

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Amendment of System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of amendment of system of records.

**SUMMARY:** As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "Ethics Consultation Web-based Database (ECWeb)-VA" (152VA10E) as set forth in 76 FR 43386. VA is amending the system of records by revising the System Number, Categories of Individuals Covered by the System, Category of Records in the System, Purpose, Routine Uses of Records Maintained in the System, Safeguards, Retention and Disposal, and System Manager and Address. VA is republishing the system notice in its entirety.

**DATES:** Comments on this new system of records must be received no later than February 29, 2016. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective February 29, 2016.

**ADDRESSES:** Written comments concerning the amended system of records may be submitted through [www.regulations.gov](http://www.regulations.gov); by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kenneth Berkowitz, MD, Acting Executive Director, National Center for Ethics in Health Care (10P6), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (202) 501-0364.

**SUPPLEMENTARY INFORMATION:** The system number is changed from 152VA10E to 152VA10P6 to reflect the current organizational alignment.

The Category of Individuals Covered by the System is being amended to

remove beneficiaries of other Federal agencies and replace it with other requesters or participants from outside VA for whom personal information will be collected.

The Category of Records in the System is being amended to add that the ECWeb record documents the consultation request, relevant consultation specific information, a summary of the information including the ethical analysis and moral deliberation, the explanation of the findings to relevant parties and support of the consultation process. The ECWeb record also includes related notes and attachments.

The Purpose in this system of records is being amended to include education, but will remove law enforcement investigations.

Routine Uses of Records Maintained in the System being deleted are:

2. Disclosure of health care information furnished and the period of care, as deemed necessary and proper, to accredited service organization representatives and other approved agents, attorneys, and insurance companies to aid claimants whom they represent in the preparation, presentation and prosecution of claims under laws administered by VA, state or local agencies.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. Relevant information may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, in matters of guardianship, inquests and commitments; to private attorneys representing Veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

15. For program review purposes and the seeking of accreditation and/or certification, health care information may be disclosed to survey teams of The Joint Commission (TJC), and similar national accrediting agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

18. Patient identifying information may be disclosed to Federal agencies and VA and government-wide third party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

19. Relevant health care information may be disclosed to health and welfare agencies, housing resources and utility companies, possibly to be combined with disclosures to other agencies, in situations where VA needs to act quickly in order to provide basic and/or emergency needs for the Veteran and Veteran's family where the family resides with the Veteran or serves as a caregiver.

All of the Routine Uses of Records Maintained in the System are renumbered due to the deletions to allow for sequential numbers. Routine use 29 which stated: Assist in quality improvement efforts with respect to ethics consultation practices as part of approved research or ongoing quality improvement projects is now routine use 21 which is being clarified to state that disclosure of ethics consultation records to groups (e.g., American Society for Bioethics and the Humanities) performing improvement or quality assessments as part of approved research or ongoing quality improvement projects with respect to ethics consultation practices.

Safeguards number 3 is being amended to remove access to the Austin VA Data Processing Center is generally restricted to Center employees, custodial personnel, Federal Protective Service and other security personnel.

The Retention and Disposal is being amended to remove in accordance with the records is deposition authority approved by the Archivist of the United States, paper records and information stored on electronic storage media are maintained for 75 years after the last episode of patient care then destroyed/deleted. This section will now state that records that are stored within Computerized Patient Record System (CPRS) and Veterans Health Information Systems and Technology Architecture (VistA) will be maintained in accordance with Record Control Schedule (RCS) 10-1 Item # XLIII-2, Electronic Health Records, NARA job# N1-15-02-3. All other records maintained outside the Electronic Health Record will be maintained in accordance with General Records Schedule (GRS) 25 Ethics Program Records Item 1.a and 1.b (N1-GRS-01-1 item 1a & 1b).

The System Manager and Address is amending the official responsible for policies and procedures from the Chief

Ethics in Health Care to the Executive Director.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, approved this document on January 12, 2016, for publication.

Dated: January 13, 2016.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

#### 152VA10P6

##### SYSTEM NAME:

Ethics Consultation Web-based Database (ECWeb)-VA

##### SYSTEM LOCATION:

Automated records within the Ethics Consultation Web-based Database (ECWeb) may be maintained on a VA-owned server administered by the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning.

1. Veterans who have applied for health care services under Title 38, U.S.C., Chapter 17, and members of their immediate families.

2. Spouse, surviving spouse, and children of Veterans who have applied for health care services under Title 38, U.S.C., Chapter 17.

3. Other requesters or participants from outside VA for whom personal information will be collected.

4. Individuals examined or treated under contract or resource sharing agreements.

5. Individuals examined or treated for research or donor purposes.

6. Individuals who have applied for Title 38 benefits, but who do not meet the requirements under Title 38 to receive such benefits.

7. Individuals who were provided medical care under emergency conditions for humanitarian reasons.

8. Pensioned members of allied forces provided health care services under Title 38, U.S.C., Chapter I.

9. Current and former employees.

10. Contractors employed by the Department of Veterans Affairs.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

The ECWeb record documents the consultation request, relevant consultation specific information, a summary of the information including the ethical analysis and moral deliberation, the explanation of the findings to relevant parties and support of the consultation process. The ECWeb record also includes related notes and attachments.

The records may include information related to ethics consultations performed in and for VHA medical treatment facilities. Information may include relevant information from a health record (a cumulative account of sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric information compiled by VA professional staff and non-VA health care providers); subsidiary record information (e.g., tumor registry, dental, pharmacy, nuclear medicine, clinical laboratory, radiology, and patient scheduling information); identifying information (e.g., name, address, date of birth, partial social security number), military service information (e.g., dates, branch and character of service, service number, health information), family or authorized surrogate information (e.g., next-of-kin and person to notify in an emergency), employment information (e.g., occupation, employer name and address), and information pertaining to the individual's medical, surgical, psychiatric, dental, and/or treatment (e.g., information related to the chief complaint and history of present illness; information related to physical, diagnostic, therapeutic, special examinations, clinical laboratory, pathology and x-ray findings, operations, medical history, medications prescribed and dispensed, treatment plan and progress, consultations; photographs taken for identification and medical treatment, education and research purposes; facility locations where treatment is provided; observations and clinical impressions of health care providers to include identity of providers and to include, as appropriate, the present state of the patient's health, an assessment of the patient's emotional, behavioral, and social status, as well as an assessment of the patient's rehabilitation potential and nursing care needs). In addition the

record may include the name and contact information for health care providers, and information regarding health care rendered by those providers.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C., 501(b), 304, 7301, and 7304(a).

##### PURPOSE(S):

The automated records may be used for such purposes as: Ethics consultation concerning education; ongoing treatment of the patient; documentation of treatment provided; payment; health care operations such as producing various management and patient follow-up reports; responding to patient and other inquiries; for epidemiological research and other health care related studies; statistical analysis, resource allocation and planning; providing clinical and administrative support to patient health care; audits, reviews and investigations conducted by staff of the health care facility, the VISN's, VA Central Office, and the VA Office of Inspector General (OIG); sharing of health information between and among Veterans Health Administration (VHA), Department of Defense (DoD), Indian Health Services (IHS), and other government and private industry health care organizations; quality improvement/assurance audits, reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations, and employee disciplinary or other adverse action, including removal; advising health care professional licensing or monitoring bodies or similar entities of activities of VA and former VA health care personnel; and, accreditation of a VA health care facility by an entity such as TJC.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus; information protected by 38 U.S.C. § 5705, i.e., quality assurance records; or information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information (IIHI), such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. VA may disclose protected health information pursuant to the following routine uses where required or permitted by law.

1. Disclosure of health care information as deemed necessary and proper to Federal, state and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

2. Disclosure of individually identifiable health care information may be made by appropriate VA personnel to the extent necessary and on a need-to-know basis, consistent with good medical and ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

3. Relevant information may be disclosed to a guardian ad litem in relation to his or her representation of a claimant in any legal proceeding.

4. Relevant information may be disclosed to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, only to the extent necessary to aid VA in preparation, presentation, and prosecution of claims authorized under Federal, state, or local laws, and regulations promulgated thereunder.

5. Disclosure of health information, excluding name and home address, (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research entities approved by the Under Secretary for Health.

6. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

7. Relevant health care information concerning a non-judicially declared incompetent patient may be disclosed to a third party upon the written authorization of the patient's next of kin in order for the patient or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled or, to arrange for the patient's discharge from a VA medical facility. Sufficient information to make an informed determination will be made available to such next of kin. If the patient's next of kin are not reasonably accessible, the Chief of Staff, Director, or designee of the custodial VA health care facility may make disclosure

of health care information for these purposes.

8. Relevant health care information may be disclosed to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f), for the purpose of identifying patients who are mentally ill or mentally retarded, so they can be evaluated for appropriate placement.

9. Relevant health care information may be disclosed to a State Veterans Home for the purpose of medical treatment and/or follow-up at the State Home when VA makes payment of a per diem rate to the State Home for the patient receiving care at such home, and the patient receives VA medical care.

10. Relevant health care information may be disclosed to (a) A Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (b) a Federal agency or a non-VA hospital (Federal, state and local, public or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services, or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit or, for VA to effect recovery of the costs of the medical care.

11. Information from an ECWeb record which relates to the performance of a health care student or provider may be disclosed to a medical or nursing school, or other health care related training institution, or other facility with which there is an affiliation, sharing agreement, contract, or similar arrangement when the student or provider is enrolled at or employed by the school or training institution, or other facility, and the information is needed for personnel management, rating and/or evaluation purposes.

12. Relevant health care information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or sharing agreement for the

provision of health care or administrative services.

13. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member of staff person requests the record on behalf of and at the written request of the individual.

14. Disclosure may be made to the National Archives and Records Administration in records management inspections conducted under authority of Title 44 U.S.C.

15. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

16. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statutes, regulation, or order issued pursuant thereto.

17. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

18. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subject, harm to economic or property interests, identify theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems (entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines as reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine uses permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

19. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of TJC and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

20. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical and ethical practices.

21. Disclosure of ethics consultation records to groups (e.g., American Society for Bioethics and the Humanities) performing improvement or quality assessments as part of approved research or ongoing quality improvement projects with respect to ethics consultation practices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on electronic media in ECWeb on a centrally located VA-owned server. In most cases, copies of back-up computer files are maintained at off-site locations. Subsidiary record information is

maintained at the various respective ethics consultation services within the health care facility and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services, as the VA may deem practicable.

**RETRIEVABILITY:**

Records are retrieved by consultation number, name of ethics consultant, requester, ethics domain or topic, facility, keywords or phrases.

**SAFEGUARDS:**

1. Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in ECWeb may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file, which is needed in the performance of their official duties. Information that is downloaded from ECWeb and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veteran Integrated Service Networks. Access is controlled by individually

unique passwords/codes, which must be changed periodically by the employee.

**RETENTION AND DISPOSAL:**

Records that are stored within Computerized Patient Record System (CPRS) and Veterans Health Information Systems and Technology Architecture (Vista) will be maintained in accordance with Record Control Schedule (RCS) 10-1 Item # XLIII-2, Electronic Health Records, NARA job# N1-15-02-3. All other records maintained outside the Electronic Health Record will be maintained in accordance with General Records Schedule (GRS) 25 Ethics Program Records Item 1.a and 1.b (N1-GRS-01-1 item 1a & 1b).

**SYSTEMS AND MANAGER(S) AND ADDRESS:**

Official responsible for policies and procedures: Executive Director, National Center for Ethics in Health Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Official maintaining the system: Director at the VA health care facility where the individuals are associated.

**NOTIFICATION PROCEDURE:**

Individuals seeking information regarding access to and contesting of ECWeb records may write, call or visit the last VA health care facility where health care was provided or by writing the National Center for Ethics in Health Care.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA health care facility location where they are or were employed or made contact or they may write the National Center for Ethics in Health Care.

**CONTESTING RECORD PROCEDURES:**

(See Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by the patient, family members or accredited representative, and friends, authorized surrogates, health care agents, employees, contractors, medical service providers, and various automated systems providing clinical and managerial support at VA health care facilities.

[FR Doc. 2016-01701 Filed 1-28-16; 8:45 am]

**BILLING CODE 8320-01-P**