ADVANCE DIRECTIVES FOR HEALTH CARE RULE

1.0 Authority

These rules are adopted pursuant to 18 V.S.A. §§ 9708 and 9719.

2.0 Purpose

The State of Vermont recognizes the fundamental right of an adult to determine the extent of health care they will receive, including treatment provided during periods of incapacity and at the end of life. 18 V.S.A., ch. 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.

3.0 Definitions

In addition to the definitions at 18 V.S.A. § 9701, the following definitions apply to this rule. Several definitions from 18 V.S.A. § 9701 are repeated in this rule or expanded upon for clarity or efficient reference.

3.1 "Advance Care Planning Documents" means documents for creating, registering, amending, suspending or revoking an Advance Directive or for creating a DNR/COLST.

3.2 "Advance Directive" means a written record executed pursuant to 18 V.S.A. § 9703. It may include appointment of an agent, identification of a preferred primary clinician, instructions on health care desires or treatment goals, an anatomical gift as defined in 18 V.S.A. § 5238(1), disposition of remains, and funeral goods and services. The term includes documents designated under prior law as a durable power of attorney for health care or a terminal care document. Although a specific form is not required to execute an Advance Directive, a suggested form, and related information, is posted on the Department's website.

3.3 "Vermont Advance Directive Registry" or "VADR" means the secure, web-based database to which Vermont residents may submit, at no charge, their Advance Directive. VADR documents for submitting, amending, suspending or revoking Advance Directives are as follows:

Document A	VADR Registration Agreement
Document B	VADR Authorization to Change

Advance Care Planning Documents and VADR documents are available on the Department's website. As used in this rule, the terms VADR and Registry

also include the business processes and staff in place to administer the VADR system and ensure that the system's operations are current and conform to 18 V.S.A., ch. 231.

3.4 "Clinician" means a medical doctor (MD), an osteopathic physician (DO), an advance practice registered nurse (A.P.R.N.), or a physician assistant (P.A.) licensed or certified under the laws of the State of Vermont and acting within the scope of that license or certification or an MD, DO, APRN or PA who treated a patient outside of Vermont and held a valid licensed to practice in the state in which the patient was located at the time the DNR/COLST was issued.

3.5 "Clinician Orders for Life-sustaining Treatment" or "COLST" means a clinician's order or orders for treatment or limitation of treatment such as intubation, mechanical ventilation, transfer to hospital, antibiotics, artificially administered nutrition, or other medical intervention. A COLST order is designed for use in outpatient settings and health care facilities and may include a DNR order that meets the requirements of 18 V.S.A. § 9708.

3.6 "Department" means the Department of Health.

3.7 "Do- Not- Resuscitate order" or "DNR order" means a written order by the patient's clinician directing health care providers not to attempt resuscitation.

3.8 "DNR Identification" means a necklace, bracelet, or anklet identifying the patient as an individual who has a DNR order.

3.9 "File" means information and documents submitted to the Vermont Advance Directive Registry (VADR)and accessible to authorized persons and entities, including the registration information, Advance Directive, and any amendment, suspension or revocation of an Advance Directive.

3.10 "Provider" means a health care provider, health care facility, residential care facility, funeral director, crematory operator, cemetery official, organ procurement organization, probate court official, and employees thereof.

3.11 "Registrant" means a principal who has submitted an Advance Directive to the Vermont Advance Directive Registry as described in Section 5.0 of this rule.

4.0 Advance Directives

4.1 Once an Advance Directive is in effect, the following entities shall follow its instructions regardless of the form of the Advance Directive: agents, guardians, health care providers, health care facilities, residential care facilities, funeral directors, crematory operators, cemetery officials and persons appointed to arrange for the disposition of a principal's remains. Information about Advance Directives and related documents will be available on the Department's website.

4.2 A principal may execute any or all parts of any Advance Directive.

5.0 Vermont Advance Directive Registry (VADR)

5.1 The submission of Advance Care Planning Documents to VADR is voluntary. Registrants who voluntarily use VADR have a responsibility to keep the VADR 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.

5.2 VADR serves only as a repository of information and documents. The validity of documents will not be evaluated except to determine whether the Registration Agreement is complete.

5.3 Submitting documents to VADR

5.3.1 Any principal may submit a copy of an Advance Directive and an original Registration Agreement (Document A) for entry into the registry by mailing, e-mailing, or faxing those documents to VADR. Addresses for submitting these forms are available on the Department's website.

5.3.2 An e-mailed Advance Directive must be submitted in a pdf format.

5.3.3 VADR staff will mail the registrant a confirmation of the submission, a unique identification number, a wallet card and stickers with VADR contact information, and instructions for accessing VADR to view the file.

5.4 Amending, Suspending, or Revoking an Advance Directive

5.4.1 To amend an Advance Directive, a registrant shall complete a new Advance Directive that is properly signed and witnessed pursuant to 18 V.S.A. § 9703. The new Advance Directive can be filed with VADR by using the Authorization to Change form (Document B).

5.4.2 A registrant may suspend or revoke an Advance Directive at any time by notifying VADR staff in writing or by e-mail with the registrant's identification number, or sufficient information to identify the registrant, and a completed VADR Authorization to Change form (Document B) indicating the action the registrant is taking.

5.4.3 Upon receiving an amendment, suspension or revocation of an Advance Directive, the registrant's file will be updated in VADR.

5.4.4 Each registrant will receive an annual notice from VADR requesting the registrant review the information on file. It is each registrant's responsibility to review this notice and their Advance Directive to

make sure it reflects their wishes by being accurate and current.

5.4.5 Failure to file an amended Advance Directive or notify VADR of a suspension or revocation of an Advance Directive could result in medical providers and facilities following the instructions of the latest Advance Directive on file with the registry.

5.4.6 The most recently dated and signed version of an advanced directive is the most current one that shall be honored by professionals, regardless of how long ago it was signed.

5.5 Notification of VADR by health care providers, health care facilities, and residential care facilities.

5.5.1 A clinician, health care provider, health care facility, or residential care facility who becomes aware of an amendment, suspension, or revocation of an advance directive while treating an incapacitated principal shall make reasonable efforts to:
5.5.1.1 Confirm the amendment, suspension, or revocation;
5.5.1.2 Record the amendment, suspension, or revocation in the principal's medical record;
5.5.1.3 Flag the amendment, suspension, or revocation in the principal's medical record on the front of the medical folder or on the front of any advance directive filed in the medical record;
5.5.1.4 Notify the principal, agent, and guardian of the amendment, suspension, or revocation; and
5.5.1.5 Inform the registry of the amendment, suspension, or revocation.

5.5.2 A clinician, health care provider, health care facility, or residential care facility who becomes aware of an amendment, suspension, or revocation of an advance directive while treating a principal with capacity shall comply with the following requirements:
5.5.2.1 Satisfy the requirements of Sections 5.5.1.1, 5.5.1.2 and 5.5.1.3; and
5.5.2.2 On request, assist the principal in notifying agents, guardians, interested individuals, and the registry.

5.5.3 A health care provider, health care facility, or residential care facility not currently providing health or residential care to a principal who becomes aware of an amendment, suspension, or revocation of an advance directive shall ensure that the amendment, suspension, or revocation is recorded and flagged in the principal's medical record and is submitted to the registry.

5.6 Notification by an Agent/Guardian

5.6.1 An agent, as defined by 18 V.S.A. § 9701 (2), 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 an amendment, suspension, or revocation by completing and sending a VADR Authorization to Change (Document B) if the patient's advance directive has been submitted to the VADR.

5.6.2 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 an advance directive.

6.0 Access to the Registry

6.1 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 adequate assurances exist that registrants' identifying information remains confidential. (18 V.S.A. § 9719 (b) (1)).

6.2 Advance directives can be accessed on the Department's website by using the unique registration identification number issued to the registrant by the VADR.

6.3 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, may access the registrant's file by using the registrant's identification number.

6.4 An agent, guardian, or person appointed to arrange for the disposition of 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.

6.5 Providers may access documents submitted to the registry by:

6.5.1 Becoming an authorized provider by submitting a completed Provider Access Application and Provider Access Agreement to VADR c/o the Department of Health. Once the application is approved, VADR will issue a provider identification number and access code. These documents are available on the Department's website;

6.5.2 Using the registrant's identification number, or calling VADR's toll-free number to request a copy of a registrant's document.

6.6 Whenever a VADR file is accessed, VADR shall maintain a record

by name of registrant, date and identification number of the person or organization that accessed the registrant's file.

6.7 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.

6.8 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.

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

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 Notification document or an Agent/Guardian Notification document without an amended Advance Directive 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 on file with the registry.

7.1 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 (d).

7.2 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 (e).

8.0 Clinician Orders for Life Sustaining Treatment (COLST)

8.1 COLST orders shall be issued on the Vermont DNR/COLST form. Health care facilities and residential care facilities may document COLST orders in the patient's medical record in a facility-specific manner when the patient is in their care. (18 V.S.A. §9708).

8.2 A COLST order shall:

8.2.1. Be signed by the patient's clinician; and

8.2.2 Be issued on the Department's form pursuant to 18 V.S.A. § 9708 (b); and

8.2.3 Until January 1, 2018, include the name of the patient,

agent, guardian, in accordance with 14 V.S.A. § 3075 (g); or other individual giving informed consent for the COLST and the individual's relationship to the patient; and

8.2.4 As of January 1, 2018, include the name of the patient, agent, guardian, in accordance with 14 V.S.A. § 3075 (g); or surrogate giving informed consent for the COLST and the individual's relationship to the patient.

9.0 Do Not Resuscitate (DNR) Facility Protocols and Orders

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

9.2 DNR orders shall be issued on the Vermont DNR/COLST form. Healthcare facilities and residential care facilities may document DNR orders in the patient's medical record in a facility-specific manner when the patient is in their care. (18 V.S.A § 9708).

9.3 A DNR order shall:

9.3.1 Be signed by the patient's clinician.

9.3.2 Certify that the clinician has consulted, or made an effort to consult, with the patient and the patient's agent, or guardian;

9.3.3 Unless based on medical futility, until January 1, 2018, include the name of the patient, agent, guardian, or other individual giving informed consent for the DNR order and their relationship to the patient;

9.3.4 Unless based on medical futility, as of January 1, 2018, include the name of the patient, agent, guardian, or surrogate giving informed consent for the DNR order and their relationship to the patient; and

9.3.5 If the patient is in a health care facility, or residential care facility, certify that the requirements of the health care facility's DNR protocol have been met.

9.4 A DNR order based on medical futility shall also:

9.4.1 Certify that resuscitation would not prevent the imminent death of the patient should the patient experience cardiopulmonary arrest; and

9.4.2 Be signed and certified by a second clinician.

9.5 All health care providers, including emergency medical personnel and staff of health care facilities shall honor a DNR order unless the provider or facility believe in good faith, after consultation with the agent or guardian where possible and appropriate, that:

9.5.1 The patient is not the person identified in the DNR order; or

9.5.2 The patient wishes to have the DNR order revoked.

9.6 Whenever a DNR order is not honored for one of the reasons contained in Section 9.5, the health care provider or staff member shall document the basis for that decision in the patient's medical record.

9.7 The most recently dated and signed version of a DNR is the most current one that shall be honored by professionals, regardless of how long ago it was signed.

9.8 A patient may suspend or revoke a DNR order at any time by informing the clinician, destroying the written DNR/COLST form, or acting in any way which evidences a specific intent to suspend or revoke the DNR/COLST order unless the order is based on medical futility.

10.0 DNR Identification

Upon signing a DNR order, the clinician shall maintain a copy of the completed order in the patient's medical record and provide the original signed order with instructions to the patient, agent, or guardian unless the patient permanently resides within the issuing facility. If the patient for any reason leaves the issuing facility, or requests an original order, the issuing facility shall provide the patient with the original signed order. The presence of a signed DNR order on the Vermont DNR/COLST form shall be honored by all health care providers. A clinician who issues a DNR order on the DNR/COLST form shall authorize the issuance of a DNR Identification to the patient. A DNR identification shall be a necklace, bracelet, or anklet.

10.1 DNR identification issued after the completion of a DNR order may be worn or possessed by the patient and shall include the following minimum requirements:

10.1.1 The principal's name, date of birth and gender;

10.1.2 One of the following: "Vermont DNR", or "VT DNR", or "VT Do Not Resuscitate", or "Vermont Do Not Resuscitate";

10.1.3 The words "order on file" and a 24-hour, seven-day a week telephone number that is toll free for the calling party to access information regarding the patient's medical order;

10.1.4 An individual-specific identification number to be used to identify the patient's medical information on file; and

10.1.5 Any additional information requested by the patient.

10.2 The presence of a valid DNR Identification that meets the minimum requirements shall be honored by all providers, including Emergency Medical Service providers, the same as a signed, written DNR/COLST order.

10.3 A DNR Identification that does not conform with the requirements outlined herein shall not be recognized as a valid DNR Identification and shall not be honored by providers.

10.4 Approved Vendors for DNR Identification

10.4.1 The Department shall maintain and post on its website a list of approved vendors who can meet the minimum requirements for DNR Identification set out in Section 10.1 and posted on the Department website. Only venders who require a copy of a DNR order prior to issuing an identification will be approved.

10.4.2 A copy of the signed DNR order must be provided to the approved vendor prior to the issuance of a DNR ID to the patient.

10.4.3 All vendors issuing Vermont DNR identifications shall maintain copies of each individual DNR order on file, which can be located via a specific individual identification number.

10.4.4 Approved vendors shall provide 24-hour seven-day a week toll free telephone access in the event that information pertaining to a patient's medical order is needed.

10. 5 Information about obtaining financial assistance for purchasing and registering with a vendor to obtain a Vermont DNR Identification as described in Section 10.1 of this rule will be available on the Department's website.

11.0 Experimental Treatments

11.1 A principal may authorize their participation in treatment studies or drug trials, or may authorize their 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(1). Such studies or trials must be conducted in compliance with 21 C.F.R. Part 56, 21 C.F.R. Part 312, and any other applicable state or federal law. Experimental treatments cannot be authorized by using the Ulysses Clause as provided by 18 V.S.A. §9707 (h).