

Veterans Health Administration White Paper
OMB No. 2900-0556 (VA Advance Directive: Durable Power Of Attorney for Health Care and Living Will)
December 2016

Background:

VA Form 10-0137, *VA Advance Directive: Durable Power of Attorney for Health Care and Living Will*, is used by VA patients to designate a health care agent and/or specify preferences for future health care. It is used by VA medical professionals to identify the patient's health care agent and/or preferences for future health care in the event that the patient loses medical decision-making capacity.

The VA Advance Directive is invoked if a patient becomes unable to make health care decisions for him or herself. Use of the VA Advance Directive is specified in [VHA Handbook 1004.02, Advance Care Planning and Management of Advance Directives](#). Veterans' rights to designate a health care agent and specify health care preferences in advance are codified in 38 CFR 17.32. This regulation also obligates VA to recognize advance directives and to use the information contained therein when health care decisions must be made for a patient that has lost decision making capacity. Use of advance directives is a well-established standard within clinical practice in the U.S. Offering the opportunity to complete an advance directive and the requirement to honor such documents is supported by Joint Commission standards and the Patient Self Determination Act of 1990 (applicable to Medicare providers.) Use of advance directives is also consistent with the health care ethics standard that patients have autonomy in health care decision making and have a right to control what is done to them in a medical setting.

Part II (Durable Power of Attorney for Health Care) of VA Form 10-0137 outlines, among other things, health care agent's access to patients' health information, including patients' medical records. According to [VHA Handbook 1605.01, Privacy and Release of Information](#), "The personal representative of an individual has the ability to exercise the individual's rights stated in paragraph 5.a [of the Handbook]" (paragraph 5, page 20). Personal representatives include Health Care Agents identified in a Durable Power of Attorney for Health Care and individual's rights include, "Individuals have the right to access, view, and obtain a copy of their own individually-identifiable information, including PHI, contained in a VA system of records or retrievable by the individual's name" (paragraph 5, page 18). This effectively means that a patient's health care agent can access, view, and obtain a copy of the patient's health information, including information in the patient's health record that is protected by 38 U.S.C. § 7332, without specific permission from the patient on VA Form 10-5345. (Note that the role of health care agent is activated when a patient loses decision-making capacity. Therefore, the person identified as the health care agent can only access, view and obtain a copy of the patient's health information, without specific permission, after the patient has lost decision-making capacity.)

Request:

To align with [VHA Handbook 1605.01, Privacy and Release of Information](#), the National Center for Ethics in Health Care requests the following change to Part II (Durable Power of Attorney for Health Care) of VA Form 10-0137, *VA Advance Directive: Durable Power of Attorney for Health Care and Living Will*:

Current language in VA Form 10-0137:

“If you get too sick to make decisions for yourself, your Health Care Agent will have the authority to make all health care decisions for you. This includes decisions to admit and discharge you from any hospital or other health care institution. Your Health Care Agent can also decide to start or stop any type of health care treatment. He or she can access your personal health information, including your medical records.

NOTE: Information about whether you have been tested for HIV or treated for AIDS, sickle cell anemia, substance abuse or alcoholism will only be shared with your Health Care Agent under very limited circumstances. If you wish to give general permission for VA to share this information with your Health Care Agent, you will need to give special written consent by completing VA Form 10-5345. You can get VA Form 10-5345 from your VA health care provider or you can get it using a computer from this website <http://www.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf>.”

Proposed revisions to VA Form 10-0137:

“If you get too sick to make decisions for yourself, your Health Care Agent will have the authority to make all health care decisions for you. This includes decisions to admit and discharge you from any hospital or other health care institution. Your Health Care Agent can also decide to start or stop any type of health care treatment. He or she can access your personal health information, and medical records, including information about whether you have been tested for HIV or treated for AIDS, sickle cell anemia, substance abuse or alcoholism.

NOTE: If you wish to give general permission for VA to share your medical records or health information with others, you can complete VA Form 10-5345 (Request for and Authorization to Release Medical Records or Health Information). You can get VA Form 10-5345 from your VA health care provider or you can get it using a computer from this website <http://www4.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf>.”