SB824_Position Statement 021022(final)(3-10-2022).

Uploaded by: Ben Steffen

Position: FAV

MARYLAND
Health Care
Commission

Andrew N. Pollak, MD, Chairman
Ben Steffen, Executive Director

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

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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

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[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.

SB 824 - Health - Accessibility of Electronic Adva

Uploaded by: Brian Sims

Position: FAV

Maryland
Hospital Association

March 10, 2022

To: The Honorable Delores G. Kelley, Chair, Senate Finance Committee

Re: Letter of Support - Senate Bill 824 - Health - Accessibility of Electronic Advance Care Planning Documents

Dear Chair Kelley:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 824. Maryland hospitals agree end-of-life care should be improved and become a routine part of patient care. Health systems can ease this process by embedding advance care planning into their internal processes and ensuring this information becomes part of a patient's electronic health record and can be easily accessed.

MHA appreciated the opportunity to participate in the Advance Directives Workgroup. We agree with the report findings that Maryland health care systems play an important role in efforts to identify and record a patient's health care decision-making proxy and advanced directives. Hospitals, however, do not play the only role.

We agree that conversations health care practitioners have with patients to inform them of their options, empowering them to submit this information, are ideally initiated prior to a hospital visit. Further, providers across the health care spectrum must be able to access this information at a moment's notice. Critically, providers must be confident they have the most recent version of a patient's wishes.

SB 824 as introduced places an emphasis on advance care plans over the documentation of a health care agent, which is a deviation from the recommendations of the Advance Directives Workgroup. The work group agreed naming an authorized agent is the appropriate starting point for patients to understand the importance of advance care planning. The work group also recognized the important role CRISP will play connecting providers to this information. We believe it is important to ensure the requirements in the bill reflect CRISP's capabilities or plans for development and are aligned with current and evolving practices.

MHA supports the intent of the legislation and looks forward to working with the bill sponsor and committee to align the bill with the work group recommendations and ensure successful implementation.

For more information, please contact:
Brian Sims, Director, Quality & Health Improvement
Bsims@mhaonline.org

SB824_DanMorhaim_FAV

Uploaded by: Dan Morhaim, M.D.

Position: FAV

TO: Senator Kelley, Chair; Vice-Chair Sen. Feldman, and Finance Committee Members
FROM: Dan Morhaim, M.D.
SUPPORT: SB824 sponsored by Senator Ben Kramer

SB824 addresses the important issue of advance care medical planning.
In 2021, the Senate Finance committee passed SB837, on the same subject, which then passed the full Senate (44-1). In the House, the HGO committee requested further study which led to an intensive process by a broad stakeholder group. That group met numerous times throughout the interim under the auspices of the Maryland Health Care Commission. SB824 is the result of that effort.

I'd like to thank this committee for its action last year and Senator Kramer for his leadership on this important and challenging subject.

This bill closes the gaps on advance care planning in key areas:

- It provides information and encouragement to complete Advance Directives by Maryland citizens via appropriate settings
- It allows adult individuals to easily and readily upload the advance directive of their choice and to make changes at any time in a secure manner
- It makes that information available to clinicians if/when needed - typically in Emergency Departments and Intensive Care units - and it does so via the Maryland Health Care Commission and the CRISP system which is already established, secure, and operating
- It involves all key medical groups in the process: healthcare providers, healthcare institutions, insurance carriers

Advance care planning is an important patient centered, patient determined, no/low-cost method of better managing serious illness and end-of-life care. This is done by completing an advance directive form. Though legal and available in Maryland and the United States since the early 1990's, only about 40% of Maryland adults have completed these forms, and the rate is about ½ that in minority groups.

The main benefit of advance care planning is that clinicians know who speaks for a patient when that person is unable to make medical decisions for themselves. The need for advance care planning has been heightened by the COVID pandemic because families are now often not able to be at the bedside with their loved one.

In my over 40 years as an ER doctor, I've seen the benefit of advance care planning, but also the problems that occur when the proper documents are not available. Without clear direction, conflicts between family members can arise; knowing what the patient would have wanted eases those. As a clinician facing impending serious and often immediate decision-making, I want to know what my patients would want so I can respect and follow their wishes.

End-of-life care is a challenging issue. It is one we cannot avoio and something we all will face for ourselves and our loved ones. Our collective tendency is to avoid talking about or thinking about this, and that's understandable. But the realities of 21st century medicine now allow us to be involved in that final stage of life, and that's empowering and valuable. We can shift to a holistic, family-centered, and peaceful closure in our final passage by completing free, readily available, legal documents. SB824 supports that valuable action step.

Please again support SB 824.

Dan Morhaim, M.D.
Maryland State Delegate 1995-2019
danmorhaim@gmail.com

SB0824 Testimony Clayborne Favorable .pdf

Uploaded by: Elizabeth Clayborne

Position: FAV

Testimony SB0824: Health Advance Care Planning and Advance Directives

Senate Finance Committee
Senator Kramer

Dear Senate Finance Committee,

As an emergency physician who has been on the front lines since the beginning of the COVID-19 pandemic, I am acutely aware of the challenges that have confronted families and healthcare workers around the nation. As a Black woman and physician with a background in bioethics, I have long been passionate about advance care planning (ACP) and this pandemic has highlighted its supreme importance. I work at University of Maryland Capital Region Medical Center, which serves a patient base that is largely African American, a community that is even less likely than the general population to have ACP. Too often, patients arrive at the ED in respiratory distress or acutely ill and cannot speak for themselves. My colleagues and I have to scramble to piece together information about their medical history and who to speak to about interventions that they might need. It is even more difficult to ask a family member to make a decision about placing a breathing tube or resuscitating a loved one when they haven't had any conversations with them about their wishes. It is essential that everyone thinks carefully about what matters most to them in life and how this would be affected if they became deathly ill or injured.

I am passionate about this issue and recently did a TEDx talk that best summarizes why now more than ever is a time that everyone needs an advance care plan. This COVID-19 pandemic has highlighted that the time for us to prepare for worst case scenarios is long overdue. I offer a unique lens as a physician who has been thinking about these issues for years and has been working in the trenches for months, calling the time of death for many who have succumbed to COIVD-19 and other ailments. I've also had the experience of giving birth during this tumultuous and unpredictable time. I worked on the front lines pregnant through the first wave and my daughter was born in May 2020. I understand why people are scared and why this is a tough topic to address at any time. That said, the issue of advance care planning has been overlooked for too long. I strongly support SB0824 which will help to provide tools for Marylanders to have an electronic advance directive. This is integral to them having a voice in their care and physicians like me giving the best care possible.

Please consider watching the TEDx talk and supporting this bill.

Sincerely,

Dr. Clayborne

Elizabeth Clayborne, MD, MA Bioethics
Emergency Physician
Adjunct Assistant Professor
University of Maryland School of Medicine
919-672-3730 (c)
elizabeth.p.clayborne@gmail.com

SB0824 Electronic Advance Care Planning.pdf
Uploaded by: Emily Allen
Position: FAV

mhamd
MENTAL HEALTH ASSOCIATION OF MARYLAND

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Senate Bill 824 Health – Accessibility of Electronic Advance Care Planning Documents

Finance Committee
March 10, 2022
Position: SUPPORT

The Mental Health Association of Maryland is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health, mental illness and substance use. We appreciate this opportunity to present testimony in support of Senate Bill 824.

SB 824 requires the Maryland Health Care Commission (MHCC) to coordinate accessibility of electronic advance care documents through the State's designated health information exchange. It will also increase access to and awareness of advance directives in health care facilities, nursing homes, and assisted living facilities.

This bill provides a wonderful opportunity to expand access to all kinds of advance care planning documents, including mental health advance directives (MHAD). An MHAD, also known as a psychiatric advance directives (PAD), is a legal document that allows a person with a mental illness to state their wishes and preferences in advance of a mental health crisis. These documents provide for more patient-centered care and can help resolve crises more quickly, appropriately, and without coercion.[1] MHADs allow individuals to clarify treatment preferences and crisis planning and often include family members and social support networks.

The Mental Health Association of Maryland offers a number of resources and tools on its website to assist individuals in learning about and effectuating an MHAD. This includes FAQs, instructions, and a downloadable MHAD template that was developed in consultation with the Maryland Department of Health, providers, consumers, and advocacy groups.

SB 824 provides a wonderful opportunity to increase patient-centered care coordination for Marylanders. But in doing so, we must be sure to address all health care needs, including mental health. Accordingly, MHAMD urges the passage of SB 824, and, in carrying out its duties under the bill, we encourage MHCC to include MHADs in the implementation.

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[1] https://www.mhamd.org/information-and-help/adults/advance-directives/#:~:text=A%20Mental%20Health%20Advance%20Directive,of%20a%20mental%20health%20crisis.&text=MHAD's%20support%20person%2Dcentered%20care,assist%20in%20times%20of%20crises.

For more information, please contact Emily Allen at (443) 901-1588

SB 824_HorizonFoundation_fav.pdf

Uploaded by: Kerry Darragh
Position: FAV

HORIZON FOUNDATION

March 10, 2022

COMMITTEE: Senate Finance Committee
BILL: SB 824 – Health – Accessibility of Electronic Advance Care Planning Documents
POSITION: Support

The Horizon Foundation is Howard County's community health foundation and the largest independent health philanthropy in the state of Maryland. We lead community change so everyone in Howard County can live a longer, better life.

The Foundation supports SB 824 as an important step in making it easier and more efficient to express and honor wishes for health care at the end of life.

Advance care planning has been found to improve the care experience and significantly reduce healthcare costs. When an advance directive does not exist, patients are more likely to receive unwanted treatments. It also increases the burden on health care providers as well as families and loved ones called on to make decisions for patients when they are unable to speak for themselves.

For the past six years, Horizon Foundation has worked with partners, including our local hospital, county government, physician groups, hospice providers, skilled nursing facilities and faith communities on our Speak(easy) Howard advance care planning campaign. The campaign has successfully created public awareness and captured health care agents of Howard County residents.

Most Maryland residents, however, have still have not completed an advance directive or named a health care agent - on average, only 30% have taken action. And there remain several policy barriers that were addressed in the State Advisory Council on Quality Care at the End of Life's December 2020 report. These barriers have led to the low rate of advance directive completion across Maryland.

We encourage you to pass SB 824. Through this legislation, Maryland has the opportunity to normalize advance care planning as a routine part of every person's health care. This legislation will also enable the effective completion and storage of advance care planning documents, improving the quality of care provided and ensuring that care aligns with a patient's treatment wishes.

Thank you for consideration of this testimony in **support of SB 824**.

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Uploaded by: Maryland State of
Position: FAV

MARYLAND
Health Care Commission

Andrew N. Pollak, MD, Chairman
Ben Steffen, Executive Director

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 an 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

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[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.
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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.

Council Letter of Support for SB 824 (1).pdf

Uploaded by: Paul Ballard

Position: FAV

LARRY J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

ALAN D. EASON
CHAIRPERSON

STATE OF MARYLAND
ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE

March 9, 2022

Delores E. Kelley, Chair
Senate Finance Committee
3 East Wing
Miller Senate Office Bldg.
11 Bladen St.
Annapolis, MD 21401

RE: Senate Bill 824-Health - Accessibility of Electronic Advance Care Planning Documents – Support

Dear Chair Kelley,

The State Advisory Council on Quality Care at the End of Life supports Senate Bill 824, which would encourage more people to prepare advance care planning documents and would make those documents more readily accessible to health care providers.

In December 2020, the Council issued a report at the request of the General Assembly, in which the Council recommended ways to increase the use of advance care planning documents and to make them more readily accessible to health care providers. In the 2021 legislative session, Senator Ben Kramer introduced Senate Bill 837, which passed in the Senate, and which had been supported by the Council. The House Health and Government Operations Committee then requested that the Maryland Health Care Commission convene a workgroup to study the issue and make recommendations. This workgroup met, issued the requested report, and Senator Kramer consequently introduced SB 824 and Delegate Bonnie Cullison introduced the cross-filed HB 1073.

The Council continues to support legislation to increase the use of advance care planning documents and to make them more readily accessible to health care providers in a timely manner. The Council believes that SB 824 would significantly help Maryland to accomplish these goals and thereby ensure that many more Marylanders' treatment wishes are honored.

Sincerely,

Alan Eason

Alan Eason
Chair

ALL CORRESPONDENCE AND INQUIRIES TO:
Paul J. Ballard, Counsel, Health Decisions Policy
300 West Preston Street ♦ Baltimore, Maryland 21201
Telephone: 410-767-6918 ♦ TTY For Disabled (Maryland Relay Service) 800-735-2258 ♦ 877-4MD-DHMH

cc: The Honorable Ben Kramer
The Honorable Bonnie Cullison
Members of the House Health and Government Operations Committee

SB0824_FAV_MedChi_Health - Accessibility of Electr

Uploaded by: Steve Wise

Position: FAV

MedChi

The Maryland State Medical Society

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TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Benjamin F. Kramer

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Christine K. Krone

DATE: March 10, 2022

RE: **SUPPORT** – Senate Bill 824 – *Health – Accessibility of Electronic Advance Care Planning Documents*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** Senate Bill 824.

Senate Bill 824 requires the adoption of a number of measures designed to increase public awareness of the importance of advance care planning and facilitate access to advance care planning documents, such as advanced directives. The legislation charges the Maryland Health Care Commission with coordinating the implementation of advance care planning programs. The Commission can specify actions to be taken by health care systems and health care providers to encourage individuals to execute advance directives, including through an electronic service recognized by the Commission. Senate Bill 824 also requires carriers to make electronic advance directives available to enrollees during open enrollment and to periodically inquire whether enrollees have executed or updated their advance directive.

MedChi strongly supports efforts to advance the public's appreciation of the importance of advance care planning and, specifically, the execution of an advanced directive. Individuals and their families too often find themselves in unexpected circumstances where they wish they had considered health care decision-making preferences and responsibilities sooner. Instead, they discover that the necessary legal framework that enables health care providers to honor the patient's desires has not been put in place. Passage of Senate Bill 824 will enhance the likelihood that individuals will execute the necessary legal documents required by health care providers and health care systems prior to a need for their use. A favorable report is requested.

For more information call:
J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Christine K. Krone
410-244-7000

SB 0824 Health - Accessibility of Electronic Advan

Uploaded by: Ted Meyerson

Position: FAV

AARP Maryland

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SB 0824 Health – Accessibility of Electronic Advance Care Planning Documents
FAVORABLE
Senate Finance Committee
March 10, 2022

Chair Kelley and Members of the Senate Finance Committee: I am Ted Meyerson, a volunteer for AARP MD. AARP MD and its members supports **SB 0824 Health – Accessibility of Electronic Advance Care Planning Documents.** We thank Senator Kramer for introducing this legislation.

The utility of Advance Directives is clear. When a patient is unable to speak for her/his self, Advance Directives save families from divisive arguments about the right thing to do, they give clear guidance to health care professionals as to what treatments the patient would want or not want, and most of all they allow the patient to maintain some control over their health care. They are not designed to manage one's death but to manage how one chooses to live.

With that realization in mind, the Maryland General Assembly incorporated a version of an Advance Directive in the Maryland Health Care Decisions Act. Yet, in spite of efforts to gain favor, it appears that people do not want to talk about advance car planning. As a result, Advance Directives have been implemented by less than 30% of eligible adults. Deduct older adults in long-term care facilities and the percentage is even worse.

To counter that hesitancy and to address Advance Care Planning, conversations about and the implementing of Advance Directives must be made normative. We believe the way to do that is to have the institutions that engage people about healthcare talk to them about Advance Directives. If everybody talks about Advance Directives, talking about Advance Care Planning will become just another topic of conversation, not something to be avoided.

SB 0824 is a win-win proposition. Insurers will know what patients want, families won't fight over treatments, loved ones won't be left with feeling of doubt or guilt, providers will have clear guidance, and most of all the patient will be treated as she/he wants to be treated.

AARP MD supports SB 0824 and respectfully requests the Senate Finance Committee issue a favorable report. For questions, please contact Tammy Bresnahan at tbresnahan@aarp.org or by calling 410-302-845

SB0824_FWA_LifeSpan, MNCHA_Accessibility Elec. Adv

Uploaded by: Danna Kauffman

Position: FWA

TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Benjamin F. Kramer

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: March 10, 2022

RE: **SUPPORT WITH AMENDMENT** – Senate Bill 824 – *Health – Accessibility of Electronic Advance Care Planning Documents*

The LifeSpan Network and the Maryland-National Capital Homecare Association **support with amendment** Senate Bill 824. Senate Bill 824 makes changes to the information sheet developed by the Maryland Department of Health, in consultation with the Attorney General's Office. It also requires health care facilities to use a State-designated health information exchange to identify if the individual has any electronic advance planning documents and, if the individual does not, offer the individual the opportunity to scan the paper documents into the State-designated health information exchange.

LifeSpan and MNCHA support the intent of Senate Bill 824 as it relates to the information sheet being updated and the need to have additional touch points to receive advance care planning documents. However, we do share a concern regarding the mandate to use the State designated health information exchange to identify individuals and to scan paper documents. The bill refers to "health care facilities", which includes related institutions and home health agencies. Related institutions are defined to include assisted living programs and nursing homes. There is another section of the bill (pages 10-13), which restates this requirement for assisted living programs and nursing homes.

Overall, assisted living programs and home health agencies are not predominately connected to CRISP, our State's designated health information exchange. To comply, programs would need to contract with an electronic health network and then connect to CRISP. While the State should work towards this goal, to mandate this requirement now would be both costly and time-consuming for programs. On the other hand, nursing homes are connecting to CRISP and do collect this information now upon admittance. However, at this time, we cannot support an additional mandate on staff. Nursing homes are experiencing unprecedented staffing shortages. We simply cannot divert staff from patient care during this time. Rather, we request that pages 10-13 as it relates to nursing homes and assisted living programs be removed from the bill and a corresponding provision be placed to exempt "related institutions" and home health care from the mandate of subsection (b) of the bill. With these changes, we urge a favorable vote.

For more information call:
Danna L. Kauffman
Pamela Metz Kasemeyer
410-244-7000

SB 824 MMCOA FWA 03 10 2022.pdf

Uploaded by: Jennifer Briemann

Position: FWA

MMCOA
MARYLAND MCO ASSOCIATION

Senate Bill 824- Health – Accessibility of Electronic Advance Care Planning Documents

FAVORABLE WITH AMENDMENTS

Senate Finance Committee

March 10, 2022

Thank you for the opportunity to testimony regarding Senate Bill 824- Health – Accessibility of Electronic Advance Care Planning Documents.

The Maryland Managed Care Organization Association's (MMCOA) nine member Medicaid Managed Care Organizations (MCOs) that serve over 1.5 million Marylanders through the Medicaid HealthChoice program are committed to identifying ways to improve quality and access to care for all Medicaid participants.

The MCOs serving Maryland's HealthChoice program recognize the importance of informed end-of-life planning, and therefore provide each of our members, as part of the Member Handbook issued in hardcopy and electronically, the materials approved by the Office of the Attorney General that allows for Advance Directive forms to be completed. These materials are provided today as part of our testimony in order to illustrate exactly what is provided to HealthChoice members by their MCO.

We also recognize and support the work done by the Maryland Health Care Commission and numerous stakeholders during the 2021 Interim to address the ongoing challenges and issues encountered by health care providers in various settings to ensure that they are delivering care that is in sync with an individual's health care preferences. We respectfully ask that the amendments discussed and supported by the House Bill sponsor regarding the electronic keeping of advanced care directives be incorporated into the bill. Utilizing a centralized portal such as CRISP to store the advanced directives of our members, as opposed to the documents maintained by the member's MCO, would enable better outcomes for providers and patients. Requiring that these documents be kept and maintained securely by CRISP will enable ease of access and continuity across all payors.

In addition, we respectfully suggest that the legislation establish other avenues and sources for Maryland residents to access information developed by the Office of the Attorney General to educate and facilitate the development of advance directives. For example, the Maryland Health Benefit Exchange website and enrollee materials could serve as an additional provider of these important resources, as the amount of consumer traffic to the MHBE website is significant, and includes a majority of individuals who ultimately enroll in the HealthChoice program.

For these reasons, we respectfully request ongoing dialogue on the bill's provisions and appropriate amendments be adopted to create a more accessible and effective system of advanced care document retention.

The MCOs welcome the opportunity for continued engagement in policy discussions surrounding advanced directive and end-of-life care planning initiatives and look forward to continued collaboration with the State as we work to identify ways to improve access to affordable high-quality care for all Medicaid participants.

Please contact Jennifer Briemann, Executive Director of MMCOA, with any questions regarding this testimony at jbriemann@marylandmco.org.

ATTACHMENT G

MARYLAND ADVANCE DIRECTIVE:

PLANNING FOR FUTURE HEALTH CARE DECISIONS

A Guide to Maryland Law on Health Care Decisions (Forms Included)

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

1632

Brian E. Frosh
Attorney General

August 2019

Dear Fellow Marylander:

I am pleased to send you an advance directive form that you can use to plan for future health care decisions. The form is *optional;* you can use it if you want or use others, which are just as valid legally. If you have any legal questions about your personal situation, you should consult your own lawyer. If you decide to make an advance directive, be sure to talk about it with those close to you. The conversation is just as important as the document. Give copies to family members or friends and your doctor. Also make sure that, if you go into a hospital, you bring a copy. Please *do not* return completed forms to this office.

Life-threatening illness is a difficult subject to deal with. If you plan now, however, your choices can be respected and you can relieve at least some of the burden from your loved ones in the future. You may also use another enclosed form to make an organ donation or plan for arrangements after death.

Here is some related, important information:

- If you want information about Do Not Resuscitate (DNR) Orders, please visit the website http://marylandmolst.org or contact the Maryland Institute for Emergency Medical Services Systems directly at (410) 706-4367. A Medical Orders for Life-Sustaining Treatment (MOLST) form contains medical orders regarding cardiopulmonary resuscitation (CPR) and other medical orders regarding life-sustaining treatments. A physician or nurse practitioner may use a MOLST form to instruct emergency medical personnel (911 responders) to provide comfort care instead of resuscitation. The MOLST form can be found on the Internet at: http://marylandmolst.org. From that page, click on "MOLST Form."

- The Maryland Department of Health makes available an advance directive focused on preferences about mental health treatment. This can be found on the Internet at: http://bha.health.maryland.gov/Pages/Forms.aspx. From that page, under "Forms," click on "Advance Directive for Mental Health Treatment."

I hope that this information is helpful to you. **I regret that overwhelming demand limits us to supplying one set of forms to each requester.** But please feel free to make as many copies as you wish. Additional information about advance directives can be found on the Internet at: http://www.oag.state.md.us/healthpol/advancedirectives.htm.

Brian E. Frosh
Attorney General

HEALTH CARE PLANNING USING ADVANCE DIRECTIVES

Optional Form Included

Your Right To Decide

Adults can decide for themselves whether they want medical treatment. This right to decide - to say yes or no to proposed treatment - applies to treatments that extend life, like a breathing machine or a feeding tube. Tragically, accident or illness can take away a person's ability to make health care decisions. But decisions still have to be made. If you cannot do so, someone else will. These decisions should reflect your own values and priorities.

A Maryland law called the Health Care Decisions Act says that you can do health care planning through “advance directives.” An advance directive can be used to name a health care agent. This is someone you trust to make health care decisions for you. An advance directive can also be used to say what your preferences are about treatments that might be used to sustain your life.

The State offers a form to do this planning, included with this pamphlet. The form as a whole is called “Maryland Advance Directive: Planning for Future Health Care Decisions.” It has three parts to it: Part I, Selection of Health Care Agent; Part II, Treatment Preferences (“Living Will”); and Part III, Signature and Witnesses. This pamphlet will explain each part.

The advance directive is meant to reflect your preferences. You may complete all of it, or only part, and you may change the wording. You are *not* required by law to use these forms. Different forms, written the way you want, may also be used. For example, one widely praised form, called *Five Wishes,* is available (for a small fee) from the nonprofit organization Aging With Dignity. You can get information about that document from the Internet at www.agingwithdignity.org or write to: Aging with Dignity, P.O. Box 1661, Tallahassee, FL 32302.

This optional form can be filled out without going to a lawyer. But if there is anything you do not understand about the law or your rights, you might want to talk with a lawyer. You can also ask your doctor to explain the medical issues, including the potential benefits or risks to you of various options. You should tell your doctor that you made an advance directive and give your doctor a copy, along with others who could be involved in making these decisions for you in the future.

In Part III of the form, you need two witnesses to your signature. Nearly any adult can be a witness. If you name a health care agent, though, that person may not be a witness. Also, one of the witnesses must be a person who would not financially benefit by your death or handle your estate. You do not need to have the form notarized.

This pamphlet also contains a separate form called “After My Death.” Like the advance directive, using it is optional. This form has four parts to it: Part I, Organ Donation; Part II, Donation of Body; Part III, Disposition of Body and Funeral Arrangements; and Part IV, Signature and Witnesses

Once you make an advance directive, it remains in effect unless you revoke it. It does not expire, and neither your family nor anyone except you can change it. You should review what you've done once in a while. Things might change in your life, or your attitudes might change. You are free to amend or revoke an advance directive at any time, as long as you still have decision-making capacity. Tell your doctor and anyone else who has a copy of your advance directive if you amend it or revoke it.

If you already have a prior Maryland advance directive, living will, or a durable power of attorney for health care, that document is *still valid*. Also, if you made an advance directive in another state, it is valid in Maryland. You might want to review these documents to see if you prefer to make a new advance directive instead.

Part I of the Advance Directive: Selection of Health Care Agent

You can name anyone you want (except, in general, someone who works for a health care facility where you are receiving care) to be your health care agent. **To name a health care agent, use Part I of the advance directive form**. (Some people refer to this kind of advance directive as a "durable power of attorney for health care.") Your agent will speak for you and make decisions based on what you would want done or your best interests. You decide how much power your agent will have to make health care decisions. You can also decide when you want your agent to have this power — right away, or only after a doctor says that you are not able to decide for yourself.

You can pick a family member as a health care agent, but you don't have to. Remember, your agent will have the power to make important treatment decisions, even if other people close to you might urge a different decision. Choose the person best qualified to be your health care agent. Also, consider picking one or two back-up agents, in case your first choice isn't available when needed. Be sure to inform your chosen person and make sure that he or she understands what's most important to you. When the time comes for decisions, your health care agent should follow your written directions.

We have a helpful booklet that you can give to your health care agent. It is called *"Making Medical Decisions for Someone Else: A Maryland Handbook."* You or your agent can get a copy on the Internet at: http://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/ProxyHandbook.pdf. You can request a copy by calling 410-576-7000.

The form included with this pamphlet does *not* give anyone power to handle your money. We do not have a standard form to send. Talk to your lawyer about planning for financial issues in case of incapacity.

Part II of the Advance Directive: Treatment Preferences ("Living Will")

You have the right to use an advance directive to say what you want about future life-sustaining treatment issues. You can do this in Part II of the form. If you both name a health care agent and make decisions about treatment in an advance directive, it's important that you say (in Part II, paragraph G) whether you want your agent to be strictly bound by whatever treatment decisions you make.

Part II is a living will. It lets you decide about life-sustaining procedures in three situations: when death from a terminal condition is imminent despite the application of life-sustaining procedures; a condition of permanent unconsciousness called a persistent vegetative state; and end-stage condition, which is an advanced, progressive, and incurable condition resulting in complete physical dependency. One example of end-stage condition could be advanced Alzheimer's disease.

FREQUENTLY ASKED QUESTIONS ABOUT ADVANCE DIRECTIVES IN MARYLAND

1. Must I use any particular form?

No. An optional form is provided, but you may change it or use a different form altogether. Of course, no health care provider may deny you care simply because you decided not to fill out a form.

2. Who can be picked as a health care agent?

Anyone who is 18 or older except, in general, an owner, operator, or employee of a health care facility where a patient is receiving care.

3. Who can witness an advance directive?

Two witnesses are needed. Generally, any competent adult can be a witness, including your doctor or other health care provider (but be aware that some facilities have a policy against their employees serving as witnesses). If you name a health care agent, that person cannot be a witness for your advance directive. Also, **one** of the two witnesses must be someone who (i) will not receive money or property from your estate and (ii) is not the one you have named to handle your estate after your death.

4. Do the forms have to be notarized?

No, but if you travel frequently to another state, check with a knowledgeable lawyer to see if that state requires notarization.

5. Do any of these documents deal with financial matters?

No. If you want to plan for how financial matters can be handled if you lose capacity, talk with your lawyer.

6. When using these forms to make a decision, how do I show the choices that I have made?

Write your **initials** next to the statement that says what you want. **Don't** use checkmarks or X's. If you want, you can also draw lines all the way through other statements that do not say what you want.

7. Should I fill out both Parts I and II of the advance directive form?

It depends on what you want to do. If all you want to do is name a health care agent, just fill out Parts I and III, and talk to the person about how they should decide issues for you. If all you want to do is give treatment instructions, fill out Parts II and III. If you want to do both, fill out all three parts.

8. Are these forms valid in another state?

It depends on the law of the other state. Most state laws recognize advance directives made somewhere else.

9. How can I get advance directive forms for another state?

Contact the National Hospice and Palliative Care Organization (NHPCO) at 1-800-658-8898 or on the Internet at: https://www.nhpco.org/patients-and-caregivers/advance-care-planning/advance-directives/downloading-your-states-advance-directive/

10. To whom should I give copies of my advance directive?

Give copies to your doctor, your health care agent and backup agent(s), hospital or nursing home if you will be staying there, and family members or friends who should know of your wishes. Consider carrying a card in your wallet saying you have an advance directive and who to contact.

11. Does the federal law on medical records privacy (HIPAA) require special language about my health care agent?

Special language is not required, but it is prudent. Language about HIPAA has been incorporated into the form.

12. Can my health care agent or my family decide treatment issues differently from what I wrote?

It depends on how much flexibility you want to give. Some people want to give family members or others flexibility in applying the living will. Other people want it followed very strictly. Say what you want in Part II, Paragraph G.

13. *Is an advance directive the same as a "Patient's Plan of Care", "Instructions on Current Life-Sustaining Treatment Options" form, or Medical Orders for Life-Sustaining Treatment (MOLST) form?*

No. These are forms used in health care facilities to document discussions about current life-sustaining treatment issues. These forms are not meant for use as anyone's advance directive. Instead, they are medical records, to be done only when a doctor or other health care professional presents and discusses the issues. A MOLST form contains medical orders regarding life-sustaining treatments relating to a patient's medical condition.

14. *Can my doctor override my living will?*

Usually, no. However, a doctor is not required to provide a "medically ineffective" treatment even if a living will asks for it.

15. *If I have an advance directive, do I also need a MOLST form?*

It depends. If you **don't** want emergency medical services personnel to try to resuscitate you in the event of cardiac or respiratory arrest, you must have a MOLST form containing a DNR order signed by your doctor. nurse practitioner, or physician assistant. A signed EMS/DNR order approved by the Maryland Institute for Emergency Medical Services Systems would also be valid.

16. *Does the DNR Order have to be in a particular form?*

Yes. Emergency medical services personnel have very little time to evaluate the situation and act appropriately. So, it is not practical to ask them to interpret documents that may vary in form and content. Instead, the standardized MOLST form has been developed. Have your doctor or health care facility visit the MOLST web site at http://marylandmolst.org or contact the Maryland Institute for Emergency Medical Services System at (410) 706-4367 to obtain information on the MOLST form.

17. *Can I fill out a form to become an organ donor?*

Yes, Use Part I of the "After My Death" form.

18. *What about donating my body for medical education or research?*

Part II of the "After My Death" form is a general statement of these wishes. The State Anatomy Board has a specific donation program, with a pre-registration form available. Call the Anatomy Board at 1-800-879-2728 for that form and additional information.

19. *If I appoint a health care agent and the health care agent and any back-up agent dies or otherwise becomes unavailable, a surrogate decision maker may need to be consulted to make the same treatment decisions that my health care agent would have made. Is the surrogate decision maker required to follow my instructions given in the advance directive?*

Yes, the surrogate decision maker is required to make treatment decisions based on your known wishes. An advance directive that contains clear and unambiguous instructions regarding treatment options is the best evidence of your known wishes and therefore must be honored by the surrogate decision maker.

Part II, paragraph G enables you to choose one of two options with regard to the degree of flexibility you wish to grant the person who will ultimately make treatment decisions for you, whether that person is a health care agent or a surrogate decision maker. Under the first option you would instruct the decision maker that your stated preferences are meant to guide the decision maker but may be departed from if the decision maker believes that doing so would be in your best interests. The second option requires the decision maker to follow your stated preferences strictly, even if the decision maker thinks some alternative would be better.

REVISED AUGUST 2019

IF YOU HAVE OTHER QUESTIONS, PLEASE TALK TO YOUR DOCTOR OR YOUR LAWYER. OR, IF YOU HAVE A QUESTION ABOUT THE FORMS THAT IS NOT ANSWERED IN THIS PAMPHLET, YOU CAN CALL THE HEALTH POLICY DIVISION OF THE ATTORNEY GENERAL'S OFFICE AT (410) 767-6918 OR E-MAIL US AT ADFORMS@OAG.STATE.MD.US.

MORE INFORMATION ABOUT ADVANCE DIRECTIVES CAN BE OBTAINED FROM OUR WEBSITE AT: http://www.marylandattorneygeneral.gov/Pages/HealthPolicy/advancedirectives.aspx

MARYLAND ADVANCE DIRECTIVE:
PLANNING FOR FUTURE HEALTH CARE DECISIONS

By: ____ **Date of Birth:**________________
(Print Name) (Month/Day/Year)

Using this advance directive form to do health care planning is completely optional. Other forms are also valid in Maryland. No matter what form you use, talk to your family and others close to you about your wishes.

This form has two parts to state your wishes, and a third part for needed signatures. Part I of this form lets you answer this question: If you cannot (or do not want to) make your own health care decisions, who do you want to make them for you? The person you pick is called your health care agent. **Make sure you talk to your health care agent (and any back-up agents) about this important role.** Part II lets you write your preferences about efforts to extend your life in three situations: terminal condition, persistent vegetative state, and end-stage condition. In addition to your health care planning decisions, you can choose to become an organ donor after your death by filling out the form for that too.

➔ You can fill out Parts I and II of this form, or only Part I, or only Part II. Use the form to reflect your wishes, then sign in front of two witnesses (Part III). If your wishes change, make a new advance directive.

Make sure you give a copy of the completed form to your health care agent, your doctor, and others who might need it. Keep a copy at home in a place where someone can get it if needed. Review what you have written periodically.

PART I: SELECTION OF HEALTH CARE AGENT

A. Selection of Primary Agent

I select the following individual as my agent to make health care decisions for me:

Name: ____

Address: ____

____

Telephone Numbers: ____
(home and cell)

B. Selection of Back-up Agents

(Optional; form valid if left blank)

1. If my primary agent cannot be contacted in time or for any reason is unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: ____

Address: ____

____

Telephone Numbers: __________________________________
(home and cell)

2. If my primary agent and my first back-up agent cannot be contacted in time or for any reason are unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: ____

____

Telephone Numbers: __________________________________
(home and cell)

C. Powers and Rights of Health Care Agent

I want my agent to have full power to make health care decisions for me, including the power to:

1. Consent or not to medical procedures and treatments which my doctors offer, including things that are intended to keep me alive, like ventilators and feeding tubes;
2. Decide who my doctor and other health care providers should be; and
3. Decide where I should be treated, including whether I should be in a hospital, nursing home, other medical care facility, or hospice program.
4. I also want my agent to:
   a. Ride with me in an ambulance if ever I need to be rushed to the hospital; and
   b. Be able to visit me if I am in a hospital or any other health care facility.

THIS ADVANCE DIRECTIVE DOES NOT MAKE MY AGENT RESPONSIBLE FOR ANY OF THE COSTS OF MY CARE.

This power is subject to the following conditions or limitations:
(Optional; form valid if left blank)

____

____

____

____

____

____

D. How my Agent is to Decide Specific Issues

I trust my agent's judgment. My agent should look first to see if there is anything in Part II of this advance directive that helps decide the issue. Then, my agent should think about the conversations we have had, my religious and other beliefs and values, my personality, and how I handled medical and other important issues in the past. If what I would decide is still unclear, then my agent is to make decisions for me that my agent believes are in my best interest. In doing so, my agent should consider the benefits, burdens, and risks of the choices presented by my doctors.

E. People My Agent Should Consult

(Optional; form valid if left blank)

In making important decisions on my behalf, I encourage my agent to consult with the following people. By filling this in, I do not intend to limit the number of people with whom my agent might want to consult or my agent's power to make decisions.

Name(s)	**Telephone Number(s):**
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

F. In Case of Pregnancy

(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my agent shall follow these specific instructions:

____

____

G. Access to my Health Information – Federal Privacy Law (HIPAA) Authorization

1. If, prior to the time the person selected as my agent has power to act under this document, my doctor wants to discuss with that person my capacity to make my own health care decisions, I authorize my doctor to disclose protected health information which relates to that issue.

2. Once my agent has full power to act under this document, my agent may request, receive, and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and other protected health information, and consent to disclosure of this information.

3. For all purposes related to this document, my agent is my personal representative under the Health Insurance Portability and Accountability Act (HIPAA). My agent may sign, as my personal representative, any release forms or other HIPAA-related materials.

H. Effectiveness of this Part

(Read both of these statements carefully. Then, initial one only.)

My agent's power is in effect:

1. Immediately after I sign this document, subject to my right to make any decision about my health care if I want and am able to.

✎______________

>>OR<<

2. Whenever I am not able to make informed decisions about my health care, either because the doctor in charge of my care (attending physician) decides that I have lost this ability temporarily, or my attending physician and a consulting doctor agree that I have lost this ability **permanently**.

✎______________

If the only thing you want to do is select a health care agent, skip Part II. Go to Part III to sign and have the advance directive witnessed. If you also want to write your treatment preferences, go to Part II. Also consider becoming an organ donor, using the separate form for that.

PART II: TREATMENT PREFERENCES (“LIVING WILL”)

A. Statement of Goals and Values

(Optional: Form valid if left blank)

I want to say something about my goals and values, and especially what’s most important to me during the last part of my life:

____

____

____

____

B. Preference in Case of Terminal Condition

(If you want to state what your preference is, initial **one** only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that my death from a terminal condition is imminent, even if life-sustaining procedures are used:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

✎____________

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

✎____________

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

✎____________

C. Preference in Case of Persistent Vegetative State

(If you want to state what your preference is, initial **one** only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in a persistent vegetative state, that is, if I am not conscious and am not aware of myself or my environment or able to interact with others, and there is no reasonable expectation that I will ever regain consciousness:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

✎_____________

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

✎_____________

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

✎_____________

D. Preference in Case of End-Stage Condition

(If you want to state what your preference is, initial **one** only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in an end-state condition, that is, an incurable condition that will continue in its course until death and that has already resulted in loss of capacity and complete physical dependency:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

✎_____________

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

✎_____________

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

✎_____________

E. Pain Relief

No matter what my condition, give me the medicine or other treatment I need to relieve pain.

F. In Case of Pregnancy

(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

____

____

____

____

G. Effect of Stated Preferences

(Read both of these statements carefully. Then, initial **<u>one</u>** only.)

1. I realize I cannot foresee everything that might happen after I can no longer decide for myself. My stated preferences are meant to guide whoever is making decisions on my behalf and my health care providers, but I authorize them to be flexible in applying these statements if they feel that doing so would be in my best interest.

✎____________

>>OR <<

2. I realize I cannot foresee everything that might happen after I can no longer decide for myself. Still, I want whoever is making decisions on my behalf and my health care providers to follow my stated preferences exactly as written, even if they think that some alternative is better.

✎____________

PART III: SIGNATURE AND WITNESSES

By signing below as the Declarant, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand its purpose and effect. I also understand that this document replaces any similar advance directive I may have completed before this date.

____ _________________________
(Signature of Declarant) (Date)

The Declarant signed or acknowledged signing this document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this advance directive.

____ ____________________
(Signature of Witness) (Date)

____
Telephone Number(s):

____ ____________________
(Signature of Witness) (Date)

____
Telephone Number(s):

(**Note:** Anyone selected as a health care agent in Part I may not be a witness. Also, at least one of the witnesses must be someone who will not knowingly inherit anything from the Declarant or otherwise knowingly gain a financial benefit from the Declarant's death. Maryland law does **not** require this document to be notarized.)

AFTER MY DEATH
(This document is optional. Do only what reflects your wishes.)

By: ______________________________ **Date of Birth:**____________
(Print Name) (Month/Day/Year)

PART I: ORGAN DONATION

(Initial the ones that you want. Cross through any that you do not want.)

Upon my death I wish to donate: ✎____________
Any needed organs, tissues, or eyes. ✎____________
Only the following organs, tissues or eyes:

____

____

____

I authorize the use of my organs, tissues, or eyes:

For transplantation ✎____________

For therapy ✎____________

For research ✎____________

For medical education ✎____________

For any purpose authorized by law ✎____________

I understand that no vital organ, tissue, or eye may be removed for transplantation until after I have been pronounced dead. *This document is not intended to change anything about my health care while I am still alive.* After death, I authorize any appropriate support measures to maintain the viability for transplantation of my organs, tissues, and eyes until organ, tissue, and eye recovery has been completed. I understand that my estate will not be charged for any costs related to this donation.

PART II: DONATION OF BODY

After any organ donation indicated in Part I, I wish my body to be donated for use in a medical study program.

✎____________

PART III: DISPOSITION OF BODY AND FUNERAL ARRANGEMENTS

I want the following person to make decisions about the disposition of my body and my funeral arrangements: (Either initial the first or fill in the second.)

The health care agent who I named in my advance directive.

✎_______________

>>OR<<

This person:

Name: ____

Address: ____

____

Telephone Number(s): ___________________________________

(Home and Cell)

If I have written my wishes below, they should be followed. If not, the person I have named should decide based on conversations we have had, my religious or other beliefs and values, my personality, and how I reacted to other peoples' funeral arrangements. My wishes about the disposition of my body and my funeral arrangements are:

____

____

____

PART IV: SIGNATURE AND WITNESSES

By signing below, I indicate that I am emotionally and mentally competent to make this donation and that I understand the purpose and effect of this document.

______________________________ ______________

(Signature of Donor) (Date)

The Donor signed or acknowledged signing the foregoing document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this donation.

______________________________ ______________

(Signature of Witness) (Date)

____

Telephone Number(s):

______________________________ ______________

(Signature of Witness) (Date)

____

Telephone Number(s):

AFTER MY DEATH

Part II: Donation of Body

The State Anatomy Board, a unit of the Department of Health administers a statewide Body Donation Program. Anatomical Donation allows individuals to dedicate the use of their bodies upon death to advance medical education, clinical and allied-health training and research study to Maryland's medical study institutions. The Anatomy Board requires individuals to pre-register prior to death as an anatomical donor to the state Body Donation Program. There are no medical restrictions or qualifications to becoming a "Body Donor". At death the Board will assume the custody and control of the body for study use. It is truly a legacy left behind for others to have healthier lives. For donation information and forms you can contact the Board toll-free at 800.879.2728

Did You Remember To ...

☐ Fill out Part I if you want to name a health care agent?

☐ Name one or two back-up agents in case your first choice as health care agent is not available when needed?

☐ Talk to your agents and back-up agent about your values and priorities, and decide whether that's enough guidance or whether you also want to make specific health care decisions in the advance directive?

☐ If you want to make specific decisions, fill out Part II, choosing carefully among alternatives?

☐ Sign and date the advance directive in Part III, in front of two witnesses who also need to sign?

☐ Look over the "After My Death" form to see if you want to fill out any part of it?

☐ Make sure your health care agent (if you named one), your family, and your doctor know about your advance care planning?

☐ Give a copy of your advance directive to your health care agent, family members, doctor, and hospital or nursing home if you are a patient there?

SB 824_MACS_FWA.pdf
Uploaded by: Lauren Kallins
Position: FWA

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Senate Finance Committee
SB 824 – Health – Accessibility of Electronic Advance Care Planning Documents
March 10, 2022

Position: Favorable with amendment

The Maryland Association of Community Services (MACS) is a nonprofit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

SB 824 applies to health care facilities as defined in § 11-119 of Health General. This part of the statute includes “related institutions” which also captures group home providers licensed by the Developmental Disabilities Administration. SB 824 presents technical challenges to compliance with the provisions of this bill for DDA providers, the most significant being a lack of access to the state-designated health information exchange (HIE).

Beyond the technical barriers to compliance, it is worth noting that unlike nursing home settings and other facilities contemplated by this bill, people with IDD who receive residential community supports also receive their medical care in the community and are thus able to seek support from their doctors regarding medical issues addressed in an advanced care planning document, including the potential benefits or risks of various options.

MACS thus seeks the following amendment language clarifying that the bill does not apply to DDA community providers:

> **THIS TITLE DOES NOT APPLY TO COMMUNITY PROVIDERS AS DEFINED IN § 7-307 OF THE HEALTH – GENERAL ARTICLE.**

Thank you for your consideration.

Respectfully submitted,

Lauren Kallins
Director of Government Relations

8835 Columbia 100 Parkway, Unit P • Columbia, Maryland 21045 • www.macsonline.org

Favorable with Amendment SB824.pdf

Uploaded by: Sharon Maneki

Position: FWA

NATIONAL FEDERATION
OF THE BLIND
MARYLAND
Live the life you want.

Subject: **Favorable SB824 with Amendments**

To: **Senate Finance Committee**

From: **Members of the National Federation of the Blind of Maryland**

Contact: **Sharon Maneki, Director of Legislation and Advocacy**

National Federation of the Blind of Maryland

9013 Nelson Way

Columbia, MD 21045

Phone: 410-715-9596

Email: nfbmdsm@gmail.com

Date: **March 10, 2022**

The members of the National Federation of the Blind of Maryland support the general concept in SB824, Health – Accessibility of Electronic Advance Care Planning Documents. However, the bill needs to be amended if its goal is to really be achieved.

Amendment: all documents and websites associated with the Electronic Advanced Care Health Documents Program shall comply with the standards in section 508 of the Rehabilitation Act of 1973 to 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.

The purpose of this bill is to make healthcare documents accessible, not only to the patient, but also to the various entities who will be administering healthcare to the patient. Section 508 of the 1973 Rehabilitation Act incorporates the standards used by the Worldwide Web Consortium in its accessibility guidelines (WCAG). Using these guidelines will ensure that everyone, including seniors and people with disabilities, will be able to read the content on the healthcare document websites established by this bill. Entities will also benefit from this requirement because there will be fewer questions about the wishes of the patient.

Developers are very familiar with WCAG because it has been in existence since 1995; therefore, it is not a burden to them. By doing things right in the beginning, developers will save both time and money.

Healthcare planning documents are very important, and access to them is vital. The best way to achieve this access is through electronic storage. Electronic storage in today's society is practical and common. The amendment suggested by the sponsor and the National Federation of the Blind of Maryland will improve the readability of these documents. Please vote in favor of the amended SB824.

HFAM Letter of Information SB 824.pdf

Uploaded by: Joseph DeMattos

Position: INFO

HFAM
Health Facilities Association of Maryland
Partners in Quality Care

March 10, 2022

The Honorable Delores Kelley
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Information - Senate Bill 824 - Health - Accessibility of Electronic Advance Care Planning Documents

Dear Chair Kelley and Members of the Senate Finance Committee:

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to comment on Senate Bill 824. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state.

Senate Bill 824 requires the Maryland Health Care Commission to coordinate the accessibility of electronic advance care planning documents in the State; requires health care facilities, nursing homes, assisted living facilities, managed care organizations, and carriers to take certain actions relating to electronic advance care planning documents; and requires the Motor Vehicle Administration to submit a report regarding the implementation of certain provisions of law relating to advance directives.

As many residents and patients in long-term and post-acute care are older, may be disabled, or have some form of dementia, advance care planning documents are commonplace and are often created or updated for those cared for in our settings. It is critical to ensure that a resident's or patient's preferences are formally documented to facilitate care planning and stimulate family conversations on this important topic in any way we are collectively able.

We are generally supportive of electronic advance care planning documents and encourage their use, when appropriate, in our setting and settings across the care continuum. However, we do have concerns that mandating the requirements outlined in this legislation would be overly burdensome for nursing homes and assisted living facilities – especially at a time when they are already short-staffed and are continuing to fight the COVID-19 pandemic.

For example, the admissions process to a nursing home or assisted living facility already requires much necessary documentation. Health care facilities do check for advance care planning documents and update these documents as needed. However, there are many times when it may not be feasible for paper documents to be scanned and uploaded upon a new admission.

In addition, those in long-term care settings may not always want nor be able to access electronic documents. Many residents and patients in our setting simply are not connected electronically. While most nursing homes have a website, it may not be feasible for residents to access the website to create, execute, and store advance planning documents.

Again, we are generally supportive of electronic advance care planning documents and appreciate the opportunity to express our concerns about implementation of this legislation’s requirements for nursing homes, assisted living, and other health care providers.

Thank you for your consideration of this issue. We look forward to our continued work together.

Be well,

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

SB 824 2022 MIA Letter of Information Final.pdf

Uploaded by: Kathleen Birrane

Position: INFO

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor

Maryland
INSURANCE ADMINISTRATION

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Commissioner

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TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE

MARCH 10, 2022

SENATE BILL 824 – HEALTH - ACCESSIBILITY OF ELECTRONIC ADVANCE CARE PLANNING DOCUMENTS

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments on Senate Bill 824.

SB 824 proposes several revisions to the Health-General Article and Insurance Article that will impact the delivery of electronic advance care planning documents in Maryland. The bill imposes new requirements on the Maryland Health Care Commission (MHCC), commercial insurance carriers, managed care organizations, health care providers, and various health care facilities. The provisions of the bill that apply to the entities regulated by the Maryland Insurance Administration (MIA) amend § 15-122.1 of the Insurance Article. If passed, the new requirements under § 15-122.1 of the Insurance Article, as enacted by SB 824, would impact all policies, contracts, or health benefit plans issued in the state on or after June 1, 2022.

Currently, § 15-122.1 requires carriers to provide an advance directive information sheet to members as part of the carrier's member publications, website, and at the request of a member. An advance directive refers to a witnessed written or electronic document, voluntarily executed by the declarant, or a witnessed oral statement made by the declarant, which considers that declarant's preferences for the receipt of future health care, including life sustaining medical services. SB 824, if enacted, would amend § 15-122.1 to require carriers to provide consumers access to the electronic means to create, execute, and store an advance directive or a health care agent designation, and the capability to upload and update the documents to the State-designated health information exchange.. Subsection (c) of new § 19-145 of the Health-General Article in lines 11 through 17 on page 10 would also permit, but not require, carriers to contract with an electronic advance directive service vendor that is approved by MHCC, and that meets the technology, security, and privacy standards set by the MHCC.

The addition of § 19-145 to the Health-General Article will require the MHCC to coordinate the accessibility of electronic advance care planning documents in the state. This includes identifying a process to allow individuals to make advance care planning documents accessible to the State-designated health information exchange, and a process to allow health care providers to access electronic advance care planning documents. This also includes identifying options for carriers and health care providers to make electronic advance care planning documents accessible to consumers through a service recognized by MHCC and providing the capability for consumers to upload an advance care planning document to the state designated health information exchange or update an existing document..

To preface, advance directives and advance directive planning involve medical decisions jointly made by individual people and their health care providers, often with guidance from their legal counsel, not insurance decisions made by carriers. The MIA has significant reservations about involving carriers in these decisions and requests that the legislature carefully consider whether it is appropriate for carriers to guide or collect advance directives, and for carriers to choose forms to make available or provide guidance about those forms. The MIA also does not believe that it is appropriate for carriers to be responsible for collecting, storing and transmitting this information, including personally identifiable information about health care agents. And the MIA is concerned that forcing carriers to establish and make forms of legal documents available, to provide information that is advisory in nature regarding decisions that are medical and legal in nature, housing this sensitive data, inevitably for the purpose of making it available to third-parties who may have need of this information in health care settings exposes health insurers to unnecessary risks and potential litigation.

At present, carriers direct members seeking information on advance directives to existing programs administered by the Department of Health and the Office of the Attorney General (OAG). This current practice assures that members have the information necessary to make informed decisions based on a complete suite of advance care planning options developed by lawyers within the OAG. If SB 824 is passed, the MIA is concerned as to what information and which options will be made available to members, as advance directive language and determinations are not always simple and there are many considerations and personal/family circumstances that drive the decision about what legal form to use, when forms should be customized, and which persons and alternatives should be selected for what reasons. Members will inevitably reach out to their carriers for more detail and information and potentially advice – none of which should be provided by an insurance carrier or the individuals that answer the customer service line. If the industry is forced to assume this legal advisory and health planning role, it will be required to develop and update forms and to maintain a system for offering electronic advance directives to members and for receiving advance directives and tracking status updates, which will cause carriers to incur significant costs and expose them to additional risks and liabilities.

Furthermore, it is unclear what the expectations are for carriers once the advance directive forms are received. Who has access to this data? To whom may it be released and under what circumstances? This uncertainty raises concerns about the privacy of this data, and these concerns are further amplified because carriers will be collecting information about third parties who are not their insured customers. Health care agents anticipate that their identity and contact information will be provided to a health care provider. They do not anticipate or give permission for their identity and contact information to be provided to a carrier.

Additionally, the MIA notes two technical concerns. First, it is unknown how the MIA will evaluate whether the carrier has the appropriate level of technology consistent with MHCC, and there is no requirement that carriers notify the Commissioner or MHCC whether they are collecting the information relating to completion of advance directives. Second, the bill appears to be incomplete as it does not include a penalty provision.

The MIA thanks the committee for its attention to this information concerning SB 824.

SB0824_LOI_Hospice_Accessibility of Electronic Adv

Uploaded by: Pam Kasemeyer

Position: INFO

Hospice & Palliative Care Network
OF MARYLAND

To: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Benjamin F. Kramer

From: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise

DATE: March 10, 2022

RE: **Letter of Information** – Senate Bill 824 – *Health – Accessibility of Electronic Advance Care Planning Documents*

On behalf of the Hospice & Palliative Care Network of Maryland (HPCNM), we submit this letter of information on Senate Bill 824. Among other provisions, Senate Bill 824 requires a health care facility, upon admittance, to use the state-designated health information exchange (CRISP) to identify if the individual has any electronic advance planning documents. The definition of a health care facility includes a hospice program.

While hospice programs have been in communication with CRISP, hospice programs are generally not connected to CRISP. Unlike hospitals and physicians that initially received financial incentives under the federal Health Information Technology for Economic and Clinical Health Act (HITECH), hospice programs did not. Therefore, a requirement that hospice programs check CRISP for electronic advance planning documents and then require them to offer to scan in a paper document would be unduly burdensome due to the financial requirements to obtain an electronic health network. Rather than this mandate, the HPCNM recommends that CRISP continue to work with hospice programs on connectivity, and the State should consider financial incentives to offset the costs.

For more information call:
Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise
410-244-7000

OAG HEAU_INF_SB0834.pdf

Uploaded by: Patricia O'Connor

Position: INFO

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March 9, 2022

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 834 (Health Insurance - Two-Sided Incentive Arrangements and Capitated Payments - Authorization): Concern

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) asks that the committee consider the following information about potential improvements to the bill that would better serve consumers because of the HEAU's concerns about the impact that risk-shifting may have on consumers without independent review of patient outcomes. We understand that fee-for-service models invite unneeded services, upcoding, or adding extra diagnosis codes to patient charts to increase profits, but are concerned that incentivizing cost savings will drive provider profits, not patient care. We are especially concerned about such models with investor owned and controlled entities, including private equity firms.

1) **Consumers must be informed if their healthcare providers are participating in these models.** Consumers would be better served by more clarity and transparency than the bill provides about Capitated Payments and Two-Sided Arrangements to compensate physicians in Preferred Provider Organization (PPO) plans as well as Health Maintenance Organization (HMO) plans. While carriers are already required to provide material information about the costs and coverage terms of the plans they market and sell, we believe it is important that specific information be provided a) before plans are purchased about the differences in cost and coverage terms of PPO plans versus HMO plans that would use these arrangements and b) after plans are purchased about the providers who are eligible for these payments by identifying them in directories and on the website. Information about the incentives that physicians receive that may

decrease access to care is material information that would need to be disclosed under the Consumer Protection Act and this bill should require providers engaged in these arrangements to alert consumers, in advance, to these incentives.

2) **The performance measures upon which the payment arrangements are based must include improved health care quality and must be based on objective, nationally based clinical or quality improvement standards that are clearly defined, objectively measured, and well-documented.**

3) **The performance measures must be independently evaluated by a state agency.** The Maryland Health Care Commission, in consultation with the Maryland Insurance Administration should, within three years, evaluate these payment arrangements and performance measures to verify that patients are not simply being short-changed without any improvement in health outcomes or reduction in costs and premiums, and to screen for potential misuse by carriers of the payment arrangements to avoid premium reimbursements to consumers pursuant to the Medical Loss Ratio and other provisions of the Affordable Care Act. https://chirblog.org/questionable-quality-improvement-expenses-drive-proposed-changes-medical-loss-ratio-reporting/ ("Under the Affordable Care Act (ACA), insurers must provide rebates to enrollees when their spending on clinical services and quality improvement, as a proportion of premium dollars, falls below a minimum threshold known as the "medical loss ratio" (MLR). Federal regulators have discovered some insurers are gaming the system by misallocating expenses or inflating their spending on providers, while minimizing their reported administrative expenses and profits. When this happens, consumers don't receive the rebates they deserve. New proposed rules aim to crack down on these practices.")

Providers and consumers would be better served by requiring communications about the performance measures and the shared medical decision making between carriers and providers that is built into these payment arrangements because including consumers as equal partners in meeting the metrics should result in premium reimbursements under the Affordable Care Act.

Such communications, combined with meaningful oversight, would be needed for the appeals and grievances processes under current law to remain effective for consumers.

cc: Sponsors