

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 837

(Senator Kramer)

Finance

Health and Government Operations

**Health - Advance Care Planning and Advance Directives**

This bill requires the Maryland Health Care Commission (MHCC) in the Maryland Department of Health (MDH) to coordinate implementation of advance care planning programs in the State. Each carrier must offer electronic advance directives to its members or enrollees as specified. The Motor Vehicle Administration (MVA) must submit a report by December 1, 2021, that provides an update on the status of implementing specified requirements related to advance directives. **The bill takes effect June 1, 2021; the insurance provisions apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

**Fiscal Summary**

**State Effect:** The affected agencies (MDH, MVA, and the Maryland Insurance Administration) advise that the bill's requirements can be implemented with existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

**Analysis**

**Bill Summary:**

*Maryland Department of Health*

The coordination provided by MHCC must include (1) the adoption and implementation of measures requiring that "health systems" and health care providers encourage individuals to upload, create, update, and make accessible electronic advance care planning

documents through the use of an electronic advance directive service recognized by MHCC and connection to the State-designated health information exchange and (2) development and implementation of quality metrics for the adoption and use of processes and tools by health care systems and health care providers to facilitate advance care planning by individuals.

“Health system” means a parent corporation of one or more hospitals or a hospital and any entity affiliated with the parent corporation or hospital through ownership, governance membership, or other means.

### *Carrier Requirements*

Each carrier must offer electronic advance directives to its members or enrollees during open enrollment and periodically thereafter and make arrangements to receive status notifications as to whether members or enrollees have completed or updated an advance directive. In doing so, a carrier may contract with an electronic advance directives service if the service (1) is approved by MHCC and (2) meets the technology, security, and privacy standards set by MHCC.

### *Motor Vehicle Administration*

The MVA report must include (1) a timeline for implementation of the requirements of § 12-303.1 of the Transportation Article; (2) identification of any obstacles to implementation; and (3) measures being taken by MVA to resolve any identified obstacles and implement the requirements.

## **Current Law:**

### *Maryland Department of Health*

In general, an advance directive allows an adult who has decision making capacity to deal with future health care issues through written instructions, a written appointment of an agent, or an oral statement to a physician or nurse practitioner. The advance directive outlines the individual’s instructions regarding the provision of health care or withholding or withdrawing health care. The individual may name an agent to make health care decisions under circumstances stated in the directive, and the authority of surrogate decision makers is specified based on their relationships with the individual. The directive becomes effective when two physicians have certified in writing that the patient is incapable of making an informed decision.

With the exception of an electronic advance directive that has been authenticated in a specified manner, a written or electronic advance directive generally must be dated, signed

by or at the express direction of the individual making the advance directive, and subscribed by two witnesses.

MDH is required to develop an information sheet, in consultation with the Office of the Attorney General, which provides information relating to advance directives.

MHCC recognizes electronic advance directive services to be authorized for connection to the State-designated health information exchange subject to security provisions. An individual may register an advance directive with such a service recognized by MHCC.

### *Carrier Requirements*

A carrier must provide the advance directive information sheet developed by MDH (1) in the carrier's member publications; (2) on the carrier's website; and (3) at the request of a member.

### *Motor Vehicle Administration*

Pursuant to § 12-303.1 of the Transportation Article, MVA must provide a method that allows an applicant for a driver's license or identification card to (1) be made aware of, and informed how to obtain, the advance directive information sheet developed by MDH and (2) indicate that the individual has an advance directive registered with MDH.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Health; Maryland Department of Transportation; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2021  
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