Date: February 23, 2018 **Staff:** Alyson Williams	**POLICY ANALYSIS** **PREPARED FOR THE BOARD OF DIRECTORS**	Health District OF NORTHERN LARIMER COUNTY

HB18-1182 STATEWIDE SYSTEM FOR ADVANCE DIRECTIVES

Concerning a statewide system of advance directives

Details

Bill Sponsors:	House – *Ginal (D) and Landgraf (R)* Senate – *Court (D) and Coram (R)*
Committee:	House Committee on Health, Insurance, & Environment
Bill History:	2/2/2018- Introduced in House- Assigned to Health, Insurance, & Environment
Next Action:	3/15/2018- Hearing in House Health, Insurance, & Environment

Bill Summary

This bill has the Colorado Department of Public Health and Environment create a statewide electronic system to be administered by a health information network and funded by gifts, grants, and donations to act as a repository for medical professionals and individuals to access and store advance directives.

Background

Advance Directives

Advance directives typically include a living will and a durable power of attorney; other documents can be incorporated to supplement these two elements.[1] A living will states how an individual wants to be treated by a medical provider if he/she is dying, permanently unconscious, or otherwise unable to make decisions. This document can include procedures that can be done and those that the person does not want done. The durable power of attorney designates a health care proxy, or someone that makes decisions for a person that cannot make decisions for themselves. Other documents included under advance directives may include Do Not Resuscitate (DNR) orders, information regarding organ and tissue donation, Physician Orders for Life-Sustaining Treatment (POLST) or Medical Orders for Life-Sustaining Treatment (MOLST). The POLST or MOLST is a form that is filled out by a medical provider (each state allows different types of professionals to create a POLST/MOLST) that is intended to fill gaps left by advance directives and are tailored to a patient's current diagnosis.[2] Colorado's form is known as a Medical Order for Scope of Treatment (MOST). The MOST cannot include a request by a terminally ill patient for a lethal prescription.[3]

For advance directives to be effective the documents must be current, treating providers (and others) must know the documents exist, and the provider must adhere to the individual's wishes. The directives should also be kept up to date as a person's situation or wishes change.

Registries in Other States

As of 2016, thirteen states currently have advance directive systems that were authorized by their state legislature.[4] There are private registries that have been in existence, but the outcomes associated with these registries is largely unknown as it is proprietary information. Three states, Washington, Vermont, and

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[1] National Institute on Aging, National Institutes of Health (May 2017). *Advance Care Planning: Healthcare Directives.* Retrieved from https://www.nia.nih.gov/health/advance-care-planning-healthcare-directives.

[2] Peck, K.R. & Fahey, K.T. (Oct. 2014). POLST Updates: What Attorneys Need to Know. *Health eSource,* 11(2). Retrieved from https://www.americanbar.org/publications/aba_health_esource/2014-2015/october/polst.html

[3] In 2016, Colorado voters approved the Colorado End-of-Life Options Act which established a legal framework for a competent, terminally patient to end their own life with a lethal prescription. Colorado Advance Directives Consortium (Dec. 2016). *MOST FAQs.* Retrieved from http://coloradoadvancedirectives.com/wp-content/uploads/2014/02/MOST-FAQs-12.2016.pdf

[4] Holmes, P. (Aug. 2016). Commission on Law & Aging Research: A Tour of State Advance Directive Registries. *Bifocal*, 37(6), 122-127. Retrieved from https://www.americanbar.org/content/dam/aba/publications/bifocal/bifocaljuly-august2016.authcheckdam.pdf

Oklahoma, have contracted with these private registries to administer the system for the state.[3] The cost and method of registration (i.e. online, email, or fax) varies through the 13 states.[3] Furthermore, the documentation that is eligible to be included in the registry is not uniform for each state. The registries in Nevada and Texas had evaluation components built into the registry to measure for their effectiveness; however, in Nevada, a limited number of providers and facilities had signed up during the first year to successfully evaluate the registry and the registry in Texas was closed soon after implementation due to budget cuts.[5]

This Legislation

In this bill, an advance directive is defined as a medical durable power of attorney, a living will, a DNR, a POLST/MOLST, and/or a will. These advance directives may be created in Colorado or another state, as long as the documents meet the same standards defined in Colorado. This bill creates an advance directive registry for the state of Colorado not more than 30 days after $750,000 has been generated through gifts, grants, and donations for this purpose. The system must allow medical professionals and individuals to upload and access advance directives, within the guidelines of HIPAA.[6] Once the system has been funded and not more than 30 days after, CDPHE is required to annually contract with one or more health information organization networks to administer and maintain the registry. CDPHE is also to implement rules to administer the system and must include criteria for access by eligible individuals, procedures for adding an advance directive, procedures for accessing and downloading the document(s), confidentiality safeguards, and a method for individuals to designate people that medical professionals may speak to regarding the person's medical condition prior to withholding life-sustaining treatment. The registry is set to be repealed September 1, 2028.

Reasons to Support

This could allow for greater access to advance directives, which could mean improved communication between individuals and their providers, especially as they transition in care. Having a registry could give individuals peace of mind that their wishes could be adhered to even when not near their primary care provider. Family members could be relieved of the stress that may be involved with making health care decisions because a patient's advance directive is not known to exist or cannot be found. This bill could facilitate reminders to patients to update their information contained in the directive.

Supporters

- Colorado Regional Health Information Organization (CORHIO)

Reasons to Oppose

The interoperability between the system and the electronic health record (EHR) of each provider, facility, or health system may not be easy or feasible. It could require resource outlays by both public and private entities to create a way to access the system through their EHR. If the ability to access the information is challenging, it is likely that providers and medical staff would not take the time to look and see if information is available. An online registry may not be easily accessible to paramedics or first responders, who may have to make immediate decisions about care in the field. If a person does not keep the information up to date with any changes, the information available in the system would not provide medical personnel with the correct information and may conflict with any written records provided by family members of a power of attorney.

[5] Klugman, C. M., & Usatine, R. P. (2013). An evaluation of 2 online advance directive programs. *American Journal of Hospice and Palliative Medicine*, *30*(7), 657-663. Retrieved from http://journals.sagepub.com/doi/abs/10.1177/1049909112463116

[6] The federal Health Insurance Portability and Accountability Act of 1996; Public Law 104-91.

Opponents

- No opposition has been made publicly available at this time.

About this Document

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.