

# Spotlight: Electronic Advance Directives

August 2023



## OVERVIEW

Research shows that individuals are more likely to receive care aligned with their values, beliefs, and preferences when they put in place a plan for when they cannot speak for themselves.<sup>1</sup> Since 2011, the Maryland Health Care Commission (MHCC) has been involved in fostering use of technology to support diffusion of electronic advance directives. Advance directives are key to help manage decision-making during a health care illness, crisis, or end-of-life care.<sup>2</sup> The creation of an advance directive serves as a record of advance care planning, which consists of:

- Understanding options and defining preferences under different circumstances;
- Designating a health care agent (or proxy) to make decisions on one's behalf if they are incapacitated; and
- Addressing end-of-life matters, such as organ donation, whole body donation to medical schools, and funeral and burial arrangements.<sup>3</sup>

Since advance directives emerged in the mid-1970s, expanding awareness and use among stakeholders has been a priority among states. Developing and maintaining an advance directive has traditionally been a paper-based process where the document was often stored at an individual's home. The value of having an advance directive is lost when providers are unaware one exists or are unable to access it when needed. Over the last decade, digital storage of advance directives has gained momentum with the widespread use of electronic

<sup>1</sup> National Institute on Aging, *Advance Care Planning: Advance Directives for Health Care*. Available at: [www.nia.nih.gov/health/advance-care-planning-advance-directives-health-care](http://www.nia.nih.gov/health/advance-care-planning-advance-directives-health-care).

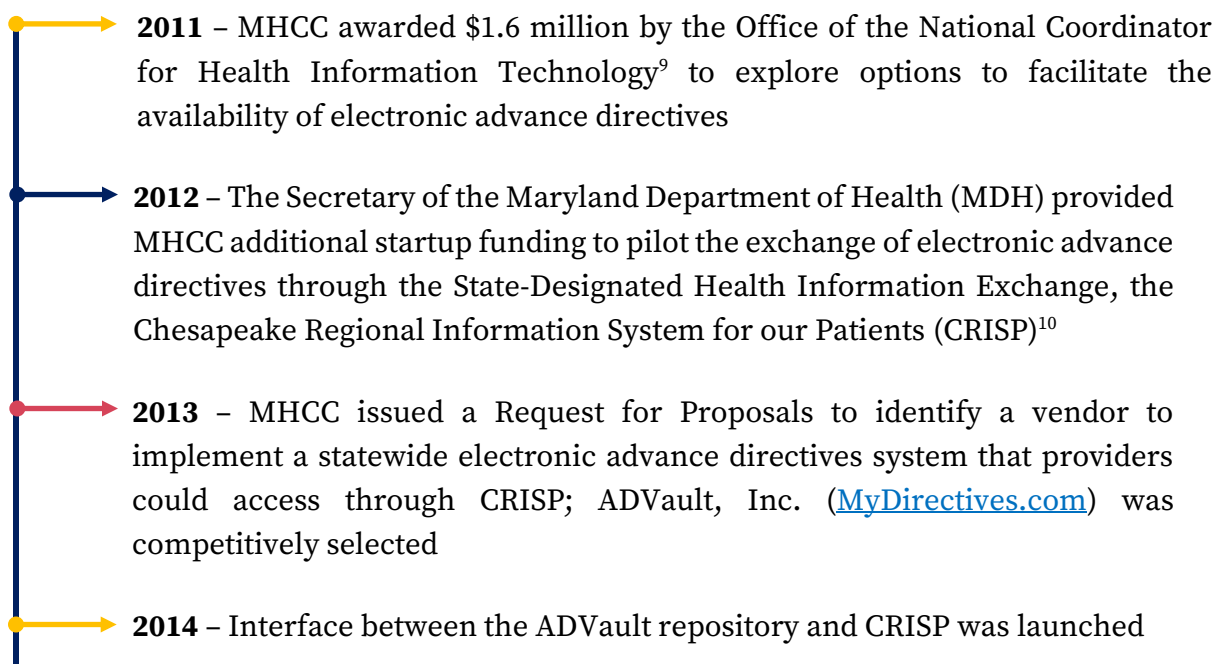
<sup>2</sup> Morhaim DK and KM Pollack. End-of-life Care Issues: A Personal, Economic, Public Policy and Public Health Crisis. *Am J Public Health* 2103 103(6):e8-e10. Available at: [www.ncbi.nlm.nih.gov/pmc/articles/PMC3698717/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3698717/).

<sup>3</sup> *Ibid.*

health record (EHR) systems. The COVID-19 pandemic highlighted critical need for digitizing advance care planning documents.<sup>4</sup>

Broad support exists for advance directives; however, completion remains low with less than one-third of the population completing an advance directive.<sup>5</sup> In general, public awareness campaigns have been somewhat effective at building awareness and less effective in getting consumers to complete an advance directive. Provider-patient communications about advance directives are an important aspect of care delivery.<sup>6</sup> In 2016, the Centers for Medicare and Medicaid Services began to reimburse for advance care planning services. The impact of this policy change has been very modest; as of 2018, only 3.7 percent of Medicare fee-for-service beneficiaries have had a (billable) advance care planning discussion with their provider.<sup>7, 8</sup>

## MARYLAND – NOTABLE MILESTONES



<sup>4</sup> American Bar Association, *It's Time for Legal Planning to Catch Up in a Digital World*, March 2020. Available at: [www.americanbar.org/groups/law\\_aging/resources/coronavirus-update-and-the-elder-law-community/it-s-time-for-legal-planning-to-catch-up-in-a-digital-world/](http://www.americanbar.org/groups/law_aging/resources/coronavirus-update-and-the-elder-law-community/it-s-time-for-legal-planning-to-catch-up-in-a-digital-world/).

<sup>5</sup> JAMA, *Completion of Advance Directives and Documented Care Preferences During the Coronavirus Disease 2019 (COVID-19) Pandemic*, July 2020. Available at: [www.jamanetwork.com/journals/jamanetworkopen/fullarticle/2768372](http://www.jamanetwork.com/journals/jamanetworkopen/fullarticle/2768372).

<sup>6</sup> AMA, *On Advance Directives, Doctors Should Be Role Models for Patients*, April 2022. Available at: [www.ama-assn.org/delivering-care/patient-support-advocacy/advance-directives-doctors-should-be-role-models-patients](http://www.ama-assn.org/delivering-care/patient-support-advocacy/advance-directives-doctors-should-be-role-models-patients).

<sup>7</sup> Health Affairs, *Advance Care Planning for Medicare Beneficiaries Increased Substantially, but Prevalence Remained Low*, April 2021. Available at: [doi.org/10.1377/hlthaff.2020.01895](https://doi.org/10.1377/hlthaff.2020.01895).

<sup>8</sup> Based on Part B data, claims from inpatient and other institutional settings are not included. Data may reflect an undercount in the number of advance care planning conversations if providers did not submit a claim.

<sup>9</sup> The Office of the National Coordinator for Health Information Technology (ONC) is the principal federal entity charged with coordinating nationwide efforts to implement and advance health information technology and the electronic exchange of health information. More information about ONC is available at: [www.healthit.gov/](http://www.healthit.gov/).

<sup>10</sup> Maryland law (2009) charged MHCC and the Health Services Cost Review Commission with designating a statewide HIE. CRISP was competitively selected to serve in this role.



- **2015 – House Bill 1106, Public Health - *Electronic Advance Directives – Witness Requirements*** – Establishes that an electronic advance directive created in compliance with MDH electronic witness protocols can be recognized as valid
- **2016 – House Bill 1385, Public Health – *Advance Directives - Procedures, Information Sheet, and Use of Electronic Advance Directives*** – Alters witness requirements for an electronic advance directive; expands the scope of education and outreach efforts undertaken by MDH, including required content for an Advance Directives Information Sheet developed in collaboration with the Office of the Attorney General (OAG) and the distribution process; requires MHCC to develop criteria for recognizing electronic advance directives services; authorizes MDH to contract with an electronic advance directives service
- **2017 – House Bill 188, Public Health – *Advance Directives – Witness Requirements, Advance Directives Services, and Fund*** – Clarifies the definition of an advance directive and electronic witness requirements; clarifies that MDH may contract with one or more electronic advance directives services; requires MHCC to approve an electronic advance directives service; establishes a non-lapsing Advance Directives Program Fund
- **2022 – House Bill 1073, Health – *Accessibility of Electronic Advance Care Planning Documents*** – Requires certain health care facilities, managed care organizations, and payers to take certain actions relating to advance care planning; alters required content on the Advance Directives Information Sheet; requires the Motor Vehicle Administration (MVA) to report on the implementation of an advance directive notification on driver’s licenses and identification cards; requires development and implementation of quality measures; ensures equal access to advance care planning for individuals with disabilities
- **2023 – Senate Bill 154, Public Health – *Mental Health Advance Directives – Awareness and Statewide Database*** – Requires MDH to develop and implement a public awareness campaign to encourage use of mental health advance directives; tasks MHCC in collaboration with the Behavioral Health Administration (BHA) to study how first responders and behavioral health crisis providers can access mental health advance directives through CRISP



## ELECTRONIC ADVANCE DIRECTIVES

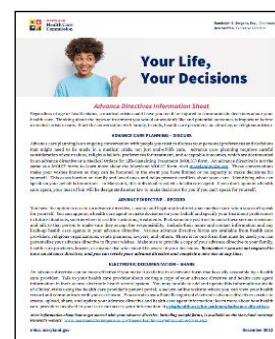
As a legally recognized way to communicate treatment instructions, advance care planning policy and practice aims to achieve greater patient participation and autonomy. Efforts to promote advance care planning conversations and encourage completion of an electronic advance directive accelerated statewide in 2018. In recent years, MHCC began asking health systems to report unique counts of advance directives stored in their EHR. In general, more advance directives are stored in EHR systems; a small portion are stored in MyDirectives, an online repository recognized by MHCC.<sup>11</sup> Many consumers appreciate the ability to upload their advance directive using a patient portal from their provider’s EHR system.

Advance Directives – MyDirectives   EHR Systems A Snapshot of Unique Counts – Maryland						
Location/Type <i>MyDirectives (MyD)</i> <i>Health System (HS)</i>	2018	2019	2020	2021	2022	2023 (Q2 Data)
Advance Care Plan (MyD)	1,149	1,666	2,347	2,698	3,016	3,188
Health Care Agent (MyD)	884	1,200	1,978	2,269	2,560	2,637
Document Upload (MyD)	8	147	289	390	501	550
EHRs <sup>12</sup> (HS)					308,988	377,664
<b>Total</b>	<b>2,041</b>	<b>3,013</b>	<b>4,614</b>	<b>5,357</b>	<b>315,065</b>	<b>384,039</b>

## RAISING AWARENESS

### Information Sheet

In the fall of 2022, MHCC collaborated with MDH and OAG to develop an Advance Directives Information Sheet (Information Sheet) for consumers. The Information Sheet includes certain content as required by law and aims to build consumer awareness of advance care planning and pathways to create, share, and update an electronic advance directive. A *Communications*

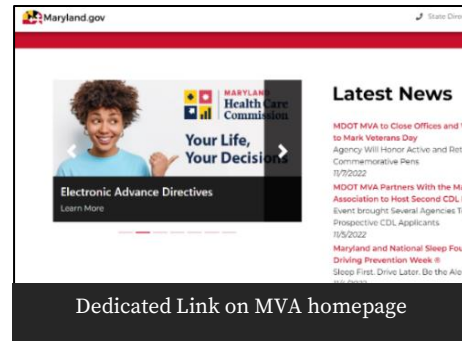


<sup>11</sup> Vendors offering an electronic advance directives service in Maryland can apply for State Recognition. This requires meeting certain criteria or standards for privacy and security, independent audits, education, reporting, and technical provisions and is a prerequisite for a vendor to integrate with CRISP. State Recognition is valid for three years, unless suspended or revoked by MHCC. More information is available at: [mhcc.maryland.gov/mhcc/pages/hit/hit\\_advancedirectives/hit\\_advancedirectives.aspx](https://mhcc.maryland.gov/mhcc/pages/hit/hit_advancedirectives/hit_advancedirectives.aspx).

<sup>12</sup> Data represents about 67 percent of health systems with a collective 32 acute care hospital locations in Maryland; information was self-reported and not audited for accuracy.

*Toolkit*,<sup>13</sup> which includes sample website language, social media posts, and images to aid in promoting the Information Sheet, was made available to stakeholders, including eight State agencies,<sup>14</sup> payers, health professional associations, consumer organizations, the State Advisory Council on Quality of Care at End of Life, and the Maryland Emergency Preparedness Network.

- The Information Sheet is available in two versions that include the same content, but slightly different formatting
- Social media campaigns promote the Information Sheet and are launched in coordination with National Healthcare Decisions Day in April
- Various stakeholders share the Information Sheet through newsletters, social media posts, and dedicated links on their organizational websites



### **Public Service Announcement**



A message to Marylanders recorded by Kurt Schmoke, President of the University of Baltimore and former mayor of Baltimore City, highlights the value of advance care planning and how to create an electronic advance directive. The public service announcement was made available for broadcasting on local television and radio stations.

### **Mental Health Advance Directives**

The MHCC and BHA are collaborating on the implementation of Senate Bill 154/Chapter 297, *Public Health - Mental Health Advance Directives - Awareness and Statewide Database* (2023). The law requires MDH to develop and implement a public awareness campaign for mental health advance directives in the State. The law also requires MHCC and BHA to explore ways for first responders and behavioral health crisis providers to access electronic advance directives via CRISP. A progress report is due to the Senate Finance Committee and House Health and Government Operations Committee by December 1, 2023.



**More information is available at:**

[mhcc.maryland.gov/mhcc/pages/hit/hit\\_advancedirectives/hit\\_advancedirectives.aspx](https://mhcc.maryland.gov/mhcc/pages/hit/hit_advancedirectives/hit_advancedirectives.aspx)

<sup>13</sup> Available at: [mhcc.maryland.gov/mhcc/Pages/hit/hit\\_advancedirectives/hit\\_advancedirectives\\_communications\\_toolkit.aspx](https://mhcc.maryland.gov/mhcc/Pages/hit/hit_advancedirectives/hit_advancedirectives_communications_toolkit.aspx).

<sup>14</sup> Includes the OAG, MDH, Department of Aging, MVA, Maryland Health Benefit Exchange, Office of Health Care Quality, Maryland Insurance Administration, and MIEMSS.

