

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 207 (Chairman, Health and Government Operations Committee)  
(By Request – Departmental – Aging)

Health and Government Operations Education, Health, and Environmental Affairs

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**Health Care Decisions Act - Appointment of Agent - Prohibition**

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This departmental bill extends the current prohibition of who may not serve as a person's health care agent to include the spouse, parent, child, or sibling of an owner, operator, or employee of a health care facility from which the person is receiving health care. A disqualified person may serve as a health care agent if the agent was appointed by the person before the date the person received, or contracted to receive, health care from the facility.

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**Fiscal Summary**

**State Effect:** None. The bill would not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** The Department of Aging has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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**Analysis**

**Current Law:** Any competent person may make a written advance directive regarding the provision or withholding of health care for that person. A person may appoint an agent to make health care decisions for him or her under the circumstances stated in the advance directive.

An owner, operator, or employee of a health care facility from which the person is receiving health care may not serve as a health care agent unless the person would qualify as a surrogate decision maker. An appointed agent has decision making priority over any individuals otherwise authorized to make health care decisions for the person.

Advance directives may be written or oral and must be witnessed by at least two people. An advance directive becomes effective when the person's attending physician and a second physician certify in writing that the patient is incapable of making an informed decision. If a patient is unconscious, or unable to communicate by any means, the second physician's certification is not required. The person in question is responsible for notifying the attending physician that he or she has an advance directive. If the person becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the advance directive.

Once an attending physician is notified of the advance directive, the physician must make the advance directive part of the person's medical records.

The person in question is responsible for notifying the health care agent that the agent was named to the advance directive.

The absence of an advance directive creates no presumption as to the patient's intent to consent to or refuse life-sustaining procedures.

**Background:** The Health Care Decisions Act, Chapter 372 of 1993, prohibits a person with a potential conflict of interest from serving as the health care agent of a resident of a facility. It specifically prohibits owners, operators, or employees of health care facilities from serving as residents' health care agents. The Department of Aging reports that there was at least one instance in which the owner of an assisted living facility bypassed this prohibition by having his or her spouse serve as the resident's agent.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Aging, Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2004  
lc/jr Revised - House Third Reader - March 19, 2004

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