

ENROLLED BILL

-- Health and Government Operations/Finance --

Introduced by **Delegates Bobo, Moe, Pendergrass, Quinter, F. Turner, and ~~Vaughn~~ Vaughn, Benson, Boteler, Boutin, Bromwell, Costa, Donoghue, Elliott, Frank, Goldwater, Hammen, Hubbard, Hurson, Kach, Kullen, Mandel, McDonough, Morhaim, Murray, Nathan-Pulliam, Oaks, Rudolph, V. Turner, and Weldon**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER 382

AN ACT concerning

Hospitals - Bone Marrow Donation

FOR the purpose of requiring a certain hospital to allow an individual to donate bone marrow to any individual under certain circumstances; and generally relating to hospitals and the donation of bone marrow.

BY repealing and reenacting, with amendments,
Article - Health - General
Section 19-310
Annotated Code of Maryland
(2000 Replacement Volume and 2004 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Health - General

19-310.

(a) (1) In this [section] SUBSECTION, "designated requestor" means a hospital employee who has completed a course offered by an organ, tissue, or eye recovery agency on how to approach potential donor families and request organ or tissue donation.

[(b)] (2) [(1)] (I) On or before the occurrence of each death in a hospital, the hospital shall contact an appropriate organ, tissue, or eye recovery agency in order to determine the patient's suitability for organ, tissue, or eye donation.

[(2)] (II) The contact and its disposition shall be noted in the patient's medical record.

[(c)] (3) [(1)] (I) The appropriate organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, shall determine the patient's suitability for organ, tissue, or eye donation.

[(2)] (II) If the organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, determines that donation is not appropriate based on established medical criteria, this determination shall be noted by hospital personnel in the patient's medical record and no further action is necessary.

[(3)] (III) If the organ, tissue, or eye recovery agency, in consultation with the patient's attending physician or the physician's designee, determines that the patient is a suitable candidate for organ, tissue, or eye donation, a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor shall initiate a request under [subsection (d) of this section] PARAGRAPH (4) OF THIS SUBSECTION, if applicable.

[(d)] (4) [(1)] (I) Except as provided in [subsection (j) of this section] PARAGRAPH (10) OF THIS SUBSECTION, when an individual dies in a hospital in accordance with § 5-202 of this article, a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor shall request, with sensitivity, in the order of stated priority, that the individual's representative consent to the donation of all or any of the decedent's organs or tissues as an anatomical donation if suitable.

[(2)] (II) For the purposes of [paragraph (1) of this subsection] SUBPARAGRAPH (I) OF THIS PARAGRAPH, the representative of the deceased individual is 1 of the following individuals listed in the following order of priority:

[(i)] 1. A spouse, but, if not alive or not competent, then;

[(ii)] 2. A son or daughter who is at least 18 years old, but, if not alive, competent, or immediately available, then;

[(iii)] 3. A parent, but, if not alive, competent, or immediately available, then;

[(iv)] 4. A brother or sister who is at least 18 years old, but, if not alive or not competent, then;

[(v)] 5. A guardian;

[(vi)] 6. A friend or other relative of the decedent, if the individual:

[1.] A. Is a competent individual; and

[2.] B. Presents an affidavit to the attending physician

stating:

[A.] I. That the individual is a relative or close friend of the

decedent; and

[B.] II. Specific facts and circumstances demonstrating that

the individual maintained regular contact with the decedent sufficient to be familiar with the decedent's activities, health, and personal beliefs; or

[(vii)] 7. Any other person authorized or required to dispose of the

body.

[(3)] (III) [(i)] 1. This [subsection] PARAGRAPH does not apply if the decedent has given contrary directions.

[(ii)] 2. The failure of the decedent to make a gift is not a contrary direction for purposes of this [subsection] PARAGRAPH.

[(4)] (IV) Contrary directions given by the decedent under this [subsection] PARAGRAPH shall be recorded in the decedent's medical record.

[(5)] (V) The representative of the appropriate organ, tissue, or eye recovery agency or the designated requestor and the representative of the deceased patient are entitled to protection from civil and criminal liability as provided in § 4-508(b) of the Estates and Trusts Article.

[(e)] (5) In all discussions concerning donations of organs and tissues, the representative of the appropriate organ, tissue, or eye recovery agency or the designated requestor shall show reasonable discretion and sensitivity:

[(1)] (I) To the circumstances of the family of the decedent;

[(2)] (II) To the religious beliefs of the decedent; and

[3] (III) To the nonsuitability for organ or tissue donation of the decedent.

[(f)] (6) [(1)] (i) When a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor makes a request under [subsection (d)(1) of this section] PARAGRAPH (4)(I) OF THIS SUBSECTION, the representative or designated requestor shall document the request and its disposition by having the appropriate individual described in [subsection (d)(2) of this section] PARAGRAPH (4)(II) OF THIS SUBSECTION sign a consent form or give a witnessed telegraphic, witnessed telephonic, or recorded consent to the donation.

[(2)] (II) Hospital personnel shall note the request and its disposition in the decedent's medical record or death certificate.

[(g)] (7) A hospital may not bill the estate of the decedent, a surviving spouse of the decedent, any heirs of the decedent, or an insurer of the decedent for the costs associated with the removal of all or any of the decedent's organs or tissues for the purpose of an anatomical donation.

[(h)] (8) After consultation with the Maryland Hospital Association, Inc., the Medical and Chirurgical Faculty of the State of Maryland, the Transplant Resource Center of Maryland, Inc., the Washington Regional Transplant Consortium, the Medical Eye Bank of Maryland, the Lions of District 22-C Eye Bank and Research Foundation, Incorporated, the Health Facilities Association of Maryland, and Tissue Banks International, the Secretary shall publish guidelines designed to implement this [section] SUBSECTION, including guidelines:

[(1)] (I) Requiring that, at or near the time of each individual death in a hospital, the hospital contact by telephone an appropriate organ, tissue, or eye recovery agency to determine the suitability of the individual for organ, tissue, and eye donation;

[(2)] (II) Requiring that each hospital designate a person to make the contact; and

[(3)] (III) Identifying the information that the person designated by the hospital shall have available before making the contact.

[(i)] (9) The provisions of this [section] SUBSECTION shall in no way interfere with the duties of the office of the Chief Medical Examiner. In sudden deaths under the jurisdiction of the office of the Chief Medical Examiner as provided in § 5-309 of this article, notification will be made to the office of the Chief Medical Examiner prior to organ removal.

[(j)] (10) The consent of the decedent's representative is not necessary and the provisions of [subsection (d) of this section] PARAGRAPH (4) OF THIS SUBSECTION do not apply if:

[(1)] (I) The decedent's driver's license or identification card contains a notation that the decedent is an organ donor; or

[(2)] (II) The decedent has consented to the gift of all or any part of the decedent's body in accordance with the provisions of:

[(i)] 1. § 5-604.1 of this article; or

[(ii)] 2. Title 4, Subtitle 5 of the Estates and Trusts Article.

[(k)] (11) A person who acts in good faith to recover organs or tissues in accordance with a notation on the decedent's driver's license or identification card that the decedent is an organ donor, a gift made in accordance with § 5-604.1 of this article or Title 4, Subtitle 5 of the Estates and Trusts Article, or a gift made in accordance with the anatomical gift laws of another state or country is immune from criminal prosecution and liability for damages in any cause of action related to the recovery and donation of the decedent's organs or tissues.

[(l)] (12) The Department shall conduct annual death record reviews at each hospital to determine the hospital's compliance with the provisions of this [section] SUBSECTION. The Department may delegate its duty to conduct annual death record reviews to the appropriate organ, tissue, or eye recovery agency serving the region in which a particular hospital is located.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HOSPITAL OFFERING BONE MARROW TRANSPLANT SERVICES SHALL ALLOW AN INDIVIDUAL TO DONATE BONE MARROW TO ANY INDIVIDUAL.

(2) AN INDIVIDUAL MAY DONATE BONE MARROW TO ANOTHER INDIVIDUAL IF A LICENSED PHYSICIAN DETERMINES, BASED ON THE PHYSICIAN'S MEDICAL JUDGMENT, THAT THE DONATION OF THE BONE MARROW IS IN THE BEST INTERESTS OF THE ~~DONOR AND DONEE~~ DONEE AND THERE IS NO SUBSTANTIAL RISK OF MEDICAL INJURY TO THE DONOR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2005.