

# HOUSE BILL 1385

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By: **Delegate Morhaim**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Electronic Advance Directives – Witness Requirements,**  
3 **Information Sheet, and Repository Services**

4 FOR the purpose of providing that certain provisions of law apply to managed care  
5 organizations in a certain manner; requiring each managed care organization to offer  
6 electronic advance directives to its enrollees at a certain time; authorizing managed  
7 care organizations to contract with an electronic advance directives service under  
8 certain circumstances; repealing a provision of law providing that an electronic  
9 advance directive created in a certain manner satisfies certain requirements;  
10 prohibiting a certain witness from being required to be physically present at the time  
11 a declarant signs or acknowledges the declarant's signature on an electronic advance  
12 directive; requiring managed care organizations and the Maryland Health Benefit  
13 Exchange to provide a certain information sheet in accordance with certain  
14 provisions of law; requiring a certain information sheet to encourage the use of  
15 electronic advance directives and provide certain information; prohibiting a certain  
16 information sheet from imposing certain requirements; requiring the Department of  
17 Health and Mental Hygiene, for a certain purpose, to contract with an electronic  
18 advance directives service to connect with health care providers in a certain manner;  
19 establishing certain requirements for an electronic advance directives service;  
20 requiring the Department to encourage certain persons and entities to engage in  
21 certain outreach efforts for a certain purpose; requiring the Department to encourage  
22 the use of electronic advance directives; requiring the State-designated health  
23 information exchange to make an electronic advance directive available to a certain  
24 health care provider under certain circumstances; requiring health insurance  
25 carriers to offer electronic advance directives to their members and enrollees at a  
26 certain time; authorizing carriers to contract with an electronic advance directives  
27 service under certain circumstances; requiring the Exchange to provide a certain  
28 information sheet in a certain manner; requiring the Secretary of Budget and  
29 Management to offer electronic advance directives to certain employees at a certain  
30 time; and generally relating to electronic advance directives.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
2 Article – Health – General  
3 Section 5–602(a), 5–620, and 15–109.1  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume)

6 BY repealing and reenacting, with amendments,  
7 Article – Health – General  
8 Section 5–602(c), 5–615, 5–622, and 5–623  
9 Annotated Code of Maryland  
10 (2015 Replacement Volume)

11 BY adding to  
12 Article – Health – General  
13 Section 15–102.9  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume)

16 BY repealing and reenacting, with amendments,  
17 Article – Insurance  
18 Section 15–122.1  
19 Annotated Code of Maryland  
20 (2011 Replacement Volume and 2015 Supplement)

21 BY adding to  
22 Article – Insurance  
23 Section 31–108(g)  
24 Annotated Code of Maryland  
25 (2011 Replacement Volume and 2015 Supplement)

26 BY adding to  
27 Article – State Personnel and Pensions  
28 Section 2–503(e)  
29 Annotated Code of Maryland  
30 (2015 Replacement Volume)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
32 That the Laws of Maryland read as follows:

33 **Article – Health – General**

34 5–602.

35 (a) Any competent individual may, at any time, make a written or electronic  
36 advance directive regarding the provision of health care to that individual, or the  
37 withholding or withdrawal of health care from that individual.

1 (c) (1) A written or electronic advance directive shall be dated, signed by or at  
2 the express direction of the declarant, and subscribed by two witnesses.

3 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this  
4 paragraph, any competent individual may serve as a witness to an advance directive,  
5 including an employee of a health care facility, nurse practitioner, physician assistant, or  
6 physician caring for the declarant if acting in good faith.

7 (ii) The health care agent of the declarant may not serve as a  
8 witness.

9 (iii) At least one of the witnesses must be an individual who is not  
10 knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any  
11 financial benefit by reason of the death of the declarant.

12 (3) [An electronic advance directive that is created in compliance with the  
13 electronic witness protocols of the Advance Directive Registry of the Department shall  
14 satisfy the witness requirement of paragraph (1) of this subsection] **A WITNESS WHO USES  
15 AN ELECTRONIC SIGNATURE AT THE DIRECTION OF THE DECLARANT TO WITNESS AN  
16 ELECTRONIC ADVANCE DIRECTIVE MAY NOT BE REQUIRED TO BE PHYSICALLY  
17 PRESENT AT THE TIME THE DECLARANT SIGNS OR ACKNOWLEDGES THE  
18 DECLARANT'S SIGNATURE ON THE ELECTRONIC ADVANCE DIRECTIVE.**

19 5-615.

20 (a) In this section, "health care facility" has the meaning stated in § 19-114 of  
21 this article.

22 (b) Each health care facility shall provide each individual on admittance to the  
23 facility information concerning the rights of the individual to make decisions concerning  
24 health care, including the right to accept or refuse treatment, and the right to make an  
25 advance directive, including a living will.

26 (c) (1) The Department, in consultation with the Office of the Attorney  
27 General, shall develop an information sheet that provides information relating to advance  
28 directives, which shall include:

29 (i) Written statements informing an individual that an advance  
30 directive:

31 1. Is a useful, legal, and well established way for an  
32 individual to direct medical care;

33 2. Allows an individual to specify the medical care that the  
34 individual will receive and can alleviate conflict among family members and health care  
35 providers;

1                                 3.     Can ensure that an individual's religious beliefs are  
2 considered when directing medical care;

3                                 4.     Is most effective if completed in consultation with family  
4 members, or legal and religious advisors, if an individual desires;

5                                 5.     Can be revoked or changed at any time;

6                                 6.     Is available in many forms, including model forms  
7 developed by religious organizations, estate planners, and lawyers;

8                                 7.     Does not have to be on any specific form and can be  
9 personalized; and

10                                8.     If completed, should be copied for an individual's family  
11 members, physicians, and legal advisors; and

12                               (ii)    The following written statements:

13                                1.     That an individual should discuss the appointment of a  
14 health care agent with the potential appointee;

15                                2.     That advance directives are for individuals of all ages;

16                                3.     That in the absence of an appointed health care agent, the  
17 next of kin make an individual's health care decisions when the individual is incapable of  
18 making those decisions; and

19                                4.     That an individual is not required to complete an advance  
20 directive.

21                               (2)    The information sheet developed by the Department under this  
22 subsection shall be provided by:

23                               (i)    The Department, in accordance with § 15–109.1 of this article;

24                               (ii)   The Motor Vehicle Administration, in accordance with §  
25 12–303.1 of the Transportation Article; [and]

26                               (iii)  A carrier, in accordance with § 15–122.1 of the Insurance Article;

27                               (IV)  **A MANAGED CARE ORGANIZATION, IN ACCORDANCE WITH §**  
28 **15–102.9 OF THIS ARTICLE; AND**

1                   **(V) THE MARYLAND HEALTH BENEFIT EXCHANGE, IN**  
2 **ACCORDANCE WITH § 31-108(G) OF THE INSURANCE ARTICLE.**

3                   (3) The information sheet developed by the Department under this  
4 subsection may not contain or promote a specific advance directive form.

5                   **(4) THE INFORMATION SHEET DEVELOPED BY THE DEPARTMENT**  
6 **UNDER THIS SUBSECTION:**

7                   **(I) SHALL ENCOURAGE THE USE OF ELECTRONIC ADVANCE**  
8 **DIRECTIVES AND PROVIDE INFORMATION ABOUT SUBMITTING ELECTRONIC**  
9 **ADVANCE DIRECTIVES TO THE ADVANCE DIRECTIVE REGISTRY IN THE**  
10 **DEPARTMENT, INCLUDING ANY FEES REQUIRED TO USE THE SERVICES OF THE**  
11 **REGISTRY; BUT**

12                   **(II) MAY NOT REQUIRE THE USE OF AN ELECTRONIC ADVANCE**  
13 **DIRECTIVE, A SPECIFIC ELECTRONIC ADVANCE DIRECTIVE FORM, THE ADVANCE**  
14 **DIRECTIVE REGISTRY, OR A SPECIFIC ADVANCE DIRECTIVE SERVICE.**

15 5-620.

16                   There is an Advance Directive Registry in the Department.

17 5-622.

18                   (a) (1) The Secretary shall, by regulation, set a fee for any service of the  
19 Registry, including an initial fee to utilize the services of the Registry and renewal fees.

20                   (2) The fees set by the Secretary may not, in the aggregate, exceed the  
21 Department's costs to establish and operate the Registry.

22                   (b) (1) The Department may, by contract, obtain from any person services  
23 related to the establishment and operation of the Registry.

24                   (2) Notwithstanding any contract in accordance with paragraph (1) of this  
25 subsection, the Department is responsible for the Registry.

26                   **(C) (1) TO FACILITATE THE USE OF CLOUD-BASED TECHNOLOGY FOR**  
27 **ELECTRONIC ADVANCE DIRECTIVES, THE DEPARTMENT SHALL CONTRACT WITH AN**  
28 **ELECTRONIC ADVANCE DIRECTIVES SERVICE TO CONNECT WITH HEALTH CARE**  
29 **PROVIDERS AT THE POINT OF CARE THROUGH THE STATE-DESIGNATED HEALTH**  
30 **INFORMATION EXCHANGE.**

31                   **(2) THE ELECTRONIC ADVANCE DIRECTIVES SERVICE SHALL:**

1                   **(I) BE APPROVED BY THE MARYLAND HEALTH CARE**  
2 **COMMISSION AND THE DEPARTMENT; AND**

3                   **(II) MEET THE TECHNOLOGY, SECURITY, AND PRIVACY**  
4 **STANDARDS SET BY THE MARYLAND HEALTH CARE COMMISSION.**

5           **[(c)] (D) (1)** The Department shall carry out appropriate educational and  
6 outreach efforts to increase public awareness of the Registry.

7                   **(2) TO INCREASE PUBLIC AWARENESS OF ELECTRONIC ADVANCE**  
8 **DIRECTIVES, THE DEPARTMENT SHALL ENCOURAGE THE FOLLOWING PERSONS AND**  
9 **ENTITIES TO ENGAGE IN OUTREACH EFFORTS ABOUT ELECTRONIC ADVANCE**  
10 **DIRECTIVES:**

11                   **(I) THE MARYLAND DEPARTMENT OF AGING;**

12                   **(II) COUNTY OMBUDSPERSONS;**

13                   **(III) LOCAL HEALTH DEPARTMENTS;**

14                   **(IV) SENIOR LIVING FACILITIES;**

15                   **(V) ACADEMIC INSTITUTIONS;**

16                   **(VI) RELIGIOUS ORGANIZATIONS; AND**

17                   **(VII) ANY SIMILAR PERSON OR ENTITY.**

18 5-623.

19           (a) **(1)** An individual may register with the Department an advance directive.

20                   **(2) THE DEPARTMENT SHALL ENCOURAGE THE USE OF ELECTRONIC**  
21 **ADVANCE DIRECTIVES.**

22           (b) (1) The registrant shall notify the Registry if the registrant has amended  
23 or revoked a registered advance directive.

24                   (2) A health care provider that becomes aware that a registrant has  
25 amended or revoked a registered advance directive shall, at the request of the registrant,  
26 provide the registrant with information on how to notify the Registry.

27           (c) An individual is not required to submit an advance directive to the Registry.

1 (d) Nothing in this Part II of this subtitle affects the validity of an advance  
2 directive that is not submitted to the Registry.

3 (E) IF AN INDIVIDUAL HAS SUBMITTED AN ELECTRONIC ADVANCE  
4 DIRECTIVE TO THE REGISTRY OR ANOTHER ADVANCE DIRECTIVES SERVICE, THE  
5 STATE-DESIGNATED HEALTH INFORMATION EXCHANGE SHALL MAKE THE  
6 ELECTRONIC ADVANCE DIRECTIVE AVAILABLE TO THE INDIVIDUAL'S HEALTH CARE  
7 PROVIDER ON REQUEST OF THE INDIVIDUAL.

8 **15-102.9.**

9 (A) THE PROVISIONS OF § 15-122.1 OF THE INSURANCE ARTICLE APPLY TO  
10 MANAGED CARE ORGANIZATIONS IN THE SAME MANNER THE PROVISIONS APPLY TO  
11 CARRIERS.

12 (B) EACH MANAGED CARE ORGANIZATION SHALL OFFER ELECTRONIC  
13 ADVANCE DIRECTIVES TO ITS ENROLLEES DURING OPEN ENROLLMENT.

14 (C) A MANAGED CARE ORGANIZATION MAY CONTRACT WITH ANY  
15 ELECTRONIC ADVANCE DIRECTIVES SERVICE IF THE SERVICE:

16 (1) IS APPROVED BY THE MARYLAND HEALTH CARE COMMISSION  
17 AND THE DEPARTMENT; AND

18 (2) MEETS THE TECHNOLOGY, SECURITY, AND PRIVACY STANDARDS  
19 SET BY THE MARYLAND HEALTH CARE COMMISSION.

20 **15-109.1.**

21 (a) The Department, in consultation with the Office of the Attorney General,  
22 shall:

23 (1) Develop and implement a plan for making the advance directive  
24 information sheet developed under § 5-615 of this article widely available; and

25 (2) Make the information sheet described in item (1) of this subsection  
26 available in a conspicuous location in each local health department, in each local  
27 department of social services, and in community health centers.

28 (b) The Department shall implement the plan on or before June 30, 2005.

29 (c) During the development of the plan under subsection (a) of this section and  
30 the information sheet under § 5-615 of this article, the Office of the Attorney General shall  
31 consult with any interested party including the State Advisory Council on Quality Care at  
32 the End of Life.

**Article – Insurance**

15–122.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Advance directive” has the meaning stated in § 5–601 of the Health – General Article.

(3) (i) “Carrier” means:

1. an insurer;

2. a nonprofit health service plan;

3. a health maintenance organization; and

4. any other person that provides health benefit plans subject to regulation by the State.

(ii) “Carrier” does not include a managed care organization.

(b) A carrier shall provide the advance directive information sheet developed under § 5–615 of the Health – General Article:

(1) in the carrier’s member publications;

(2) if the carrier maintains a Web site on the Internet, on the carrier’s Web site; and

(3) at the request of a member.

**(C) EACH CARRIER SHALL OFFER ELECTRONIC ADVANCE DIRECTIVES TO ITS MEMBERS OR ENROLLEES DURING OPEN ENROLLMENT.**

**(D) A CARRIER MAY CONTRACT WITH ANY ELECTRONIC ADVANCE DIRECTIVES SERVICE IF THE SERVICE:**

**(1) IS APPROVED BY THE MARYLAND HEALTH CARE COMMISSION AND THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE; AND**

**(2) MEETS THE TECHNOLOGY, SECURITY, AND PRIVACY STANDARDS SET BY THE MARYLAND HEALTH CARE COMMISSION.**

31–108.

1           **(G) THE EXCHANGE SHALL PROVIDE THE ADVANCE DIRECTIVE**  
2 **INFORMATION SHEET DEVELOPED UNDER § 5-615 OF THE HEALTH – GENERAL**  
3 **ARTICLE:**

4                   **(1) IN THE EXCHANGE’S CONSUMER PUBLICATIONS;**

5                   **(2) ON THE EXCHANGE’S WEB SITE; AND**

6                   **(3) AT THE REQUEST OF AN APPLICANT.**

7                                   **Article – State Personnel and Pensions**

8           2-503.

9           **(E) THE SECRETARY SHALL OFFER ELECTRONIC ADVANCE DIRECTIVES TO**  
10 **EMPLOYEES DURING OPEN ENROLLMENT FOR HEALTH INSURANCE BENEFITS**  
11 **UNDER THE PROGRAM.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13           October 1, 2016.