



# Defense Health Agency

## ADMINISTRATIVE INSTRUCTION

NUMBER 6025.02

July 27, 2023

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DAD-HCO

SUBJECT: Advance Directives

References: See Enclosure 1.

1. PURPOSE. This Defense Health Agency Administrative Instruction (DHA-AI), based on the authority of References (a) through (b), and in accordance with the guidance of References (c) through (q), establishes the Defense Health Agency's (DHA) procedures on providing patient educational materials and administrative filing of the advance directive medical legal correspondence into the Department of Defense (DoD) Health Record at Military Medical Treatment Facilities (MTFs).

2. APPLICABILITY. This DHA-AI applies to the DHA Enterprise (components and activities under the authority, direction, and control of the DHA) to include: assigned, attached, allotted, or detailed personnel. For DHA publications, the terms "market" or "direct reporting market" includes the Hawaii Market unless otherwise noted in the publication. This applies to all published DHA publications, thereby ratifying any actions taken by the Hawaii Market after establishment.

3. POLICY IMPLEMENTATION. It is DHA's instruction, pursuant to References (c) through (q), that:

a. In accordance with Reference (e), MTF staff will discuss with and inform patients of their right to self-determination in their health care. Health Care Providers must inquire, either periodically or as needed for care, treatment, and service, as to whether a patient has executed an Advance Directive to make decisions regarding their healthcare, and whether any such advanced directive is documented in the patient's DoD Health Record or otherwise documented in compliance with the accreditation organization requirements. MTFs may develop local procedures or guidance on implementing accreditation and legal requirements, including advising patients of their right to accept or refuse treatment and the right to prepare advance directives and to select a healthcare decisionmaker.

July 27, 2023

b. MTF staff, to the extent practical, will discuss the use of advance directives, specifically living wills and durable medical powers of attorney, with patients and/or their legally authorized representatives. To the extent possible, MTF staff will abide by all decisions made by their patients or their legally authorized representatives in accordance with Reference (f).

c. MTFs will document the existence of an advance directive in the DoD Health Record in accordance with References (g) and (l), or as required by the accreditation organization.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. PROPONENT AND WAIVERS. The proponent of this publication is the Deputy Assistant Director (DAD), Healthcare Operations (HCO). When Activities are unable to comply with this publication the activity may request a waiver that must include a justification, to include an analysis of the risk associated with not granting the waiver. The activity director or senior leader will submit the waiver request through their supervisory chain to the DAD-HCO to determine if the waiver may be granted by the Director, DHA or their designee.

7. RELEASABILITY. **Cleared for public release.** This DHA-AI is available on the Internet from the Health.mil site at: <https://health.mil/Reference-Center/Policies> and is also available to authorized users from the DHA SharePoint site at: <https://info.health.mil/cos/admin/pubs/SitePages/Home.aspx>.

8. EFFECTIVE DATE. This DHA-AI:

a. Is effective upon signature.

b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with Reference (d).

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Director

Enclosures

1. References
2. Responsibilities
3. Advance Directives Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD(HA))," September 30, 2013, as amended
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013, as amended
- (c) United States Code, Title 10, Section 1073c
- (d) DHA Procedural Instruction 5025.01, "Publication System," April 1, 2022
- (e) Patient Self-Determination Act: Omnibus Reconciliation Act of 1990, Public Law 101-508, Sections 4206 and 4751
- (f) DoD Instruction 6000.14, "DoD Patient Bill of Rights and Responsibilities in the Military Health System (MHS)," September 26, 2011, as amended
- (g) DoD Instruction 6040.45, "DoD Health Record Life Cycle Management," November 16, 2015, as amended
- (h) DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019, as amended
- (i) DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs," March 13, 2019
- (j) DoD Instruction 6025.18, "Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs" March 13, 2019
- (k) DoD Instruction 8580.02, "Security of Individually Identifiable Health Information in DoD Health Care Programs," August 12, 2015
- (l) DHA Procedures Manual 6025.02, Volume 1, "DoD Health Record Lifecycle Management, Volume I: General Principles, Custody and Control, and Inpatient Records," November 23, 2021
- (m) United States Code, Title 10, Section 1044c(a)(1)
- (n) United States Code, Title 10, Section 1044
- (o) DHA Procedural Instruction 6025.10, "Standard Processes, Guidelines, and Responsibilities of the DoD Patient Bill of Rights and Responsibilities in the Military Health System (MHS) Military Medical Treatment Facilities (MTFs)," October 9, 2018, as amended
- (p) The Joint Commission (TJC), Hospital, Ambulatory and Behavioral Health Manuals, Current Editions<sup>1</sup>
- (q) DHA Administrative Instruction 106, "Organizational Inspection Program," August 29, 2019

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<sup>1</sup> This reference can be found at: <https://e-dition.jcrinc.com/ProxyLogin.aspx?lnk=377437192647>. Log-in credentials needed.

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DHA. The Director, DHA will:

a. Ensure the enterprise electronic systems supporting the advance directives functions are managed and sustained.

b. Develop and issue implementation and procedural guidance to specify documentation and management procedures for record systems that support the advance directives procedures as it relates to the DoD Health Record.

c. Ensure MTF Directors comply with, oversee, and execute the procedures outlined in this DHA AI.

2. DAD-HCO. The DAD-HCO must:

a. Develop implementation and procedural guidance, in accordance with Reference (l), to specify documentation management procedures that support advance directives functions.

b. Collaborate with appropriate stakeholders to make necessary changes to procedures to ensure the implementation of the advance directives procedures outlined in this DHA AI.

3. DIRECTORS, DIRECT REPORTING MARKETS, SMALL MARKET AND STAND ALONE MILITARY MEDICAL TREATMENT FACILITY, AND DEFENSE HEALTH AGENCY REGIONS. The Directors, Direct Reporting Markets, Small Market and Stand Alone Military Medical Treatment Facility, and Defense Health Agency Regions must monitor compliance through the Organization Inspection Program (OIP) in accordance with Reference (p) regarding the advance directives procedures in this DHA-AI for the MTFs in their areas of responsibility.

4. DIRECTORS, MTF OR DESIGNEES. Directors, MTF or designees will establish and execute necessary advance directive procedures for record management in accordance with Reference (l), and the proper and compliant use of personally identifiable information and protected health information as outlined in References (h) through (k) and as outlined in this DHA AI.

ENCLOSURE 3

ADVANCE DIRECTIVES PROCEDURES

1. OVERVIEW

a. In accordance with References (e), (f), (l), (o) and (p), MTF staff will inform patients, while they are capable of making decisions, of their rights regarding their health care decision making when they become unable to make decisions. This includes the right to accept or refuse treatment and the right to prepare advance directives. In accordance with Reference (l), an advance directive, otherwise known as a Patient Self-Determination Act document, is any written declaration that:

(1) Sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the declarant whenever the declarant has a terminal physical condition, or is in a persistent vegetative state; or

(2) Authorizes another person to make health care decisions for the declarant, under circumstances stated in the declaration, whenever the declarant is incapable of making informed health care decisions.

b. Written instructions by the patient can be in the form of what is commonly known as a “living will” or a “durable power of attorney for healthcare,” as recognized under host nation or state laws, when not in conflict with federal law and DoD policy, (some states require both legal documents) and related to the provision for such care when the patient is incapacitated.

c. Behavioral health advance directives or psychiatric advance directives may be an option for patients, in locations in which they are available and in accordance with state or host nation laws, to the extent that they do not conflict with federal law and DoD policy. Behavioral health advance directives or psychiatric advance directives are legal documents that allow patients with serious mental health illnesses to prevent involuntary mental health interventions through advance planning. Patients have the option to execute a comprehensive advance directive that includes psychiatric medical conditions. This may be an option for patients with mental health conditions who experience incapacitating crises where they are legally incompetent to make medical decisions.

2. MTF PROCEDURES

a. In accordance with Reference (e), MTF staff will discuss and inform patients of their right to self-determination in their health care. Health care providers must inquire, either periodically or as needed for care, treatment, and service, as to whether a patient has executed an advance directive to make decisions regarding their healthcare, and whether any such advanced directive is documented in the patient's DoD Health Record or otherwise documented in compliance with the accreditation organization requirements. MTFs may develop local procedures or guidance on executing the accreditation and legal requirements. This includes the right to accept or refuse treatment and the right to prepare advance directives.

b. The MTF Director or designee will provide educational opportunities for licensed independent practitioners and staff on issues concerning advance directives as part of initial and ongoing training.

c. MTF staff will inform all patients over the age of 18 years old of their rights and provide written educational material, if requested by the patient. Written educational material may include the living will, durable power of attorney, and organ donation educational materials explaining their rights under applicable law, including the right to execute an advance directive. MTF personnel will not pressure a patient into formulating an advance directive. After the patient has been informed of their rights, the patient may choose to proceed with an advance directive or not. As needed, MTF staff will consult the servicing DHA Office of General Counsel (OGC) legal personnel for further guidelines and information on advance directives that should be provided to patients and employees in accordance with Reference (l).

d. MTF staff, to the extent practical, or as needed for care, treatment, and services, will discuss the use of advance directives (both living wills and durable medical or health care powers of attorney) with patients and/or their legally authorized representatives. To the extent possible, MTFs will abide by all decisions made by their patients or their legally authorized representatives in accordance with Reference (f). A provider who disagrees with a patient's wishes as a matter of conscience may arrange for transfer of care to another qualified provider willing to proceed according to the patient's wishes within the limits of the law and medical ethics in accordance with References (f) and (o). Signed advance directives will become a part of the patient's medical record.

e. In accordance with References (f) and (o), patients have the right to make sure their wishes regarding their healthcare are known even if they are no longer able to communicate or make decisions for themselves.

f. MTFs will document whether patients have an advance directive in accordance with References (g) and (l). This information will be documented and the MTF must file a copy of the Advance Directive in the electronic health record if available, in accordance with Reference (l). Paper documents will be appropriately digitized, and metadata tagged in the electronic document management system in accordance with Reference (g). The patient or legally designated representative has a right to revoke their advance directive documentation. The MTF personnel will document the revocation in the DoD Health Record in accordance with References (g) and (l).

g. Reference (m) stipulates that advance medical directives by any individual eligible for legal assistance are exempt from state law requirements of form, substance formality, or recording, and shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned in accordance with References (m) and (n).

(1) If a living will is prepared in a different state than the admission location, the Active Duty Service member's (ADSM) living will can be used.

(2) MTFs will refer patients who are eligible for military legal assistance services to the local Military Department legal assistance office for guidance on updating their advance directive, such as when a life event occurs (for example, birth of a child, death of an individual previously identified as a healthcare agent, etc.).

3. ADSM PATIENTS. While ADSMs patients usually determine their own care, on occasion the requirements of the Military Department will override their decision. These situations are unusual but when questions concerning mandatory medical or surgical procedures on ADSMs arise, MTFs will follow Military Department-specific procedures that apply to the ADSM patient. Because of the unusual nature of such situations involving ADSM patients, physicians may wish to consult with their institutional medical ethics committee and supporting OGC legal counsel.

## GLOSSARY

### PART I. ABBREVIATIONS AND ACRONYMS

|        |  |
|--------|--|
| ADSM   | Active Duty Service member                       |
| DAD    | Deputy Assistant Director                        |
| DHA    | Defense Health Agency                            |
| DHA-AI | Defense Health Agency Administrative Instruction |
| DHAR   | Defense Health Agency Region                     |
| DRM    | Direct Reporting Market                          |
| HCO    | Health Care Operations                           |
| MHS    | Military Health System                           |
| MTFs   | Military Medical Treatment Facility              |
| OGC    | Office of General Counsel                        |
| SSO    | Small Market and Stand Alone MTF Organization    |
| TJC    | The Joint Commission                             |

### PART II. DEFINITIONS

active duty. The full-time duty in the active Military Service of the United States. This includes members of the Reserve Components serving on orders issued under Title 10, United States Code for greater than 30 calendar days. It also includes Reserve Component members who incur an injury, illness, or disease in the line of duty as outlined in 10 USC 1074a and requires hospitalization at a non-military medical facility. It does not include National Guard members in state status.

behavioral health advance directive. In a behavioral health advance directive, people are able to express their preferences on where to receive care and what treatments they are willing to undergo. They are also able to identify an agent or representative who is trusted and legally empowered to make healthcare decisions on their behalf. These decisions may include the use of all or certain medications, preferred facilities, and listings of visitors allowed in facility-based care. May also be called a psychiatric advance directive.

DoD Advance Directive. Legal document stating the patient's oral and written instructions about future medical care, in the event that the patient is not able to communicate these instructions. Examples include a living will and do not resuscitate orders.

DoD Health Record. Includes all medical and dental care documentation, including mental health care documentation that has been recorded for that individual. Information may be recorded and maintained in paper or electronic media. Three principal component records maintained within the DoD health care system, each of which is a specific subset of the information in the DoD Health Record are the Service Treatment Record, Non-Service Treatment Record, and Occupational Health Treatment Record. Inpatient records are also a part of the DoD Health Record for an individual. Certain documents from an inpatient record are also included in the Service Treatment Record and Occupational Health Treatment Record. Administrative documents created to communicate copies of information contained in the health record to non-health care related activities are not part of the DoD Health Record.

durable power of attorney. An instrument containing an authorization for one to act as the agent of the principal that terminates especially upon revocation by the principal or death of the principal or agent.

legally authorized representative. Those person(s) authorized to make medical decisions on a patient's behalf in accordance with applicable law. This term broadly includes healthcare agents, court-appointed guardians, or surrogate decisionmakers (as identified by applicable law).

living will. A written document that spells out medical treatments a patient would and would not want to be used to keep the patient alive, as well as the patient's preferences for other medical decisions, such as pain management or organ donation.

Individual eligible for legal assistance: Any individual specified in Title 10 USC Section 1044, which includes active duty and retired military service members, active duty and retired officers of the commissioned corps of the Public Health Service, members of the reserve components under conditions specified in Title 10 USC Section 1044, and all of their dependents. See Title 10 USC Section 1044 for the complete description.

Inpatient. A patient who is admitted to a hospital or clinic for treatment that requires at least one overnight stay.

MTF. Is any fixed facility of the DoD that is outside of a deployed environment, used primarily for health care, and any other location used for purposes of providing healthcare services as designated by the Secretary of Defense.

metadata tag. In information systems, a non-hierarchical keyword or term assigned to a document or other piece of information. The entry of metadata information about a scanned document allows for categorization of the data so the document can subsequently be located.

personally identifiable information. Any information that could identify a specific individual, including but not limited to a name, name of a family member, street address, social security number, or other information that is linked or linkable to the individual.

protected health information (PHI). Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium. PHI excludes individually

identifiable health information in employment records held by a DoD covered entity in its role as employer. Information that has been de-identified in accordance with Reference (i) is not PHI. PHI is a subset of personally identifiable information, with respect to living persons.

Veterans Affairs Advance Directive. A VA advance directive is a completed VA Form 10-0137. In VA, this form is used by patients to document treatment preferences for both medical and mental health care.