

ADVANCE DIRECTIVES FOR HEALTH CARE RULES

I Purpose

These rules are adopted to effectuate the intent of Chapter 231 of Title 18, Vermont Statutes Annotated (V.S.A.), Advance Directives for Health Care and Disposition of Remains. Persons with questions about the rules are encouraged to call the Department at (802) 863-7200 or 1-800-464-4343.

The State of Vermont recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of incapacity and at the end of life. 18 V.S.A. Chapter 231 enables adults to retain control over their own health care through the use of advance directives, including appointment of an agent and directions regarding health care and disposition of remains.

Vermont's law pertaining to advance directives for health care and disposition of remains may be found at 18 V.S.A. Chapter 231 (Sections 9700-9720):

<http://www.leg.state.vt.us/statutes/sections.cfm?Title=18&Chapter=231>

II Definitions

- A. The definitions of terms contained in these rules are the same as those contained in 18 V.S.A. § 9701. If any of such legislative definitions are amended, the amended definitions shall be the definitions of the terms contained in these rules.
- B. Additional definitions for purposes of these rules:
1. "Advance Directive Locator" shall mean a document submitted to VADR (defined below) describing the physical location(s) of an advance directive.
 2. "COLST" shall mean a Clinician Order for Life Sustaining Treatment.
 3. "Department" shall mean the Department of Health.
 4. "EMS personnel" shall mean emergency medical personnel.
 5. "File" shall be information and documents submitted to the Vermont Advance Directive Registry (VADR) and accessible to authorized persons and entities, including the registration information, advance directive, Advance Directive Locator, and any amendment, suspension or revocation, as well as COLST and Do Not Resuscitate (DNR) Orders should the legislature authorize the submission of those documents to VADR.

6. "Health care provider" shall mean a person, partnership, corporation, facility or institution, licensed or certified or authorized by law to provide professional health care service in Vermont to an individual during that individual's medical care, treatment, or confinement. The term shall include emergency medical personnel.
7. "Provider" shall mean a health care provider, health care facility, residential care facility, funeral director, crematory operator, cemetery official, organ procurement organization, probate court official, and the employees thereof.
8. "Registrant" shall be a principal who has submitted an advance directive or an Advance Directive Locator to VADR.
9. "Registration Agreement" shall mean consent by the principal for the principal's advance directive personal and emergency contact information to be scanned and stored in VADR for retrieval by providers in accordance with Vermont law.
10. "Staff member" shall mean those persons acting on behalf of a health care facility or residential care facility, whether or not paid by the facility.
11. "VADR" shall mean the Vermont Advance Directive Registry located at:

Vermont Advance Directive Registry
 c/o USLWR
 523 Westfield Ave., P.O. Box 2789
 Westfield, NJ 07091-2789
 Phone: 1-800-548-9455
 Fax: 1-908-654-1919

The Department of Health is legally responsible for VADR and its maintenance. Persons with questions about VADR are encouraged to call the Department at (802) 863-7200 or 1-800-464-4343.

III Attachments

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| Attachment A | Comprehensive advance directive with explanation of choices and responsibilities of a principal executing an advance directive. This is an optional form. Links to other optional forms will be provided at the Department's website. |
| Attachment B | Do Not Resuscitate (DNR) Order and Clinician Order for Life Sustaining Treatment (COLST)
The DNR/COLST form is designed to be used as one form. |
| Attachment C | VADR Registration Agreement |
| Attachment D | VADR Advance Directive Locator |
| Attachment E | VADR Authorization to Change |
| Attachment F | VADR Provider Notification |
| Attachment G | VADR Agent/Guardian Notification |

IV Advance Directives

1. Agents, guardians, health care providers, health care facilities, residential care facilities, staff members, funeral directors, crematory operators, cemetery officials and persons appointed to arrange for the disposition of the principal's remains, when making decisions concerning a principal without capacity or for a deceased principal, shall follow the instructions in the advance directive regardless of the form of the advance directive.
2. The Department shall maintain a website which contains links to a variety of advance directive forms particularly suited to persons with a variety of interests or concerns, including a comprehensive advance directive covering the alternatives provided for under 18 V.S.A. Chapter 231.
3. A principal may execute any or all parts of any advance directive.
4. Attachment A constitutes a comprehensive advance directive with an explanation of choices and responsibilities of a principal executing an advance directive. This is an optional advance directive. Links to other optional forms will be provided at the Department's website.

V Clinician Orders for Life Sustaining Treatment (COLST)

1. At any time a patient may need life sustaining treatment, the patient's clinician shall determine, to the extent possible and in accordance with the relevant sections of 18 V.S.A. Chapter 231, the wishes of the patient regarding life sustaining treatment, and shall record those wishes in the patient's medical chart.
2. A Clinician Order for Life Sustaining Treatment (COLST) is a form which is available for health care providers and health care facilities to summarize orders regarding life sustaining treatment so that the orders are readily accessible to staff who will implement them.
3. Each health care facility shall consider whether to adopt a COLST for use by the facility's medical staff. Attachment B is a combination DNR Order form and COLST form. This form is designed to be used as one form.
4. Any order for life sustaining treatment must be based on properly documented consent.

VI. Do Not Resuscitate (DNR) Protocols, Orders and Identifications

A. Do Not Resuscitate (DNR) Protocol

1. Each health care facility and residential care facility must adopt a DNR protocol ensuring that DNR orders are issued, revoked, and handled according to the same standards and process for each patient at the facility.

2. A copy of the facility's DNR protocol shall be made available to anyone upon request.

B. Do Not Resuscitate (DNR) Order

1. A Do Not Resuscitate (DNR) Order must:
 - a. certify that the clinician has consulted, or made an effort to consult with, the patient and the patient's agent or guardian, if there is one;
 - b. identify who has provided informed consent for the DNR Order, if the order is based on informed consent;
 - c. certify that resuscitation would not prevent the imminent death of the patient should the patient experience cardiopulmonary arrest, if the order is not based on informed consent;
 - d. certify that the requirements of the health care facility's DNR protocol have been met, if the patient is in a health care facility; and
 - e. be signed by the patient's clinician and also signed and certified by a second clinician if the order is not based on informed consent.
2. Attachment B is a combination DNR Order and COLST form. This form is designed to be used as one form.
3. If a DNR order is based on consent (i.e., the DNR Order is not based on medical futility and is certified by two clinicians), all health care providers, including emergency medical personnel, and all staff members shall honor the DNR Order unless, the health care provider or staff member:
 - a. believes the patient is not the person identified in the DNR Order; or
 - b. consults the agent or guardian where possible and appropriate, and believes in good faith that the patient wishes to have the DNR Order revoked; or the
 - c. principal revokes or indicates he/she wants different treatment to be resuscitated
4. Whenever a DNR Order is not honored for one of the reasons contained in subparagraph 3, the health care provider or staff member shall document the basis for that decision in the patient's medical record.

C. Do Not Resuscitate (DNR) Identification (ID)

1. Upon issuing a DNR Order, a clinician may authorize the issuance of one or more types of DNR identification to the patient or the patient's caregivers. The DNR ID shall identify the principal as an individual who has a DNR

order. The DNR identification shall be appropriate to the circumstances, and may consist of a bracelet or other jewelry, or a wallet card.

2. Contact information of organizations which provide DNR ID may be obtained from the Department of Health.
3. A patient may suspend or revoke a DNR Identification which is not based on medical futility at any time by the patient's signing a statement, informing the clinician, removing, burning, tearing, obliterating or acting in any way which evidences a specific intent to suspend or revoke the DNR Identification.

D. Emergency Medical Personnel

1. EMS personnel shall honor a conscious patient's right to give or deny consent for treatment, whether or not the request revokes or contradicts a DNR Order or Advance Directive based on informed consent.
2. EMS personnel shall provide comfort care to persons who have chosen not to be resuscitated.
3. EMS personnel shall not initiate cardiopulmonary resuscitation (CPR) or other resuscitation treatments for patients with apparently valid DNR Orders or DNR Identification.
4. Even if a patient is being taken to an out of state hospital, Vermont law (statutes and rules) on advance directives applies to the call and transport while the patient is in Vermont.
5. No local variations are allowed with regard to advance directives and DNRs.
6. These rules apply to all EMS work, including in-hospital and interfacility transfers.

VII Experimental Treatments

1. A principal may authorize participation in treatment studies or drug trials, or may authorize the principal's agent to consent to treatment studies or drug trials, as part of health care provided pursuant to an advance directive as defined in 18 VSA § 9701(11).
2. An advance directive may not substitute for compliance with 21 C.F.R. Part 56, 21 C.F.R. Part 312, or any other applicable state or federal law, and treatment studies or drug trials may not be included within a waiver of the right to object to treatment under 18 VSA § 9707(h).

VIII Advance Directive Registry

A. The Registry

1. The Vermont Advance Directive Registry (VADR) is a secure, web-based database to which individuals may submit, at no charge, an advance directive or an Advance Directive Locator (information regarding the location of an advance directive), and other documents which amend, suspend, or revoke an advance directive.
2. VADR is a voluntary database. Registrants who voluntarily use the VADR system have a responsibility to keep the VADR system informed and updated about any changes to their Advance Directive. This responsibility is important because medical providers and facilities are required to access the VADR system for information about a person's Advance Directive, and information obtained from VADR is presumed to be current and accurate absent any evidence to the contrary.
3. VADR serves only as a repository of information and documents and will not evaluate the validity of, or reconcile, documents except to determine whether the Registration Agreement is complete.
4. Information regarding the Vermont Advance Directive Registry can be obtained from the Department of Health, PO Box 70, 108 Cherry Street, Burlington, VT 05402-0070, on the Department's website (<http://healthvermont.info/vadr>), or at 1-800-548-9455.

B. Submissions to VADR

1. Any individual may submit a copy of an advance directive or Advance Directive Locator, and an original Registration Agreement for entry into the registry by mailing or faxing those documents to VADR.
2. Attachments C and D are the Registration Agreement and the Advance Directive Locator.
3. VADR shall scan into the registry the advance directive, regardless of form or content, or the Advance Directive Locator.
4. VADR shall send to the registrant, by mail, confirmation of the submission, a unique identification number, a wallet card and stickers with VADR contact information, and instructions for accessing VADR and viewing the file.

C. Amendment, Suspension, and Revocation of an Advance Directive by the Registrant

1. A registrant may file an amendment, suspension, or revocation of an advance directive at any time by notifying VADR in writing with the registrant's identification number or sufficient information to identify the registrant.

2. A registrant who wishes to file an amendment to, or suspend or revoke an advance directive, may use the Authorization to Change form provided in Attachment E.
3. In order for an amendment to have the same legal effect as the advance directive, the amendment must be properly executed as if it were a new advance directive.
4. Annually, VADR will mail a notice to each registrant requesting review and confirmation that the information on file is accurate and current.
5. Upon receiving notice of an amendment, suspension, or revocation, or information in response to VADR's annual mailing, VADR shall scan the document into the registrant's file in a manner that will present it to an accessor so that it appears before previously submitted documents.
6. Failure to notify VADR of an amendment, suspension, or revocation of an advance directive does not affect the validity of the amendment, suspension, or revocation of the advance directive.

D. Notifying the Registry of Amendment, Suspension, and Revocation of an Advance Directive

1. Health Care Providers, Health Care Facilities, and Residential Care Facilities
 - a. **Incapacitated patient:** Any health care provider, health care facility, or residential care facility who becomes aware of an amendment, suspension, or revocation of a registrant's advance directive while treating an incapacitated patient, shall make reasonable efforts to notify VADR of the amendment, suspension, or revocation by completing and sending a Provider Notification, if the patient's advance directive has been submitted to the registry.
 - b. **Patient with capacity:** Any health care provider, health care facility, or residential care facility who becomes aware of an amendment, suspension, or revocation of a registrant's advance directive while treating a patient with capacity, on request shall assist the patient in notifying VADR of the amendment, suspension, or revocation, if the patient's advance directive has been submitted to the registry.
 - c. **Patient not currently receiving health or residential care:** Any health care provider, health care facility, residential care facility, not currently providing health or residential care to a registrant, which becomes aware of an amendment, suspension, or revocation of a registrant's advance directive shall ensure that VADR is notified of the amendment, suspension, or revocation by completing and sending a Provider Notification, if the patient's advance directive has been submitted to the registry.
2. **Agent/Guardian:** An agent or guardian who becomes aware of an amendment, suspension, or revocation of a registrant's advance directive

shall make reasonable efforts to notify VADR of the amendment, suspension, or revocation by completing and sending an Agent/Guardian Notification, if the patient's advance directive has been submitted to the registry.

3. Upon receipt of a Provider Notification or Agent/Guardian Notification, VADR will scan the document into the registrant's file, placing it before previously submitted documents.
4. Attachments F and G are the Provider Notification and Agent/Guardian Notification forms, respectively.
5. Failure to notify VADR of an amendment, suspension, or revocation of an advance directive does not affect the validity of the amendment, suspension, or revocation of the advance directive.
6. A health care provider, health care facility, or residential care facility which, in the course of providing treatment, checks the registry and finds a Provider or Agent/Guardian Notification of Change form shall make reasonable efforts to determine the wishes of the registrant. Consistent with 18 V.S.A. § 9713, the provider or facility shall not be subject to criminal or civil liability for providing or withholding health care or services in good faith pursuant to the Advance Directive or Notification of Change.

E. Deletion or Replacement of an Advance Directive in the Registry

1. A registrant may delete a file in the registry by submitting to VADR an Authorization to Change or sufficient information to identify the registrant and a clear statement that the registrant wishes to delete the existing file.
2. A registrant may replace his or her existing file in the registry by submitting to VADR a properly executed advance directive accompanied by an Authorization to Change or sufficient information to identify the registrant and a clear statement that the registrant wishes to replace the existing forms.

F. Access to the Registry

1. No person shall access VADR information for any purpose unrelated to decision-making for health care or disposition of remains of the registrant, except that the Department may authorize specific persons to access the information for statistical or analytical purposes as long as registrants' identifying information remains confidential.
2. Advance directives and other forms submitted to the registry can be accessed at: <http://healthvermont.gov/vadr> by using the unique registration identification number issued to the registrant by the VADR.
3. Agents, guardians, persons appointed to arrange for the disposition of

remains, or any person to whom the registrant has given the registrant's identification number and authority to access the file can access the registrant's file by using the registrant's identification number.

4. An agent, guardian, or person appointed to arrange for the disposition remains who does not have a registrant's identification number may obtain a copy of the file by calling VADR's toll-free number to request a copy of the advance directive for a specific registrant.
5. Providers can access documents submitted to the registry by:
 - a. becoming an authorized provider by submitting a completed Provider Access Application and Provider Access Agreement to VADR c/o the Department of Health at 108 Cherry St., Burlington, VT 05401. Once the application is approved, VADR will issue a provider identification number and access code;
 - b. using the registrant's identification number; or calling VADR's toll-free number to request a copy of a registrant's document.
6. VADR shall maintain a record by name of registrant, date and identification number of the person or organization that accessed the registrant's file whenever a file is accessed.

G. Obligations of Providers

1. Providers who are issued a registry account shall agree to protect the identification number issued to the provider and to limit access to the identification number to their employees with a need to access the registry.
2. Providers who are issued a registry account shall train their employees on the proper use of the registry and the registrants' documents, and the obligation to report any unauthorized access or misuse of information to the Department.

IX Authority and Obligations of Health Care Providers, Health Care Facilities and Residential Care Facilities and Health Insurers

1. Health care providers, health care facilities, and residential care facilities and their staff members shall comply with the requirements of 18 V.S.A. Chapter 231 with regard to:
 - a. obtaining and following the health care instructions of a patient (18 V.S.A. §§ 9707(a), (b), (g) and (h), 9708 (c), 9709(a), 9714);
 - b. communicating with the patient, agent, guardian or other persons identified by the patient (18 V.S.A. §§ 9702 (a)(9), 9704, 9706, 9707(c), 9708);
 - c. recording the basis for all significant decisions in the patient's medical record, including the basis for believing a patient wants to suspend or

revoke a DNR Order or Identification based on informed consent (18 V.S.A. §§ 9704, 9706-08);

- d. assisting the patient to execute an advance directive (18 V.S.A. §§ 9703, 9709); and
 - e. assisting the patient, agent or guardian in obtaining care (18 V.S.A. § 9707), or submitting documents to VADR (18 V.S.A. §§ 9704, 9707).
2. Health care providers, health care facilities, and residential care facilities shall adopt and follow all protocols required under 18 V.S.A. § 9709(a).
 3. Health care facilities and residential care facilities shall adopt and follow all protocols required under 18 V.S.A. § 9709(b).
 4. Every hospital shall designate an adequate number of individuals to explain the nature and effect of an advance directive to patients as required by 18 V.S.A. § 9709(c).
 5. No health care provider, health care facility, residential care facility or health insurer shall discriminate in rates or offering services or insurance on the basis of a person's advance directive or DNR order in violation of 18 V.S.A. § 9709(d).

X Authority and Obligations of Funeral Directors, Crematory Operators, Cemetery Officials, Procurement Organizations, and Persons appointed to arrange for the Disposition of the Principal's Remains

1. Funeral Directors, Crematory Operators, Cemetery Officials, Procurement Organizations, and Persons appointed to arrange for the disposition of the principal's remains shall determine and follow the principal's instructions, with limited exceptions. (18 V.S.A. § 9712(a), (b) and (c)).
2. Funeral Directors, Crematory Operators, Procurement Organizations and Cemetery Officials shall develop the systems required by 18 V.S.A. § 9712(d).