



Maryland COMAR 10.25.19

State Recognition of an Electronic Advance Directives Service

Proposed Amendments and Criteria for State Recognition

DRAFT - JULY 21, 2022



Background

- ▶ **2011** – The MHCC was awarded \$1.6 million by the Office of the National Coordinator for Health Information Technology (ONC) to explore options to facilitate the availability of electronic advance directives
- ▶ **2012** – The Secretary of the Maryland Department of Health (MDH) provided MHCC with additional startup funding to pilot the exchange of electronic advance directives through the State-Designated Health Information Exchange (CRISP)





Background *(Continued...)*

- ▶ **2013** – The MHCC issued a Request for Proposals to identify a vendor to implement a statewide electronic advance directives system that health care providers could access through CRISP; ADVault (dba MyDirectives.com) was competitively selected to build an interface between its cloud-based advance directive service and CRISP
- ▶ **2014** – An interface between the ADVault repository and CRISP was launched
- ▶ **2015 through 2017** – Legislation aimed to expand use of cloud-based technology to support diffusion of electronic advance directives statewide*

**HB1106 (2015), HB1385 (2016), and HB188 (2017)*



Existing Law

KEY ELEMENTS:

- ▶ Altered witness requirements for electronic advance directives
- ▶ Established a non-lapsing advance directives fund
- ▶ Expanded scope of outreach and education requiring development of an advance directive information sheet with specific content
- ▶ Tasked MHCC with a State Recognition Program for electronic advance directive services (or “vendors”)



Regulations and State Recognition Criteria



- ▶ The regulations outline program procedures for State Recognition of an electronic advance directive service
- ▶ In 2016, staff collaborated with stakeholders to inform the development of regulations and criteria vendors must meet to receive State Recognition
- ▶ Vendor criteria for State Recognition includes standards for privacy and security; auditing and compliance; and education, reporting, and technical provisions
 - Draft criteria for State Recognition must be published in the Maryland Register and on the Commission's website
 - A draft incorporating public comments, if any, will be presented to the Commission for consideration

2022 Legislation – Digital Identity Guidelines



- ▶ Chapter 312 (Senate Bill 824), *Health – Accessibility of Electronic Advance Care Planning Documents*, (2022) repeals the technical requirement that vendors implement a certain digital identity proofing guideline published in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-63, among other revisions
 - NIST SP 800-63 addresses how applicants can prove their identities and become enrolled as valid subscribers within a system
- ▶ Rationale
 - The requirement has resulted in limited competition among vendors seeking State Recognition in Maryland
 - Vendors and consumers view the requirement as burdensome
 - Other standards (e.g., USA Patriot Act and ANSI/NASPO-IDPV-2015) are as effective and nimble in responding to the cyber risk landscape

Proposed Amendments & Criteria for State Recognition



REGULATIONS

- ▶ Remove references of the NIST digital identity proofing guideline under Regulation .02, Definitions

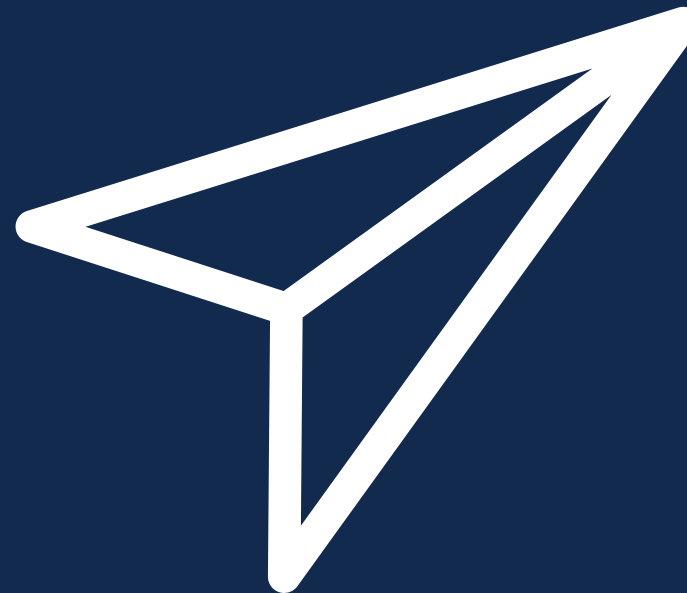
CRITERIA

- ▶ Removes the requirement for vendors to implement the NIST digital identity proofing guideline
- ▶ Clarifies acceptable evidence and frequency (annual) for demonstrating adequate systems and privacy and security controls
- ▶ Updates frequency of reporting to MHCC from biannually to quarterly regarding the number of unique advance directives for Maryland residents



Next Steps

- ▶ Publish draft vendor criteria in the Maryland Register and on MHCC's website





Action

- ▶ Staff requests the Commission adopt proposed amendments to COMAR 10.25.19: *State Recognition of an Electronic Advance Directives Service*, and approve the Criteria for public comment via the Commission's website