

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 1385  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Delegate Morhaim” and substitute “Delegates Morhaim, Hammen, Angel, Barron, Bromwell, Cullison, Hayes, Hill, Kelly, Kipke, Krebs, McDonough, McMillan, Miele, Morgan, Oaks, Pena-Melnyk, Pendergrass, Rose, Saab, Sample-Hughes, West, and K. Young”; in line 2, strike “Electronic”; strike beginning with “Witness” in line 2 down through “Services” in line 3 and substitute “Procedures, Information Sheet, and Use of Electronic Advance Directives”; strike beginning with “certain” in line 4 down through “time” in line 30 and substitute “a certain expression of an individual’s wishes regarding health care shall be considered under certain circumstances, notwithstanding any other provision of law; repealing a provision of law establishing that a certain electronic advance directive satisfies a certain requirement; establishing that a witness is not required for an electronic advance directive under certain circumstances; authorizing the State-designated health information exchange to accept as valid a certain electronic advance directive in a certain form under certain circumstances; requiring the Maryland Health Benefit Exchange to provide a certain information sheet in accordance with certain provisions of this Act; altering the contents of a certain information sheet; requiring the Department of Health and Mental Hygiene to take certain actions regarding electronic advance directives; requiring the Department, for a certain purpose, to contract with an electronic advance directives service to connect with health care providers in a certain manner; requiring certain money in the Spinal Cord Injury Research Trust Fund to be used to administer the Advance Directive Registry in the Department; altering the date on or before which the Department must implement a certain plan; requiring the Department to offer to certain recipients a certain information sheet in a certain manner and the use of electronic advance directives through a certain service; requiring the Maryland Health Care Commission to develop certain criteria for a certain purpose; establishing certain requirements that an electronic advance directives service must

(Over)

**HB1385/196187/1 Health and Government Operations Committee**  
**Amendments to HB 1385**  
**Page 2 of 10**

meet to connect to the State-designated health information exchange; authorizing the State-designated health information exchange to charge a certain fee under certain circumstances; requiring the State-designated health information exchange to ensure that electronic advance directives services do not have access to certain information; altering a certain definition; making conforming changes”; and in line 30, strike “electronic”.

On page 2, strike in their entirety lines 1 through 5, inclusive; in line 8, strike “5-602(c), 5-615, 5-622, and 5-623” and substitute “5-602(a) and (c), 5-615, 5-622, 13-1406, and 15-109.1”; after line 10, insert:

“BY repealing and reenacting, without amendments,

Article – Health – General

Section 5-620

Annotated Code of Maryland

(2015 Replacement Volume)”;

in line 13, strike “15-102.9” and substitute “5-615.1 and 19-144”; in line 16, strike “with” and substitute “without”; in line 18, strike “15-122.1” and substitute “6-103.1”; and strike in their entirety lines 26 through 30, inclusive.

AMENDMENT NO. 2

On page 2, in line 35, after “(a)” insert “**(1)**”; and after line 37, insert:

**“(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN THE ABSENCE OF A VALIDLY EXECUTED OR WITNESSED ADVANCE DIRECTIVE, ANY AUTHENTIC EXPRESSION MADE BY AN INDIVIDUAL WHILE COMPETENT OF THE INDIVIDUAL’S WISHES REGARDING HEALTH CARE FOR THE INDIVIDUAL SHALL BE CONSIDERED.”**

**HB1385/196187/1 Health and Government Operations Committee  
Amendments to HB 1385  
Page 3 of 10**

On page 3, strike beginning with “WHO” in line 14 down through “DIRECTIVE” in line 18 and substitute “IS NOT REQUIRED FOR AN ELECTRONIC ADVANCE DIRECTIVE IF THE DECLARANT’S IDENTITY HAS BEEN ESTABLISHED USING REMOTE IDENTITY PROOFING AND MULTIFACTOR AUTHENTICATION SERVICES:”

**(I) ESTABLISHED IN ACCORDANCE WITH THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY SPECIAL PUBLICATION 800-63-2: ELECTRONIC AUTHENTICATION GUIDELINE; AND**

**(II) APPROVED BY THE MARYLAND HEALTH CARE COMMISSION.**

**(4) THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE MAY ACCEPT AS VALID AN UNWITNESSED ELECTRONIC ADVANCE DIRECTIVE IN THE FORM OF A VIDEO RECORD OR FILE TO STATE THE DECLARANT’S WISHES REGARDING HEALTH CARE FOR THE DECLARANT OR TO APPOINT AN AGENT IF THE VIDEO RECORD OR FILE:**

**(I) IS DATED; AND**

**(II) IS STORED IN AN ELECTRONIC FILE BY AN ELECTRONIC ADVANCE DIRECTIVES SERVICE RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION”.**

On page 4, in line 26, after “Article;” insert “AND”; and strike in their entirety lines 27 and 28.

On page 5, in line 1, strike “(V)” and substitute “(IV)”; in line 4, after “form” insert “OR AN ELECTRONIC ADVANCE DIRECTIVE TECHNOLOGY OR SERVICE”; in line 6,

(Over)

**HB1385/196187/1 Health and Government Operations Committee  
Amendments to HB 1385  
Page 4 of 10**

after “SUBSECTION” insert “AT A MINIMUM SHALL”; and strike in their entirety lines 7 through 14, inclusive, and substitute:

**“(I) EDUCATE THE PUBLIC ON THE USE OF ELECTRONIC ADVANCE DIRECTIVES;**

**“(II) ENCOURAGE THE USE OF ELECTRONIC ADVANCE DIRECTIVES;**

**“(III) PROVIDE INFORMATION ABOUT DEVELOPING AN ELECTRONIC ADVANCE DIRECTIVE;**

**“(IV) DESCRIBE HOW ELECTRONIC ADVANCE DIRECTIVES ARE MADE AVAILABLE AT THE POINT OF CARE;**

**“(V) INDICATE THAT THE USE OF AN ELECTRONIC ADVANCE DIRECTIVE IS NOT REQUIRED; AND**

**“(VI) INDICATE THAT INDIVIDUALS DO NOT HAVE TO PAY TO HAVE THEIR ELECTRONIC ADVANCE DIRECTIVES HONORED.**

**5-615.1.**

**THE DEPARTMENT SHALL:**

**(1) ENCOURAGE THE USE OF ELECTRONIC ADVANCE DIRECTIVES;**

**(2) CARRY OUT APPROPRIATE EDUCATIONAL AND OUTREACH EFFORTS TO INCREASE PUBLIC AWARENESS OF ELECTRONIC ADVANCE DIRECTIVES; AND**

**(3) ENCOURAGE THE FOLLOWING PERSONS AND ENTITIES TO ENGAGE IN OUTREACH EFFORTS REGARDING ELECTRONIC ADVANCE DIRECTIVES:**

**(I) THE MARYLAND DEPARTMENT OF AGING;**

**(II) COUNTY OMBUDSPERSONS;**

**(III) LOCAL HEALTH DEPARTMENTS;**

**(IV) SENIOR LIVING FACILITIES;**

**(V) ACADEMIC INSTITUTIONS;**

**(VI) RELIGIOUS ORGANIZATIONS;**

**(VII) HOSPITALS; AND**

**(VIII) OTHER SIMILAR PERSONS OR ENTITIES.”.**

On page 6, in line 5, strike “(1)”.

On pages 6 and 7, strike in their entirety the lines beginning with line 7 on page 6 through line 19 on page 7, inclusive, and substitute:

“13-1406.

(a) There is a Spinal Cord Injury Research Trust Fund.

(Over)

**HB1385/196187/1 Health and Government Operations Committee**  
**Amendments to HB 1385**  
**Page 6 of 10**

(b) The Fund shall consist of money transferred to the Fund under § 6–103.1 of the Insurance Article or received from any other lawful source.

(c) (1) Money in the Fund shall be used to [make]:

(I) MAKE grants for spinal cord injury research that is focused on basic, preclinical, and clinical research for developing new therapies to restore neurological function in individuals with spinal cord injuries; AND

(II) ADMINISTER THE ADVANCE DIRECTIVE REGISTRY ESTABLISHED UNDER § 5-620 OF THIS ARTICLE.

(2) For the purpose specified in paragraph (1) of this subsection, a grant may include an award to or for:

(i) A public or private entity;

(ii) A university researcher;

(iii) A research institution;

(iv) Private industry;

(v) A clinical trial;

(vi) A supplement to an existing charitable or private industry grant;

(vii) A matching fund;

(viii) A fellowship in spinal cord injury research;

**HB1385/196187/1 Health and Government Operations Committee**  
**Amendments to HB 1385**  
**Page 7 of 10**

(ix) A research meeting concerning spinal cord injury research; or

(x) Any other recipient or purpose which the Board determines is consistent with the purpose specified in paragraph (1) of this subsection.

(d) (1) The Fund is a continuing, nonlapsing fund, not subject to § 7–302 of the State Finance and Procurement Article.

(2) (i) The Fund shall be used exclusively to offset the actual documented direct costs of fulfilling the statutory and regulatory duties of the Board under this subtitle.

(ii) The Department shall pay the indirect costs the Board incurs in fulfilling the statutory and regulatory duties of the Board under this subtitle.

(3) Any unspent portions of the Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Fund to be used for the purpose specified in subsection (c) of this section.

(e) The chairman of the Board or the designee of the chairman shall administer the Fund.

(f) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2–1220 of the State Government Article.”.

On page 7, in line 28, strike “June 30, 2005” and substitute “**JANUARY 1, 2017**”; and after line 32, insert:

**“(D) THE DEPARTMENT SHALL OFFER:**

(Over)

(1) THE INFORMATION SHEET DEVELOPED UNDER § 5-615 OF THIS ARTICLE AS PART OF THE MONTHLY ENROLLMENT PACKET MAILED TO A RECIPIENT BY THE ENROLLMENT BROKER; AND

(2) THE USE OF ELECTRONIC ADVANCE DIRECTIVES TO A RECIPIENT THROUGH AN ADVANCE DIRECTIVES SERVICE THAT:

(i) IS APPROVED BY THE MARYLAND HEALTH CARE COMMISSION AND THE DEPARTMENT; AND

(ii) MEETS THE TECHNOLOGY, SECURITY, AND PRIVACY STANDARDS ESTABLISHED BY THE MARYLAND HEALTH CARE COMMISSION.

19-144.

(A) TO FACILITATE THE USE OF WEB-BASED TECHNOLOGY FOR ELECTRONIC ADVANCE DIRECTIVES, THE MARYLAND HEALTH CARE COMMISSION SHALL DEVELOP CRITERIA FOR RECOGNIZING ELECTRONIC ADVANCE DIRECTIVES SERVICES THAT ARE AUTHORIZED TO CONNECT TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE.

(B) TO BE AUTHORIZED TO CONNECT TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE, AN ELECTRONIC ADVANCE DIRECTIVES SERVICE SHALL:

(1) BE RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION;

(2) MEET NATIONAL PRIVACY AND SECURITY STANDARDS AND INDUSTRY BEST PRACTICES FOR SECURITY AUDITS IDENTIFIED BY THE MARYLAND HEALTH CARE COMMISSION;

(3) USE REMOTE IDENTITY PROOFING AND MULTIFACTOR AUTHENTICATION SERVICES:

(i) ESTABLISHED IN ACCORDANCE WITH THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY SPECIAL PUBLICATION 800-63-2: ELECTRONIC AUTHENTICATION GUIDELINE; AND

(ii) APPROVED BY THE MARYLAND HEALTH CARE COMMISSION;

(4) BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH CONNECTING TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE; AND

(5) STORE ELECTRONIC ADVANCE DIRECTIVES THAT ARE RECEIVED BY FACSIMILE OR OTHER ELECTRONIC MEANS.

(c) THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE MAY CHARGE ELECTRONIC ADVANCE DIRECTIVES SERVICES RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION A FEE FOR CONNECTING TO THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE.

(d) THE STATE-DESIGNATED HEALTH INFORMATION EXCHANGE SHALL ENSURE THAT ELECTRONIC ADVANCE DIRECTIVES SERVICES DO NOT HAVE

**HB1385/196187/1 Health and Government Operations Committee  
Amendments to HB 1385  
Page 10 of 10**

**ACCESS TO INFORMATION STORED ON THE STATE-DESIGNATED HEALTH  
INFORMATION EXCHANGE.**

On page 8, strike in their entirety lines 2 through 26, inclusive, and substitute:

“6-103.1.

Notwithstanding § 2-114 of this article, beginning January 15, 2006, from the tax imposed on the health insurers under this subtitle, \$500,000 shall be distributed annually to the Spinal Cord Injury Research Trust Fund created under § 13-1406 of the Health – General Article.”.

On page 9, strike in their entirety lines 7 through 11, inclusive.