteria the patient specified in the living will have been met, and to determine whether or not the surrogate and the treatment team agree in their interpretation of the patient's expressed preferences and how these apply to the present circumstance.

(d) In cases where the treatment team and the surrogate agree regarding interpretation of the patient's preferences as stated in the living will, the responsible practitioner needs to ensure that the patient is treated in accordance with that interpretation.

(e) In cases where the treatment team and surrogate disagree in their interpretation of the patient's preferences as stated in the living will, and cannot resolve the conflict, a multidisciplinary ethics consultation team must review the case and attempt to bring the parties to consensus.

(f) If the ethics consultation team is unable to resolve the conflict, it is necessary to engage Regional Counsel and refer the matter to a court of appropriate jurisdiction. This is the proper procedure in disputed cases where the consultation team determines that the following conditions exist:

1. The living will and its contents are consistent with clinical and professional standards and VA policy;

2. The relevant statements contained in the living will are clear and unambiguous, and a valid expression of the patient's preferences; and

3. The surrogate is unwilling to authorize treatment consistent with those statements.

(g) If the consultation team determines that the advance directive is unclear or ambiguous, or not a valid expression of the patient's preferences, the treatment team must not attempt to override the surrogate's decision on the basis of the advance directive.

(2) **Patients Who Have No Authorized Surrogate.** In cases where there is no authorized surrogate who is available and willing to serve, the practitioner may either follow the procedures outlined in VHA Handbook 1004.1 regarding an alternative decision-making process, or contact Regional Counsel for assistance in obtaining a legal guardian for health care decisions.

c. **Documentation.** The responsible practitioner must document in the patient's health record findings regarding each of the five prerequisites listed in subparagraph 12a, the decision-making process that was used, and the decision that was reached.

### 13. IMPLEMENTATION OF PATIENT INSTRUCTIONS IN CRITICAL SITUATIONS

A special provision applies for patients who are critically ill and at risk of imminent loss of decision-making capacity. In these circumstances, for patients who have decision-making capacity, but are not physically able to sign an advance directive form or whose existing directive is not readily available, VA is to follow their unambiguous verbal or non-verbal instructions regarding future health care decisions. The patient's instructions must have been expressed to at least two members of the health care team. The substance of these instructions must be recorded in an "Advance Directive Discussion" progress note and must be signed by at least two members of the health care team who were present and can attest to the instructions expressed by the patient. These instructions take effect only if the patient loses decision-making capacity during the critical situation in which the instructions were given.

### 14. REFERENCES

- a. VHA Handbook 1004.1, Informed Consent for Clinical Treatments and Procedures.
- b. Federal Patient Self-Determination Act, 42 U.S.C. § 1395cc.
- c. Title 38 CFR § 17.32, (2005).
- d. Title 10 U.S.C. § 1044c.
- e. DOD Directive 1350.4, Legal Assistance Matters, April 28, 2001, [http://www.dtic.mil/whs/directives/corres/pdf/d13504wch1\\_042801/d13504p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/d13504wch1_042801/d13504p.pdf)
- f. Fagerlin A, Schneider CE. "Enough. The Failure of the Living Will," Hastings Center Report. 34(2):30-42; 2004.
- g. Miles SH, Koepp R, Weber EP. "Advance End-of-Life Treatment Planning," Archives of Internal Medicine. 156:1062-67; 1996.
- h. VHA Handbook 1907.1, Health Information Management and Health Records.

- i. VHA Handbook 1605.1, Privacy and Release of Information.
- j. “Your Life, Your Choices” module in MyHealtheVet at the web site <http://www.myhealth.va.gov>.

**VA FORM 10-0137, VA ADVANCE DIRECTIVE:  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND LIVING WILL**

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## VA FORM 10-0137B, WHAT YOU SHOULD KNOW ABOUT ADVANCE DIRECTIVES

Below is an embedded copy of Department of Veterans Affairs (VA) Form 10-0137B, What You Should Know About Advance Directives. VA Form 10-0137B can also be found on the VA Forms Intranet web site at <http://vaww.va.gov/vaforms> , and Internet web site at <http://www.va.gov/vaforms/> . This is to be used for local reproduction. This form will also be stocked by the Hines Service and Distribution Center (formerly known as the Forms and Publications Depot).

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