

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: VERMONT

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable, States should include definitions of living will, durable power of attorney for healthcare, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a healthcare provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

Vermont law provides that "Advance directive" means a written record pursuant to Section 1902(w)(4) of the Social Security Act and 18 VSA, Chapter 231, Section 9703, which may include but is not limited to appointment of an agent, identification of a preferred primary care clinician, and instructions on health care desires or treatment goals. The legal definition of "Advance directive" (18 VSA, Chapter 231, Section 9701) includes documents designated under prior law as a durable power of attorney for health care or a terminal care document. (The Terminal Care Document applies only when the individual is terminally ill and has no hope of recovery and states that the individual does not want his/her life prolonged by extraordinary measures. The Durable Power of Attorney for Health Care allows an individual to specify the desired kind of care and/or treatment to be administered in a variety of medical situations in which the individual is incapable of making decisions for him/herself.

Pursuant to 18 VSA, Chapter 231, Section 9702, an adult, referred to as a principal in the law, may use an Advance directive to appoint one or more agents and alternate agents to whom authority to make health care decisions is delegated. An adult in an Advance directive may specify the scope and extent of authority of the appointed agent(s), and may direct the type of health care desired or not desired, for example, a "do-not-resuscitate order", and may direct decisions regarding personal circumstances, for example, relating to disposition of remains and funeral arrangements. (18 VSA, Chapter 231, Section 9702). The Advance directive may also be used to select a preferred primary care clinician, nominate one or more persons to serve as a guardian should one be needed, or identify persons whom the principal does not want to serve as a decision-maker.

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A health care provider, health care facility, and residential facility must not, except on an emergency basis, provide health care to a patient without capacity without first attempting to ascertain whether the patient has an advance directive in effect (18 VSA, Chapter 231, Section 9707). Exceptions are outlined in 18 VSA, Chapter 231, Section 9707.

A health care provider, health care facility, and residential facility having knowledge that a principal's advance directive is in effect shall follow the instructions of the person, whether agent or guardian, who has the authority to make health care decisions for the principal, or the instructions contained in the Advance directive. (18 VSA, Chapter 231, Section 9707).

A health care provider can refuse to follow the instructions contained in an individual's advance directive based on moral, ethical, or other conflict with the instructions (18 VSA, Section 9707(b)(3)). However, if a health care provider does refuse to follow the instructions contained in an individual's advance directive, the provider shall promptly:

Inform the individual, if possible, and any appointed agent and guardian of the conflict; assist the individual, agent or guardian in the transfer of care to another provider who is willing to honor the instructions; provide ongoing health care until a new provider has been found to provide the services; and document in the individual's medical record the conflict, the steps taken to resolve the conflict, and the resolution of the conflict.

Every health care provider, health care facility, and residential facility shall develop protocols pursuant to 42 CFR, Part 489, Subpart I and 18 VSA, Chapter 231, Section 9709 to ensure that all patients' advance directives are handled, administered, and implemented in a manner that strictly adheres to all applicable state laws and regulations.

The Vermont Ethics Network, under the direction of the Health Policy Council, has developed a summary describing this State law, as well as a comprehensive Advance Directive form, both of which are available to medical providers and the general public in Vermont.

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