

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 352

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Health Care Decisions - “Patient’s Plan of Care” Form - Communication of Patient Preferences”; in line 3, after the first “of” insert “authorizing certain health care providers to prepare certain forms under certain circumstances;”; in lines 4 and 13, in each instance, strike “Physician Orders for Life-Sustaining Treatment” and substitute “Patient’s Plan of Care”; strike beginning with “documents” in line 4 down through “individual” in line 5 and substitute “summarizes the plan of care for an individual; specifying that the form is voluntary”; strike beginning with “and” in line 8 down through “statement” in line 9 and substitute “under certain circumstances, to be signed by certain individuals, to include certain contact information, to be dated, to contain certain statements, and to designate under which conditions the form shall be reviewed or modified”; strike beginning with “comply” in line 9 down through “regulations” in line 12 and substitute “review the form as part of a certain process; requiring the Office of the Attorney General to consult with certain entities in developing the form; requiring certain facilities to offer to certain individuals the opportunity to prepare the form”; after line 18, insert:

“BY repealing and reenacting, with amendments,

Article - Health - General

Section 5-602

Annotated Code of Maryland

(2000 Replacement Volume and 2003 Supplement)”;

and in line 21, after “5-608.1” insert “and 19-344(f)(5)”.

AMENDMENT NO. 2

On page 2, after line 21, insert:

(Over)

“5-602.

(a) Any competent individual may, at any time, make a written advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual.

(b) (1) Any competent individual may, at any time, make a written advance directive appointing an agent to make health care decisions for the individual under the circumstances stated in the advance directive.

(2) An owner, operator, or employee of a health care facility from which the declarant is receiving health care may not serve as a health care agent unless the person would qualify as a surrogate decision maker under § 5-605(a) of this subtitle.

(3) An agent appointed under this subtitle has decision making priority over any individuals otherwise authorized under this subtitle to make health care decisions for a declarant.

(c) (1) A written advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

(2) (i) Except as provided in items (ii) and (iii) of this paragraph, any competent individual may serve as a witness to an advance directive, including an employee of a health care facility or physician caring for the declarant if acting in good faith.

(ii) The health care agent of the declarant may not serve as a witness.

(iii) At least one of the witnesses must be an individual who is not knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any financial benefit by reason of the death of the declarant.

(d) (1) Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make health care decisions for the individual.

(2) An oral advance directive shall have the same effect as a written advance directive if made in the presence of the attending physician and one witness and if the substance of the oral advance directive is documented as part of the individual’s medical record. The documentation shall be dated and signed by the attending physician and the witness.

(e) (1) Unless otherwise provided in the document, an advance directive shall become effective when the declarant's attending physician and a second physician certify in writing that the patient is incapable of making an informed decision.

(2) If a patient is unconscious, or unable to communicate by any means, the certification of a second physician is not required under paragraph (1) of this subsection.

(f) (1) It shall be the responsibility of the declarant to notify the attending physician that an advance directive has been made. In the event the declarant becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the existence of an advance directive.

(2) An attending physician who is notified of the existence of the advance directive shall promptly:

(i) If the advance directive is written, make the advance directive or a copy of the advance directive a part of the declarant's medical records; or

(ii) If the advance directive is oral, make the substance of the advance directive, including the date the advance directive was made and the name of the attending physician, a part of the declarant's medical records.

(3) IF THE CARE OF A DECLARANT IS TRANSFERRED FROM ONE HEALTH CARE PROVIDER TO ANOTHER, THE TRANSFERRING HEALTH CARE PROVIDER MAY PREPARE A "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF THIS SUBTITLE.

(4) IF THE TRANSFERRING HEALTH CARE PROVIDER PREPARES A "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF THIS SUBTITLE, THE TRANSFERRING HEALTH CARE PROVIDER SHALL:

(I) TAKE REASONABLE STEPS TO ENSURE THAT THE "PATIENT'S PLAN OF CARE" FORM IS CONSISTENT WITH ANY APPLICABLE DECISION

STATED IN THE ADVANCE DIRECTIVE OF A DECLARANT; AND

(II) TRANSMIT THE “PATIENT’S PLAN OF CARE” FORM TO THE RECEIVING HEALTH CARE PROVIDER SIMULTANEOUSLY WITH THE TRANSFER OF THE DECLARANT.

(g) It shall be the responsibility of the declarant to notify a health care agent that the agent has been named in an advance directive to act on the declarant’s behalf.

(h) Unless otherwise provided in the patient’s advance directive, a patient’s agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

(i) The absence of an advance directive creates no presumption as to the patient’s intent to consent to or refuse life-sustaining procedures.”.

AMENDMENT NO. 3

On page 3, in lines 4 and 5, 12, and 19, in each instance, strike “PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT” and substitute “PATIENT’S PLAN OF CARE”; strike beginning with “TO” in line 5 down through “TO” in line 6 and substitute “SUITABLE FOR SUMMARIZING THE PLAN OF CARE FOR AN INDIVIDUAL, INCLUDING THE ASPECTS OF THE PLAN OF CARE RELATED TO”; in line 7, after “PROCEDURES;” insert “AND”; in line 8, after “HOSPITAL” insert “FROM A NONHOSPITAL SETTING”; strike beginning with “; AND” in line 8 down through “FORM” in line 11; in line 12, after “FORM” insert “IS VOLUNTARY AND”; in line 14, after “OF” insert “;

(I) THE PATIENT IF THE PATIENT IS”;

in the same line, after “INDIVIDUAL;” insert “OR

(II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE; AND”;

in line 15, strike “AN INDIVIDUAL” and substitute “THE PATIENT IF THE PATIENT IS”; strike beginning with “; AND” in line 16 down through “SUBTITLE” in line 18; in line 22, after “(2)”

insert “IF THE ATTENDING PHYSICIAN HAS A REASONABLE BASIS TO BELIEVE THAT THE “PATIENT’S PLAN OF CARE” FORM SATISFIES THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION,”; in the same line, strike “AND”; after line 22, insert:

“(3) SHALL BE SIGNED BY:

(I) THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL; OR

(II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE;

(4) IF SIGNED BY THE PATIENT IN ACCORDANCE WITH ITEM (3)(I) OF THIS SUBSECTION, SHALL INCLUDE CONTACT INFORMATION FOR THE PATIENT’S HEALTH CARE AGENT;

(5) IF SIGNED BY A HEALTH CARE AGENT OR SURROGATE DECISION MAKER IN ACCORDANCE WITH ITEM (3)(II) OF THIS SUBSECTION, SHALL INCLUDE CONTACT INFORMATION FOR THE HEALTH CARE AGENT OR SURROGATE DECISION MAKER;

(6) SHALL BE DATED;

(7) SHALL INCLUDE A STATEMENT THAT THE FORM MAY BE REVIEWED, MODIFIED, OR RESCINDED AT ANY TIME;

(8) SHALL DESIGNATE UNDER WHICH CONDITIONS THE FORM MUST BE REVIEWED OR MODIFIED, INCLUDING PROMPTLY AFTER THE PATIENT BECOMES INCAPABLE OF MAKING AN INFORMED DECISION; AND”;

in line 23, strike “(3)” and substitute “(9)”; in line 26, strike “(1)””; strike beginning with “SHALL,”  
in line 26 down through “FORM:” in line 27 and substitute “SHALL REVIEW ANY “PATIENT’S

PLAN OF CARE” FORM RECEIVED FROM ANOTHER HEALTH CARE PROVIDER AS PART OF THE PROCESS OF ESTABLISHING A PLAN OF CARE FOR AN INDIVIDUAL.”;  
and strike in their entirety lines 28 through 32, inclusive.

AMENDMENT NO. 4

On page 4, strike in their entirety lines 1 through 7, inclusive; in line 8, strike “(F)” and substitute “(E)”; strike beginning with the first “THE” in line 8 down through “CONSULTATION” in line 9 and substitute “THE OFFICE OF THE ATTORNEY GENERAL, IN DEVELOPING THE “PATIENT’S PLAN OF CARE” FORM IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, SHALL CONSULT”; in line 10, strike “THE OFFICE OF THE ATTORNEY GENERAL” and substitute “THE DEPARTMENT”; in line 12, strike “AND”; after line 12, insert:

“(3) ONE OR MORE REPRESENTATIVES FROM THE COMMUNITY OF INDIVIDUALS WITH DISABILITIES; AND”;

in line 13, strike “(3)” and substitute “(4)”; and in line 13, strike “DEPARTMENT” and substitute “OFFICE OF THE ATTORNEY GENERAL”.

AMENDMENT NO. 5

On page 5, after line 4, insert:

“19-344.

(f) (5) (I) A FACILITY SHALL OFFER A RESIDENT, UPON ADMISSION, THE OPPORTUNITY FOR THE PREPARATION OF A “PATIENT’S PLAN OF CARE” FORM IN ACCORDANCE WITH § 5-608.1 OF THIS ARTICLE.

(II) IF A FACILITY PREPARES A “PATIENT’S PLAN OF CARE” FORM IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE FORM SHALL REMAIN CONSPICUOUSLY IN THE FRONT OF A RESIDENT’S MEDICAL RECORDS.”.