

**Vermont Department of Mental Health
Guidelines for Compliance with
Advance Directives Law
18 VSA §9709**

January 11, 2008

Vermont's new Advance Directive law, effective September 1, 2005, establishes a number of obligations for health care providers, health care facilities and residential care facilities. 18 VSA Chapter 231. The law defines "health care facility" to include mental health centers or agencies, nursing homes and outpatient therapy programs. 18 VSA §9432(7).

Generally, the law requires that providers and facilities attempt to determine whether a client / patient who lacks capacity has an Advance Directive **before** they provide care to that individual. If the client /patient does have an Advance Directive and it is in effect, providers and facilities are required to follow the instructions of the person, whether agent or guardian, who has the authority to make decisions for the client / patient, or the instructions in the Advance Directive unless the law provides for an exception.

In order to ensure that providers and facilities implement their obligations they are required to have protocols in place that are consistent with their obligations under the law. 18 VSA §9709.

All health care providers, health care facilities, and residential care facilities (Level III & IV Residential Care Homes) must develop protocols to ensure that:

- A client's Advance Directive is available when services are provided;
- The existence of an Advance Directive is prominently noted on the file jacket of a patient's medical record or flagged in an electronic record;
- The provider checks the Vermont's Advance Directives registry before providing services to an incapacitated patient; and
- Agents and guardians have the right to access client records, participate in discussions about treatment and decisions, and file complaints.
- The provider complies with its obligations under the Patient Self-Determination Act, 42 U.S.C. § 1295cc(a).

Health care and residential care facilities (Level III & IV Residential Care Homes) must also develop protocols to ensure that:

- Patients are asked if they have Advance Directives before or as soon as possible after admission and periodically while at the facility;
- Advanced Directives are reviewed to determine whether the facility is able to follow their instructions;
- 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 Do-Not-Resuscitate (DNR) orders; and
- Advanced Directives and any DNR orders are transferred along with the patient when the patient moves from one facility to another.

There are a number of resources available to providers and facilities to assist in complying with the requirements of Vermont's Advance Directive law:

1. Department of Health Advance Directive webpage: <http://healthvermont.gov/vadr/index.aspx>.
2. Vermont Ethics Network website: <http://www.vtethicsnetwork.org/>.
3. Vermont Association of Hospitals and Health Care Systems and Vermont Medical Society FAQ: <http://www.vahhs.org/download/Registry%20FAQ%207-16-07.pdf>.

On specific questions regarding their obligations under the law, mental health agencies/programs should consult their attorneys.

Questions and Answers

For which clients and programs do these guidelines apply?

These guidelines are to be applied to all programs serving adults 18 years old and older and legally emancipated youth under 18 years old.

When do the guidelines apply?

Designated agencies (DAs) will be expected to inquire and document upon opening a client's case whether the client has an Advance Directive. DAs may also check if a client has an Advance Directive by checking the state's Advance Directives Registry.

Capacity: If it is determined that the client lacks capacity and has an Advance Directive, and it is in effect, providers and facilities are required to follow the instructions of the person, whether agent or guardian, who has the authority to make decisions for the patient, or the instructions in the Advance Directive unless the law provides for an exception.

For current clients, the Department of Mental Health (DMH) will expect a 100% review by DA staff to determine whether Advance Directive policies are in place. Once the 100% review is completed, periodic reviews with the clients will be carried out and documented in the client record by the staff of each DA.

How does this law apply to the Level III & IV Residential Care Homes?

Residential care facilities (Level III & IV Residential Care Homes) must develop protocols to ensure that

- A client's Advance Directive is available when services are provided;
- The existence of an Advance Directive is prominently noted on the file jacket of a client / patient's medical record or flagged in an electronic record;
- The provider checks the Vermont's Advance Directives registry before providing services to an incapacitated client / patient; and
- Agents and guardians have the right to access client / patient records, participate in discussions about treatment and decisions, and file complaints.
- The provider complies with its obligations under the Patient Self-Determination Act, 42 U.S.C. § 1295cc(a).
- Clients / patient are asked if they have Advance Directives before or as soon as possible after admission and periodically while at the facility;
- Advanced Directives are reviewed to determine whether the facility is able to follow their instructions;
- If the facility is unable to follow the instruction, steps are taken to notify the client / patient and agent, and to assist the client / patient to transfer to another facility that has the ability to follow the instruction;
- Patients / clients are encouraged and helped to submit their Advance Directives to the registry;
- The facility has a consistent process to issue, revoke, and handle Do-Not-Resuscitate (DNR) orders; and
- Advanced Directives and any DNR orders are transferred along with the patient when the client / patient moves from one facility to another.

How will DMH determine DA compliance with the law?

DMH is requiring that the DAs be in compliance with this law no later than July 1, 2008. DMH Quality Management will assess compliance with the law by verifying policy, protocols, and documentation. Verification of Advance Directives policy and procedures will take place during a Program Review. Documentation verification upon admission and periodic verification of Advance Directives will be reviewed as part of the *Minimum Standards Reviews*. It is expected that copies of existing Advance Directives be in the client record and be prominently noted on the file jacket of a patient's medical record or flagged in an electronic record.

As of July 1, 2008 these guidelines will be an addendum into the Designated Agency Provider Manual.

How can I find the Vermont Advance Directive Registry?

To obtain access to the Vermont Advance Directive Registry, a DA must apply to become an authorized provider. Providers may apply for an access account by submitting a completed [Provider Access Application](#) and [Provider Access Agreement](#) to:

**Vermont Advance Directive Registry
Vermont Department of Health
108 Cherry Street, Room 304
P.O. Box 70
Burlington, VT 05402-0070**

For more information visit the Department of Health Advance Directive webpage:
<http://healthvermont.gov/vadr/index.aspx>

Useful Definitions:

Title 18: Health, Chapter 231: Advance Directives for Health Care And Disposition

§9701. Definitions:

(4) "**Capacity**" means an individual's ability to make and communicate a decision regarding the issue that needs to be decided.

(A) An individual shall be deemed to have capacity to appoint an agent if the individual has a basic understanding of what it means to have another individual make health care decisions for oneself and of who would be an appropriate individual to make those decisions, and can identify whom the individual wants to make health care decisions for the individual.

(B) An individual shall be deemed to have 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.

"**Health care provider**" is defined under Title 18, Chapter 221, section 9432(8) means a person, partnership, corporation, facility or institution, licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

"Residential care facility" means a residential care home or an assisted living residence as those terms are defined in section 7102 of Title 33 below:

(1) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:

(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and

(B) Level IV, which provides personal care, as described in subdivision (A), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care.