

SENATE BILL 824

J1, J5, O2

2lr2121
CF 2lr2118

By: Senator Kramer

Introduced and read first time: February 7, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health – Accessibility of Electronic Advance Care Planning Documents**

3 FOR the purpose of requiring the Maryland Health Care Commission to coordinate the
4 accessibility of electronic advance care planning documents in the State; requiring
5 health care facilities, nursing homes, assisted living facilities, managed care
6 organizations, and carriers to take certain actions related to electronic advance care
7 planning documents; altering the required content for an information sheet on
8 advance directives developed by the Maryland Department of Health; requiring the
9 Motor Vehicle Administration to submit a report regarding the implementation of
10 certain provisions of law related to advance directives; and generally relating to
11 advance care planning documents.

12 BY repealing and reenacting, with amendments,

13 Article – Health – General

14 Section 5–615, 15–103(b)(9)(xv) and (xvi), 19–144, and 19–1805(b)

15 Annotated Code of Maryland

16 (2019 Replacement Volume and 2021 Supplement)

17 BY adding to

18 Article – Health – General

19 Section 15–103(b)(9)(xvii) and (xviii), 19–145, and 19–1401.4

20 Annotated Code of Maryland

21 (2019 Replacement Volume and 2021 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – Insurance

24 Section 15–122.1

25 Annotated Code of Maryland

26 (2017 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Health – General**

4 5–615.

5 (a) (1) In this section[, “health] THE FOLLOWING WORDS HAVE THE
6 MEANINGS INDICATED.

7 (2) “ADVANCE CARE PLANNING DOCUMENT” HAS THE MEANING
8 STATED IN § 19–145 OF THIS ARTICLE.

9 (3) “ELECTRONIC ADVANCE CARE PLANNING DOCUMENT” HAS THE
10 MEANING STATED IN § 19–145 OF THIS ARTICLE.

11 (4) “HEALTH care facility” has the meaning stated in § 19–114 of this
12 article.

13 (b) (1) Each health care facility shall provide each individual on admittance to
14 the facility information concerning the rights of the individual to make decisions concerning
15 health care, including the right to accept or refuse treatment, and the right to make an
16 advance directive, including a living will.

17 (2) **ON ADMITTANCE OF AN INDIVIDUAL TO A HEALTH CARE FACILITY,**
18 **EACH HEALTH CARE FACILITY SHALL:**

19 (I) USE THE STATE-DESIGNATED HEALTH INFORMATION
20 EXCHANGE TO IDENTIFY IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE
21 PLANNING DOCUMENTS;

22 (II) IF THE INDIVIDUAL HAS ANY ELECTRONIC ADVANCE
23 PLANNING DOCUMENTS, ATTEMPT TO VERIFY THE CONTENTS AND UPDATE THE
24 DOCUMENTS AS NECESSARY; AND

25 (III) IF THE INDIVIDUAL DOES NOT HAVE ANY ELECTRONIC
26 ADVANCE CARE PLANNING DOCUMENTS:

27 1. OFFER THE INDIVIDUAL THE OPPORTUNITY TO SCAN
28 ANY PAPER ADVANCE CARE PLANNING DOCUMENTS THE INDIVIDUAL BROUGHT TO
29 THE HEALTH CARE FACILITY AND MAKE THEM ACCESSIBLE TO THE
30 STATE-DESIGNATED HEALTH INFORMATION EXCHANGE; OR

6 (I) THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND STORE
7 AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND

12 (c) (1) The Department, in consultation with the Office of the Attorney
13 General, shall develop an information sheet that provides information relating to advance
14 directives, which shall include:

15 (i) Written statements informing an individual that an advance
16 directive:

22 [2.] 3. Allows an individual to specify the medical care that the
23 individual [will] MAY receive and can alleviate conflict among family members and health
24 care providers;

[3.] 4. Can HELP ensure that an individual's religious beliefs are considered [when directing] IF medical care **IS PROVIDED**;

27 [4.] 5. [Is most effective if completed in consultation] CAN BE
28 MORE EFFECTIVE IF DISCUSSED with family members, or legal and religious advisors, if
29 an individual desires;

30 [5. Can be revoked or changed at any time;]

1 7. Does not have to be on any specific form and can be
2 personalized; [and]

3 8. If completed, should be copied for an individual's family
4 members, physicians, and legal advisors **AND, AT THE DISCRETION OF THE INDIVIDUAL,**
5 **MADE ACCESSIBLE TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE;**
6 and

7 **9. IS MOST EFFECTIVE IF IT IS MADE ACCESSIBLE TO**
8 **THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE; AND**

9 (ii) The following written statements:

10 1. **THAT AN INDIVIDUAL IS NOT REQUIRED TO**
11 **COMPLETE AN ADVANCE DIRECTIVE;**

12 2. That an individual should discuss the appointment of a
13 health care agent with the potential appointee;

14 [2.] 3. That advance directives are for individuals of all ages;
15 **AND**

16 [3.] 4. That in the absence of an appointed health care agent, the
17 next of kin make an individual's health care decisions when the individual is incapable of
18 making **OR COMMUNICATING** those decisions[; and

19 4. That an individual is not required to complete an advance
20 directive].

21 (2) The information sheet developed by the Department under this
22 subsection shall be provided by:

23 (i) The Department, in accordance with § 15-109.1 of this article;

24 (ii) The Motor Vehicle Administration, in accordance with §
25 12-303.1 of the Transportation Article;

26 (iii) A carrier, in accordance with § 15-122.1 of the Insurance Article;
27 [and]

28 (iv) The Maryland Health Benefit Exchange, in accordance with §
29 31-108(g) of the Insurance Article;

30 (v) **A LICENSED PHYSICIAN TO A PATIENT AT AN APPROPRIATE**
31 **TIME DURING A SCHEDULED APPOINTMENT;**

3 (vii) A HEALTH CARE FACILITY IN ACCORDANCE WITH
4 SUBSECTION (B) OF THIS SECTION;

5 (VIII) A NURSING HOME IN ACCORDANCE WITH § 19-1401.4 OF
6 THIS ARTICLE;

9 (x) THE STATE-DESIGNATED HEALTH INFORMATION
10 EXCHANGE IN ACCORDANCE WITH § 19-145(B)(2)(IV) OF THIS ARTICLE.

18 (4) The information sheet developed by the Department under this
19 subsection at a minimum shall:

20 (i) Educate the public on the use of electronic advance directives;

21 (ii) Encourage the use of electronic advance directives;

22 (iii) Provide information about developing an electronic advance
23 directive;

24 (iv) Describe how electronic advance directives are made available at
25 the point of care;

26 (v) Indicate that the use of an electronic advance directive is not
27 required; [and]

(vi) Indicate that individuals do not have to pay to have their electronic advance directives honored; **AND**

1 (VII) EMPHASIZE THE IMPORTANCE OF MAKING AN ELECTRONIC
2 ADVANCE DIRECTIVE ACCESSIBLE THROUGH THE STATE-DESIGNATED HEALTH
3 INFORMATION EXCHANGE.

4 15-103.

5 (b) (9) Each managed care organization shall:

(xv) Upon provision of information specified by the Department under paragraph (19) of this subsection, pay school-based clinics for services provided to the managed care organization's enrollees; [and]

9 (xvi) In coordination with participating dentists, enrollees, and
10 families of enrollees, develop a process to arrange to provide dental therapeutic treatment
11 to individuals under 21 years of age that requires:

22 (XVII) PROVIDE THE ADVANCE DIRECTIVE INFORMATION
23 SHEET DEVELOPED UNDER § 5-615 OF THIS ARTICLE:

24 1. TO ALL ENROLLEES AT THE TIME OF INITIAL
25 ENROLLMENT AND IN THE MANAGED CARE ORGANIZATION'S ENROLLEE
26 PUBLICATIONS:

30 (XVIII) IF A MANAGED CARE ORGANIZATION MAINTAINS A
31 WEBSITE, PROVIDE ACCESS ON ITS WEBSITE TO ITS ENROLLEES TO:

1 **1. THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND**
2 **STORE AN ADVANCE DIRECTIVE OR HEALTH CARE AGENT DESIGNATION; AND**

3 **2. THE CAPABILITY TO UPLOAD AN ADVANCE CARE**
4 **PLANNING DOCUMENT AS DEFINED IN § 19–145 OF THIS ARTICLE, AND MAKE IT**
5 **ACCESSIBLE TO THE STATE–DESIGNATED HEALTH INFORMATION EXCHANGE OR**
6 **UPDATE AN EXISTING ELECTRONIC ADVANCE CARE PLANNING DOCUMENT, AS**
7 **DEFINED IN § 19–145 OF THIS ARTICLE.**

8 **19–144.**

9 (a) To facilitate the use of Web–based technology for electronic advance
10 directives, the Maryland Health Care Commission shall develop criteria for recognizing
11 electronic advance directives services that are authorized to connect to the
12 State–designated health information exchange.

13 (b) To be authorized to connect to the State–designated health information
14 exchange, an electronic advance directives service shall:

15 (1) Be recognized by the Maryland Health Care Commission;

16 (2) [Be established in accordance with the National Institute of Standards
17 and Technology Special Publication 800–63–2: Electronic Authentication Guideline;

18 (3)] Be responsible for all costs associated with connecting to the
19 State–designated health information exchange; and

20 [(4)] (3) Store electronic advance directives that are received by facsimile
21 or other electronic means.

22 (c) The State–designated health information exchange may charge electronic
23 advance directives services recognized by the Maryland Health Care Commission a fee for
24 connecting to the State–designated health information exchange.

25 (d) The State–designated health information exchange shall ensure that
26 electronic advance directives services do not have access to information stored on the
27 State–designated health information exchange.

28 **19–145.**

29 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
30 INDICATED.

(2) (I) "ADVANCE CARE PLANNING DOCUMENT" MEANS A DOCUMENT THAT INDICATES AN INDIVIDUAL'S PREFERENCES FOR THE RECEIPT OF HEALTH CARE.

4 (II) "ADVANCE CARE PLANNING DOCUMENT" INCLUDES:

5 1. AN ADVANCE DIRECTIVE;

0 (3) "CARRIER" MEANS:

11 (I) AN INSURER;

12 (II) A NONPROFIT HEALTH SERVICE PLAN;

.3 (III) A HEALTH MAINTENANCE ORGANIZATION; AND

4 (IV) A MANAGED CARE ORGANIZATION.

5 (4) "ELECTRONIC ADVANCE CARE PLANNING DOCUMENT" MEANS AN
6 ELECTRONIC VERSION OF AN ADVANCE CARE PLANNING DOCUMENT THAT IS
7 ACCESSIBLE TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE AND
8 APPROPRIATE HEALTH CARE PROVIDERS.

9 (5) "HEALTH CARE PROVIDER" MEANS:

(II) A SET OF HEALTH CARE PRACTITIONERS, AS DEFINED IN § 15-113 OF THIS ARTICLE;

27 (IV) A NURSING FACILITY, AS DEFINED IN § 19-301 OF THIS
28 TITLE; OR

1 (v) AN ASSISTED LIVING PROGRAM, AS DEFINED IN § 19-1801
2 OF THIS TITLE.

3 **(B) (1) THE COMMISSION SHALL COORDINATE THE ACCESSIBILITY OF**
4 **ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS IN THE STATE.**

7 (I) IDENTIFYING A PROCESS THROUGH WHICH:

3. HEALTH CARE PROVIDERS CAN ACCESS ELECTRONIC
ADVANCE CARE PLANNING DOCUMENTS AS APPROPRIATE;

28 (III) DEVELOPMENT AND IMPLEMENTATION OF QUALITY
29 MEASURES ENDORSED OR DESIGNATED FOR TESTING BY A NATIONAL QUALITY
30 MEASUREMENT ORGANIZATION TO MEASURE THE EFFECTIVENESS OF THE OPTIONS
31 IDENTIFIED UNDER ITEM (II) OF THIS PARAGRAPH; AND

11 (C) AS AN OPTION UNDER SUBSECTION (B)(2)(II) OF THIS SECTION, A
12 CARRIER OR HEALTH CARE PROVIDER MAY CONTRACT WITH AN ELECTRONIC
13 ADVANCE DIRECTIVE SERVICE IF THE SERVICE:

18 (D) THE COMMISSION MAY ADOPT REGULATIONS TO CARRY OUT THIS
19 SECTION.

20 19-1401.4.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

27 (B) (1) ON ADMITTANCE OF AN INDIVIDUAL TO A NURSING HOME, THE
28 NURSING HOME SHALL:

17 (I) ACCESS TO THE ELECTRONIC MEANS TO CREATE, EXECUTE,
18 AND STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND

23 19-1805.

24 (b) (1) The Department, in consultation with representatives of the affected
25 industry and advocates for residents of the facilities and with the approval of the
26 Department of Aging and the Department of Human Services, shall adopt regulations to
27 implement this subtitle.

28 (2) The regulations adopted under paragraph (1) of this subsection shall:

29 (i) Provide for the licensing of assisted living programs;

30 (ii) Require the Department, during a survey or other inspection of
31 an assisted living program, to review the number of waivers granted to the program under
32 subsection (a)(3) of this section and determine whether a change in the program's licensure
33 status is warranted; [and]

6 B. Any subsequent complaint investigations conducted by
7 federal, State, or local surveyors; and

8 C. Any plans of correction in effect with respect to the survey
9 or complaint investigation; or

12 (IV) ON ADMITTANCE OF AN INDIVIDUAL TO AN ASSISTED LIVING
13 FACILITY, REQUIRE THE ASSISTED LIVING FACILITY TO:

28 (v) IF AN ASSISTED LIVING FACILITY MAINTAINS A WEBSITE,
29 REQUIRE THE ASSISTED LIVING FACILITY TO PROVIDE TO ITS RESIDENTS:

Article – Insurance

7 15-122.1.

(a) (1) In this section the following words have the meanings indicated.

11 (3) (i) "Carrier" means:

1. an insurer;

2. a nonprofit health service plan;

3. a health maintenance organization; and

4. any other person that provides health benefit plans to the State.

(ii) "Carrier" does not include a managed care organization.

18 (b) A carrier shall provide the advance directive information sheet developed
19 under § 5-615 of the Health – General Article:

20 (1) TO ALL MEMBERS OR ENROLLEES AT THE TIME OF INITIAL
21 ENROLLMENT AND in the carrier's member publications;

22 (2) if the carrier maintains a [Web site on the Internet] WEBSITE, on the
23 carrier's [Web site] WEBSITE; and

24 (3) at the request of a member.

25 (C) IF A CARRIER MAINTAINS A WEBSITE, THE CARRIER SHALL PROVIDE TO
26 ALL ITS MEMBERS OR ENROLLEES TO:

27 (1) ACCESS TO THE ELECTRONIC MEANS TO CREATE, EXECUTE, AND
28 STORE AN ADVANCE DIRECTIVE OR A HEALTH CARE AGENT DESIGNATION; AND

6 SECTION 2. AND BE IT FURTHER ENACTED, That:

12 (b) The report required under this section shall include:

13 (1) a timeline for implementation of the requirements of § 12–303.1 of the
14 Transportation Article;

15 (2) identification of any obstacles to implementation of the requirements;
16 and

20 SECTION 3. AND BE IT FURTHER ENACTED, That § 15–122.1 of the Insurance
21 Article, as enacted by Section 1 of this Act, shall apply to all policies, contracts, and health
22 benefit plans issued, delivered, or renewed in the State on or after June 1, 2022.

23 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June
24 1, 2022.