



## **Frequently Asked Questions Updated July 16, 2007**

### **What is the Vermont Advance Directive Registry?**

The Vermont Advance Directive Registry (Registry) is a secure, web-based database where patients may submit their advance directive and other documents, such as amendments, or locator forms. Documents are scanned and electronically stored and may be accessed by clinicians either by internet or telephone.

### **When does the requirement to check the Registry become effective?**

By June 5, 2007, clinicians and facilities must have developed protocols that address the Registry and must check the Registry when treating a patient without capacity.

### **When must clinicians and hospitals check the Registry?**

Health care facilities and clinicians must create protocols to ensure that the clinician or facility checks the Registry when a patient “without capacity is admitted or provided services” to determine whether the patient has an advance directive. 18 V.S.A. § 9709 (a)(3). The terms “admission” and “services” are not defined.

### **Does the Vermont Advance Directive law require clinicians and hospitals to check the Registry for all patients?**

No, the Vermont Advance Directive law only requires them to check the Registry at the time patients without capacity are admitted or provided services. Other laws, rules, best practices or hospital policies may require hospitals or physicians to determine whether all patients have advance directives, and checking the Registry would be a tool that hospitals and clinicians may choose to use to meet those obligations.

### **How can hospitals implement the legal requirement to check the Registry?**

Hospitals should check the Registry upon a patient's admission to an inpatient unit, upon admission of a patient for observation purposes and in the emergency department prior to admission. Most, if not all, Vermont hospitals already have protocols in place for checking for advance directives for inpatient admissions. These protocols generally call for non-clinical staff who may not be qualified to determine capacity (such as staff at the registration desk) to ask about and obtain advance directives for patients. This basic process can be applied to enable staff to check the Registry for all patients, at the time of inpatient admission, admission for observation or in the emergency department prior to admission. While not required by law, checking the Registry for all patients at the earliest opportunity will ensure the patients' advance directives are available, should they be needed at a later point in treatment, when the patient is unable to direct his or her care.

**Under the Vermont Advance Directive law, how is capacity defined?**

Capacity is defined as the patient's ability to make and communicate a decision regarding an issue that needs to be decided. "An individual shall be deemed to have the capacity to make a health care decision if the individual has a basic understanding of the diagnosed condition and the benefits, risks, and alternatives to the proposed health care." 19 V.S.A. § 9701 (4).

**Under the Vermont Advance Directive law, who may determine capacity? Are there any legal requirements in connection with determining capacity?**

The patient's clinician may determine capacity for purposes of the Vermont Advance Directives law. Clinicians are defined as including medical doctors, osteopathic physicians, advance practice registered nurses and physician's assistants, practicing within the scope permitted by their respective licenses.

When capacity is determined for purposes of deciding whether an advance directive should become effective, a principal's clinician must speak with an interested individual such as a family member, clergy person or involved friend if one is reasonably available. The clinician must also make specific findings regarding the cause, nature, and projected duration of the lack of capacity in the patient's medical record. VAHHS and VMS recommend following the same process when determining capacity in order to decide whether to check the Registry for an advance directive.

**Must the Registry be checked for competent patients who will be undergoing general anesthesia or conscious sedation because they will temporarily and foreseeably lose capacity?**

No. With respect to surgical procedures, when competent patients who have decisional capacity give their informed consent, there is no reason to check the Registry at that time. We recommend that hospitals and physicians have conversations with patients who will receive anesthesia or conscious sedation, addressing advance care planning, prior to the procedure. Hospitals and physicians are only required to check the Registry if the patient loses capacity subsequent to the procedure.

**Are physicians and other clinicians required to check the Registry for inpatients, observation patients and patients in the emergency department, if hospital staff have already checked the Registry?**

If hospital staff have checked the Registry, physicians treating a patient who has been admitted to an inpatient unit, admitted for purposes of observation or who is seen in the emergency department, are not required to separately and additionally check the Registry, unless they have reason to believe that the patient has changed his or her advance directive since the hospital staff checked the Registry. Physicians providing services in hospitals will rely on the documentation regarding advance directives in the hospital medical record.

**When are clinicians such as physicians obligated to check the Registry for patients being treated in hospital clinics and hospital outpatient services units?**

Hospital clinics and hospital outpatient services units (such as same-day surgery) will create hospital protocols to ensure that the Registry is checked for all patients without capacity. Physicians practicing in these settings should become familiar with the facility's protocol, and may rely on documentation in the medical record that the Registry has already been checked for that episode of care unless they have reason to believe that the patient has changed his or her advance directive since it was last checked. Protocols may require staff or clinicians to check the Registry for advance directives for all patients or to alert physicians or other clinicians if a patient appears to lack capacity.

**When are clinicians such as physicians obligated to check the Registry for patients they are treating in their offices, in clinics, at home, or in other non-hospital settings?**

Physicians and other clinicians must create protocols to ensure that the Registry is checked to determine if a patient has an advance directive before a clinician provides services to a patient, if the patient does not have the capacity to make decisions about his or her care.

**What about nursing home patients without capacity coming to a physician's office for care?**

Like hospitals and physicians, nursing homes are required to have protocols that ensure that the Registry is checked for their patients at the time of admission or when services are provided. While in limited cases it may be permissible for a physician to rely on the nursing home's protocol for checking the Registry, in most cases we recommend that the physician check the Registry to determine if the patient has an advance directive, in case something has changed since the Registry was checked by the nursing home. Physicians who work frequently and closely with nursing homes may wish to develop joint protocols with the nursing home, so that they will know whether the nursing home has checked the

Registry recently and will not have to check it themselves every time they see a patient from the nursing home.

The advance directive law requires that a patient's advance directive accompany the patient when the patient is transferred from one health care facility to another. However, it is not clear that the advance directive would be required to accompany a nursing home patient to a physician's office or clinic. A physician practice could request that the nursing home send a copy of the Advance Directive with the patient, if it is available.

### **What are the responsibilities for health care professionals, health care facilities and residential care facilities that become aware of amendments, suspensions and revocations?**

(1) **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 the Registry** 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) **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 the Registry** of the amendment, suspension, or revocation, if the patient's advance directive has been submitted to the Registry.

(3) **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 the Registry 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.

### **How does a hospital or clinician notify the Registry that a patient has amended, suspended or revoked his or her advance directive?**

Notification of change forms are available on the Department of Health website:  
[http://healthvermont.gov/regs/ad/AD\\_Provider\\_Notification.pdf](http://healthvermont.gov/regs/ad/AD_Provider_Notification.pdf)

Once the form is completed, it can be faxed or mailed to:

Vermont Advance Directive Registry (VADR)  
523 Westfield Ave.  
P.O. Box 2789  
Westfield, NJ 07091-2789

Fax: (908) 654-1919

**If during an individual episode of care a patient specifically asks that some component of their advance directive not be followed, does that constitute a “change” to the advance directive about which the Registry must be notified?**

No. Hospitals and physicians need not inform the Registry unless a patient indicates that they wish to change their advance directive. Section 9707 (g) permits patients with and without capacity to make treatment decisions that override their advance directives, unless certain limited exceptions are met, (Ulysses clause, likelihood of serious harm within 24 hours).

**How can I access the Registry?**

Clinicians and hospitals may access documents in the Registry in several ways:

(1) Log into the Registry using the registrant’s ID number. (Unlimited 24/7 Internet access)

(2) Call the Registry’s toll-free number (1-800-548-9455) to request a copy of a registrant’s document. After verification, the Registry will fax the advance directive documents to a secure fax at the facility or clinician’s office. Emergency requests, received by phone, should be fulfilled within 30 minutes.

(3) Obtain an access account by becoming an authorized provider through the Vermont Department of Health. Authorized providers receive access codes which enable them to have unlimited 24/7 Internet access to the Registry to view and print their patients advance directives.

**How can I become an authorized provider?**

Authorized providers are required to submit an application form and a provider access agreement to the Vermont Department of Health. More information and the forms are available at: <http://healthvermont.gov/vadr/provider.aspx>

Completed applications and agreements should be faxed or mailed to:

Vermont Advance Directive Registry  
Vermont Department of Health  
108 Cherry Street  
P.O. Box 70  
Burlington, VT 05402-0070  
Fax: 802-652-4157

If you have questions about the authorized provider application or access agreement, you can contact the Department of Health by phone at 1-800-464-4343 or 802-863-7200.

**Is there a “test” advance directive in the Registry I can use to familiarize myself with the system?**

Yes. To view the “test” advance directive, use the following identifying information when prompted:

Name: John A. Doe

DOB: 04/24/1955

Registration # US2000005955

**Can the Registry help hospitals and other authorized providers electronically store advance directives they may already have on file?**

Yes. The Registry can store advance directives that authorized providers (hospitals, clinics, nursing homes, etc.) already have on file in a separate database called a “living vault.” The advance directive documents can be either in paper or electronic format. Records in the living vault are indexed by name and DOB. When staff search the Registry using the name and DOB, and the provider has a living vault, the system will automatically search the living vault as well as the Registry. A provider's living vault will only be available to the provider whose records were used to create it. A provider's living vault cannot be accessed by other users of the Registry. Advance directives in the living vault can be transferred to the Registry only if the patient completes a registration agreement and sends it in to the Registry.

**Must each person who accesses the Registry have their own user name and password?**

It depends. For security purposes and tracking purposes it is important to be able to identify each user individually, but there may be several ways to accomplish that goal. Some hospitals may be able to use the hospital user name and passwords to achieve the security and tracking goals rather than obtaining Registry user names and passwords for each individual.

**Is hospital or clinician access to the Registry tracked?**

It depends. When an advance directive is accessed on the website, the Registry tracks which registrant’s advance directive was viewed, when, and by which username. When an advance directive is accessed by phone, the Registry will maintain a record of that call.

However when the Registry is searched online, *but no advance directive is found for the individual*, no record of the search is maintained. When a hospital or clinician uses the patient's registration ID number (from the wallet card) to check the Registry the record of the search will trace the access back to the registrant and not to the hospital or clinician.

**Should hospitals and clinicians note in the patient record that the Registry was checked?**

Yes. Given that there are some common situations in which the Registry cannot verify that it was checked, VAHHS and VMS recommend documenting that the Registry was checked in the medical record.

### **How can I obtain customer support if I have trouble using the Registry?**

**EMERGENCY** support during non-business hours is available by calling 888-548-9455.

Routine help and questions are addressed by sending an e-mail message to the Registry address: [support@uslivingwillregistry.com](mailto:support@uslivingwillregistry.com).

Business hours telephone support (Monday - Friday, 9 am - 5 pm EST) is available by calling 908-325-2525.

Non-business hours technical problems with the Registry can be addressed by calling 1-800-548-9455 and following the voice prompts to speak with representatives of the Registry.

More information is also available on the Registry website provider section <http://healthvermont.gov/vadr/provider.aspx>

### **What kinds of policies are health care professionals and facilities required to have in place with respect to advance directives?**

All health care providers, health care facilities and residential care facilities must develop protocols to ensure that:

- Advance directives and DNR orders are available when services are provided
- The existence of an advance directive or DNR order is prominently noted on the file jacket of a patient's medical record or flagged in an electronic record
- Advance directives for individuals, not currently receiving care, but who anticipate future care, are accepted and stored
- Once an advance directive Registry is available, the provider checks the Registry before providing services to an incapacitated patient
- Agents and guardians have the right to access patient records, participate in discussions about treatment and decisions, and file complaints
- The applicable requirements of the Patient Self-Determination act are followed. (See below.)

In addition, health care and residential facilities must also develop protocols to ensure that:

- Patients are asked if they have advance directives prior to or as soon as possible after admission and periodically while at the facility
- Advance directives are reviewed to determine whether the facility would be able to follow the instructions in the advance directive

- If the facility is unable to follow the instruction, steps are taken to notify the patient and agent, and to assist the patient to transfer to another facility that has the ability to follow the instruction
- Patients are encouraged and helped to submit their advance directives to the Registry
- The facility has a consistent process to issue, revoke, and handle DNR orders
- Advance directives and DNR orders are transferred along with the patient when the patient moves from one facility to another

**Are there penalties associated with the requirements in the Vermont advance directive law?**

Yes, providers and facilities are subject to review and discipline by licensing entities for failure to act in accordance with a known advance directive or instruction of an agent or guardian and for unauthorized accessing of the Registry.