

Chapter 667

(House Bill 188)

AN ACT concerning

Public Health – Advance Directives – Witness Requirements, Advance Directives Services, and Fund

FOR the purpose of ~~altering the circumstances under which a witness's subscription is not required for an electronic advance directive; requiring the Maryland Health Care Commission to adopt regulations specifying the manner in which~~ clarifying that certain guidelines, in accordance with which a declarant's identity may be established authenticated without a witness's subscription apply as periodically updated providing that a witness is not required for an electronic advance directive if the declarant's identity has been authenticated in accordance with certain replacement guidelines under certain circumstances; requiring the Department of Health and Mental Hygiene to issue a request for proposals from electronic advance directives services for a certain purpose; clarifying that the Department of Health and Mental Hygiene may contract with multiple electronic advance directives services; repealing the requirement that a certain electronic advance directives service be approved by the Department; requiring an electronic advance directives service to use certain guidelines to authenticate a declarant's identity for an electronic advance directive that is not witnessed; requiring the Maryland Health Care Commission and the Department to approve only electronic advance directives services that use certain guidelines to authenticate a declarant's identity for an electronic advance directive that is not witnessed; requiring an individual to submit an electronic advance directive that is not witnessed to an electronic advance directives service recognized by the Commission; repealing a certain provision of law requiring the Department to review an advance directive and verify that the advance directive includes certain items before accepting the advance directive into an electronic advance directives service; establishing the Advance Directive Program Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the Department to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; specifying the purpose for which the Fund may be used; providing for the investment of money in and expenditures from the Fund; requiring interest earnings of the Fund to be credited to the Fund; exempting the Fund from a certain provision of law requiring interest earnings on State money to accrue to the General Fund of the State; requiring, on or before a certain date each year, the Department to report to the Governor and certain committees of the General Assembly on the Advance Directive Program; repealing certain provisions of law relating to the establishment, operation, and duties of the State Board of Spinal Cord Injury Research; repealing certain provisions of law establishing the Spinal Cord Injury Research Trust Fund; repealing certain provisions of law authorizing the Secretary of Health and Mental Hygiene to take certain actions relating to grants made from money in the Spinal Cord Injury Research Trust Fund; requiring a certain amount of a certain tax on

certain health insurers to be distributed annually to the Advance Directive Program Fund instead of to the Spinal Cord Injury Research Trust Fund; transferring money remaining in the Spinal Cord Injury Research Trust Fund to the Advance Directive Program Fund; defining a certain term; altering a certain definition; repealing certain definitions; and generally relating to advance directives, advance directives services, and the Advance Directive Program Fund.

BY repealing and reenacting, without amendments,

Article – Health – General

Section 5–601(a) and 5–620

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 5–601(b), 5–602(c), ~~and 5–622(a)(1)~~ 5–622(a), and 5–623(c)

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY repealing

Article – Health – General

Section 5–624; and 13–1401 through 13–1407 and the subtitle “Subtitle 14. State Board of Spinal Cord Injury Research”

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY adding to

Article – Health – General

Section 5–626 ~~and 5–627~~

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 6–103.1

Annotated Code of Maryland

(2011 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(i)

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(ii)94. and 95.
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)96.
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

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

Article – Health – General

5–601.

(a) In this subtitle the following words have the meanings indicated.

(b) “Advance directive” means:

(1) A witnessed written or electronic document, voluntarily executed by the declarant in accordance with the requirements of this subtitle; [or]

(2) A witnessed oral statement, made by the declarant in accordance with the provisions of this subtitle; **OR**

(3) AN ELECTRONIC DOCUMENT, VOLUNTARILY EXECUTED BY THE DECLARANT, IN WHICH THE DECLARANT’S IDENTITY IS ~~ESTABLISHED AUTHENTICATED~~ IN ACCORDANCE WITH ~~REGULATIONS ADOPTED UNDER § 5–602(C)(3)(II) OF THIS SUBTITLE~~ THE GUIDELINES DESCRIBED IN § 5–602(C)(3) OF THIS SUBTITLE.

5–602.

(c) (1) **[A] EXCEPT AS PROVIDED FOR IN PARAGRAPH (3) OF THIS SUBSECTION,** A written or electronic 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 subparagraphs (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, nurse practitioner, physician assistant, 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.

(3) ~~(H)~~ A witness is not required for an electronic advance directive if the declarant's identity has been ~~established~~ **AUTHENTICATED** in accordance with ~~the~~ National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline] ~~REGULATIONS ADOPTED BY THE MARYLAND HEALTH CARE COMMISSION UNDER SUBPARAGRAPH (H) OF THIS PARAGRAPH, AS PERIODICALLY UPDATED OR, IF REPLACED, THE REPLACEMENT GUIDELINE.~~

~~(H) THE MARYLAND HEALTH CARE COMMISSION SHALL ADOPT REGULATIONS SPECIFYING THE MANNER IN WHICH THE DECLARANT'S IDENTITY MAY BE ESTABLISHED WITHOUT A WITNESS'S SUBSCRIPTION.~~

(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.

5-620.

There is an Advance Directive Program in the Department.

5-622.

(a) (1) To facilitate the use of cloud-based technology for electronic advance directives, the Department shall **ISSUE A REQUEST FOR PROPOSALS FROM AND** contract with an electronic advance directives service **OR MULTIPLE ELECTRONIC ADVANCE DIRECTIVES SERVICES** to connect with health care providers at the point of care through the State-designated health information exchange.

(2) [The] AN electronic advance directives service shall:

(i) Be approved by the Maryland Health Care Commission and the Department; [and]

(ii) Meet the technology, security, and privacy standards set by the Maryland Health Care Commission; AND

(III) USE THE GUIDELINES DESCRIBED IN § 5-602(C)(3) OF THIS SUBTITLE TO AUTHENTICATE A DECLARANT’S IDENTITY FOR AN ELECTRONIC ADVANCE DIRECTIVE THAT IS NOT WITNESSED.

(3) THE MARYLAND HEALTH CARE COMMISSION ~~AND THE DEPARTMENT~~ MAY APPROVE ONLY ADVANCE DIRECTIVES SERVICES THAT USE THE GUIDELINES DESCRIBED IN § 5-602(C)(3) OF THIS SUBTITLE TO AUTHENTICATE A DECLARANT’S IDENTITY FOR AN ELECTRONIC ADVANCE DIRECTIVE THAT IS NOT WITNESSED.

5-623.

(c) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN individual is not required to submit an advance directive to an electronic advance directives service recognized by the Maryland Health Care Commission.

(2) AN INDIVIDUAL SHALL SUBMIT AN ELECTRONIC ADVANCE DIRECTIVE THAT IS NOT WITNESSED TO AN ELECTRONIC ADVANCE DIRECTIVES SERVICE THAT IS RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION.

[5-624.

Before accepting an advance directive into an electronic advance directives service recognized by the Maryland Health Care Commission, the Department shall review and verify that the advance directive includes:

- (1) The signature of the declarant;
 - (2) The date on which the advance directive was signed by the declarant;
- and
- (3) The signature of two witnesses as provided in § 5-602(c) of this subtitle.]

5-626.

(A) IN THIS SECTION, “FUND” MEANS THE ADVANCE DIRECTIVE PROGRAM FUND.

(B) THERE IS AN ADVANCE DIRECTIVE PROGRAM FUND.

(C) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING TO CARRY OUT THE PURPOSES OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER § 5-620 OF THIS SUBTITLE.

(D) THE DEPARTMENT SHALL ADMINISTER THE FUND.

(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(F) THE FUND CONSISTS OF:

(1) MONEY TRANSFERRED TO THE FUND UNDER § 6-103.1 OF THE INSURANCE ARTICLE;

(2) INTEREST EARNED UNDER SUBSECTION (H) OF THIS SECTION;
AND

(3) ANY OTHER MONEY RECEIVED FROM ANY OTHER LAWFUL SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) MONEY IN THE FUND MAY BE USED ONLY TO CARRY OUT THE PURPOSES OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER § 5-620 OF THIS SUBTITLE.

(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.

~~5-627.~~

~~ON OR BEFORE JANUARY 15 EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE HOUSE APPROPRIATIONS COMMITTEE, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, AND THE SENATE FINANCE COMMITTEE ON THE PROGRAM, INCLUDING, FOR THE PRIOR CALENDAR YEAR, THE COSTS TO ESTABLISH AND MAINTAIN THE PROGRAM AND THE FEES CHARGED TO REGISTRANTS UNDER THE PROGRAM.~~

[Subtitle 14. State Board of Spinal Cord Injury Research.]

[13-1401.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Board” means the State Board of Spinal Cord Injury Research.
- (c) “Fund” means the Spinal Cord Injury Research Trust Fund.]

[13–1402.

There is a State Board of Spinal Cord Injury Research in the Department.]

[13–1403.

- (a) (1) The Board consists of 11 members.

- (2) Of the 11 members of the Board:

- (i) One shall be a member of the Maryland House of Delegates appointed by the Speaker of the House;

- (ii) One shall be a member of the Senate of Maryland appointed by the President of the Senate;

- (iii) Four shall be individuals with knowledge and expertise concerning spinal cord injuries appointed by the Governor from separate lists submitted to the Governor by the University of Maryland School of Medicine and the Johns Hopkins School of Medicine, with:

- 1. Two individuals from the University of Maryland School of Medicine; and

- 2. Two individuals from the Johns Hopkins School of Medicine;

- (iv) Two shall be nurses with knowledge and expertise concerning spinal cord injuries appointed by the Governor from separate lists submitted to the Governor by the University of Maryland School of Nursing and the Johns Hopkins School of Nursing, with:

- 1. One nurse from the University of Maryland School of Nursing; and

- 2. One nurse from the Johns Hopkins School of Nursing;

(v) Two members, appointed by the Governor from a list submitted by the Department of Disabilities, shall be individuals who have a spinal cord injury or who have a family member with a spinal cord injury; and

(vi) One member, appointed by the Governor, shall be an individual from the general public with knowledge and expertise concerning spinal cord injuries.

(b) (1) Subject to paragraph (2) of this subsection, the term of a member is 4 years.

(2) The Governor shall stagger the terms of the initial members.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed and qualifies.

(5) A member who serves 2 consecutive 4-year terms may not be reappointed until 4 years after completion of those terms.

(6) (i) If a vacancy occurs, the Governor promptly shall appoint a successor who will serve until the term expires.

(ii) The successor may be reappointed for a full term.]

[13–1404.

(a) The Governor shall appoint the chairman of the Board.

(b) A majority of the authorized membership of the Board is a quorum.

(c) At the times and places that it determines, the Board:

(1) Shall meet at least twice a year; and

(2) Subject to the call by the chairman or by request of a majority of the members of the Board, may meet more frequently as deemed necessary.

(d) A member of the Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.]

[13–1405.

(a) The Board shall:

(1) Develop criteria, subject to the approval of the Secretary, for the award of grants for the purpose specified in § 13–1406(c) of this subtitle;

(2) Subject to § 13–1407 of this subtitle, administer:

(i) A grants program for the purpose specified in § 13–1406(c)(1) of this subtitle; and

(ii) The Fund;

(3) Make recommendations to the Secretary for approval of applications for grants from the Fund; and

(4) On or before January 1 of each year beginning in 2002, submit a report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly concerning:

(i) The activities of the Board in administering the grant program specified in this subtitle, including the status of money in the Fund;

(ii) The status of spinal cord injury neurological research projects that are funded by grants issued by the Board; and

(iii) Any other matter determined by the Board.

(b) A member of the Board who is a member of the General Assembly may not vote on matters before the Board relating to the exercise of the sovereign powers of the State.]

[13–1406.

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

(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:

(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 Program 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;

(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.]

[13–1407.

The Secretary:

(1) May:

(i) Approve an application for a grant for the purpose specified in § 13–1406(c) of this subtitle, if the Board has recommended approval of that application; and

(ii) On recommendation by the Board, adopt any regulation necessary to carry out this subtitle; and

(2) Shall:

(i) Ensure that recipients of grant funds under this subtitle use the funds for the purposes authorized by this subtitle; and

(ii) Designate the staff necessary to assist the Board in carrying out its functions under this subtitle.]

Article – Insurance

6–103.1.

Notwithstanding § 2–114 of this article, beginning [January 15, 2006] **JULY 1, 2017**, from the tax imposed on the health insurers under this subtitle, \$500,000 shall be distributed annually to the [Spinal Cord Injury Research Trust] **ADVANCE DIRECTIVE PROGRAM** Fund created under [§ 13–1406] **§ 5–626** of the Health – General Article.

Article – State Finance and Procurement

6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

94. the Community Program Fund; [and]

95. the Maryland Corps Program Fund; AND

96. THE ADVANCE DIRECTIVE PROGRAM FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That all money remaining in the Spinal Cord Injury Research Trust Fund shall be transferred to the Advance Directive Program Fund on July 1, 2017.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before January 15, 2018, the Department of Health and Mental Hygiene shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the House Appropriations Committee, the House Health and Government Operations Committee, the Senate Budget and Taxation Committee, and the Senate Finance Committee on the Advance Directive Program, including the costs to establish and maintain the Program and the fees charged to registrants under the Program.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2017.

Approved by the Governor, May 25, 2017.