Health District

OF NORTHERN LARIMER COUNTY

2/22/2019

STAFF: ALYSON WILLIAMS POLICY ANALYSIS

SB19-073: STATEWIDE SYSTEM OF ADVANCE MEDICAL DIRECTIVES

Concerning a statewide system of advance medical directives

Details

Bill Sponsors:	Senate – Ginal *(D),* Court (D) House – Landgraf *(R)*
Committee:	Senate Health & Human Services Senate Appropriations
Bill History:	1/10/2019- Introduced in Senate- Assigned to Health & Human Services 2/6/2019- Senate Health & Human Services Refer Amended to Appropriations
Next Action:	Hearing in Senate Appropriations
Fiscal Note:	2/5/2019 Version

Bill Summary

This bill has the Colorado Department of Public Health and Environment (CDPHE) create a statewide electronic system to be administered by a health information network to act as a repository for qualified providers and individuals to access and store advance directives.

Issue Summary

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 POLST 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.

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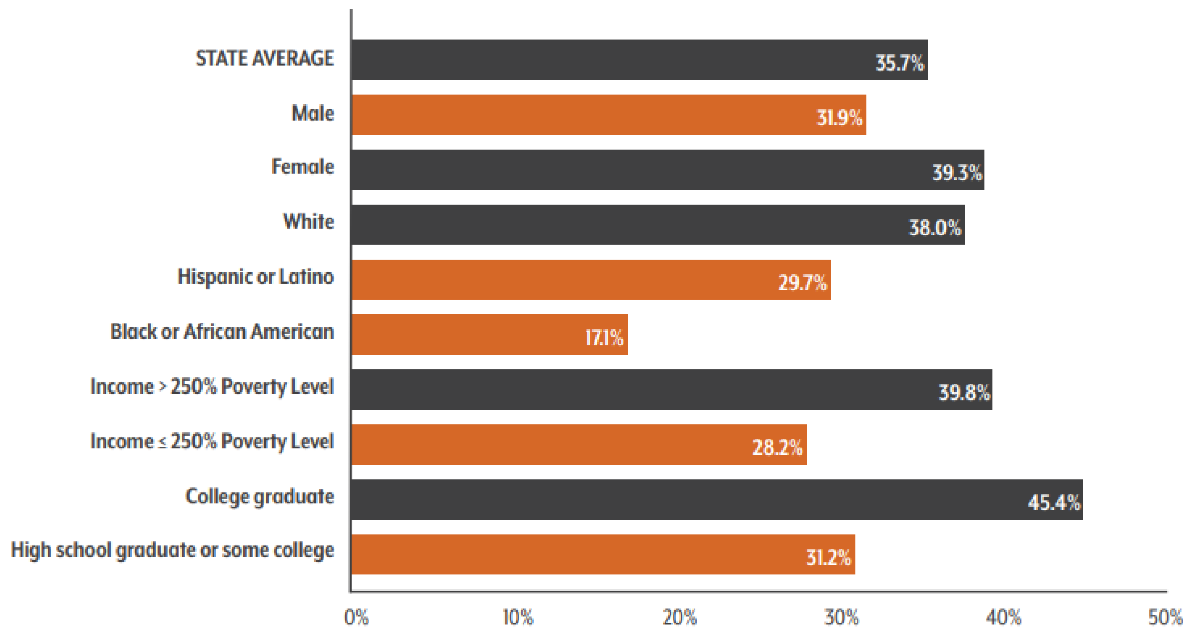
[1] National Institute on Aging, National Institutes of Health (May 2017). *Advance Care Planning: Healthcare Directives.* Retrieved from https://www.nia.nih.gov/health/advance-care-planning-healthcare-directives.

[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

Advance Directives in Colorado

The Colorado Health Institute (CHI) found during the 2017 Colorado Health Access Survey that one-third, or nearly 250,000, Coloradans that are 65 or older have not completed an advance directive.[4] In addition, CHI found that the completion of directives is variable by age and demographics. For example, 16.7 percent of individuals between the ages of 25 and 34 have completed advance directives, whereas by the ages of 45 to 54, 35.6 percent have completed their directives. The following table demonstrate the variation by demographic group.



The 2016 Larimer County Community Health Survey, administered by the Health District of Northern Larimer County, found that 30 percent of residents have completed an advance directive.[5] Mirroring the results of CHI's statewide survey, the Larimer County survey found that females (32%) are more likely to have completed an advance care directive than males (23%). Additionally, low-income residents (24%) were less likely to have completed an advance care directive than residents with a higher income (34%).[6]

Registries in Other States

As of 2016, thirteen states have advance directive systems that were authorized by their state legislature.[7] 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 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

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[4] Colorado Health Institute (June 2018). *The Last Word: Advance Directives in Colorado.* Retrieved from https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/CHAS%20advance%20directives%20report%201.pdf

[5] Health District of Northern Larimer County (2018). *Advance Care Planning in Our Community: 2016 Survey of Larimer County Residents.* Retrieved from https://www.healthdistrict.org/sites/default/files/2016-survey-acp-factheet-20180313.pdf

[6] Lower income is less than 250% of the federal poverty level (FPL) and higher income denotes an income above 250 percent of FPL.

[7] 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

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.[8]

This Legislation

The bill defines an "advance health care directive" to be a MOST, a living will, CPR/DNR directive, or medical durable power of attorney, which includes any of these documents that were properly executed in another state. The bill clarifies that a power of attorney form is not an advance health care directive. The bill defines an "authorized surrogate decision-maker" as a guardian that is appointed under a durable medical power of attorney, a health care proxy-by-statute, or a similarly authorized surrogate (as defined by laws of another state), who is authorized to make medical decisions for an individual who lacks decisional capacity. A "qualified provider" is defined as a person or entity that may use or disclose protected health information for treatment purposes in accordance with HIPAA.

The bill states that CDPHE is to ensure that qualified individuals may access the statewide electronic system for treatment purposes allowed under HIPAA. CDPHE is to contract with one or more health information organization networks in order to create, administer, and maintain the system.[9] The department must also promulgate rules that include the establishment of:

- Criteria for qualified individuals to have access to the system and advance medical directives
- Procedures by which a qualified individual may add or remove an advance medical directive to or from the system
- Procedures by which a qualified individual may access and download a directive from the system
- Procedures and safeguards for ensuring the confidentiality and secure storage of the information contained in the directives added to and maintained in the system

Upon the request of an individual or authorized surrogate decision-maker, a qualified provider that has a HIPAA-compliant agreement with a health information network may upload the individual's directive to the system. The directive may only be uploaded to the system by the provider after the individual or authorized surrogate has consulted with the provider in-person or via telehealth. The uploading provider is not subject to civil or criminal liability or regulatory sanction for actions taken in accordance with this section. Prior to uploading a directive to the system, the individual or authorized surrogate is to sign an electronic affidavit in the presence of a provider that affirms that the directive is appropriate executed, current, and accurate. The signing of the affidavit revokes any prior directives of the same type that had been uploaded to the system. The individual or authorized surrogate is responsible for ensuring that the uploaded directive is appropriately executed, current, and accurate.

Emergency medical service personnel, individual health care providers, health facilities, or any other person or entity that complies with a directive accessed from the system are not subject to civil or criminal liability or regulatory sanction for action taken in accordance with the directive. This is not the case if the person or entity has actual knowledge of a directive properly executed after the date of directive that is uploaded to the system.

The bill is effective August 2, 2019 if the last day of session is May 3, 2019, unless a referendum petition is filed against the bill.

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[8] 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

[9] There are two health information networks in Colorado: Quality Health Network (QHN) on the Western Slope and Colorado Regional Health Information Organization (CORHIO) on the Front Range and Eastern Plains.

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, whether or not their primary care provider is involved. 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 their directive.

Supporters

- AARP
- Alzheimer's Association, Colorado Chapter
- Anthem Blue Cross and Blue Shield
- Colorado Association of Health Plans
- Colorado Cross-Disability Coalition
- Colorado Hospital Association
- Colorado Rural Health Center
- Kaiser Foundation Health Plan
- Kaiser Permanente
- Leading Age Colorado
- National Alliance on Mental Illness
- University of Colorado Health
- Quality Health Network

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 this would require dual entry, to both the registry and the patient's file in the EHR, there may not be much use of the registry. 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 an individual does not keep the information up to date with any changes and get it properly into the system, 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 or others with power of attorney. The bill creates a burden of an individual having to meet with their provider for the directive to be entered, and for the individual to sign an electronic affidavit in the presence of the provider. It may be a barrier to completion to mandate individuals to have their directives entered into the system only through meeting with their provider.

Opponents

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

About this Analysis

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. This analysis is accurate to staff knowledge as of date printed. 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.