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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-67
VAC Chapter title(s)	Advance Healthcare Directive Registry
Date this document prepared	July 1, 2024

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*.

Acronyms and Definitions

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

"Board" means the State Board of Health.

"Department" means the Virginia Department of Health.

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 or 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.

§ 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 directives.

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

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No viable alternatives for achieving the purpose of these regulations have been identified as part of this periodic review. § 54.1-2995(D) of the Code of Virginia requires the Board to promulgate regulations to carry out the provisions of Article 9, which shall include, but not be limited to (i) a determination of who may access the registry, including physicians, other licensed health care providers, the declarant, and his legal representative or designee; (ii) a means of annually reminding registry users of which documents they have registered; and (iii) fees for filing a document with the registry.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The Board did not form an informal advisory group for the purposes of assisting in the periodic review. No comments were received during the public comment period following publication of the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

These actions are being used to conform the regulations to the provision of Article 9 (§ 54.1-2994 et seq.) of Chapter 29 of Title 54.1 of the Code of Virginia, to clarify the document types that may be stored in the Advance Healthcare Directive Registry and when a provider may access documents in the Advance Healthcare Directive Registry. The advantage to the public and the Commonwealth is that the regulations are in compliance with legislative changes enacted by the 2021 General Assembly and will provide helpful information regarding advance healthcare directive registration. There are no disadvantages to individual private citizens or businesses not subject to the regulation, the agency, or the Commonwealth. The Advance Healthcare Directive Registry regulations are effective in meeting the criteria set out in Executive Order 19 (2022) as they are necessary for the protection of public health, safety, and welfare of

the citizens of the Commonwealth. The establishment of effective healthcare data analysis and reporting initiatives is essential to improving the quality and efficiency of healthcare, fostering competition among healthcare providers, and increasing consumer choice with regard to healthcare services in the Commonwealth.

The regulations are mostly clearly written and understandable, though require some clarifying language with regard to allowable documentation and provider access to the registry.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board will amend the regulation to better align the chapter with current practice, update existing regulatory language to conform to the form and style requirements of the Virginia Registrar of Regulations, consider opportunities for regulatory reduction, and amend the chapter to clarify advance care planning documentation that may be stored in the Advance Healthcare Directory Registry and who may access the documentation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for these regulations as the Board is required to make available an Advance Healthcare Directive Registry. The Board has not received complaints or comments concerning this regulation but has identified the need to amend these regulations to maintain compliance with the Code of Virginia and current industry standards. The regulatory language contained in this chapter is not complex. The regulation does not conflict with state law or regulation. The regulation requires a comprehensive review to reflect changes in the health care industry, technology, and economic conditions.
