



MEMORANDUM

DATE: July 21, 2022

TO: Commissioners

FROM: David Sharp
Director, Center for Health Information Technology & Innovative Care Delivery

RE: Recommended Proposed Permanent Amendments to COMAR 10.25.19, *State Recognition of an Electronic Advance Directives Service*

Background

State law (2016 Chapter 510 and 2017 Chapter 667) require the Maryland Health Care Commission (MHCC) to develop a State Recognition Program (State Recognition) for electronic advance directives services (vendors). The law facilitates the use of cloud-based technology to support creation of and accessibility to electronic advance directives. State Recognition demonstrates that a vendor meets certain criteria for privacy and security best practices, engages independent auditors, conducts consumer education, commits to State reporting requirements, and implements appropriate technical controls for protected health care information.

The MHCC worked collaboratively with stakeholders to develop regulations and vendor criteria for State Recognition. COMAR 10.25.19: *State Recognition of an Electronic Advance Directives Service*, outlines program procedures for State Recognition, a prerequisite for connecting to the State-Designated HIE (CRISP). State Recognition is valid for three years, unless suspended or revoked by MHCC. Since 2018, one vendor has received MHCC State Recognition (i.e., ADVault, Inc. dba MyDirectives.com).

During the 2022 session of the Maryland General Assembly, Chapter 312 (Senate Bill 824), *Health – Accessibility of Electronic Advance Care Planning Documents*, was passed repealing a requirement that vendors must implement the electronic authorization guideline (National Institute of Standards and Technology Special Publication 800–63–2: Electronic Authentication Guideline or subsequent replacement publications to 800-63) to connect to CRISP. Several vendors argued that imposing this level of electronic authentication prevented the vendors from entering the Maryland market.

Changes to Regulation

The proposed amendments to COMAR 10.25.19 align with Chapter 312 (2022) removing references of the electronic authentication guideline under Regulation .02 and other miscellaneous non-technical changes under Regulations .03, .04, .06, and .08.

Staff Recommendation

Staff requests the Commission approve amendments to COMAR 10.25.19: *State Recognition of an Electronic Advance Directives Service* as proposed permanent.