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Fast-Track Regulation
Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-67
VAC Chapter title(s)	Advance Healthcare Directive Registry
Action title	Amend Regulations Following 2024 Periodic Review
Date this document prepared	8/19/2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Virginia's Advance Health Care Planning Registry (Registry) is an online system used by Virginia residents to store their advance health care directives (e.g., living will, health care power of attorney, anatomical gift, etc.) and other advance health care planning documentation. The Registry may be accessed by a patient's health care providers, family members, power of attorney, or a designee who will ensure that the patient's medical wishes are executed if the patient is incapacitated.

This Fast Track action amends the regulations governing Virginia's Advance Health Care Planning Registry by aligning the regulations with current Registry storage and access practices, updating the regulations to reflect recent statutory changes, and conforming regulatory language to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations. The changes to the regulations clarify the advance care planning documentation that may be stored in the Registry, and specify who is permitted to access the documentation that is stored within it.

- "Advance Health Care Directive Registry" will be changed to "Advance Health Care Planning Registry" throughout the chapter and its title to reflect statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly.
- A new section, 12VAC5-67-5, has been added to define terms used throughout the regulatory chapter.
- Changes to 12VAC5-67-10 conform the regulations to *Form and Style Guidelines.*
- Updates to 12VAC5-67-20 align the regulations with statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly by including Durable Do Not Resuscitate Orders and portable medical order forms in the types of documents that may be stored and accessed in the Registry.
- Amendments to 12VAC5-67-30 create two subsections outlining the requirements followed by persons filing advance health care planning documentation in the Registry, and the requirements followed by licensed health care providers when accessing and querying the Registry on behalf of patients.

The VDH has considered all opportunities for regulatory reduction to meet the objectives of Executive Order – 19 as part of this fast-track action.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the State Board of Health.

"Documentation" means advanced health care planning documents such as health care powers of attorney, living wills, anatomical gift declarations, Durable Do Not Resuscitate Orders, portable medical orders, and any other document that supports advance health care planning.

"Registry" means the Advance Health Care Planning Registry.

"Regulations" means the provisions regulating the Advance Health Care Planning Registry (12VAC5-67-10 through 12VAC5-67-30).

"VDH" means the Virginia Department of Health.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On 10/2/2025 the Board of Health adopted amendments to the regulations governing Virginia's Advance Health Care Planning Registry.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM

procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

In 2024, the VDH completed a periodic review of the regulations governing the Advance Health Care Planning Registry. In its finding, VDH recommended that the regulations be amended to (i) align with the objectives of Executive Order 19; (ii) conform the regulations to the *Form and Style Guidelines* as published by the Virginia Registrar of Regulations; (iii) reflect current practices executed by the VDH and the contracted vendor with which the VDH partners to provide public access to the Registry; and (iv) incorporate recent statutory changes specifying the types of documents that may be stored in the Registry and the persons who can access such documentation. Additional changes conform the regulations to Chapters 231 and 274 of the 2024 Acts of Assembly by updating the name of the Registry to the Advance Health Care Planning Registry.

Amendments to the regulations are expected to be non-controversial as the changes conform the regulations to current law and practice. The VDH does not anticipate any reduction in the services provided that are associated with the regulatory changes.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The regulations are promulgated under the authority of §§ 32.1-12, 54.1-2994, and 54.1-2995 of the Code of Virginia.

- § 32.1-12 of the Code of Virginia authorizes the Board to make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions that may be necessary to carry out the provisions of Title 32.1 and other laws of the Commonwealth administered by the Board, the State Health Commissioner, or the Department of Health.

- § 54.1-2994 of the Code of Virginia directs the Department to make available a secure online central registry for advance health care planning.

- § 54.1-2995 of the Code of Virginia requires the Board to promulgate regulations related to the Advance Health Care Planning Registry.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This Fast Track action is needed to align the regulations with current Registry maintenance and access practices and recent statutory changes. The proposed amendments are critical for safeguarding the health, safety and welfare of Virginia residents as the changes establish a framework for timely access to a patient's critical health care planning information stored in the Registry, better clarify the types of

advance health care planning documentation that may be stored in the Registry, and specify who may access the documentation stored in the Registry. Establishing clear criteria for document submission and access ensures that important health planning documents are easily and securely stored. This is particularly important in emergency situations where a patient may be unable to communicate his preferences and health care providers need immediate access to these documents to make informed decisions about the patient's medical treatment.

Changes to the regulations will improve the existing system that is used to store and access patient health care planning documentation, the accessibility of the documentation, and reliability of crucial health care decisions made by health care providers. It also reflects broader industry efforts to modernize healthcare systems and improve patient outcomes by ensuring that health care providers have timely access to relevant legal documents.

Opportunities to reduce regulatory requirements applicable to state agencies and regulants have been considered as part of this fast track action, and the action conforms the regulations to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

All sections have been amended to conform to the *Form and Style requirements.*

- The title of the regulations (12VAC5-67-10 through 12VAC5-67-30) has been changed from "Advance Health Care Directive Registry" to "Advance Health Care Planning Registry."

- Technical changes conform the regulations to Chapters 231 and 274 of the 2024 Acts of Assembly by updating regulatory language from the Advance Health Care Directive Registry to the Advance Health Care Planning Registry.

- 12VAC5-67-5. Definitions. This section has been added to the regulations, and defines the terms "advance directive," "Department," and "Registry" that are used throughout the regulatory chapter.

- 12VAC5-67-10. General Provisions. The changes conform the regulations to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations.

- 12VAC5-67-20. Criteria for submission of an advance directive to the Registry. Amendments conform the regulations to Chapters 231 and 274 of the 2024 Acts of Assembly by permitting the submission of other documents supporting advance health care planning into the Registry - including Durable Do Not Resuscitate Orders and portable medical order forms.

- 12VAC5-67-30. Access to the registry. The regulations have been separated into two subsections that separate the access requirements applicable to persons registering the documents in the Registry and licensed health care providers. The changes remove an existing restriction placed on licensed health care providers by permitting them to access and query the Registry for a patient's advance directive information regardless of if the patient is comatose, incapacitated or incapable of communication, and define "advance directive" for purposes of the section.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are two primary advantages to the public, the Commonwealth, and regulated and business entities as a result of the regulatory changes. Firstly, the regulations will accurately convey the processes and requirements related to the filing, storage, and accessibility of health care planning documentation in Virginia's Advance Health Care Planning Registry. Secondly, expanding health care provider access to the documentation stored in the Registry will provide medical professionals with the critical information that is needed to make timely and accurate medical decisions on behalf of patients.

There are no known disadvantages to the public, regulated entities, or business entities as a result of the regulatory changes. The primary disadvantage to the VDH and the Commonwealth is the increased cost charged to the agency to enhance and administer a Registry that can be queried by health care providers.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory changes.

Localities Particularly Affected

No localities are particularly affected by the regulatory changes.

Other Entities Particularly Affected

The regulatory action primarily impacts the individuals and entities involved in facilitating the submission, maintenance, and access to patient health care planning documentation stored in Virginia's Advance Health Care Planning Registry; such as healthcare and legal businesses involved in the provision of medical care, estate planning, and the handling of health care planning documentation for Virginia residents. Fiscal impact to these entities is anticipated to be negligible, as the (i) regulatory changes align the regulations with existing practices conducted by such entities; and (ii) VDH is responsible for payment of fees associated with administration of the Registry, registrant registration, and health care provider onboarding and Registry access.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	This analysis has been provided in tables 1a, 1b, and 1c on the Economic Review Form.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	This analysis has been provided in tables 1a, 1b, and 1c on the Economic Review Form.
For all agencies: Benefits the regulatory change is designed to produce.	This analysis has been provided in tables 1a, 1b, and 1c on the Economic Review Form.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	This analysis has been provided in table 2 on the Economic Review Form.
Benefits the regulatory change is designed to produce.	This analysis has been provided in table 2 on the Economic Review Form.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	This analysis has been provided in tables 3 and 4 on the Economic Review Form.

Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	This analysis has been provided in tables 3 and 4 on the Economic Review Form.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	This analysis has been provided in tables 3 and 4 on the Economic Review Form.
Benefits the regulatory change is designed to produce.	This analysis has been reported in tables 3 and 4 on the ORM Economic Review form.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

These regulations are required pursuant to § 54.1-2995 (D) of the Code of Virginia. There are no viable alternatives to achieve the purpose of the regulatory change, which is required to align the regulations with statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly.

This analysis has been provided in table 1c on the ORM Economic Review Form.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

No alternative regulatory methods are available to the agency. Non-substantive changes are made for the purpose of clarity, readability, and transparency, but do not change compliance or reporting requirements.

Substantive amendments are proposed to organize content, remove duplicative requirements, conform the regulations to recent statutory changes, and align the regulations with current practices related to Registry maintenance and access, and the filing of advance care planning documentation in the Registry.

The proposed changes do not impact small businesses as these entities have already adopted the changes as part of current practice and procedure.

This analysis has been provided in table 1c and table 4 on the ORM Economic Review Form

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Rilee Bennett, 8701 Park Central Drive, Suite 100-200, Richmond, VA 23227, 804-662-6258, (fax) 804-662-7269, rilee.bennett@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are

being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
N/A	12VAC5-67-5	N/A	**CHANGE:** The new section has been added to better specify the terms "Advance directive," "Department, and "Registry" throughout the regulatory chapter, and, where possible, align the terms with existing statutory definitions. **INTENT:** The intent is to clarify the terms used throughout the regulatory chapter and to align the terms to statutory definitions and descriptions, where possible. **RATIONALE:** The rationale is that the definitions will provide better clarity and uniformity for the public, government organizations, and the contracted vendor, public-private partnership, or entity which administers the Registry; including the responsibilities of the VDH in respect to the Registry's operation and access to the documentation stored in the Registry. **LIKELY IMPACT:** The likely impact is that the public will better understand the role of the Board and VDH's responsibility in provide public access to a secure online central registry for the filing of and access to advance health planning documentation.
12VAC5-67-10		This section requires the VDH to permit public access to the Registry; specifies the conditions that must be met to make the Registry available to the public; and outlines the responsibility of the contracted vendor, entity, or public-private partnership with which the VDH partners to contact persons who have registered documents in the Registry to confirm the documents such persons have registered.	**CHANGE:** Technical changes utilize the new definitions added to the regulations under this action (12VAC5-67-5), and update the name of the Registry from the Advance Health Care Directive Registry to the Advance Health Care Planning Registry to conform the provisions to Chapters 231 and 274 of the 2024 Acts of Assembly. Remaining amendments conform the regulations to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations. **INTENT:** The intent is to better ensure that the regulations reflect recent statutory changes enacted during the 2024 General Assembly Session, and to provide uniformity in regulation and statute when describing the responsibilities of government organizations and the entities involved in the Registry's administration. Updating the title of the Registry was done to conform the regulations to changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly.

			RATIONALE: The rationale is that aligning statutory and regulatory language will provide clarity to the regulatory chapter, and better specifies the options available to the VDH when making the Registry available for public access. The regulations should also reflect statutory changes enacted during the 2024 Virginia General Assembly Regular Session. **LIKELY IMPACT:** The likely impact is that the changes will provide better clarity to the public concerning the responsibilities of the Board, the VDH, and the contracted vendor, entity, or public-private partnership with which the VDH coordinates public access to the Registry.
12VAC5-67-20		This section specifies the types of documentation that may filed in the Advance Health Care Planning Registry.	**CHANGE:** Regulatory language has been updated to conform the provisions to statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly by referencing the Advance Health Care Planning Registry, and including other types of documents that support health care planning – such as durable do not resuscitate orders and portable medical order forms – that may be filed in the Registry. Technical changes utilize the new definitions added to the regulations under this action (12VAC5-67-5) in the title and section provisions. The remaining amendments conform the regulations to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations. **INTENT:** The intent is to ensure that the regulations accurately reflect recent statutory changes which renamed the Advance Health Care Directive Registry to the Advance Health Care Planning Registry, and updated the types of documents filed in the Registry. **RATIONALE:** The rationale is that the regulations will conform to recent statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly, and which have already been implemented. **LIKELY IMPACT:** The likely impact is that the regulations will reflect the current procedures and requirements associated with filing documents in the Registry, and will provide better clarity on the types of documents that may be filed in support of a person's advance health care planning.
12VAC5-67-30		This section outlines who has permission to access a patient's health care planning documentation that is included in the Registry – the patient or their legal representative or designee;	**CHANGE:** Amendments conform the provisions to statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly by (i) removing an existing restriction only permitting licensed health care providers to access and query a patient's advance directive information if the patient is comatose, incapacitated, or unable to

		licensed health care providers if a patient is comatose, incapacitated, or is mentally or physically incapable of communication.	communicate; and (ii) permitting licensed health care providers to access and query such information on behalf of any patient with whom they have a treatment relationship. Technical changes utilize the new definitions added to the regulations under this action (12VAC5-67-5), and update the name of the Registry from the Advance Health Care Directive Registry to the Advance Health Care Planning Registry. Remaining amendments conform the regulations to the *Form and Style Guidelines* published by the Virginia Registrar of Regulations. **INTENT:** The intent is to align the provisions with statutory changes by expanding the circumstances in which a health care provider may access and query the Registry to determine a patient's medical wishes that have been filed in the Registry. **RATIONALE:** The rationale is that permitting health care providers to access and query a patient's advance health care planning documentation in the Registry will result in better informed medical decisions on behalf of the patient. Secondly, health care providers should be empowered to make informed medical decisions on behalf of all patients, instead of a subset of patients who are comatose, incapacitated, or who are unable to communicate. The changes conform the regulations to statutory changes enacted under Chapters 231 and 274 of the 2024 Acts of Assembly. **LIKELY IMPACT:** The likely impact is that patients will receive better overall care because health care providers will be authorized to access and query a patient's advance health care planning documentation to make better informed medical decisions on behalf of the patient, even in instances where a patient is not comatose, incapacitated, or unable to communicate. The regulations will also reflect recent statutory changes and the current practices followed by the persons filing documents in the Registry and the health care providers who access and query the Registry.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current emergency requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage