

Administrative Procedures – Final Proposed Rule Coversheet**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

RECEIVED
AUG 15 2016

BY:

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Advance Directives for Health Care Rule

Paul Dragon for, on 8-9-16
(signature) (date)

Printed Name and Title:

Hal Cohen

Secretary, Agency of Human Services

RECEIVED BY: _____

- ☐ Final Proposed Rule Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Statement
- ☐ Public Input Statement
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Approval received by E-mail.
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:

Advance Directives for Health Care Rule

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

16P-019

3. ADOPTING AGENCY:

Department of Health

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Bessie Weiss

Agency: Department of Health

Mailing Address: Vermont Department of Health, 108
Cherry Street, Burlington, VT 05402

Telephone: 802 652 - 2092 Fax: 802 951 - 1275

E-Mail: bessie.weiss@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://healthvermont.gov/regs/index.aspx>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: David Englander

Agency: Department of Health

Mailing Address: Vermont Department of Health, 108
Cherry Street, Burlington, VT 05402

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: david.englander@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

3 V.S.A. § 801(b)(11), 18 V.S.A. §§ 9708 and 9719.

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

13. **CONCISE SUMMARY (150 WORDS OR LESS):**

This rule specifies the requirements for Vermonters to retain control over their own health care through the use of "advance directives", written instructions about health care desires or treatment goals, appointment of an agent for decision making, and other end-of-life preferences. The proposed rule amendment also includes the minimum requirements for a Do Not Resuscitate (DNR) identification as required by statute.

14. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

This proposed rule is an amendment to an existing rule and is necessary to effectuate provisions of 18 V.S.A. § 9708 specifically, and § 9719 more broadly. In doing so, the rule addresses the minimum requirements for a DNR identification as required by 18 V.S.A. § 9708(h), a provision that was amended by Act 50 (2013), Sec. E.312.3(f); and subsequently by Act 127 (2014), Sec. 2.

15. **LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Individual Vermonters and their families, physicians, Emergency Medical Services (EMS) personnel, hospital staff and ethicists, guardians, health care agents,

health care facilities, residential care facilities, hospices, home health agencies, and the Vermont Ethics Network.

16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

Among other provisions, this rule specifies the requirements for a DNR identification. Although an identification is not required, individuals choosing to have a DNR identification will need to purchase one and pay an annual fee to maintain it. The enterprise issuing these identifications has provisions to assist low-income individuals.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 7/1/2016

Time: 02:00 PM

Street Address: Vermont Department of Health / 108 Cherry Street / Burlington, VT / Room 3B

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

7/8/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

VADR

Advance Directive

Do Not Resuscitate

Clinician Orders for Life Sustaining Treatment

DNR

Health Care Agent


Vermont Advance Directives Registry

Run Spell Check



STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Hal Cohen, Secretary 
DATE: January 8, 2016
SUBJECT: Signatory for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Paul Dragon as signatory authority to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

A large, stylized handwritten signature of Hal Cohen, written in black ink.

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Advance Directives for Health Care Rule

2. ADOPTING AGENCY:

Department of Health

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

SOS Log # 06-043, Advance Directives for Health Care Rules,
January 8, 2007

Run Spell Check



State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322
[fax] 802-828-3320

Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Chris Winters, SOS
Charlene Dindo, LCAR
ICAR Members

Date: May 10, 2016

Proposed Rule: Advance Directives for Health Care Rule
(AHS/Dept of Health)

The following official action was taken at the May 9, 2016 meeting of ICAR.

Present: Chair Michael Clasen, Steve Knudson, Dirk Anderson, Scott Bascom, Diane Bothfeld, Clare O'Shaughnessy and Allan Sullivan
Absent: Jenn Duggan
John Kessler
Abstain: Allan Sullivan

☐ The Committee has no objection to the proposed rule being filed with the Secretary of State.

☒ The Committee approves the rule with the following recommendations.

1. Coversheet and Economic Impact Statement signature line: Printed name and signature need to match. Include "for Hal Cohen" when signed by Deputy Dragon.

☐ The Committee opposes filing of the proposed rule.

cc: Dawn Philibert
David Englander

Instructions:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Rule Title: Advance Directives for Health Care Rule

Hal Cohen
Secretary, Agency of Human Services

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Advance Directives for Health Care Rule

2. ADOPTING AGENCY:

Department of Health

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Individuals who complete Advance Directives: They often indicate a preference for limited medical interventions as they near end-of-life. The promotion of Advance Directives not only gives individuals control of the types of medical care they want but also allows them to appoint an agent who will make decisions if they are not able to do so. This is likely to lead to fewer unwanted health care interventions toward the end of life, saving resources for both the individual and the health care system.

People who want a DNR identification in addition to a copy of their DNR order: They will need to buy the identification from a company approved by the Department of Health. This purchase and the annual maintenance fee will have a small economic impact upon those individuals.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

No impact.

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

No impact. The rule, especially the provision requiring the definition of minimum requirements for DNR identification, is required by statute.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

No burden.

7. GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:

A. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):

No impact.

B. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND."):

No impact.

C. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):

No impact.

D. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):

No impact.

E. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None.

Run Spell Check

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Advance Directives for Health Care Rule

2. ADOPTING AGENCY:

Department of Health

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The proposed rule was posted on the Department's website at http://www.healthvermont.gov/admin/public_comment.aspx, and a public hearing was held.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The work leading up to the writing of this rule amendment has involved four years of collaborative work with the following organizations: Vermont Ethics Network, University of Vermont Medical Center Ethicists, Vermont Legal Aid, Vermont Health Care Ombudsman, Vermont Association of Hospitals and Health Systems, Visiting Nurses of Vermont, Vermont Center for Independent Living, and the Vermont Medical Society.

Run Spell Check

Public Comment Responsiveness Summary for Proposed:
Advance Directive for Health Care Rule

A public hearing was held on July 1, 2016 at 2:00 p.m. in Burlington, Vermont, regarding the proposed Advance Directives for Health Care Rule. During both the public comment period as well as the hearing, the Vermont Department of Health ("Department") received and reviewed written public comments submitted from June 1, 2016 through July 8, 2016.

We received one set of written comments. The following is the Department's response to those comments.

Comment: Joy Chilton, RN and Compliance Officer for Central Vt Home Health & Hospice, Inc. commented that **all** DNR orders – including those based on medical futility – must contain a clinician certification that the clinician has consulted, or made an effort to consult, with the patient, and the patient's agent or guardian, if there is one. *See* 18 V.S.A. § 9708 (d).

Response: **Agreed.** The Department edited the rule to make that change.

Comment: Ms. Chilton commented that Section 10.6 regarding a patient's right to suspend or revoke a DNR also applies to DNRs based on medical futility. *See* 18 V.S.A. § 9708 (i).

Response: **Agreed.** The Department edited the rule to make that change.