

**TO:** HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE  
DELEGATE SHANE PENDERGRASS, CHAIR  
DELEGATE JOSELINE PENA-MELNYK, VICE CHAIR  
COMMITTEE MEMBERS

**FROM:** DAN MORHAIM, M.D.

**SUPPORT SB837 “Health- Advance Care Planning and Advance Directives”**  
**Sponsor: Senator Ben Kramer**

The history and benefits of this legislation are well summarized by the letter and Council report sent to you by the State’s Council on Quality Care at the End of Life. Dr. Yvette Oquendo, M.D. FAAFP, Medical Director, CareFirst BlueCross BlueShield, for example, noted that the *“Document is excellent. Very comprehensive.”* The Council membership, a diverse group, unanimously adopted the report and then endorsed SB837 which specifically implements its recommendations.

The positives of advance directives are manifold. Care is personalized. Values are respected. Intra-family conflicts are minimized or avoided. Clinicians know what kind of care patients want. The racial disparity of completion rates will decrease. The end-of-life experience becomes more holistic, manageable, and compassionate. Health care costs are reduced. The pandemic has made advance care planning more compelling because patients may not be able to communicate their wishes and families are not allowed at the bedside.

I have no affiliation or interest of any type in this bill, directly or indirectly, other than my long standing desire to see that the challenging aspects of end-of-life care can be made more manageable for Maryland patients and their families.

**Support for SB837** comes from “people” groups including the State Council, AARP, the Horizon Foundation of Howard County, and from “provider” groups - the ones who actually deliver care - including the Hospice and Palliative Care Network of Maryland, MedChi, and HFAM, as well as from thousands of citizens across the state.

However, concerns were raised by the League of Life and Health Insurers and the Maryland Hospital Association. They did not bother to testify in the Senate hearing, providing only written materials. The Senate Finance committee and the Senate did not find their arguments persuasive, and neither should you. SB837 passed the Senate 44-1. Based on their written testimony submitted to the Senate, here’s why the “concerns” raised by the League and MHA are shallow and without merit.

**The League** suggests that under SB837 somehow the options for Marylanders completing an advance directive *“would be severely limited”* and that the *“full range of options”* would not be available. **Nothing could be further from the truth. In fact, the exact opposite is the case.** Here are the facts. The Maryland Health Care Commission, directed by prior enacted legislation, was requested to develop an electronic advance directive registry system under the rules of state procurement and with strict standards of safety and security. This was accomplished by ADVault (mydirectives.com) which met all the MHCC requirements. Under that system, a person

can choose to use the mydirectives.com format or can choose to upload any advance directive from any source they want.

As you know, advance directive forms are available from multiple sources including the Maryland Attorney General's Office, AARP, faith organizations, and online. A person completing any one of these can upload that specific advance directive into the State's electronic advance directive registry. In addition, a person can upload a video into the State system stating their medical care preferences (and may also leave a personal message for their family). Thus all options are made easily and readily available for the full benefit of Marylanders.

The amendments suggested by the League are already covered by enacted legislation (HB556/2004; HB557/2004; HB214/2007), and so these offer nothing new.

Instead, for insurers, it is not a question of "if" but "when". Medicare's 2022 requirements for insurers includes in its "*value based insurance design*" (VBID program) exactly the language in this legislation: directing health insurers to ask their members to update or create an advance care plan during normal enrollment and re-enrollment workflows so the plans can be found when needed. Medicare will allow insurance plans to account for any costs associated with digital advance care plan programs in their medical loss ratio. That's a significant statement of how serious Medicare will be in pushing payers to step up and do their part. We in Maryland can wait a few more years until the Medicare VBID rules work their way into insurance programs, or we can lead and put the health and care of our citizens first today.

**The Maryland Hospital Association** suggests that SB837 somehow "*circumvents*" hospitals efforts to promote advance directives. Hospitals can continue their efforts (and so can anyone else). Instead, SB837 adds to whatever efforts hospitals may be doing.

Further, it is not "*Hospitals*" that have these conversations with patients. It is the people who are the "*caregivers*" (most commonly physicians and hospice personnel) who do that. Those key caregivers (Med-Chi and Maryland Hospice & Palliative Care) support this bill and obviously do not believe that it adversely "*impacts the trust.*" If anything, the legislation increases trust.

MHA asserts that the legislation is "*linked to an incentive.*" There is nothing in the bill that links or creates incentives for anyone.

MHA confusingly states that the bill does not include a definition of "*decision-making proxy*". This makes no sense because "*decision-making proxy*" **is a standard and basic part of every advance directive already and has been for over 30 years.** You can see an example of that at the Maryland AG web site:

<https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx>

In terms of MHA's suggested amendments, the first two do nothing but remove healthcare institutions from the bill and should be rejected. Healthcare institutions should be doing exactly what SB837 says: "ENCOURAGE INDIVIDUALS TO UPLOAD, CREATE, UPDATE, AND MAKE ACCESSIBLE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS THROUGH THE USE OF AN ELECTRONIC ADVANCE DIRECTIVE SERVICE RECOGNIZED BY THE COMMISSION UNDER § 19-144 OF THIS SUBTITLE; AND CONNECTION TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE;"

Their 3<sup>rd</sup> suggested amendment negates allowing MHCC to see how well hospitals are performing in this regard. MHCC does this for any number of measurements and outcomes. Data is important for monitoring progress.

While electronic health records (EHR) can be a source for clinicians to locate a patient's advance directive, that only works if the patient is in their system. What happens if a person is not? What if you were taken to Anne Arundel Medical Center today, but your home hospital is elsewhere? How would clinicians be able to take care of you? That's why the state enabled the CRISP system as the designated health information exchange for Maryland. That's how medical records (including lab test results, imaging reports, discharge summaries, etc.) are shared between hospital systems. This has proven to be valuable in patient care, enabling clinicians to make informed decisions more promptly. Advance directive information should be made available the same way with the same protections under the same system, as SB837 would do.

Last, hospitals ought to be embracing SB837 for another reason. There is a new type of lawsuit. You've heard of "wrongful death" legal actions where someone died who shouldn't have. Now there are "wrongful life" suits where someone has been kept alive against their will or wishes. See <https://www.nytimes.com/2021/01/22/health/elderly-dnr-death-lawsuit.html> and <https://www.advisory.com/daily-briefing/2021/02/22/wrongful-life>. Hospitals are where these events take place and are the ones with deep pockets, so they are getting sued. **It is their interest to be sure their patients have advance directives and that these are available to the clinicians and are honored.**

There are many ways to say "No", but it's important to say "Yes" to this because we are all mortal and will be confronting these issues for ourselves and our loved ones. Events are taking place every day in every hospital in Maryland where advance directives would make a positive difference.

Proponents represent citizens and direct health care providers. Please vote with the people and support SB837.

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