



2022 SESSION
POSITION PAPER

BILL NO: SB 824

COMMITTEE: Senate Finance Committee

POSITION: Support

TITLE: SB 824 – Health – Accessibility of Electronic Advance Care Planning Documents

BILL ANALYSIS

Senate Bill 824 (“SB 824”) requires the Maryland Health Care Commission (“MHCC”) to coordinate the accessibility of electronic advance care planning documents in the State. SB 824 necessitates health care facilities, nursing homes, assisted living facilities, and managed care organizations promote adoption and use of electronic advance care planning documents. Managed care organizations and carriers must offer members and enrollees access to the electronic means to create, execute and store an advance directive (AD) or a health care agent designation, and the capacity to upload and advance care planning document. SB 824 alters the required content for an information sheet on ADs developed by the Maryland Department of Health (MDH). In addition, the Motor Vehicle Administration must submit a report regarding the implementation of certain provisions of law related to ADs.

POSITION AND RATIONALE

The Maryland Health Care Commission supports SB 824.

Advance Directives are important tools to help with advance care planning as they include vital information for continuing or withdrawing health care. ADs are utilized across the health care continuum, in settings such as hospital emergency rooms, long-term care facilities, nursing homes, assisted living facilities, and in ambulatory care practices. The COVID-19 public health emergency highlighted the need and value to provide care that aligns with a patient’s values and preferences. SB 824 represents a unique opportunity to implement important activities to better ensure patient wishes are not left unsaid.

The Maryland General Assembly passed legislation in 2016 (2016 Laws of Maryland, Chapter 510)¹ that established a foundation for ADs, made promoting the use of ADs a

¹ The General Assembly passed legislation in 2017 that clarified certain security requirements that third-part advance directive vendors must meet to obtain MHCC recognition (2017 Law of Maryland, Chapter 667).

priority, and clarified that certain electronic ADs have the same credibility as written ADs.² The legislation expanded AD outreach and education activities by MDH. The legislation also required the Maryland Department of Aging and Maryland Health Benefit Exchange (MHBE) to disseminate MDH AD materials. The 2016 legislation included a requirement for MHCC to develop a State Recognition Program for electronic advance directives services. COMAR 10.25.19 *State Recognition of an Electronic Advance Directives Service* defines program procedures for State recognition, which is a prerequisite for connecting to the State-Designated health information exchange, CRISP.³

Many electronic health record (EHR) systems include advance care planning features. EPIC and Cerner, the two largest EHR systems implemented in most hospitals and by a number of health care practitioners, enable consumers to develop or upload their AD via a patient portal. Johns Hopkins Medicine and the University of Maryland Medical System, which have EPIC, have activated the AD system features. Hospitals using Cerner's EHR are in the process of operationalizing AD system feature. Carriers make AD information to enrollees and members in printed form and on their websites. The MHBE reports that about 18 percent of Qualified Health Plan enrollees and 14 percent of active Medicaid beneficiaries have designated an authorized health care agent.^{4, 5}

In a 2020 Joint Chairman's Report, the State Advisory Council on Quality Care at the End of Life estimated that about 1.4 million adults had created an AD.⁶ Efforts to promote the use of electronic ADs, which was a direct outcome of the 2016 law have been modest; about 2,500 residents have created electronic AD. The use of EHR systems to store ADs is more widely embraced by consumers and providers.

During the 2021 interim, MHCC convened an Advance Directive Workgroup at the request of Health and Government Operations Chairman Shane Pendergrass. The MHCC established the Advance Directives Workgroup comprised of over 40 stakeholders representing consumers, providers, nursing homes, hospice and palliative care, carriers, technology vendors, the Maryland Insurance Administration (MIA), Maryland Department of

² Public Health – Advance Directives – Witness Requirements, Advance Directives Services, and Fund. House Bill 188. Available online at: www.mgaleg.maryland.gov/2017RS/bills/hb/hb0188E.pdf.

³ COMAR 10.25.19: State Recognition of an Electronic Advance Directives Service. Available online at: www.mdrules.elaws.us/comar/10.25.19.

⁴ Reports are based on MHBE's queries of their enrollment systems as of December 2021. Health – Advance Care Planning and Advance Directives. Senate Bill 837. Available online at: www.mgaleg.maryland.gov/2021RS/bills/sb/sb0837T.pdf.

⁵ MyDirectives is the only vendor to receive State Recognition for its advance directive services (2018 and 2021).

"Advance Directives." Maryland Attorney General. Available online at: www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx.

⁶ "Report to the Joint Committee Chairs State Policy Recommendations to Increase Electronic Advance Directive Registrations." State Advisory Council on Quality Care at the End of Life. 2020. Available online at: www.marylandattorneygeneral.gov/Health%20Policy%20Documents/SAC/Inc_Elect_Adv_Dir_Reg.pdf.



Transportation, the Maryland Department of Health, Delegate Bonnie Cullison, and Senator Ben Kramer. The Workgroup met from late summer through the early winter. The Workgroup developed four recommendations they believed will move the utilization of advance directives forward. These recommendations are generally incorporated in SB 824. As important as the consensus recommendation, the Workgroup accepted a broad vision that advance care planning was an essential activity for all adults. Achieving that vision would require concerted efforts of all stakeholders. This legislation memorializes that vision by asking caregivers, payors, and EHR developers to take modest steps to normalize the creation of advance care documents that are crucial to patient, loved ones, and caregivers during health care crises.

The MHCC believes that SB 824 will increase adoption and use of ADs. The MHCC is committed to meeting its responsibilities under the legislation by using existing nationally recognized quality measures when appropriate and developing new measures from our own data sources when necessary to track the progress of this important initiative.

For these reasons, the Commission asks for a favorable report on SB 824.

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

