

HB1073/323121/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 1073

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “**Delegate Cullison**” and substitute “**Delegates Cullison, Bagnall, Bhandari, Carr, Chisholm, Hill, Johnson, Kaiser, Kelly, Kerr, Kipke, Landis, R. Lewis, Morgan, Pena-Melnyk, Pendergrass, Reilly, Rosenberg, Saab, Sample-Hughes, Szeliga, and K. Young**”; in line 4, after “requiring” insert “certain”; in line 5, strike “, nursing homes, assisted living facilities,”; after line 11, insert:

“BY repealing

Article - Health - General

Section 5-602(c)(3) and 5-622(a)(3)

Annotated Code of Maryland

(2019 Replacement Volume and 2021 Supplement)”;

in line 14, strike “5-615” and substitute “5-602(c)(4), 5-615, 5-622(a)(2)”; in the same line, after “(xvi),” insert “and”; in the same line, strike “, and 19-1805(b)”;

in line 19, strike the first comma and substitute “and (31) and”; and in the same line, strike “, and 19-1401.4”.

AMENDMENT NO. 2

On page 2, after line 3, insert:

“5-602.

(c) **[(3) A witness is not required for an electronic advance directive if the declarant’s identity has been authenticated in accordance with the National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline or, if replaced, the replacement guideline.]**

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[(4)] (3) The State-designated health information exchange may accept as valid an unwitnessed electronic advance directive in the form of a video record or file to state the declarant's wishes regarding health care for the declarant or to appoint an agent if the video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives service recognized by the Maryland Health Care Commission.”.

On page 5, in line 5, strike “HOME” and substitute “FACILITY”; in the same line, strike “§ 19-1401.4” and substitute “§ 19-301”; and in lines 7 and 8, strike “§ 19-1805” and substitute “§ 19-1801”.

On page 6, after line 3, insert:

“5-622.

(a) (2) An electronic advance directives service shall:

(i) Be approved by the Maryland Health Care Commission; AND

(ii) Meet the technology, security, and privacy standards set by the Maryland Health Care Commission]; and

(iii) Use the guidelines described in § 5-602(c)(3) of this subtitle to authenticate a declarant's identity for an electronic advance directive that is not witnessed].

[(3) The Maryland Health Care Commission may approve only advance directives services that use the guidelines described in § 5-602(c)(3) of this subtitle to authenticate a declarant's identity for an electronic advance directive that is not witnessed.]”.

AMENDMENT NO. 3

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On page 2, after line 10, insert:

“(4) “ELECTRONIC PLATFORM” MEANS THE PLATFORM DEVELOPED IN ACCORDANCE WITH § 19-145(B)(2)(I) OF THIS ARTICLE TO MAKE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS ACCESSIBLE.”;

in line 11, strike “(4)” and substitute “(5)”; in line 17, strike “ON” and substitute “EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, ON”; in line 18, strike “EACH” and substitute “THE”; in lines 19 and 20, strike “STATE-DESIGNATED HEALTH INFORMATION EXCHANGE” and substitute “ELECTRONIC PLATFORM”; in lines 20 and 22, in each instance, after “HAS” insert “UPLOADED OR SAVED”; in line 25, strike “DOES NOT HAVE” and substitute “HAS NOT UPLOADED OR SAVED”; and strike beginning with “MAKE” in line 29 down through “EXCHANGE” in line 30 and substitute “UPLOAD OR SAVE THEM TO THE ELECTRONIC PLATFORM”.

AMENDMENT NO. 4

On page 3, in line 3, after “MAINTAINS” insert “A WEBSITE, AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(IV) OF THIS ARTICLE IS DEVELOPED, THE HEALTH CARE FACILITY SHALL PROVIDE A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB.”; strike beginning with “AN” in line 3 down through “DOCUMENT” in line 11 and substitute:

- “(4) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT APPLY TO:**
- (I) A COMMUNITY PROVIDER AS DEFINED IN § 7-307 OF THIS ARTICLE;**
 - (II) A HOME HEALTH AGENCY AS DEFINED IN § 19-401 OF THIS ARTICLE;**

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(III) AN ASSISTED LIVING FACILITY AS DEFINED IN § 19-1801 OF THIS ARTICLE; AND

(IV) A HOSPICE AS DEFINED IN § 19-901 OF THIS TITLE”;

and in line 21, after “care” insert “**, INCLUDING THE DESIGNATION OF A HEALTH CARE AGENT**”.

On page 4, in line 5, strike “MADE ACCESSIBLE” and substitute “**BE UPLOADED OR SAVED**”; in lines 5 and 8, in each instance, strike “STATE-DESIGNATED HEALTH INFORMATION EXCHANGE” and substitute “**ELECTRONIC PLATFORM**”; in line 7, strike “MADE ACCESSIBLE” and substitute “**UPLOADED OR SAVED**”.

On page 5, in line 16, strike “WEBSITES” and substitute “:

1. WEBSITES”;

and in line 17, after “ARTICLE” insert “**; AND**

2. AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(IV) OF THIS ARTICLE IS DEVELOPED, THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB”.

On page 6, in line 1, strike “MAKING” and substitute “**UPLOADING OR SAVING**”; strike beginning with “THROUGH” in line 2 down through “EXCHANGE” in line 3 and substitute “**TO THE ELECTRONIC PLATFORM**”; and in line 31, strike “PROVIDE ACCESS ON ITS WEBSITE TO ITS ENROLLEES TO:” and substitute “**AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(IV) OF THIS ARTICLE IS DEVELOPED, PROVIDE A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB.**”

**(31) PARAGRAPH (9)(XVII) OF THIS SUBSECTION MAY NOT BE
CONSTRUED TO REQUIRE A MANAGED CARE ORGANIZATION TO:**

**(I) ASSIST AN ENROLLEE IN DRAFTING AN ELECTRONIC
ADVANCE CARE PLANNING DOCUMENT;**

**(II) STORE ELECTRONIC ADVANCE CARE PLANNING
DOCUMENTS; OR**

(III) ACCESS ADVANCE CARE PLANNING DOCUMENTS.”.

On page 7, strike in their entirety lines 1 through 7, inclusive.

AMENDMENT NO. 5

On page 8, in line 5, after “**DIRECTIVE;**” insert “**AND**”; strike beginning with “**A**” in line 6 down through “**3.**” in line 8; in line 12, after “**PLAN;**” insert “**AND**”; strike beginning with “**; AND**” in line 13 down through “**ORGANIZATION**” in line 14; and strike beginning with “**ACCESSIBLE**” in line 17 down through “**PROVIDERS**” in line 18 and substitute “**ABLE TO BE UPLOADED OR SAVED TO THE ELECTRONIC PLATFORM DEVELOPED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION**”.

AMENDMENT NO. 6

On page 9, in line 7, strike “**IDENTIFYING A PROCESS**” and substitute “**COLLABORATION WITH THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE TO DEVELOP AN ELECTRONIC PLATFORM**”; in line 8, strike “**MAKE**” and substitute “**UPLOAD OR SAVE**”; strike beginning with “**ACCESSIBLE**” in line 9 down through “**EXCHANGE**” in line 10; and strike in their entirety lines 15 through 27, inclusive, and substitute:

(Over)

“(II) IDENTIFICATION OF OPTIONS MEETING FEDERAL, STATE, AND INDUSTRY CYBERSECURITY STANDARDS THAT MAY BE TAKEN BY CARRIERS, MANAGED CARE ORGANIZATIONS, AND HEALTH CARE PROVIDERS TO:

1. ENCOURAGE MEMBERS, ENROLLEES, AND PATIENTS TO CREATE, UPLOAD OR SAVE, AND UPDATE ADVANCE PLANNING DOCUMENTS; AND

2. MAKE TOOLS, WHICH MAY INCLUDE ELECTRONIC ADVANCE DIRECTIVE SERVICES RECOGNIZED BY THE COMMISSION UNDER § 19-144 OF THIS SUBTITLE, ACCESSIBLE TO MEMBERS, ENROLLEES, AND PATIENTS THAT ALLOW THEM TO CREATE, UPLOAD OR SAVE, AND UPDATE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS;”.

On page 10, in line 7, after “UPLOAD” insert “OR SAVE”; strike beginning with “AND” in line 8 down through “EXCHANGE” in line 9 and substitute “TO THE ELECTRONIC PLATFORM DEVELOPED IN ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH”; after line 10, insert:

“(3) AS THE COMMISSION IDENTIFIES OPTIONS UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE COMMISSION MAY EXPLORE WHETHER CARRIERS, MANAGED CARE ORGANIZATIONS, AND HEALTH CARE PROVIDERS WITH SECURE MEMBER AUTHENTICATION WEBSITES CAN LINK BETWEEN THE WEBSITE OF THE CARRIER, MANAGED CARE ORGANIZATION, OR HEALTH CARE PROVIDER AND THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE.

(4) IN DEVELOPING THE ELECTRONIC PLATFORM IN ACCORDANCE WITH PARAGRAPH (2)(I) OF THIS SUBSECTION, THE COMMISSION AND THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE:

(I) SHALL CONSULT WITH OTHER STATE AGENCIES AND STAKEHOLDERS, AS APPROPRIATE; AND

(II) SUBJECT TO AVAILABLE FUNDS, MAY CONTRACT WITH A THIRD-PARTY VENDOR, AS APPROPRIATE.

(5) THE ELECTRONIC PLATFORM DEVELOPED IN ACCORDANCE WITH PARAGRAPH (2)(I) OF THIS SUBSECTION SHALL:

(I) PROVIDE AN INDIVIDUAL WITH DISABILITIES WITH NONVISUAL ACCESS IN A WAY THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY THE INDIVIDUAL WITH DISABILITIES SO THAT THE INDIVIDUAL IS ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME INTERACTIONS, AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES, WITH SUBSTANTIALLY EQUIVALENT EASE OF USE; AND

(II) BE CONSISTENT WITH THE STANDARDS OF § 508 OF THE FEDERAL REHABILITATION ACT OF 1973.”;

and in line 12, after “CARRIER” insert “, MANAGED CARE ORGANIZATION,”.

On pages 10 through 13, strike in their entirety the lines beginning with line 20 on page 10 through line 5 on page 13, inclusive.

AMENDMENT NO. 7

On page 13, in line 20, strike “AT THE TIME OF” and substitute “IN”; in line 21, after “ENROLLMENT” insert “MATERIALS DISTRIBUTED AFTER INITIAL PURCHASE AND UPON RENEWAL”; in line 25, after “WEBSITE,” insert “AFTER THE TAB ON THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE WEBSITE REQUIRED UNDER § 19-145(B)(IV) OF THIS ARTICLE IS DEVELOPED,”; in the same line, after

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“PROVIDE” insert “A LINK TO THE WEBPAGE THAT IS ACCESSED THROUGH THE TAB.”; and strike beginning with “TO” in line 25 down through “AND” in line 28.

On page 14, strike in their entirety lines 1 through 5, inclusive, and substitute:

“(D) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A CARRIER TO:

(1) ASSIST A MEMBER OR ENROLLEE IN DRAFTING AN ELECTRONIC ADVANCE CARE PLANNING DOCUMENT;

(2) STORE ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS;
OR

(3) ACCESS ADVANCE CARE PLANNING DOCUMENTS.”;

in line 22, strike “June 1, 2022” and substitute “January 1, 2023”; in line 23, after “That” insert “Section 1 of”; in lines 23 and 24, strike “June 1, 2022” and substitute “January 1, 2023”; and after line 24, insert:

“SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect June 1, 2022.”.