



February 7, 2023

The Honorable Melony Griffith
Chair, Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 154 - Public Health - Mental Health Advance Directives - Awareness and Statewide Database

Dear Chair Griffith:

The Maryland Health Care Commission (“MHCC”) is submitting this letter of information on SB 154 - *Public Health - Mental Health Advance Directives - Awareness and Statewide Database* (“SB 154”).

SB 154 requires the Maryland Department of Health to develop and implement a public awareness campaign to encourage the use of mental health advance directives in the State. The campaign must include awareness initiatives to encourage and support outreach efforts by specified persons and agencies to inform present or future recipients of mental health services and members of their families, health care providers, and other behavioral health care partners regarding mental health advance directives. The Behavioral Health Administration (BHA) must study the feasibility and cost of establishing a centralized statewide database and report to Senate Finance and House Health and Government Operations committees of the General Assembly by December 1, 2023.

SB 154 is well-intentioned but misaligned with the legislation that passed during the 2022 legislative session (SB 824/HB1073). The legislation that passed last session was comprehensive in nature and required action by health care facilities, nursing homes, assisted living facilities, carriers, managed care organizations, ambulatory providers, and select State agencies. These activities will lead to an increase in the number of provider-patient discussions about advance directives, improve documentation rates, and the ability for providers to retrieve documented patient preferences, including a identifying their health care agent.

The legislation passed last year was the result of the work of the Advance Directives Workgroup (Workgroup) that met over the 2021 interim. The MHCC formed this workgroup at the request of the Chair of the Health and Government Operations Committee Chair. The workgroup developed consensus recommendations for legislation that was considered in the 2022 legislative session. The workgroup was comprised of over 40 stakeholders representing consumers, providers, nursing homes, hospice and palliative care, carriers, technology vendors, the Maryland Insurance Administration, Maryland Department of Transportation, and the

legislature. The workgroup met from late summer through the early winter. HB 1073/SB 824 included recommendations contained in the workgroup report.¹

Members of the workgroup endorsed the principle that advance care planning, including the creation of an advance directive, is an important responsibility for all adults, regardless of their current health status and this included behavioral health. No workgroup member, but especially the experts on emergency and end-of-life care, accepted the idea that advance care planning should be directed only at individuals with a particular health condition.

During this past interim the MHCC worked on the implementation of the requirements in HB 1073/SB 824. We think the actions taken to implement last session's legislation will increase adoption and use of advance directives statewide. We worked in consultation with the Office of the Attorney General (OAG) and the Maryland Department of Health (MDH) to update the advance directive information sheet to include written statements that an advance directive: (1) can be updated or revoked by the individual at any time; (2) is a useful, legal, and well established way for an individual to communicate the preferences of the individual for medical care, including the designation of a health care agent; (3) if completed, should be copied for an individual's family members, physicians, and legal advisors and, at the discretion of the individual, be uploaded or saved to the electronic platform; (4) is most effective if it is uploaded or saved to the electronic platform; and (5) is not required to be completed by the individual. Additionally, the information sheet was updated to include information about creating an advance directive for behavioral health care and treatment.

Additionally, we worked to coordinate the accessibility of electronic advance care planning documents in the State with the State-designated HIE to develop a process through which individuals can upload, save, and update their advance care planning documents and health care providers can access electronic advance care planning documents as appropriate. We worked to identify options that meet cybersecurity standards that may be taken by carriers, MCOs, and health care providers to encourage and make tools available for members, enrollees, and patients allowing them to create, upload, or save and update electronic advance care planning documents. We are working on the development and implementation of quality measures endorsed or designated for testing by a national quality measurement organization to measure the effectiveness of the options specified above on advance directives. Additionally, these measures work for the development of advance directives specific to behavioral health.

¹ *Advance Directives Workgroup Report*, Maryland Health Care Commission, January 2022. Available at: www.mhcc.maryland.gov/mhcc/pages/hit/hit_advancedirectives/documents/hit_adv_directives_wkgrp.pdf.

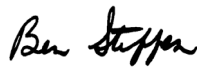


We do not think there needs to be a separate advance directive data repository for behavioral health and somatic care. In fact, we met with representatives from the Maryland Mental Health Association who asked if we could include behavioral health in our efforts on advance care planning and we did. One commonality among the various stakeholders to last session’s legislation was that all stakeholders have a role to play if advance care planning is to be embedded in what are routine and expected health care discussions regardless of whether addressing somatic care issues or behavioral health issues. Most important, is to encourage all adults to do advance care planning.

SB 154 will further stigmatize people with mental illness. Stigmas, prejudice, and discrimination against people with mental illness still exist and are well-documented in research literature and clinical practice.² A standalone advance directives database for people with mental illness will prolong stigmas about individuals and families impacted by mental illness.³ Advocacy organizations may view SB 154 as continuing longstanding biases and misconceptions about mental illness even among EMS and health care providers. Also, SB 154 creates redundancies where processes have been established and can be used to easily incorporate behavioral health without recreating the wheel in another place.

I hope this information is useful. If you would like to discuss this further, please contact Ben Steffen at ben.steffen@maryland.gov.

Sincerely,



Ben Steffen
Executive Director, MHCC

cc: Tracey DeShields, Director, Policy Development and External Affairs, MHCC

² Stigma, Prejudice and Discrimination Against People with Mental Illness, American Psychiatric Association. Available at: www.psychiatry.org/patients-families/stigma-and-discrimination.

³ *Psychiatry’s myopia—reclaiming the social, cultural, and psychological in the psychiatric gaze*. Braslow JT, Brekke JS, Levenson J. JAMA Psychiatry. 2020;78(4):349-350. Available at: www.jamanetwork.com/journals/jamapsychiatry/article-abstract/2770563.

