



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jay Jones
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

MEMORANDUM

TO: Syreeta B. Stewart
Regulations and Guidance Documents Supervisor
Department of Medical Assistance Services

FROM: Elizabeth M. Guggenheim *EMG*
Senior Assistant Attorney General
Office of the Attorney General

DATE: July 8, 2026

SUBJECT: **Fast-Track Regulation: Repeal of Advanced Directives Language**

You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the statutory authority to promulgate this regulation and if it comports with applicable state law. I have reviewed the attached fast-track regulation posted to the Virginia Regulatory Town Hall that would remove reference to a repealed regulation and replace it with reference to the applicable regulation at 12 VAC 30-20-240, which provides advance directive requirements. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal

promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information, please contact me at 786-7363.

cc: Kim F. Piner, Esq.
Chief, Senior Assistant Attorney General

Attachment



Proposed Text

highlight

Action: Repeal of Advanced Directives Language

Stage: Fast-Track

6/17/26 11:31 AM

12VAC30-10-130 Requirements for advance directives

An advance directive shall be defined as a written instruction, such as a living will or durable power of attorney for health care, recognized under state law and relating to the provision of medical care when the individual is incapacitated. Each specified provider receiving funds under this Plan must maintain written policies, procedures, and materials concerning advance directives to ensure compliance with the law. The specified providers shall be: hospitals, nursing facilities, providers of home health care or personal care services, hospices, health maintenance organizations and health insuring organizations.

Refer to 42VAC30-20-70 12VAC30-20-240 for further requirements.