

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

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

House Bill 557

(Delegate Morhaim, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

**Advance Directive Information Availability Act**

This bill requires the Department of Health and Mental Hygiene (DHMH), in consultation with the Office of the Attorney General (OAG), to develop an information sheet providing information relating to advance directives and develop a plan to make it widely available. The information sheet may not contain or promote a specific advance directive form. DHMH must implement the plan by June 30, 2005. OAG must consult with any interested party, including the State Advisory Council on Quality Care at the End of Life, in developing the plan and the information sheet. An insurance carrier (excluding managed care organizations) must include the advance directive information sheet in the carrier's member publications, on the carrier's web site if the carrier maintains a web site, and at a member's request. The Motor Vehicle Administration (MVA) must make driver's license and identification card applicants aware of and informed of how to obtain the advance directive. DHMH must report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2005 on the bill's implementation.

**Fiscal Summary**

**State Effect:** DHMH general fund expenditures could increase by \$16,600 and federal fund expenditures could increase by \$14,900 in FY 2005. The Transportation Trust Fund (TTF) expenditures for the MVA could increase minimally depending on the number of customer questions about advance directives. Future years reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	16,600	22,400	22,600	22,800	23,100
SF Expenditure	-	-	-	-	-
FF Expenditure	14,900	20,100	20,300	20,500	20,700
Net Effect	(\$31,500)	(\$42,500)	(\$42,900)	(\$43,300)	(\$43,800)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

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## **Analysis**

**Current Law:** When a person is admitted to a health care facility, the facility must provide information regarding the person's right to make decisions concerning health care, including the right to accept or refuse treatment, and the right to make an advance directive, including a living will.

Any competent individual can make a written advance directive regarding the provision of health care or the withholding or withdrawal of health care for themselves. A person may appoint an agent to make health care decisions for the person. A written advance directive must be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make health care decisions for the individual. An oral directive has the same effect as a written directive if it is made in the presence of the attending physician and one witness and if the substance of the oral directive is documented in the patient's medical record. The documentation must be dated and signed by the attending physician and witness.

An advance directive becomes effective when the declarant'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, a second physician's certification is not required.

It is the declarant's responsibility to notify the attending physician that an advance directive was made. If the declarant becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the existence of the advance directive. The attending physician must make the advance directive a part of the patient's medical record.

**Background:** Health care facilities must provide patients, upon admittance, with information regarding how to make an advance directive under requirements set by the federal government and the Joint Commission on Accreditation of Healthcare Organizations.

DHMH's Developmental Disabilities Administration or the Mental Hygiene Administration already provide individuals they serve with information regarding advance directives.

The U.S. Department of Health and Human Services Agency for Healthcare Research and Quality reports that less than 50% of severely or terminally ill patients studied had an advance directive in their medical record. Of those, 12% received input from their physician in developing it. Between 65% and 75% of physicians whose patients had an advance directive were not aware that one existed. In cases where an advance directive existed, the directive helped make end-of-life decisions less than half of the time.

**State Expenditures:** For DHMH, general fund expenditures could increase by \$16,625 and federal fund expenditures could increase by \$14,925 in fiscal 2005. This reflects the bill's October 1, 2004 effective date.

#### *Department of Health and Mental Hygiene*

DHMH general fund expenditures could increase by \$16,625, and federal fund expenditures could increase by \$14,925 to print an informational sheet on advance directives to include in applications for services. The expenditures also include the cost of posters on advance directives that would be placed within local health departments and local departments of social services. Future years reflect annualization and inflation.

#### *Motor Vehicle Administration*

TTF special fund expenditures for the MVA could increase depending on the level of customer queries received about advance directives for additional staff time. The fiscal impact could vary depending on the MVA office location. Any increase is assumed to be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Department of Health and Mental Hygiene, Maryland Department of Transportation, Agency for Healthcare Research and Quality, Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2004  
ncs/jr Revised - House Third Reader - March 21, 2004  
Revised - Enrolled Bill - May 6, 2004

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