National Center for ETHICS in Health Care

Updated June 26, 2018

Frequently Asked Questions

VHA Handbook 1004.02: Advance Care Planning and Management of Advance Directives

1. **Q: Where can I find the VA advance directive form?**

   A: The VA advance directive can be completed in iMedConsent™ or on paper. The paper form is available on the National Center for Ethics in Health Care's website: http://www.ethics.va.gov/activities/policy.asp

2. **Q: Who can access iMedConsent™?**

   A: All staff members who have access to CPRS can access iMedConsent™. The program launches from the CPRS tool drop down menu.

3. **Q: Can we alter or adapt the VA Form 10-0137 to include additional questions?**

   A: No. VA Form 10-0137 (the VA advance directive) is approved by White House Office of Management and Budget, and it may not be customized by the facility. The Veteran completes the form by marking the check boxes and filling in information into the free-text areas and signing it, but the form itself may not be altered or customized.

4. **Q: Can we include standardized, boilerplate text in the free text areas of the VA advance directive in iMedConsent™?**

   A: No. Including standardized, boilerplate text in the free text areas would constitute altering or adapting the advance directive. Patients should determine what, if any, information is included in the free text areas in iMedConsent™.

5. **Q: Does the VA recognize and honor non-VA advance directives?**

   A: Yes. 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, and any valid DOD advance directive. A state-authorized advance directive is a non-VA Durable Power of

Attorney for Health Care, 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. Questions about the validity of advance directives should be referred to the Regional Counsel staff assigned to your facility.

6. **Q: Can a Veteran have more than one valid advance directive on file?**

   A: A Veteran may not have more than one valid VA advance directive at the same time. Only the most recent VA advance directive is valid. However, a Veteran may have both a valid state-authorized advance directive and a valid VA advance directive. For example, a Veteran who lives in New York may wish to have a New York state-authorized advance directive in addition to a VA advance directive.

7. **Q: If a Veteran has a state-authorized advance directive and a VA advance directive, which one takes precedence?**

   A: 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 Veterans who live in a state where a VA advance directive may not be recognized. If a Veteran completes both types of advance directive, they need to make sure the two documents are consistent with each other. If valid advance directives contain conflicting information, the most recent one (as determined by examination of the date applied by the Veteran at the time the document was signed) prevails.

8. **Q: Why would a Veteran complete a VA advance directive and a state-authorized advance directive?**

   A: Depending on the state, the VA advance directive may not be recognized as a legally-recognized document in non-VA settings. If the Veteran lives in a state that does not recognize the VA advance directive, the Veteran should consider completing both a VA advance directive and their state's advance directive. Both types of advance directive are legally-recognized within VA. If the Veteran completes both types of advance directive, advise the Veteran to make sure the two documents are consistent with each other.

   The VA advance directive was drafted with input from the Department of Justice (DOJ). If VA needs to go to court to enforce the terms of a VA advance directive, the DOJ determines whether the case will be brought to court. The language in the VA advance directive is drafted to try to ensure that DOJ will take the Veteran's case to court. A state-authorized advance directive may not meet the standards held by DOJ in order for VA to be able to have the advance directive enforced by the courts.

9. **Q: How do I find out if a state recognizes the VA advance directive as a legal document?**

   A: Questions about the validity of advance directives should be referred to the Regional

Counsel staff assigned to your facility.

10. **Q: If a state does not recognize the VA advance directive, does the Veteran need to complete a state-authorized advance directive or can the Veteran just have the VA advance directive notarized?**

    A: If the Veteran lives in a state that does not recognize the VA advance directive and they want to have a valid advance directive for care outside of the VA, the Veteran should consider completing both a VA advance directive and a state-authorized advance directive. Both types of advance directive are legally-recognized within VA. Completing the state-authorized advance directive will ensure there is a valid advance directive if the Veteran goes to a hospital outside of the VA system. If the Veteran completes both types of advance directive, they need to make sure the two documents are consistent with each other.

11. **Q: Whose responsibility is it to ensure that an advance directive is "valid" before it is scanned into a Veteran's electronic health record?**

    A: The validity of a completed advance directive is ultimately a legal question and will differ depending on whether the advance directive is a VA advance directive (VA Form 10-0137) or a state-authorized authorized advance directive because these forms are all based on specific laws. So, questions regarding the validity of an advance directive should be directed to Regional Counsel.

    That being said, if VA staff assist a Veteran in completing a VA advance directive (Form 10-0137), that staff member should provide advice and assistance so that the form is completed accurately, as outlined in VHA Handbook 1004.02, *Advance Care Planning and Management of Advance Directives* (paragraph 11, page 11: *PATIENT-REQUESTED ADDITIONAL INFORMATION ABOUT ADVANCE DIRECTIVES OR ASSISTANCE IN COMPLETING ADVANCE DIRECTIVE FORMS*). If a Veteran completes a VA advance directive or a state-authorized advance directive independently, it is the Veteran's responsibility to make sure that their advance directive meets whatever legal elements (e.g., for witness signatures or notarization) are required.

12. **Q: Can an advance directive be a Do Not Resuscitate (DNR)/Do Not Attempt Resuscitation (DNAR) order?**

    A: No. An advance directive is not a medical order or a DNR/DNAR order. VHA Handbook 1004.03, *Life-Sustaining Treatment (LST) Decisions: Eliciting, Documenting, and Honoring Patients' Values, Goals, and Preferences*, establishes standardized procedures for eliciting, documenting, and honoring Veterans' values, goals, and preferences regarding the initiation, limitation or discontinuation of LSTs (including DNR/DNAR orders). Consistent with these policy requirements, a national standardized progress note template and order set have been developed to document Veterans' values, goals and preferences regarding life-sustaining treatments, including DNR/DNAR orders, in the electronic health record. For more information on the LSTDI and DNR/DNAR orders, please see the NCEHC's website:

http://vaww.ethics.va.gov/LST.asp.

13. **Q: What is the difference between a state-authorized advance directive and state-authorized portable orders?**

    A: A state-authorized advance directive is a non-VA durable power of attorney for health care, living will, mental health directive, or other advance directive document that is legally recognized by a particular state. An advance directive is a statement of the Veteran's preferences about future health care decisions. State-authorized portable orders (SAPOs) are specialized forms or identifiers (e.g., DNAR bracelets or necklaces) authorized by state law, that translate a Veteran's preferences with regard to specific life-sustaining treatment decisions into portable medical orders. An advance directive is not an order.

14. **Q: Aren't the terms "Health Care Agent" and "Durable Power of Attorney for Healthcare" synonymous and used interchangeably in legal language?**

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

15. **Q: When does the "Durable Power of Attorney" go into effect? When does a Health Care Agent start to make health care decisions?**

    A: The DPAHC goes into effect as soon as it is executed (signed and witnessed per policy). The Health Care Agent only makes decisions for the Veteran when the Veteran has lost decision-making capacity.

16. **Q: What is a Legal or Special Guardian?**

    A: Legal Guardian or Special 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.

17. **Q: Is a Veteran's Legal or Special Guardian also their health care agent?**

    A: Not necessarily. A health care agent (HCA) is a person selected by the Veteran and named in a Durable Power of Attorney for Health Care (DPAHC) to make health care decisions on the Veteran's behalf if, or when, that individual can no longer do so. A Legal guardian or a Special 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. We understand that in some states the appointed guardian may be referred to as a "health care agent," but if the Veteran had previously appointed a HCA through an advance directive, it is a legal matter to determine which person has legal authority as the Veteran's decision maker. Because guardianship is established under state law and every state is different, questions about guardianship in the case of a

particular Veteran should be directed to your Regional/District Counsel.

18. Q: Regarding the priority of surrogates, does a Legal or Special guardian have priority over the health care agent?

A: No. In VA, the health care agent is higher on the priority of surrogates than the legal or special guardian. In VA, if the Veteran lacks decision-making capacity the surrogate is authorized to make health care decisions on behalf of the Veteran in the following order of priority: Health Care Agent, legal guardian or special guardian, next-of-kin (the next-of-kin is a relative, 18 years of age or older, in the following order of priority: spouse, adult child, parent, sibling, grandparent, and grandchild), close friend.

19. Q: What documentation is necessary to qualify someone as a "close friend" in the surrogate hierarchy?

A: The close friend must present a signed, written statement that will be placed in the Veteran's electronic health record describing (with specific examples) that person's relationship to, and familiarity with, the Veteran. Social workers, or other staff, must verify, in a signed and dated progress note, that this requirement has been met.

20. Q: Does the Veteran also need to sign the "close friend" written statement?

A: No. VHA Handbook 1004.02 does not require the Veteran to sign the written statement by the close friend.

21. Q: How can a Veteran ensure their same-sex spouse or same-sex partner is their surrogate decision-maker?

A: On June 26, 2013, the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. Based on that decision, the Department of Veterans Affairs VA is now able to treat all married individuals equally as legally recognized spouses, regardless of gender.

With regard to surrogate decision-making, VA personnel will accept a same-sex spouse's word that they are the Veteran's spouse, without requiring a marriage license, just as they would for opposite-sex spouses, unless there is evidence to suggest that the person is not the spouse. For the surrogate priority list, spouses, regardless of gender, are recognized as first in order of priority under legal "next-of kin" (the third tier in the surrogate hierarchy after Health Care Agent and legal guardian or special guardian).

VA is not necessarily able to accord this same legal recognition to unmarried partners. An unmarried partner would fall under the fourth-tier of the priority list: as a "close friend." Patients can ensure that their preferred surrogate is at the top of VA's surrogate priority list by appointing that person as their Health Care Agent in a Durable Power of Attorney for Health Care.

22. Q: If a Veteran is not legally divorced from an "ex-spouse," is VA obligated to contact the spouse to inquire about their serving as surrogate decision-maker?

A: Yes, unless the Veteran who lacks decision-making capacity has an authorized surrogate who would be higher on the priority list. The authorized surrogate is the person at the highest level of the hierarchy who is willing and available to serve in that role. In VA, the order of surrogate priority is: (1) Health Care Agent; (2) Legal guardian or special guardian; (3) Next-of-kin in the following order of priority: spouse, adult child, parent, sibling, grandparent, and grandchild; and (4) Close friend. In the scenario above, if the Veteran had not appointed a health care agent in a durable power of attorney for health care and did not have a legal or special guardian appointed by the court, VA would be obligated to contact the spouse to inquire about serving as surrogate decision-maker. Patients can make sure their preferred surrogate is at the top of VA's surrogate hierarchy by appointing that person as their health care agent.

23. Q: Can a VA staff member be identified as the Health Care Agent (HCA) on a Veteran's advance directive?

A: VHA policy is silent on the question of whether a VA staff member can serve as a HCA for a Veteran who receives care at VA. Patients have the right to select whomever they would like to be their HCA. However, from an ethical point of view, selecting a VA staff member has the potential to create a conflict if the staff member who is chosen to act on behalf of the Veteran as HCA is also involved in providing treatment for the Veteran. For example a nurse or physician assistant appointed as HCA might be instructed by a physician to carry out treatment orders that the HCA knows are inconsistent with the Veteran's wishes. Similarly, it would not be ethically appropriate for a VA social worker serving as HCA, to assist the Veteran in completing an advance directive. It is recommended, therefore, that if a Veteran wishes to choose a VA staff member as HCA, that staff member not be directly involved in providing care for the Veteran now or in the future. A determination of whether the staff member is or would be part of the Veteran's treatment team should be made before designating the staff member as HCA. It is important that social workers and other providers who assist Veterans to complete advance directives help the Veteran understand these potential problems.

24. Q: Can a Veteran appoint more than one health care agent? If so, how is this done?

A: The Veteran may appoint an "alternate health care agent" under the DPAHC section of the VA advance directive. This second person can be appointed to make health care decisions for the Veteran in the event the first person is not available.

25. Q: Can a Veteran add a third health care agent in the free text section of the VA advance directive?

A: Yes. A Veteran could appoint a third health care agent, who would be contacted if the second health care agent (the alternate health care agent) were not available. The "additional preferences" section (part II C) of the VA advance directive provides space for Veterans to write other important preferences about their health care that are not described somewhere else in the document.

26. Q: Which advance directive progress note titles should be linked to CPRS?

A: The three approved progress note titles used for documenting advance directives and advance care planning discussions ("Advance Directive," "Advance Directive Discussion," and "Rescinded Advance Directive") must be linked to 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). VA has developed a national standardized note title "Advance Directive Notification and Screening" that matches the requirements of Handbook 1004.02 policy. It is recommended that facilities use this note title to document the notification and screening requirements of this Handbook. However use of this note title is not required. The note titles "Advance Directive," "Advance Directive Discussion," and "Rescinded Advance Directive" must not be used to document advance directive screening or notification.

27. Q: Can health care providers other than social workers complete the "Advance Directive Discussion" progress note?

A: Yes. VHA Handbook 1004.02 establishes certain requirements for the primary care practitioner or Patient Aligned Care Team (PACT) and the mental health care practitioner or mental health care team related to advance care planning. VHA Handbook 1004.02 also establishes the requirement that the facility Director identify staff responsible for providing Veterans with information about advance directives and assistance in completing advance directive forms and ensuring their appropriate training. All staff members who conduct advance care planning discussions should use the "Advance Directive Discussion" progress note title to document the discussion; however, the content of the note may be different depending on the responsibility fulfilled by the particular staff member.

28. Q: Is there a VA form a Veteran needs to complete to rescind an advance directive? If not, what is recommended?

A: The Veteran does not need to complete a specific VA form in order to rescind an advance directive. To ensure that documents in the Veteran's electronic health record are consistent with their health preferences, whenever a Veteran 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 Veteran is revoking, stating that the directive signed on (indicate the date) was revoked and describe the discussion with the Veteran that resulted in revocation;
2. Request that the responsible party (typically, the Chief of Health Information Management Service) changes the progress note title associated with the revoked advance directive to "*Rescinded Advance Directive*." You and your staff may find it helpful to implement a quality assurance activity at the local level to ensure that revoked advance directives are being appropriately retitled.
3. File a new advance directive, if applicable, with the progress note title "*Advance Directive.*"

29. Q: What are the requirements regarding advance directive notification and screening?

A: Advance directive notification requires that all Veterans are given written notification stating their right to accept or decline medical treatment, to designate an HCA, and to document their treatment preferences. Providing VA Form 10-0137A, *Your Rights Regarding Advance Directives*, satisfies this requirement.

Advance directive screening requires that all Veterans and Community Living Center residents must be asked whether they have an advance directive or a mental health advance directive. Notification and screening is required in certain situations such as when a Veteran checks in for a first appointment or as part of hospital discharge planning when a Veteran is discharged to a long-term care or rehabilitation facility in the community. Please see VHA Handbook 1004.02 for a complete list of requirements.

In reference to advance directive screening as part of hospital discharge planning, if a Veteran is admitted to an inpatient unit for a short amount of time and the notification and screening requirements are met when the Veteran is admitted to the unit, notification and screening upon discharge may not be necessary. This requirement applies more to situations in which a Veteran spends a significant amount of time on an inpatient unit or changes in the Veteran's health status or wishes regarding advance care planning have changed. The benefits of having this discussion include the Veteran being given an opportunity to complete a new advance directive, if desired, and the Veteran being aware that a VA advance directive may not be legally-recognized outside of the VA and thus providing them the chance to complete a state-authorized advance directive.

30. Q: Who can complete advance directive notification and screening?

A: The advance directive notification and screening process may vary from facility to facility. Social workers, clerks and other staff who are appropriately trained may be involved in the advance directive notification and screening process. Talk with your co-workers and supervisor to determine if notification and screening is part of your role.

31. Q: What if I cannot perform advance directive notification and screening?

A: There may be circumstances when it is not possible to perform advance directive notification and screening, for example, if the Veteran is not conscious and no surrogate is available. If notification and screening is not possible, this must be documented in the Veteran's electronic medical record.

32. Q: Is there a CPRS template for documenting advance directive notification and screening?

A: Yes. The National Center for Ethics in Health Care has developed a CPRS template "Advance directive Notification and Screening" (ADNS).The template allows VA staff to document whether:

- the Veteran or representative was provided written notification about advance directives,
- the Veteran has an advance directive,
- the advance directive is on file, and
- the Veteran's advance directive contains information about mental health preferences.

Although facilities are required to install the ADNS template, facilities are not required to use the ADNS template. Facilities can opt to use a locally-developed process to document advance directive notification and screening instead, but it is important to note that there are two national, standardized health factors ("advance directive YES" and "advance directive NO") associated with the ADNS template that must be included in any documentation process for advance directive notification and screening.

33. Q: What progress note title is associated with the ADNS template?

A: As identified in VHA Handbook 1004.02, "VA has developed a national standardized note title "Advance directive Notification and Screening" that matches the requirements of this policy. It is recommended that facilities use this note title to document the notification and screening requirements of this Handbook. However use of this note title is not required" (paragraph 6, page 7). Facilities may determine locally which progress note title is associated with the ADNS template. Facilities may not, however, use the note title "Advance Directive," "Advance Directive Discussion," or "Rescinded Advance Directive" to document advance directive screening or notification.

34. Q: Who can be a witness to the Veteran's completion of a VA advance directive?

A: VA Form 10-0137 must be signed by the Veteran in the presence of two witnesses. Witness attestation means only that the individual saw the Veteran sign the form. Neither witness may knowingly be named as a beneficiary in the Veteran's will, be appointed as a HCA in the advance directive, or be financially responsible for the Veteran's care. No employee of the VA facility in which the Veteran is being treated may serve as a witness, unless they are family members, non-clinical employees (e.g., Medical Administration, Voluntary Service, Environmental Management Service, Telehealth Clinical Technician's (TCT)) or employees from the Chaplain Service, Psychology Service, or Social Work Service. If the Veteran chooses to have the document notarized, then the notary can serve as one of the two required witnesses and must sign in two places: once in Part IV B "Witnesses' Signatures" and in Part V "Signature and Seal of Notary Public."

35. Q: Sometimes there is only one witness available to sign the VA advance directive. Would the document be legally valid with only one witness signature?

A: No. VHA Handbook 1004.02 establishes the requirement that to be legally valid, the VA advance directive must be signed by the Veteran and two witnesses. If an advance directive is filed or presented without the appropriate

signature(s), staff should initiate the appropriate local process (e.g., via social work service) to explain the problem to the Veteran, and assist the Veteran in completing a new advance directive. From an ethical point of view, if a situation arose where a Veteran lost decision-making capacity and the advance directive on file was discovered to be missing appropriate signature(s), it would still be appropriate for clinicians and family members to take the information into account as a reflection of the Veteran's wishes.

36. Q: Does the VA advance directive need to be notarized?

A: The VA advance directive is valid in all VA facilities without being notarized. If the Veteran wants to use the VA advance directive in a VA health care setting, this section may be left blank. A VA advance directive may, however, require notarization in order to be legally-recognized outside of the VA health care setting. If a Veteran wants to use the VA advance directive as their advance directive outside of the VA health care setting, he or she would need to determine if the VA advance directive is valid in their local community and whether or not a notarization is required. They can do so by talking to their legal advisor or their health care provider. The VA advance directive provides space for a notary's signature and seal if it is required outside of the VA. If the Veteran chooses to have the advance directive notarized and would also like to have the notary serve as a witness, the notary must sign in two places: once in Part IV B "Witnesses' Signatures" and in Part V "Signature and Seal of Notary Public."

37. Q: If a Veteran does not wish to notarize their advance directive, does 'Part V: Signature and Seal of Notary Public (optional)' have to be scanned into the record?

A: Yes. The entire VA advance directive, even blank pages, should be scanned into the Veteran's electronic heath record.

38. Q: Who determines decision-making capacity?

A. Decision-making capacity is a clinical determination made by a practitioner. The practitioner who will be performing the treatment or procedure is responsible for the final determination of decision-making capacity with respect to informed consent for that treatment or procedure. That practitioner will often be the one to make this determination or the practitioner can request a consult to obtain the capacity assessment. If a Veteran's lack of capacity is based on a diagnosis of mental illness, a psychiatrist or licensed psychologist must be consulted in order to ensure that the underlying cause of the lack of decision-making capacity is adequately addressed. Determination of decision-making capacity is addressed in VHA Handbook 1004.01, *Informed Consent for Clinical Treatments and Procedures.*

39. Q: Does a diagnosis of dementia always mean that a Veteran lacks decision-making capacity?

A: A diagnosis of dementia does not automatically mean that a Veteran lacks decision-making capacity for the purpose of informed consent. Patients are presumed to have

decision making capacity and determining capacity isn't a global assessment of whether the Veteran can make a decision about how manage their finances or evaluate a TV they plan to buy, but an assessment of whether the Veteran can make a decision about the treatment being recommended. For many procedures, a Veteran with dementia will be able to understand and appreciate the nature and expected consequences of the health care decision and to reason about the options and communicate a choice. It is for this reason that capacity is often understood on a "sliding scale" depending on the seriousness of the likely consequences of Veterans' decisions.

40. Q: Should Veterans complete the VA release of information form (VA Form 10-5345, *Request for and Authorization to Release Medical Records or Health Information)*, when they complete an advance directive?

A: It depends. There are three situations when a Veteran should complete the VA release of information form, even if the Veteran has a VA advance directive.

a. When a patient lacks decision-making capacity, their health care agent or legal guardian, by law, has the same right to the Veteran's health record as the Veteran would. Health care agents and legal guardians may obtain medical records and information about the Veteran, including 7332-protected health information (i.e. information about alcohol or drug abuse treatment, sickle cell anemia, or Human Immunodeficiency Virus (HIV)), without specific authorization from the Veteran and without a signed VA release of information form. If a Veteran wants their health care agent to have access to their medical records before they lose decision-making capacity, the Veteran should complete the VA release of information form.

b. Surrogates other than the health care agent or legal guardian only have access to information deemed necessary to make informed decisions on the Veteran's behalf (because the Veteran has lost decision-making capacity). This would only include 7332-protected health information if it is relevant to the current decisions required. If the Veteran wants the surrogate to have more access to the Veteran's health care information, the Veteran should complete a VA release of information form.

c. Unless a person is either the Veteran's health care agent or other surrogate, they generally won't have access to the Veteran's health care information unless the Veteran has completed a VA release of information form. So, if the Veteran wants any person other than a health care agent or other surrogate to have access to their health care information, the Veteran should complete a VA release of information form.

41. Q: Does the VA have a mental health advance directive?

A: VA policy does not exceptionalize mental health care by distinguishing mental health advance directives from medical advance directives. The VA does not have a separate mental health advance directive, VA Form 10-0137 is a mental health advance directive if it contains mental health preferences in part three B or if additional pages are initialed, dated, and attached to it.

42. Q: Will there be a national form for mental health preferences coming in the future or is each station responsible for developing and updating their own mental health preferences form?

A: The National Center for Ethics in Health Care has developed a Mental Health Preferences Worksheet that is available on the Center's website. The worksheet is not mandated for use. Facilities can use locally created worksheets, but using the Ethics Center's worksheet is recommended for standardization.

43. Q: Can we use a CPRS template/worksheet to help Veterans document their mental health care preferences in the free-text areas of the VA advance directive in iMedConsent™?

A: Yes as long as the free-text area is editable by the Veteran. As noted in FAQ #4, "Including standardized, boilerplate text in the free text areas would constitute altering or adapting the advance directive." This prohibition only applies to substantive text that is un-editable by the Veteran. Veterans should determine what, if any, substantive information is included in the free text areas in iMedConsent™. So, if the CPRS template helps the Veteran document their preferences, e.g., by including prompts or questions, and they can edit the information in the template, there is no prohibition in VHA Handbook 1004.02, *Advance Care Planning And Management Of Advance Directives*, or VHA Handbook 1004.05, *iMedConsent*™ that limits your facility from copying and pasting information from the CPRS template into iMedConsent™ to help Veterans document their mental health care preferences in the free text areas of the VA advance directive in iMedConsent™.

44. Q: If a Veteran needs to update the contact information in the DPAHC, do they need to complete a new document, or can an addendum be made on the original "Advance Directive" progress note?

A: If a Veteran wants to update or revise a VA advance directive, a new one needs to be created and documented in the electronic health record. The old advance directive must be rescinded.

45. Q: Do practitioners have to obtain consent in emergency situations?

A: In a medical emergency the Veteran's consent is implied by law. Unless the Veteran has a Do Not Attempt Resuscitation order (DNAR order) to withhold resuscitation or other orders to withhold life-sustaining treatments, the practitioner may provide necessary medical care in emergency situations without the Veteran's or surrogate's express consent if immediate medical care is necessary to preserve life or avert serious impairment of the health of the Veteran, the Veteran is unable to consent, and the practitioner determines that waiting to obtain consent from the Veteran's surrogate would increase the hazard to the life or health of the Veteran (see VHA Handbook 1004.01, *Informed Consent for Clinical Treatments and Procedures*).

46. Q: I have had Veterans make statements on the VA advance directive form saying "I want to be on life support for 30 days and then disconnect it." Is this a

valid entry for a Veteran to make?

A: Yes. Patients can use the VA advance directive to do all of the following: 1. Name specific people to make health care decisions for them; 2. Describe preferences for how they want to be treated; and 3. Describe preferences for medical care, mental health care, long-term care, or other types of health care. Under the Section C (Additional Preferences) of the Living Will section of the document, Veterans can write other important preferences for their health care that are not described somewhere else in the document. In the above scenario, the Veteran can list his/her preference under the "additional preferences" section. For Veterans who have lost decision-making capacity, the health care preferences they stated in advance will be discussed with their surrogate. Decisions will be made that are consistent with the Veteran's advance directive to the extent their preferences are permitted by clinical and professional standards, permitted by law, and are agreed to by the surrogate.

47. Q: What are the situations where an advance directive would not be honored?

A: For Veterans who have lost decision-making capacity, the health care preferences they stated in an advance directive need to be honored to the extent permitted by clinical and professional standards, and the law. Preferences listed in an advance directive that are not permitted in VA, such as physician assisted suicide, would not be honored. Additionally, preferences would not be honored in circumstances where the wishes of the Veteran were unclear or ambiguous or the conditions stated in the living will are not met by current conditions of the Veteran.

48. Q: Who should I contact if I have a question about Handbook 1004.02 or a question about an active Veteran case related to advance care planning or a Veteran's advance directive?

A: For policy clarification or questions related to an active Veteran case, please contact your local IntegratedEthics (IE) program officer or your local Ethics Consultation Service. A list of key IE personnel by facility and VISN is available under the "Important IE Program Links" heading at: http://vaww.ethics.va.gov/integratedethics/index.asp.

49. Q: How do I find an interpreter/translator for the new Spanish/English VA advance directive form (VA Form 10-0137 Spanish English - Directrices Anticipadas De Va Poder Legal Para La Designacion De Agente Para El Cuidado De Salud Y Testamento En Vida)?

A: VHA Directive 2012-024, *Limited English Proficiency Title VI Prohibition Against National Origin Discrimination In Federally Conducted and Federally Assisted Programs and Activities*, includes a requirement for providing translation services that may be needed to assist the Veteran when completing this form. You may need to check within your facility policies or with your leadership to identify the local process for coordinating the assistance of an interpreter/translator.

50. Q: May we allow Veterans to only complete the Spanish portions of the new Spanish/English VA advance directive form (VA Form 10-0137 Spanish

English - Directrices Anticipadas De Va Poder Legal Para La Designacion De Agente Para El Cuidado De Salud Y Testamento En Vida)?

A: No. This is a bilingual form, requiring completion of both the Spanish and English portions when text is added. The policy basis for this is VHA Handbook 1907.01, *Health Information Management and Health Records* § 12e, which requires that documents entered into the electronic health record "… must be in English, and must conform to acceptable English grammar. Documents that provide information to patients (e.g., consent forms) may include Spanish translations, when appropriate, provided that both Spanish and English translations are included in the document." Based on this policy requirement, VA does not allow for the use of a "Spanish Only" version of this form. Facilities should discontinue use of any locally developed Spanish or Spanish/English versions of this form and use the official VA Form 10-0137 Spanish/English going forward.

51. Q: What resources are available for Veterans, families, and VA staff to learn more about advance care planning and advance directives?

A: There are a variety of resources and educational tools available on the National Center for Ethics in Health Care's (NCEHC) website and the Geriatrics and Extended Care website including podcasts, worksheets and handouts. In addition, training materials, including a PowerPoint and script, are available on the NCEHC's website for facilities to use to deliver local training to VA staff who provide information and assistance with completing advance directives.

52. Q: When a patient completes an advance directive, we like to copy the information about the Health Care Agent and/or the Veteran's preferences for life-sustaining treatments and put it in a note (this makes the information easy to find, especially if there is a delay scanning the advance directive into the record). When we do this, should we use the "Advance Directive Discussion" note or the "Advance Directive" note?

A: An advance directive is a legal document outlining a Veteran's preferences. Clinicians should not copy information from an advance directive into either an "Advance Directive Discussion" or "Advance Directive" note in an attempt to make the note a valid resource for the information. Attempting to repeat the information could introduce errors, create discrepancies between the note and the legal document, and increase the risk that the Veteran's choices will not be known or followed.

It is important to develop workflows to ensure that Veterans' advance directives are scanned into the chart in a timely manner. iMedConsent™ can be used to create an advance directive which is immediately attached to an "Advance Directive" note and accessible in the chart.