



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 28, 2020

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

**RE: SB 701 – “End-of-Life Option Act (Richard E. Israel and Roger ‘Pip’ Moyer Act)” –
Letter of Concern**

Dear Chair Smith:

The Maryland Board of Physicians (the “Board”) is submitting this Letter of Concern for SB 701, entitled “End-of-Life Option Act (Richard E. Israel and Roger ‘Pip’ Moyer Act).”

SB 701 sets forth the circumstances under which, and the procedure by which, an individual may request aid in dying. A “qualified individual” is defined in the bill as one who is an adult, has the capacity to make medical decisions, is a resident of Maryland, has a terminal illness, and has the ability to self-administer medication.

The process involves the licensed physician who has primary responsibility for the medical care of the individual making the request. Among other requirements, this physician, or “attending physician,” shall ensure that the individual is a qualified individual, makes an informed decision, and has voluntarily requested aid in dying. The attending physician also is responsible for determining that the individual has a terminal illness and documenting certain information in the qualified individual’s medical record.

The Board has concerns that the bill does not clarify if any civil or criminal liability is incurred by a health care provider for failing to comply with certain provisions of Health-General Article, §5-6A-01 *et seq.*, such as improperly diagnosing a patient. Is a health care provider’s failure to cooperate in good-faith compliance with Health-General Article, §5-6A-01 *et seq.* deemed a criminal violation of §3-102 of the Criminal Law Article that subjects the provider to particular criminal penalties? In addition, the bill does not specifically address who, or what entity, is responsible for resolving matters concerning compliance with the Health-General provisions and determining whether or not the provider acted in good-faith compliance with the subtitle. For example, who investigates a complaint? Is a criminal law enforcement agency responsible for determining compliance with and enforcing these provisions? Is it the Board? What is the meaning of an act in “good-faith” compliance? This term is not defined in the bill.

The Board also is concerned regarding the following provision under §5-6A-09:

(C) RECORDS OR INFORMATION COLLECTED OR MAINTAINED UNDER THIS SUBTITLE ARE NOT SUBJECT TO SUBPOENA OR DISCOVERY AND MAY NOT BE INTRODUCED INTO EVIDENCE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING, EXCEPT TO RESOLVE MATTERS CONCERNING COMPLIANCE WITH THIS SUBTITLE OR AS OTHERWISE SPECIFICALLY PROVIDED BY LAW.

If it's decided that the Board is the agency, or one of the agencies, that will be tasked with investigating complaints alleging failure to comply with the requirements of the subtitle or involving other standard of care concerns, the Board must have the ability to subpoena medical records as part of its investigation. This provision could preclude the Board from investigating complaints involving standard of care issues or other potential violations of the Medical Practice Act related to certain actions by physicians in an end-of-life matter, and would adversely affect the Board's efforts and mission to protect the health and safety of Maryland citizens.

In addition, the bill does not specifically address the potential role of physician assistants (PAs). Under Health Occupations Article (H.O.), Title 15, PAs may be delegated the dispensing of prescription drugs, under certain circumstances, by a supervising physician who possesses a dispensing permit. *See H.O. §15-302.2*. The Board is concerned that the bill lacks clarity about whether the dispensing of medications prescribed for aid in dying may be delegated by a permit holder to a PA.

Finally, the Board believes there are inconsistencies in the use of certain terms throughout the bill, which – in turn – may cause confusion for the public and practitioners about certain provisions.

Thank you for your consideration of this information. If you have questions or need additional information, please contact Wynne E. Hawk, 410-764-3786.

Sincerely,



Christine A. Farrelly
Executive Director

cc: Members of the Judicial Proceedings Committee
Webster Ye, MDH

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.