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STATE OF MARYLAND

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April 1, 2021

The Honorable Shane E. Pendergrass
Chair, Health and Government Operations
Room 241
House Office Building
Annapolis, Maryland 21401

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

Dear Chair Pendergrass and Committee members:

The Maryland Health Care Commission (the “MHCC”) is submitting this letter of opposition to *SB 837 – Health – Advance Care Planning and Advance Directives* because it promotes a single standalone advance directive repository that has not been accepted by consumers.

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 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 service seeking to integrate their web-based repository with 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 high bar around privacy and security protections for web-based repositories included in statute has

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.

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.

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

deterred other vendors from seeking State recognition. While privacy advocates have lauded these requirements, some suggest more stringent requirements should be in place to safeguard consumers' information.

Consumer use of a web-based repository to create, maintain, and share their advance directive has been slow to gain traction. Approximately 2,532 Marylanders have used MyDirectives.com for their electronic advance directive to date. In 2020, just about 51 advance directives in the web-based repository were accessed by providers through CRISP.

SB 837 promotes a web-based repository for advance directives that is not accepted by consumers or frequently accessed by providers. A difficulty reported by providers using a web-based repository is that its availability exists outside of clinical workflows. As of January 2016, nationally certified electronic health record (EHR) systems are required to adopt standards to store advance directives.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 registry largely citing EHRs increase accessibility.⁶

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.

Sincerely,



Andrew Pollack
Chair, MHCC



Ben Steffen
Executive Director, MHCC

cc: Senator Benjamin F. Kramer
HGO Committee Members

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/.