

**ADVANCE HEALTH CARE PLANNING
(Advance Directives)**

- 1. REASON FOR ISSUE:** This is a recertification of Veterans Health Administration (VHA) Handbook, 1004.2, "Advance Health Care Planning" dated, July 6, 1998. It contains provisions for advance health care planning for Department of Veterans Affairs (VA) patients and defines the obligations of the health care staff.
- 2. SUMMARY OF CONTENTS:** This Handbook describes the mechanisms by which patients can express their desires with respect to future health care decisions. It defines the obligations and duties of the health care staff to assure that every patient is given this opportunity.
- 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 need to be addressed to the Center at vhaethics@hq.med.va.gov, or telephone 202-501-0364.
- 5. DOCUMENTS RESCINDED:** VHA Handbook, 1004.2 dated, July 6, 1998, is rescinded.
- 6. RECERTIFICATION:** This handbook is scheduled for recertification on or before the last working day of July 2008.

S/ Louise Van Diepen for
Robert H. Roswell, M.D.
Under Secretary for Health

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(Advance Directives)**

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ADVANCE HEALTH CARE PLANNING (Advance Directives)

1. PURPOSE

This handbook describes the mechanisms by which patients can express their desires with respect to future health care decisions (Advance Directives: Durable Power of Attorney for Health care, Living Will, and treatment preferences). It defines the obligations and duties of the health care staff, to assist the patient to express their future health care choices.

2. BACKGROUND AND AUTHORITY

The Patient Self-Determination Act (PSDA) of 1990 requires health care entities, which receive Medicare reimbursement, to provide written information to each person on admission regarding that person's right to accept or refuse medical treatment and to express their wishes concerning future medical care in an advance directive (AD). The PSDA is not directly applicable to VA; however, VHA policy is consistent with the Act's requirements.

3. SCOPE

a. VA is committed to creating a health care environment that promotes health care decision-making as an ongoing collaborative process between clinical staff and patients or their surrogates. VA respects the right of patients to accept or refuse any treatment option offered in any treatment setting or to request withdrawal of any treatment that has already been initiated including life-sustaining treatment. VA also recognizes the importance of educating patients regarding their treatment options. It is essential to assure that patients are given sufficient information to make an informed decision concerning their future health care. It is also imperative to provide procedural safeguards that recognize and respect patient decisions while preventing harm.

b. Advance health care planning provides an opportunity for patients to give guidance to their caregivers regarding their treatment preferences if, in the future, the patient is unable to make health care decisions. It is an opportunity for the health care team to review health care options with the patient and make recommendations about what future treatment plans would best meet the patient's health care goals. It also is an opportunity for patients to discuss their wishes with their families and others who may have to make a decision for them based on substituted judgment.

c. Traditionally, the focus of advance health care planning has been on whether to withhold or withdraw life-sustaining treatment. However, an advance directive (AD) can serve as an important resource for other types of health care decisions. For example, an AD might inform the treatment team and surrogate about how the patient's religious or cultural preferences should influence the treatment decision. It might also serve to explain why a nursing home resident would choose to accept or refuse acute care hospitalization. VA is committed to respecting patient wishes regarding provision and/or continuation of offered treatment, to avoid imposing unwanted burdens on patients and families, and to relieving pain and suffering by all appropriate means.

d. Documents that will be recognized as legal instruments for health care decision-making in VHA include a properly executed VA Durable Power of Attorney for Health Care (DPAHC), a VA Living Will, and a state-authorized advance health care planning document to the extent that it does not direct any action contrary to VA policy. Those portions of a state authorized AD that are not consistent with VA policy will not be given effect. The remaining provisions may be implemented in compliance with the patient's wishes. An AD does not go into effect unless it has been established and documented that the patient lacks decision-making capacity and is not expected to regain it.

NOTE: This policy does not address related informed consent procedures, priority of surrogates, or consent procedures for patients without surrogates. Those issues are addressed in VHA policy entitled Informed Consent.

4. DEFINITIONS

a. **Advance Directive (AD)**. This term refers to specific written statements made by a patient who has decision-making capacity regarding future health care decisions. This information is available to instruct the surrogate and providers about the patient's wishes when the patient can no longer make decisions.

(1) **VA Living Will**. A written statement made by a patient on an authorized VA form which sets forth the patient's wishes regarding the patient's health care treatment preferences including the withholding and withdrawal of life-sustaining treatment.

(2) **VA Durable Power of Attorney for Health Care (DPAHC)**. A written instruction on a VA form which designates the patient's choice of HCA.

(3) **State-Authorized Advance Directive**: A non-VA Living Will, DPAHC, or other advance health care planning document, the validity of which is determined pursuant to the applicable state law.

b. **Health Care Agent**. The Health Care Agent (HCA) is the individual (or alternate) named in a DPAHC executed by the patient when the patient had decision-making capacity.

c. **Decision-Making Capacity**. Decision-making capacity is the ability to understand and appreciate the nature and consequences of health care treatment decisions. This includes understanding the benefits and risks of the proposed treatment options, as well as any alternative treatment options. *NOTE: Refer to VHA Handbook 1004.1, entitled Informed Consent.*

d. **Lack of Decision-Making Capacity**. Lack of decision-making capacity is the inability to understand and appreciate the nature and consequences of health care decisions and to formulate and/or communicate decisions concerning health care. Patients who are incapable of giving consent as a matter of law; e.g., persons judicially determined to be incompetent, are deemed to lack decision-making capacity for the purpose of obtaining informed consent. (Refer to VHA Handbook 1004.1, entitled Informed Consent for further discussion regarding determination of capacity.)

e. **Surrogate Decision-Maker.** A surrogate decision-maker is an individual, organization or other body authorized under VA policy to make health care decisions on behalf of a patient who lacks decision-making capacity. *NOTE: Refer to VHA Handbook 1004.1, entitled Informed Consent for surrogate hierarchy and further discussion regarding surrogates.*

5. RESPONSIBILITIES

a. **Notification and Screening for AD.** All patients will be advised of their right to provide instructions about their future health care should they become unable to make those decisions themselves. It is most appropriate to have this discussion prior to the onset of a medical crisis. Patients may also feel more comfortable discussing these matters when they are not stressed by an imminent or critical health care decision. For that reason, use of the outpatient setting to discuss advance health care planning is encouraged. Patients will be informed of their rights under this policy but will not be required to execute an AD as a condition of receiving care. Patients who have visual, speech or hearing problems may require additional assistance with the planning process. The information in Appendix A will be provided to every patient and documented in the medical record. It is suggested that Appendix A be used as an overprint, signed by the patient, and filed in the Medical Record to document this discussion. Local facility policy must clearly delineate which service or staff members will be responsible for assuring that this discussion occurs, is documented and filed consistently in the medical record.

b. **Pre-existing AD.** If the patient has previously completed an advance directive, the attending physician, or other designated member of the treatment team, must review the existing AD with the patient to assure that the patient's wishes are clear. If a patient has completed a State-authorized AD, questions about the validity of that document must be referred to the Regional Counsel. If at all possible, that referral should occur before the patient becomes incapacitated.

c. **Completion of an AD.** If the patient does not have an AD and wishes to complete one, a locally designated member of the treatment team will assist the patient in doing so. *NOTE: It is important to inform the patient that this option is always available to them even if they choose not to complete one when they are first informed.*

(1) This discussion process should attempt to assure that the patient has substantial understanding about what is at issue and their beliefs and values elicited regarding the various choices their surrogate may face, should they lack decision-making capacity. It is important to understand the patient's values, the value they place on different health care states, their wishes to avoid some states and their willingness to undergo interventions in order to achieve other health care states. Preferences often change dependent on current health status and survival probability. How the patient understands factual information is contingent upon their background, assumptions, and personal history. New information will be incorporated into this framework of pre-existing knowledge and beliefs. Idiosyncratic or incorrect understandings of fact must be addressed in order to achieve a basis from which to discuss preferences. The importance of effective ongoing communication between provider and patient cannot be overemphasized. Although it is not required that the physician have this discussion with the patient it is important to provide an opportunity for the patient to discuss treatment options with the physician. It is the health care provider's responsibility to facilitate the patient's understanding of the issues, potential decision points, and to assist the patient in capturing these

on the authorized form (whether VA or State authorized), using the form to reflect the patient's wishes, rather than making the patient's wishes conform to the approved form.

(2) Patients should be encouraged to designate a HCA and an alternate, and to discuss their preferences with these individuals, even if they do not want to complete the "living will" portion of the form or to indicate any particular instructions regarding treatment preferences for their future care. It might be helpful to review the hierarchy of surrogate decision-makers (as delineated in VHA policy entitled Informed Consent) with the patient so they are clear about who will be making decisions for them if they do not designate a HCA.

d. **Treatment Team.** The treatment team is expected to be aware of the existence of an AD for any given patient.

e. **Review.** The attending physician, or other designated member of the treatment team, will review the AD with the patient at each hospital admission and, at least annually if in an extended in-patient status. That discussion will be documented in the medical record. If the patient has decision-making capacity at the time of the review, this review will be conducted with the patient and authorized surrogate and/or family members if the patient agrees. If the patient lacks decision-making capacity at the time of the review, the review will be conducted with the authorized surrogate.

6. PROCEDURES

a. Patients who have decision-making capacity may execute an AD indicating their wishes regarding future health care decisions. That declaration must be signed by the patient in the presence of two witnesses.

b. Witnesses may not be entitled to, or a claimant against, any portion of the patient's estate, financially responsible for the patient's care, or employed by the VA facility in which the patient is being treated. **EXCEPTION:** where other witnesses are not reasonably available, employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) may serve as witnesses. Witnesses are attesting only to the fact that they saw the patient sign the form.

c. The Advance Directive shall be documented on the VA form (or State-authorized document) but may include supplemental instructions.

d. The patient should retain the original of the AD. A copy will be placed in the medical record. The patient should be advised to provide copies to friends and family members.

e. **Filing.** For in-patients, the copy of the AD will be filed either behind a tab specifically designating Advance Directive or as the first document in the current/open medical record. The AD shall stay in this location of the active medical record so long as the patient is an inpatient. For outpatients the AD will be filed immediately following the problem list. Each local facility will develop a mechanism to assure that the AD is maintained in the outpatient record and the inpatient record to accommodate patient movement from one setting to another, or one facility to another. **NOTE:** *The AD documentation or refusal thereof, must remain in the open/current*

Medical Record and not be removed when the medical record is thinned.

f. **Flagging.** The Medical record will be flagged to indicate the presence of an Advance Directive. The flag will be on the outside of the current Medical Record, in a designated location and will specifically state ADVANCE DIRECTIVE INSIDE. The exact nature of the flag and specific location on the outside of the medical record is a local decision. However, the flag, its specific location and its use must be consistent throughout the medical facility. It is suggested that the flag be in a designated place on VA Form 10-1079, Emergency Medical Identification with the date last reviewed. The AD portion of the DHCP progress note package triggers an alert when the patient's electronic record is accessed. This alert should be used, but will not replace the flag on the outside of the patient's current paper medical record, unless the facility operates in a completely paperless environment, and there is no hard copy of the medical record in use anywhere. *NOTE: The DHCP warning or flag should be used ONLY to indicate the patient has completed an AD and never used to track whether the patient was given the option.* Practitioners should not assume anything about the content of an AD based solely on the chart being flagged.

NOTE: All references to the medical record apply uniformly regardless of the form in which it is maintained, whether paper or electronic.

g. **Implementation.** The attending physician shall have the authority to implement the AD by writing appropriate orders. This order(s) shall be accompanied by a progress note addressing the following issues:

(1) If the patient lacks decision-making capacity and is not likely to regain it in a reasonable period of time (all advance health care planning documents become effective only when the patient no longer has decision-making capacity); and

(2) All administrative requirements of this policy and local protocols are met. *NOTE: If there is concern regarding the implementation of the advance directive, the attending physician may consult with the chief of the service, Ethics Advisory Committee, Chief of Staff (COS), and/or Regional Counsel through the COS prior to the implementation; and*

(3) If the patient has specified Do Not Resuscitate (DNR) in their AD then that will be noted in the implementation progress note, and a DNR order written in the medical record specifying that the order is written pursuant to and in accordance with the patient's AD.

h. **HCA.** If a patient who no longer has decision-making capacity has designated a health care agent in a DPAHC, that person is responsible for making all treatment decisions on behalf of that patient, including withholding and withdrawal of life support. Decisions made by the health care agent on behalf of the patient must be based on the patient's known wishes (for example, instructions regarding future health care contained in the AD or otherwise documented in the medical record). If the patient's wishes are **not known** then, and only then, may that decision be based on the HCA's perception of the patient's best interest (refer to VHA Handbook 1004.1, Informed Consent).

7. INSTRUCTIONS IN CRITICAL SITUATIONS

Verbal or nonverbal instructions from patients in situations in which the patient is admitted to care when critically ill and loss of capacity may be imminent AND the patient is not physically able to sign a form, or the appropriate form is not readily available, should be recorded in the medical record. In this situation, the health care team member having the discussion with the patient must document the discussion in a progress note and sign it. This note must be co-signed by another member of the health care team, who was present and can attest to the wishes expressed (verbally or nonverbally) by the patient. These instructions will guide the treatment team and surrogate should the patient lose capacity during the presenting situation. If the patient subsequently regains decision-making capacity they will be asked to confirm the instructions by completing an AD.

8. REVOCATION

The patient with decision-making capacity may revoke the AD. This may be done at any time by any means, such as canceling, defacing, tearing or otherwise destroying the document, or by some other person acting at the patient's direction and in the patient's presence, or by a written or verbal statement by the patient expressing intent to revoke. If a patient revokes, in whole or in part, an advance directive, the attending physician, or clinical designee, shall so note in the patient's medical record as a progress note and on the AD itself and any flag, whether paper or electronic. This documentation shall include the nature of the direction received, and the time and date when the direction was received. If a patient requests significant modifications of an existing AD, a new document shall be completed.

9. DISPUTES

a. The treatment team and HCA or other surrogate work to achieve consensus regarding treatment plans, however, the treatment team may not overrule an authorized surrogate's decision.

b. The designated HCA or other surrogate may not override a patient's specific instructions in the AD.

c. Disputes among medical staff and the HCA or other surrogate concerning interpretation of an AD may be referred to the Ethics Advisory Committee or similar body, Chief of the Service, Chief of Staff (COS), or Regional Counsel through the COS. The specific manner of resolving disputes will be delineated in local policy.

10. DO NOT RESUSCITATE (DNR)

VHA policy regarding DNR is contained in VHA Handbook, 1004.3, Do Not Resuscitate (DNR) Protocols within the Department of Veterans Affairs (VA). That policy does not limit the patient's ability to indicate specific treatment preferences in an AD.

11. WITHHOLDING AND WITHDRAWAL OF LIFE-SUSTAINING TREATMENT

a. A decision to withhold or withdraw life-sustaining treatment never justifies ignoring the patient or providing less than humane care and total concern for patient welfare, comfort and dignity, nor does it justify the active hastening of the moment of death.

b. Withholding and withdrawal of treatment, including life-sustaining treatment, must follow VHA policy regarding Informed Consent. VHA Informed Consent Policy provides for patients (or surrogate for patients without decision-making capacity) to accept or refuse any treatment offered to them, including life-sustaining treatment.

12. RESIDENTS

The functions and supervision of residents will conform to VHA policy regarding supervision of residents.

13. CONSCIENTIOUS OBJECTION

A health care provider may request to decline to participate in the withholding or withdrawal of life-sustaining treatment for reasons of conscience. In such cases, responsibility for the patient's care shall be delegated to another health care provider, of comparable skill and competency who is willing to accept it.

14. PALLIATIVE CARE

The withholding or withdrawal of some or all life-sustaining treatments is compatible with maximal therapeutic efforts short of the provision of the life-sustaining treatment in question. Maximal therapeutic efforts shall be made in other areas such as pain control, relief of suffering to assure comfort and dignity, body cleanliness, mouth care, skin integrity, positioning, suctioning, palliative oxygen, support of Social Work and Chaplain Services, attendance by family members, etc.

15. REFERENCES

- a. Public Law 101-508. Patient Self-determination Act.
- b. VHA Handbook 1004.1, Informed Consent.
- c. VHA Handbook 1004.3, Do Not Resuscitate (DNR).
- d. Futility Guidelines: A Resource for Decisions about Withholding and Withdrawal of Treatment , A VA Central Office Bioethics Committee publication.
- e. VHA Handbook 1400.1, Resident Supervision.

ADVANCE DIRECTIVE ACKNOWLEDGEMENT

(Suggested format for screening documentation which can be overprinted on VAF 10-0114J - Medical Record Supplement to Progress Note for Specialized Disciplines.)

The Department of Veterans Affairs (VA) recognizes the right of a patient to have an advance directive (AD). It is the policy of VA to comply with such ADs.

Your Rights

1. You have the **right to accept or refuse any medical treatment.**
2. You have the **right to create a Durable Power of Attorney for Health care (DPAHC)** to designate someone to make health care decisions for you if you become unable to make them for yourself. That person is called your Health care Agent (HCA).
3. You have the **right to make a Living Will.** It is a statement you write while you are able to make decisions about what you want done for you in the event you are no longer able to make decisions for yourself. You may state whether you want life-sustaining treatment to be withheld or withdrawn in certain circumstances, for example in the event of terminal illness, or other specific requests that are important to you regarding your treatment.

Do you have an Advance Directive (DPAHC or Living Will)?

- Yes** *It is your responsibility to provide a copy for your medical record, in order to be sure that your wishes will be carried out.*
- No** *Would you like a health care provider to discuss this with you? Yes No*

Your Signature: _____ **Date:** _____

A copy of this form was provided to the patient by: _____
(Employee's name and title)

NOTE: *The original Advance Directive should stay with the patient; copy to the medical record.*

Instructions and Definitions for VA Advance Directives

1. VA Advance Directive: Living Will & Durable Power of Attorney for Health Care

(VA Form 10-0137)

This combined Durable Power of Attorney for Health Care and Living Will permits you to specify certain treatments you may or may not want. With this form, you can:

- a. Appoint someone to make health care decisions for you if, in the future, you become unable to make those decisions for yourself

and/or

- b. Indicate what medical treatment(s) you do or do not want if in the future you are unable to make your wishes known.

2. Instructions:

- a. Read each section carefully.
- b. Talk to the person(s) you plan to appoint to make sure that they understand your wishes, and are willing to take the responsibility.
- c. Place the initials of your name in the blank before those choices you want to make under parts 1 and 2 of VA Form 10-0137.
- d. Add any special instructions in the blank spaces provided. If you need more space for additional comments, you may use a separate sheet of paper; but you must indicate on the form that there are additional pages to your advance directive.
- e. Sign the form and have it witnessed.
- f. Keep the original for yourself.
- g. Give a copy of this entire form to all of the following people: your doctor or your nurse, the person you appoint to make your health care decisions for you, your family, and anyone else who might be involved in your care.
- h. Remember that you may change or cancel this document at any time.

3. Definitions (Words you need to know.)

- a. **Advance Directive.** A written document that tells what you want or do not want, if you become unable to make your wishes about health care treatments known.
- b. **Artificial Nutrition and Hydration.** When synthetic food (or nutrients) and water are fed to you through a tube inserted through your nose into your stomach or into the intestine directly or into a vein.
- c. **Comfort Care.** Care that helps to keep you comfortable but does not cure your disease. Bathing, turning, pain medication, keeping your lips and mouth moist and pain medications are examples of comfort care.
- d. **Cardiopulmonary Resuscitation (CPR).** Treatment to try and restart a person's breathing or heartbeat. CPR may be done by breathing into your mouth, pushing on your chest, by putting a tube through your mouth or nose into your throat, administering medication, giving electric shock to your chest, or by other means.
- e. **Durable Power of Attorney for Health Care.** A document that appoints a specific individual to make health care decisions for you if you become unable to make those decisions for yourself.
- f. **Life-sustaining Treatment.** Any medical treatment that is used to delay the moment of death. A breathing machine (ventilator), CPR, and artificial nutrition and hydration are examples of life-sustaining treatments.
- g. **Living Will.** Instructions you have made in advance that tell what medical treatment you do or do not want if you become unable to make your wishes known.
- h. **Permanent Vegetative State** When a person is unconscious with no hope of regaining consciousness even with medical treatment. The body may move and eyes may be open, but as far as anyone can tell, the person can't think or communicate.
- i. **Surrogate Decision-maker.** This is an individual, organization or other body authorized to make health care decisions for you if you are unable to do so yourself.



DEPARTMENT OF VETERANS AFFAIRS

**VA ADVANCE DIRECTIVE:
Living Will and Durable Power of Attorney for Health Care**

This form is a tool to document or capture a patient's wishes regarding a designated health care agent and their future treatment preferences. This form is a tool, not an end in itself. The form does not substitute for comprehensive dialogue with the patient. It is expected that the health care professional assisting the patient will bring up for discussion other possible end stage scenarios, as appropriate. Supplemental pages may be appended as necessary.

I, _____ write this document as a directive
(print or type patient's name and social security number)
regarding my health care. I have put my initials by the choices I want.

Part I. - Durable Power of Attorney for Health care (DPAHC)

<i>initials</i>	I appoint this person to make decisions about my health care if there ever comes a time when I cannot make those decisions myself.
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<i>Name</i>	
<i>Street Address</i>	
<i>City, State and ZIP Code</i>	
<i>Work Telephone Number with Area Code</i>	<i>Home Telephone Number with Area Code</i>

If the person above cannot or will not make decisions for me, I appoint this person:

<i>Name</i>	
<i>Street Address</i>	
<i>City, State and ZIP Code</i>	
<i>Work Telephone Number with Area Code</i>	<i>Home Telephone Number with Area Code</i>

<i>initials</i>	I have notified the individuals listed above of my decision.
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<i>initials</i>	I have not appointed anyone to make health care decisions for me in this or any other documents.
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PART III - Signatures

A. Your signature – By my signature below I show that I understand the purpose and the effect of this document.

<i>Signature</i>	<i>Social Security Number</i>	<i>Date</i>
<i>Name (Printed or Typed)</i>		
<i>Street Address</i>		
<i>City, State and ZIP Code</i>		

B. Your Witnesses' Signatures

I am not, to the best of my knowledge, named in the person's will.
 I am not the person appointed as Health Care Agent (HCA) in this advance directive.
 I am not a health care provider (or an employee of the health care provider), or financially responsible, now or in the past, for the care of the person making this advance directive.
 (Exception: where other witnesses are not reasonably available, employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees such as Voluntary Service or Environmental Management Service may serve as witnesses.)

Witness #1: I personally witnessed the signing of this advance directive.

<i>Signature</i>	<i>Date</i>
<i>Name (Printed or Typed)</i>	
<i>Street Address</i>	
<i>City, State and ZIP Code</i>	

Witness #2: I personally witnessed the signing of this advance directive.

<i>Signature</i>	<i>Date</i>
<i>Name (Printed or Typed)</i>	
<i>Street Address</i>	
<i>City, State and ZIP Code</i>	