

Chapter 311

(House Bill 1073)

AN ACT concerning

Health – Accessibility of Electronic Advance Care Planning Documents

FOR the purpose of requiring the Maryland Health Care Commission to coordinate the accessibility of electronic advance care planning documents in the State; requiring certain health care facilities, ~~nursing homes, assisted living facilities,~~ managed care organizations, and carriers to take certain actions related to electronic advance care planning documents; altering the required content for an information sheet on advance directives developed by the Maryland Department of Health; requiring the Motor Vehicle Administration to submit a report regarding the implementation of certain provisions of law related to advance directives; and generally relating to advance care planning documents.

BY repealingArticle – Health – GeneralSection 5–602(c)(3) and 5–622(a)(3)Annotated Code of Maryland(2019 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section ~~5–615~~ 5–602(c)(4), 5–615, 5–622(a)(2), 15–103(b)(9)(xv) and (xvi), and
~~19–144, and 19–1805(b)~~

Annotated Code of Maryland

(2019 Replacement Volume and 2021 Supplement)

BY adding to

Article – Health – General

Section ~~15–103(b)(9)(xvii) and (xviii), and (31) and 19–145, and 19–1401.4~~

Annotated Code of Maryland

(2019 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 15–122.1

Annotated Code of Maryland

(2017 Replacement Volume and 2021 Supplement)

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

Article – Health – General

5-602.

(c) ~~[(3)~~ A witness is not required for an electronic advance directive if the declarant's identity has been authenticated in accordance with the National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline or, if replaced, the replacement guideline.]

~~[(4)]~~ (3) The State-designated health information exchange may accept as valid an unwitnessed electronic advance directive in the form of a video record or file to state the declarant's wishes regarding health care for the declarant or to appoint an agent if the video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives service recognized by the Maryland Health Care Commission.

5-615.

(a) **(1)** In this section[, “health] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) “ADVANCE CARE PLANNING DOCUMENT” HAS THE MEANING STATED IN § 19-145 OF THIS ARTICLE.

(3) “ELECTRONIC ADVANCE CARE PLANNING DOCUMENT” HAS THE MEANING STATED IN § 19-145 OF THIS ARTICLE.

(4) “ELECTRONIC PLATFORM” MEANS THE PLATFORM DEVELOPED IN ACCORDANCE WITH § 19-145(B)(2)(I) OF THIS ARTICLE TO MAKE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS ACCESSIBLE.

~~(4)~~ **(5) “HEALTH care facility” has the meaning stated in § 19-114 of this article.**

(b) **(1)** Each health care facility shall provide each individual on admittance to the facility information concerning the rights of the individual to make decisions concerning health care, including the right to accept or refuse treatment, and the right to make an advance directive, including a living will.

(2) ~~ON~~ EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, ON ADMITTANCE OF AN INDIVIDUAL TO A HEALTH CARE FACILITY, ~~EACH~~ THE HEALTH CARE FACILITY SHALL:

(I) ~~USE THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE ELECTRONIC PLATFORM TO IDENTIFY IF THE INDIVIDUAL HAS UPLOADED OR SAVED ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS;~~

(II) IF THE INDIVIDUAL HAS UPLOADED OR SAVED ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS, ATTEMPT TO VERIFY THE CONTENTS AND UPDATE THE DOCUMENTS AS NECESSARY; AND

(III) IF THE INDIVIDUAL ~~DOES NOT HAVE~~ HAS NOT UPLOADED OR SAVED ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS:

1. OFFER THE INDIVIDUAL THE OPPORTUNITY TO SCAN ANY PAPER ADVANCE CARE PLANNING DOCUMENTS THE INDIVIDUAL BROUGHT TO THE HEALTH CARE FACILITY AND ~~MAKE THEM ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE~~ UPLOAD OR SAVE THEM TO THE ELECTRONIC PLATFORM; OR

2. PROVIDE THE INDIVIDUAL WITH AN INFORMATION SHEET DEVELOPED IN ACCORDANCE WITH THIS SECTION.

(3) IF A HEALTH CARE FACILITY MAINTAINS A WEBSITE, AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(2)(IV) OF THIS ARTICLE IS DEVELOPED, THE HEALTH CARE FACILITY SHALL PROVIDE A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB. ~~AN ELECTRONIC HEALTH RECORD SYSTEM, THE HEALTH CARE FACILITY SHALL PROVIDE ACCESS THROUGH THE ELECTRONIC HEALTH RECORD SYSTEM'S PATIENT PORTAL;~~

~~(I) THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND~~

~~(II) THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AND MAKE IT ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT~~

(4) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT APPLY TO:

(I) A COMMUNITY PROVIDER AS DEFINED IN § 7-307 OF THIS ARTICLE;

(II) A HOME HEALTH AGENCY AS DEFINED IN § 19-401 OF THIS ARTICLE;

(III) AN ASSISTED LIVING FACILITY AS DEFINED IN § 19-1801 OF THIS ARTICLE; AND

(IV) A HOSPICE AS DEFINED IN § 19-901 OF THIS TITLE.

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

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

1. **CAN BE UPDATED OR REVOKED BY THE INDIVIDUAL AT ANY TIME;**

2. Is a useful, legal, and well established way for an individual to [direct] **COMMUNICATE THE PREFERENCES OF THE INDIVIDUAL FOR medical care, INCLUDING THE DESIGNATION OF A HEALTH CARE AGENT;**

[2.] 3. Allows an individual to specify the medical care that the individual [will] **MAY** receive and can alleviate conflict among family members and health care providers;

[3.] 4. Can **HELP** ensure that an individual's religious beliefs are considered [when directing] **IF** medical care **IS PROVIDED;**

[4.] 5. [Is most effective if completed in consultation] **CAN BE MORE EFFECTIVE IF DISCUSSED** with family members, or legal and religious advisors, if an individual desires;

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

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

7. Does not have to be on any specific form and can be personalized; [and]

8. If completed, should be copied for an individual's family members, physicians, and legal advisors **AND, AT THE DISCRETION OF THE INDIVIDUAL, MADE ACCESSIBLE BE UPLOADED OR SAVED TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE ELECTRONIC PLATFORM;** and

9. IS MOST EFFECTIVE IF IT IS ~~MADE ACCESSIBLE~~ UPLOADED OR SAVED TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE ELECTRONIC PLATFORM; AND

(ii) The following written statements:

1. THAT AN INDIVIDUAL IS NOT REQUIRED TO COMPLETE AN ADVANCE DIRECTIVE;

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

[2.] 3. That advance directives are for individuals of all ages;
AND

[3.] 4. That in the absence of an appointed health care agent, the next of kin make an individual’s health care decisions when the individual is incapable of making **OR COMMUNICATING** those decisions[; and

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

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

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

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

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

(iv) The Maryland Health Benefit Exchange, in accordance with § 31–108(g) of the Insurance Article;

(V) A LICENSED PHYSICIAN TO A PATIENT AT AN APPROPRIATE TIME DURING A SCHEDULED APPOINTMENT;

(VI) A MANAGED CARE ORGANIZATION IN ACCORDANCE WITH § 15–103 OF THIS ARTICLE;

(VII) A HEALTH CARE FACILITY IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION;

(VIII) A NURSING ~~HOME~~ FACILITY IN ACCORDANCE WITH ~~§ 19-1401.4~~ § 19-301 OF THIS ARTICLE;

(IX) AN ASSISTED LIVING FACILITY IN ACCORDANCE WITH ~~§ 19-1805~~ § 19-1801 OF THIS ARTICLE; AND

(X) THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE IN ACCORDANCE WITH § 19-145(B)(2)(IV) OF THIS ARTICLE.

(3) (I) [The] ~~EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE~~ information sheet developed by the Department under this subsection may not contain or promote a specific advance directive form or an electronic advance directive technology or service.

(II) ~~THE INFORMATION SHEET SHALL INCLUDE LINKS TO WEBSITES:~~

1. WEBSITES FOR ELECTRONIC ADVANCE ~~DIRECTIVE~~ DIRECTIVES SERVICES THAT THE MARYLAND HEALTH CARE COMMISSION HAS RECOGNIZED UNDER § 19-144 OF THIS ARTICLE; AND

2. AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(2)(IV) OF THIS ARTICLE IS DEVELOPED, THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB.

(4) The information sheet developed by the Department under this subsection at a minimum shall:

- (i) Educate the public on the use of electronic advance directives;
- (ii) Encourage the use of electronic advance directives;
- (iii) Provide information about developing an electronic advance directive;
- (iv) Describe how electronic advance directives are made available at the point of care;
- (v) Indicate that the use of an electronic advance directive is not required; [and]
- (vi) Indicate that individuals do not have to pay to have their electronic advance directives honored; AND

(VII) EMPHASIZE THE IMPORTANCE OF ~~MAKING~~ UPLOADING OR SAVING AN ELECTRONIC ADVANCE DIRECTIVE ACCESSIBLE THROUGH THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE TO THE ELECTRONIC PLATFORM.

5-622.

(a) (2) An electronic advance directives service shall:

(i) Be approved by the Maryland Health Care Commission; AND

(ii) Meet the technology, security, and privacy standards set by the Maryland Health Care Commission[; and

(iii) Use the guidelines described in § 5-602(c)(3) of this subtitle to authenticate a declarant's identity for an electronic advance directive that is not witnessed].

[(3) The Maryland Health Care Commission may approve only advance directives services that use the guidelines described in § 5-602(c)(3) of this subtitle to authenticate a declarant's identity for an electronic advance directive that is not witnessed.]

15-103.

(b) (9) Each managed care organization shall:

(xv) Upon provision of information specified by the Department under paragraph (19) of this subsection, pay school-based clinics for services provided to the managed care organization's enrollees; [and]

(xvi) In coordination with participating dentists, enrollees, and families of enrollees, develop a process to arrange to provide dental therapeutic treatment to individuals under 21 years of age that requires:

1. A participating dentist to notify a managed care organization when an enrollee is in need of therapeutic treatment and the dentist is unable to provide the treatment;

2. A managed care organization to provide the enrollee or the family of the enrollee with a list of participating providers who offer therapeutic dental services; and

3. A managed care organization to notify the enrollee or the family of the enrollee that the managed care organization will provide further assistance if

the enrollee has difficulty obtaining an appointment with a provider of therapeutic dental services;

(XVII) PROVIDE THE ADVANCE DIRECTIVE INFORMATION SHEET DEVELOPED UNDER § 5-615 OF THIS ARTICLE:

1. TO ALL ENROLLEES AT THE TIME OF INITIAL ENROLLMENT AND IN THE MANAGED CARE ORGANIZATION'S ENROLLEE PUBLICATIONS;

2. IF THE MANAGED CARE ORGANIZATION MAINTAINS A WEBSITE, ON THE MANAGED CARE ORGANIZATION'S WEBSITE; AND

3. AT THE REQUEST OF AN ENROLLEE; AND

(XVIII) IF A MANAGED CARE ORGANIZATION MAINTAINS A WEBSITE, ~~PROVIDE ACCESS ON ITS WEBSITE TO ITS ENROLLEES TO:~~ AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(2)(IV) OF THIS ARTICLE IS DEVELOPED, PROVIDE A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB.

(31) PARAGRAPH (9)(XVII) OF THIS SUBSECTION MAY NOT BE CONSTRUED TO REQUIRE A MANAGED CARE ORGANIZATION TO:

(I) ASSIST AN ENROLLEE IN DRAFTING AN ELECTRONIC ADVANCE CARE PLANNING DOCUMENT;

(II) STORE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS; OR

(III) ACCESS ADVANCE CARE PLANNING DOCUMENTS.

~~**1. THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR HEALTH CARE AGENT DESIGNATION; AND**~~

~~**2. THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AS DEFINED IN § 19-145 OF THIS ARTICLE, AND MAKE IT ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT, AS DEFINED IN § 19-145 OF THIS ARTICLE.**~~

(a) To facilitate the use of Web-based technology for electronic advance directives, the Maryland Health Care Commission shall develop criteria for recognizing electronic advance directives services that are authorized to connect to the State-designated health information exchange.

(b) To be authorized to connect to the State-designated health information exchange, an electronic advance directives service shall:

(1) Be recognized by the Maryland Health Care Commission;

(2) [Be established in accordance with the National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline;

(3)] Be responsible for all costs associated with connecting to the State-designated health information exchange; and

[(4)] (3) Store electronic advance directives that are received by facsimile or other electronic means.

(c) The State-designated health information exchange may charge electronic advance directives services recognized by the Maryland Health Care Commission a fee for connecting to the State-designated health information exchange.

(d) The State-designated health information exchange shall ensure that electronic advance directives services do not have access to information stored on the State-designated health information exchange.

19-145.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “ADVANCE CARE PLANNING DOCUMENT” MEANS A DOCUMENT THAT INDICATES AN INDIVIDUAL’S PREFERENCES FOR THE RECEIPT OF HEALTH CARE.

(II) “ADVANCE CARE PLANNING DOCUMENT” INCLUDES:

1. AN ADVANCE DIRECTIVE; AND

2. ~~A DOCUMENT THAT APPOINTS A HEALTH CARE AGENT; AND~~

~~3.~~ A MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT FORM.

(3) “CARRIER” MEANS:

- (I) AN INSURER;**
- (II) A NONPROFIT HEALTH SERVICE PLAN; AND**
- (III) A HEALTH MAINTENANCE ORGANIZATION; ~~AND~~**
- ~~(IV) A MANAGED CARE ORGANIZATION.~~**

(4) “ELECTRONIC ADVANCE CARE PLANNING DOCUMENT” MEANS AN ELECTRONIC VERSION OF AN ADVANCE CARE PLANNING DOCUMENT THAT IS ~~ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE AND APPROPRIATE HEALTH CARE PROVIDERS~~ ABLE TO BE UPLOADED OR SAVED TO THE ELECTRONIC PLATFORM DEVELOPED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION.

(5) “HEALTH CARE PROVIDER” MEANS:

(I) A HEALTH CARE PRACTITIONER WHO IS LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS;

(II) A SET OF HEALTH CARE PRACTITIONERS, AS DEFINED IN § 15-113 OF THIS ARTICLE;

(III) A HEALTH CARE FACILITY AS DEFINED IN § 19-114 OF THIS SUBTITLE;

(IV) A NURSING FACILITY, AS DEFINED IN § 19-301 OF THIS TITLE; OR

(V) AN ASSISTED LIVING PROGRAM, AS DEFINED IN § 19-1801 OF THIS TITLE.

(B) (1) THE COMMISSION SHALL COORDINATE THE ACCESSIBILITY OF ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS IN THE STATE.

(2) THE COORDINATION PROVIDED BY THE COMMISSION UNDER THIS SUBSECTION SHALL INCLUDE:

(I) ~~IDENTIFYING A PROCESS~~ COLLABORATION WITH THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE TO DEVELOP AN ELECTRONIC PLATFORM THROUGH WHICH:

1. INDIVIDUALS CAN ~~MAKE~~ UPLOAD OR SAVE ADVANCE CARE PLANNING DOCUMENTS ~~ACCESSIBLE TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE;~~

2. INDIVIDUALS CAN UPDATE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS; AND

3. HEALTH CARE PROVIDERS CAN ACCESS ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS AS APPROPRIATE;

(H) ~~IDENTIFICATION OF OPTIONS THAT MAY BE TAKEN BY CARRIERS AND HEALTH CARE PROVIDERS TO:~~

~~1. ENCOURAGE INDIVIDUALS TO CREATE, UPLOAD, AND UPDATE ADVANCE PLANNING DOCUMENTS; AND~~

~~2. MAKE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS ACCESSIBLE THROUGH:~~

~~A. THE USE OF AN ELECTRONIC ADVANCE DIRECTIVE SERVICE RECOGNIZED BY THE COMMISSION UNDER § 19-144 OF THIS SUBTITLE; AND~~

~~B. PROVIDING THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AND MAKE IT ACCESSIBLE TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN ELECTRONIC ADVANCE CARE PLANNING DOCUMENT;~~

(II) IDENTIFICATION OF OPTIONS MEETING FEDERAL, STATE, AND INDUSTRY CYBERSECURITY STANDARDS THAT MAY BE TAKEN BY CARRIERS, MANAGED CARE ORGANIZATIONS, AND HEALTH CARE PROVIDERS TO:

1. ENCOURAGE MEMBERS, ENROLLEES, AND PATIENTS TO CREATE, UPLOAD OR SAVE, AND UPDATE ADVANCE CARE PLANNING DOCUMENTS; AND

2. MAKE TOOLS, WHICH MAY INCLUDE ELECTRONIC ADVANCE ~~DIRECTIVE~~ DIRECTIVES SERVICES RECOGNIZED BY THE COMMISSION UNDER § 19-144 OF THIS SUBTITLE, ACCESSIBLE TO MEMBERS, ENROLLEES, AND

PATIENTS THAT ALLOW THEM TO CREATE, UPLOAD OR SAVE, AND UPDATE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS;

(III) DEVELOPMENT AND IMPLEMENTATION OF QUALITY MEASURES ENDORSED OR DESIGNATED FOR TESTING BY A NATIONAL QUALITY MEASUREMENT ORGANIZATION TO MEASURE THE EFFECTIVENESS OF THE OPTIONS IDENTIFIED UNDER ITEM (II) OF THIS PARAGRAPH; AND

(IV) INCLUSION OF A DISTINCT TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE THAT PROVIDES:

1. ACCESS TO THE ADVANCE DIRECTIVE INFORMATION SHEET DEVELOPED UNDER § 5-615 OF THIS ARTICLE;

2. THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR HEALTH CARE DESIGNATION; AND

3. THE CAPABILITY TO UPLOAD OR SAVE AN ADVANCE CARE PLANNING DOCUMENT ~~AND MAKE IT ACCESSIBLE TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE~~ TO THE ELECTRONIC PLATFORM DEVELOPED IN ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH AND UPDATE EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS.

(3) AS THE COMMISSION IDENTIFIES OPTIONS UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE COMMISSION MAY EXPLORE WHETHER CARRIERS, MANAGED CARE ORGANIZATIONS, AND HEALTH CARE PROVIDERS WITH SECURE MEMBER AUTHENTICATION WEBSITES CAN LINK BETWEEN THE WEBSITE OF THE CARRIER, MANAGED CARE ORGANIZATION, OR HEALTH CARE PROVIDER AND THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE.

(4) IN DEVELOPING THE ELECTRONIC PLATFORM IN ACCORDANCE WITH PARAGRAPH (2)(I) OF THIS SUBSECTION, THE COMMISSION AND THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE:

(I) SHALL CONSULT WITH OTHER STATE AGENCIES AND STAKEHOLDERS, AS APPROPRIATE; AND

(II) SUBJECT TO AVAILABLE FUNDS, MAY CONTRACT WITH A THIRD-PARTY VENDOR, AS APPROPRIATE.

(5) THE ELECTRONIC PLATFORM DEVELOPED IN ACCORDANCE WITH PARAGRAPH (2)(I) OF THIS SUBSECTION SHALL:

(I) PROVIDE AN INDIVIDUAL WITH DISABILITIES WITH NONVISUAL ACCESS IN A WAY THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY THE INDIVIDUAL WITH DISABILITIES SO THAT THE INDIVIDUAL IS ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME INTERACTIONS, AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES, WITH SUBSTANTIALLY EQUIVALENT EASE OF USE; AND

(II) BE CONSISTENT WITH THE STANDARDS OF § 508 OF THE FEDERAL REHABILITATION ACT OF 1973.

(C) AS AN OPTION UNDER SUBSECTION (B)(2)(II) OF THIS SECTION, A CARRIER, MANAGED CARE ORGANIZATION, OR HEALTH CARE PROVIDER MAY CONTRACT WITH AN ELECTRONIC ADVANCE ~~DIRECTIVE~~ DIRECTIVES SERVICE IF THE SERVICE:

(1) IS APPROVED BY THE MARYLAND HEALTH CARE COMMISSION UNDER § 19-144 OF THIS SUBTITLE; AND

(2) MEETS THE TECHNOLOGY, SECURITY, AND PRIVACY STANDARDS SET BY THE COMMISSION.

(D) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

~~19-1401.4.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(2) "ADVANCE CARE PLANNING DOCUMENT" HAS THE MEANING STATED IN § 19-145 OF THIS TITLE.~~

~~(3) "ELECTRONIC ADVANCE CARE PLANNING DOCUMENT" HAS THE MEANING STATED IN § 19-145 OF THIS TITLE.~~

~~(B) (1) ON ADMITTANCE OF AN INDIVIDUAL TO A NURSING HOME, THE NURSING HOME SHALL:~~

~~(i) USE THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE TO IDENTIFY IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE PLANNING DOCUMENTS;~~

~~(II) IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE PLANNING DOCUMENTS, ATTEMPT TO VERIFY THE CONTENTS AND UPDATE THE DOCUMENTS AS NECESSARY; AND~~

~~(III) IF THE INDIVIDUAL DOES NOT HAVE ANY ELECTRONIC ADVANCE PLANNING DOCUMENTS:~~

~~1. OFFER THE INDIVIDUAL THE OPPORTUNITY TO SCAN ANY PAPER ADVANCE CARE PLANNING DOCUMENTS THE INDIVIDUAL BROUGHT TO THE NURSING HOME AND MAKE THEM ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE; OR~~

~~2. PROVIDE THE INDIVIDUAL WITH AN INFORMATION SHEET DEVELOPED IN ACCORDANCE WITH § 5-615 OF THIS ARTICLE.~~

~~(2) IF A NURSING HOME MAINTAINS A WEBSITE, THE NURSING HOME SHALL PROVIDE TO ITS RESIDENTS:~~

~~(i) ACCESS TO THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND~~

~~(ii) THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AND MAKE IT ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT.~~

~~19-1805.~~

~~(b) (1) The Department, in consultation with representatives of the affected industry and advocates for residents of the facilities and with the approval of the Department of Aging and the Department of Human Services, shall adopt regulations to implement this subtitle.~~

~~(2) The regulations adopted under paragraph (1) of this subsection shall:~~

~~(i) Provide for the licensing of assisted living programs;~~

~~(ii) Require the Department, during a survey or other inspection of an assisted living program, to review the number of waivers granted to the program under subsection (a)(3) of this section and determine whether a change in the program's licensure status is warranted; [and]~~

~~(iii) Require an assisted living program facility to post in a conspicuous place visible to actual and potential residents of the facility and other interested parties:~~

~~1. A. Its statement of deficiencies for the most recent survey;~~

~~B. Any subsequent complaint investigations conducted by federal, State, or local surveyors; and~~

~~C. Any plans of correction in effect with respect to the survey or complaint investigation; or~~

~~2. A notice of the location, within the facility, of the items listed in item 1 of this item;~~

~~(IV) ON ADMITTANCE OF AN INDIVIDUAL TO AN ASSISTED LIVING FACILITY, REQUIRE THE ASSISTED LIVING FACILITY TO:~~

~~1. USE THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE TO IDENTIFY IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS AS DEFINED IN § 19-145 OF THIS TITLE;~~

~~2. IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS, ATTEMPT TO VERIFY THE CONTENTS AND UPDATE THE DOCUMENTS AS NECESSARY; AND~~

~~3. IF THE INDIVIDUAL DOES NOT HAVE ANY ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS:~~

~~A. OFFER THE INDIVIDUAL THE OPPORTUNITY TO SCAN ANY PAPER ADVANCED CARE PLANNING DOCUMENTS THE INDIVIDUAL BROUGHT TO THE ASSISTED LIVING FACILITY AND MAKE THEM ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE; OR~~

~~B. PROVIDE THE INDIVIDUAL WITH AN INFORMATION SHEET DEVELOPED IN ACCORDANCE WITH § 5-615 OF THIS ARTICLE; AND~~

~~(V) IF AN ASSISTED LIVING FACILITY MAINTAINS A WEBSITE, REQUIRE THE ASSISTED LIVING FACILITY TO PROVIDE TO ITS RESIDENTS:~~

~~1. ACCESS TO THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND~~

~~2. THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AS DEFINED IN § 19-145 OF THIS TITLE AND MAKE IT ACCESSIBLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT AS DEFINED IN § 19-145 OF THIS TITLE.~~

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) TO ALL MEMBERS OR ENROLLEES AT THE TIME OF IN INITIAL ENROLLMENT MATERIALS DISTRIBUTED AFTER INITIAL PURCHASE AND UPON RENEWAL AND in the carrier’s member publications;

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

(3) at the request of a member.

(c) IF A CARRIER MAINTAINS A WEBSITE, AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(2)(IV) OF THIS ARTICLE IS DEVELOPED, THE CARRIER SHALL PROVIDE A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB. TO ALL ITS MEMBERS OR ENROLLEES TO:

~~(1) ACCESS TO THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND~~

~~(2) THE CAPABILITY TO UPLOAD AN ADVANCE CARE PLANNING DOCUMENT AS DEFINED IN § 19-145 OF THE HEALTH GENERAL ARTICLE TO THE STATE DESIGNATED HEALTH INFORMATION EXCHANGE OR UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT AS DEFINED IN § 19-145 OF THE HEALTH GENERAL ARTICLE.~~

(D) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A CARRIER TO:

(1) ASSIST A MEMBER OR ENROLLEE IN DRAFTING AN ELECTRONIC ADVANCE CARE PLANNING DOCUMENT;

(2) STORE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS; OR

(3) ACCESS ADVANCE CARE PLANNING DOCUMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2022, the Motor Vehicle Administration shall submit a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, that provides an update on the status of implementing the requirements of § 12-303.1 of the Transportation Article relating to advance directives.

(b) The report required under this section shall include:

(1) a timeline for implementation of the requirements of § 12-303.1 of the Transportation Article;

(2) identification of any obstacles to implementation of the requirements; and

(3) measures being taken by the Motor Vehicle Administration to resolve any identified obstacles and implement the requirements of § 12-303.1 of the Transportation Article.

SECTION 3. AND BE IT FURTHER ENACTED, That § 15-122.1 of the Insurance Article, as enacted by Section 1 of this Act, shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after ~~June 1, 2022~~ January 1, 2023.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect ~~June 1, 2022~~ January 1, 2023.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect June 1, 2022.

Approved by the Governor, May 12, 2022.