

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1106 (Delegate Morhaim)

Health and Government Operations

Finance

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**Public Health - Electronic Advance Directives - Witness Requirements**

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This bill establishes that an electronic advance directive, created in compliance with the electronic witness protocols of the Advance Directive Registry of the Department of Health and Mental Hygiene (DHMH), must be recognized as satisfying the witness requirement for an advance directive.

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**Fiscal Summary**

**State Effect:** None. The changes are technical in nature and do not materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Any competent individual may, at any time, make a written or electronic advance directive regarding the provision of health care to that individual, including the withholding or withdrawal of health care from that individual. A written or electronic advance directive must be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses. The suggested living will form included in statute includes, above the witness signature line, “the declarant signed or acknowledged signing this document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this advance directive.” With specified exceptions, any competent individual may serve as a witness to an advance directive.

An electronic signature has the same effect as a manual signature if the electronic signature (1) uses an algorithm approved by the National Institute of Standards and Technology; (2) is unique to the individual using it; (3) is capable of verification; (4) is under the sole control of the individual using it; (5) is linked to data in such a manner that, if the data are changed, the electronic signature is invalidated; (6) persists with the document and not by association in separate files; and (7) is bound to a digital certificate.

**Background:** An advance directive protects an individual's right to choose or to refuse various forms of health care (even in the face of the development of decisional incapacity) by transferring a critical health care decision point from the time of a patient's decisional incapacity to an earlier time when the person is fully competent.

Electronic advance directives eliminate the need to find or carry paper documents before going to the hospital or the need to create and recreate the documents every time a person enters a facility.

Chapter 549 of 2013 required DHMH to take all steps necessary to make a registry of advance directives operational in the State by October 1, 2014. The Maryland Health Care Commission (MHCC) was tasked with implementing the registry. MHCC contracted with AD Vault Inc., the operator of MyDirectives.com, a free, secure, web-based system that allows individuals to document and store advance directives in a secure database to serve as the State's registry. Within MyDirectives.com, electronic advance directives may be created, signed, witnessed, stored, and shared electronically. The database was subsequently linked to the Chesapeake Regional Information System for our Patients (CRISP), the State-designated health information exchange, enabling practitioners using CRISP to be able to access electronic advance directives along with a patient's other medical records. Today, when an individual creates an advance directive on MyDirectives.com, that individual is asked to enter the email addresses of two potential witnesses, who then receive an automated email requesting that they serve as witnesses. A potential witness who accepts is permitted to review the electronic advance directive and then electronically sign the document. MHCC advises that it has not established standalone electronic witness protocols and that the protocols put in place by MyDirectives.com are, thus, the *de facto* standard.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary  
(Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2015  
me/ljm Revised - House Third Reader - April 3, 2015

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