

STATE OF MARYLAND



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March 11, 2021

The Honorable Dolores G. Kelley
Chair, Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 837 – Health – Advance Care Planning and Advance Directives

Dear Chair Kelley:

The Maryland Health Care Commission (the “MHCC”) is submitting this letter of information on *SB 837 – Health – Advance Care Planning and Advance Directives*.

SB 837 requires the MHCC to coordinate the implementation of an advance care planning program in the State. The bill mandates health insurance carriers to offer electronic advance directives to its members during open enrollment. The Motor Vehicle Administration will be required to report on progress made to educate customers on the process for completing an electronic advance directive, noting any obstacles and plans to resolve those obstacles. In addition, the Maryland Department of Health (MDH) will be required to collaborate with local jurisdictions to develop and implement a plan that provides individuals receiving a COVID-19 vaccination at select sites with information about advance care planning and the State-designated electronic advance directives system.

In 2016, the General Assembly passed House Bill 1385, *Public Health – Advance Directives - Procedures, Information Sheet, and Use of Electronic Advance Directives*. The law consists of two key components: 1) State recognition of electronic advance directives services¹ and 2) outreach and education.² The MHCC was tasked with developing criteria for State recognition of an electronic advance directives services seeking to integrate their web-based repository with

1 Electronic advance directives services are third-party vendors that allows consumers to create, maintain, and share electronic advance directives online. Vendors are required by statute to adopt privacy and security guidelines in the National Institute of Standards and Technology Special Publication 800-63A, *Digital Identity Guidelines: Enrollment and Identity Proofing*.

2 The law placed responsibility on MDH to increase public awareness about electronic advance directives, including vendors recognized by MHCC. In 2017, MDH began procuring services to support a public campaign designed to increase awareness about advance care planning and encourage use of electronic advance directives. Grants were awarded to more than a dozen organizations across Maryland, including faith-based communities.

Note: The Maryland Health Care Commission is an independent State agency. The position of the Commission may differ from the Maryland Department of Health

the State-Designated Health Information Exchange (CRISP).³ To date, ADVault, Inc. (or MyDirectives.com) is the only web-based repository recognized by MHCC. The National Institute of Standards and Technology (NIST) standards established for the privacy and security protections for web-based repositories have deterred other vendors from seeking State recognition. Several vendors have argued that the NIST standards should not be applied to web-based advance directive repositories. The MHCC found little support for waiving these standards in the privacy community. Some privacy advocates have lauded the NIST requirements and others suggest even more stringent requirements should be in place to safeguard consumers' information.

The goal of encouraging use of advance directives is commendable but new approaches to engage the public are needed. Consumer use of a web-based repository to create, maintain, and share their advance directive has been slow and growth has now stalled. Approximately 2,532 Marylanders have used MyDirectives.com for their electronic advance directive to date. In 2020, providers accessed 51 advance directives in the MyDirectives.com application through the CRISP application programming interface(API). SB 837 promotes the standalone web-based advance directive solutions that have seen slow uptake.

The MHCC will continue to work with stakeholders to promote the use of advance directives and to identify realistic approaches for accelerating adoption. A promising trend is the embedding of advance directive features in electronic health record (EHR) systems. The MHCC has confirmed that EPIC and Cerner, the two most used EHRs in Maryland offer advance directive features. As EHRs are tuned to support routine clinical workflows accessing an advance directive through these systems is most natural and more convenient for most providers. As of January 2016, EHR systems are required to adopt standards to store advance directives as a condition of national certification.⁴ The majority of Maryland hospitals (87 percent) report they primarily rely on their certified EHR system to locate patients' advance directives.⁵ Nationally, most consumers (65 percent) favor storing their advance directive in an EHR over a web-based repository largely citing EHRs increase accessibility.⁶ The MHCC has found that most consumers prefer to store their advance directive in the EHR along with medication lists, problem lists, and other types of medical information that consumers should review on an ongoing basis. If the goal is to promote use of advance directives, legislation should encourage use of advance directives stored in all appropriately protected electronic systems, particularly EHRs.

I hope you find this information useful. If you would like to discuss this further, please contact Ben Steffen, Executive Director, Maryland Health Care Commission at ben.steffen@maryland.gov or Tracey DeShields, Director of Policy Development at tracey.deshields2@maryland.gov.

3 In the fall of 2016, MHCC convened a stakeholder workgroup to deliberate on various policy issues related to electronic advance directives. Feedback informed the development of draft regulations and vendor criteria for State Recognition. COMAR 10.25.19, *State Recognition of an Electronic Advance Directives Service*, outlines procedures for State Recognition.

4 Certified EHRs are required to adopt standards for storing advance directives in the January 14, 2016 Final Rule: *2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications* adopted on January 14, 2016.

5 Maryland hospitals were asked in 2020 to specify the extent they rely on their EHR to locate advance directives. Approximately 54 percent selected "always," and 33 percent selected "usually." For family/friends, about 12 percent selected "always," and 35 percent selected "usually." For CRISP, about 2 percent selected "always," and 44 percent selected "usually."

6 Software Advice, *EHRs' Potential for Improving End-of-Life Care Documentation*, January 2015. Available at: softwareadvice.com/long-term-care/industryview/ehr-end-of-life-report-2015/.

Sincerely,



Andrew Pollack
Chair, MHCC



Ben Steffen
Executive Director, MHCC

cc: Senator Benjamin F. Kramer