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Testimony
for the House Health & Government Operations Committee
In **OPPOSITION** to

Senate Bill 837 – Health – Advance Care Planning and Advance Directives

April 1, 2021

The League of Life and Health Insurers of Maryland, Inc. respectfully **opposes** Senate Bill 837 - Health - Advance Care Planning and Advance Directives and urges the committee to give the bill an unfavorable report.

Senate Bill 837 requires insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) to offer electronic advance directives to its members or enrollees during open enrollment and periodically thereafter as well as make arrangements to receive status notifications as to whether members or enrollees of the carrier have completed or updated an advance directive.

We agree that everyone should have the right to make decisions about their own health care that is respectful to their personal and religious beliefs and that the use of advance directives can be a useful protection in case of situations in which a person is unable to make these decisions on their own. Currently carriers direct members to existing programs administered by the Office of the Attorney General and the Maryland Department of Health to find information about advanced directives. This option allows Marylanders to choose from the full set of options available to them.

Under this bill, these options would be severely limited, which we do not feel is the right approach to encouraging the use of advance directives. Not providing the full range of options to Marylanders would limit their ability to make an informed choice on these critical decisions. If a Marylander were to visit the National Institute of Health (NIH) or Center for Disease Control (CDC) websites, consumers would see a variety of approaches to how you might make arrangements on their advance care planning. Senate Bill 837 would steer consumers to one particular avenue in which they might not feel comfortable. We believe that the menu of options letting Marylanders choose their respective paths, electronic or not is the best way forward.

We are committed to continuing to work with the Maryland Health Care Commission (MHCC) to promote the use of advance directives, such as through the embedding of advance directive features in

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electronic health record systems, where a majority of consumers favor storing their advance directives. We also believe that the most appropriate discussions about the development of an advance care planning belongs with the trusted and established relationship with a provider, not in an impersonal form field of a website as the only approach. We also don't wish to see limits set on the ways that Marylanders approach these critical health decisions. We are willing and able to be an active part of a workgroup on this important discussion to explore ways that we can help Marylanders be informed about their options. We have included amendments to this letter as a suggested way forward to help carriers provide full lists of the electronic advanced directive services recommended by MHCC.

For these reasons, the League urges the committee to give Senate Bill 837 as introduced an **unfavorable** report.

Very truly yours,



Matthew Celentano
Executive Director

**LEAGUE OF LIFE & HEALTH INSURERS OF MARYLAND SUGGESTED AMENDMENTS TO
SENATE BILL 837:**

AMENDMENT NO. 1

On page 1, in line 6 after “requiring” insert “**the Maryland Department of Health to provide in an advance directive information sheet a list or a link to a list of electronic advance directive services recognized by the Maryland Health Care Commission;**”; and in line 6 strike beginning with “each” down through “circumstances;” in line 10, inclusive.

Rationale: This amendment makes changes to the purpose paragraph to align with the substantive amendments proposed.

AMENDMENT NO.2

On page 1, in line 21 strike “Section” and substitute “Sections 5-615(c) and”; and strike beginning with “BY” in line 24 down through “) ” in line 28, inclusive.

Rationale: This amendment makes changes to the function paragraph to align with the substantive amendments proposed.

AMENDMENT NO. 3

On page 2, after line 3 insert:

“**5-615**”

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

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

1. Is a useful, legal, and well established way for an individual to direct medical care;

2. Allows an individual to specify the medical care that the individual will receive and can alleviate conflict among family members and health care providers;

3. Can ensure that an individual's religious beliefs are considered when directing medical care;

4. Is most effective if completed in consultation with family members, or legal and religious advisors, if an individual desires;

5. Can be revoked or changed at any time;

6. Is available in many forms, including model forms developed by religious organizations, estate planners, and lawyers;

7. Does not have to be on any specific form and can be personalized; and

8. If completed, should be copied for an individual's family members, physicians, and legal advisors; and

(ii) The following written statements:

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

2. That advance directives are for individuals of all ages;

3. That in the absence of an appointed health care agent, the next of kin make an individual's health care decisions when the individual is incapable of making those decisions; and

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

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

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

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

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

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

(3) The information sheet developed by the Department under this subsection may not contain or promote a specific advance directive form or an electronic advance directive technology or service.

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

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

(ii) Encourage the use of electronic advance directives;

(iii) Provide information about developing an electronic advance directive, INCLUDING A LINK TO A LIST OF ELECTRONIC ADVANCE DIRECTIVE SERVICES RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION UNDER § 19-144 OF THIS ARTICLE;

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

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

(vi) Indicate that individuals do not have to pay to have their electronic advance directives honored.”

Rationale: This amendment adds to the existing information sheet developed by the Maryland Department of Health and the Attorney General instructions the requirement to provide a link to a list of electronic advance directive services that the MHCC has approved. The effect of this amendment is that health insurance carriers will be required to provide this information to their members under the current requirements in § 15-122.1 of the Insurance Article.

AMENDMENT NO. 4

On page 3 through 4, strike in their entirety the lines beginning with line 5 on page 3 through line 6 on page 4, inclusive.

On page 6, strike beginning with “SECTION” in line 9 down through “2021.” in line 11; and in line 12, strike “SECTION 5” and substitute “SECTION 4”.

Rationale: The amendment removes the proposed additions to the Insurance Article