

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 796

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Medical Decision Making Act of 2005

This bill requires the Department of Health and Mental Hygiene (DHMH) to issue a Certificate of Life Partnership to a qualifying couple for the purpose of conferring rights to make medical determinations in certain circumstances.

The bill takes effect October 1, 2005.

Fiscal Summary

State Effect: DHMH general fund expenditures could increase by \$129,100 in FY 2006. Fee revenues are assumed to cover most or all of these costs. Future year estimates reflect annualization and inflation.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	\$129,100	\$157,800	\$167,000	\$176,900	\$187,600
GF Expenditure	129,100	157,800	167,000	176,900	187,600
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: Local county clerks could make the life partnership forms available using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A life partnership may be created between two individuals if: (1) each individual is at least 18 years old; (2) the individuals are not be related to the other

individual by blood or marriage within four degrees of consanguinity; (3) the individuals are of the same sex or opposite sex; (4) neither individual is married or a member of a civil union or domestic partnership with another individual; (5) the individuals agree to be in a relationship of mutual interdependence; (6) the individuals share a common residence in the State; and (7) the individuals agree to register with the Secretary of Health and Mental Hygiene.

DHMH must develop and distribute a “Declaration of Life Partnership” form and a “Notice of Termination of Life Partnership” form. The forms must be distributed to each county clerk and must be made available at DHMH, on its web site, and at local health departments. Each county clerk must make the forms available on the county clerk’s web site.

DHMH must set a reasonable fee, based on the costs of implementing the bill, to file a “Declaration of Life Partnership” form. To apply for the declaration of life partnership form, two individuals must sign the form before a notary public. Once the form is submitted to DHMH, DHMH must register the form and return a copy to the life partners at the address provided. DHMH must keep records of life partnerships, which contain a complete record of each registration, including confirmation numbers of registered life partnerships, and the date each registration was recorded.

An individual who has previously registered a life partnership may not register a new life partnership until 90 days after the date that a notice of termination of life partnership was recorded by DHMH. DHMH may only disclose registered life partnerships as specified in regulation. The form must include reference to the information sheet on advance directives.

If a life partner has selected a health care agent in accordance with State advance health care directive laws, that health care agent retains authority to make health care decisions, regardless of the life partnership, until the health care agency has been revoked.

The rights and obligations of a life partner are only those described in the bill. The establishment of a life partnership registry in Maryland may not be construed to recognize, condone, or prohibit a domestic partnership, civil union, or marriage between two individuals of the same sex entered into in another state or jurisdiction.

The bill may not be construed in any way that conflicts with State public policy that recognizes a valid marriage to be only a marriage between a man and a woman.

Medical Emergencies: A hospital, related institution, or residential treatment center must allow a patient’s life partner and other specified relatives to visit the patient unless no visitors are allowed, the facility reasonably determines that the presence of a particular

visitor would endanger the health or safety of the patient or member of the facility staff, or the patient tells the facility staff that the patient does not want a particular person to visit.

In the case of a medical emergency, two adults must be treated as life partners if one of the adults, in good faith, tells the emergency medical provider or hospital personnel that the adults are in a mutually interdependent relationship for the following purposes only: (1) allowing one adult to accompany the ill or injured adult being transported to a hospital in an emergency vehicle; and (2) visitation with the ill or injured adult admitted to a hospital on an emergency basis.

Disinterment, Reinterment, or Burial: DHMH may not deny inspection of a disinterment or reinterment permit record to a life partner of the deceased whose human remains have been disinterred or reinterred. A life partner may give consent for a postmortem examination of the decedent. A life partner of the decedent has the right to arrange for the final disposition of the body. A life partner is a “person of interest” for the purposes of determining a burial site.

Health Care Decisions: The following individuals or groups, in the specified order of priority, may make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent: (1) the patient’s guardian, if one has been appointed; (2) the patient’s spouse or life partner; (3) an adult child of the patient; (4) a parent of the patient; (5) an adult brother or sister of the patient; or (6) a friend or other relative of the patient.

An individual may not be transported by ambulance between facilities unless accompanied by specified attendants or a specified family member, including the domestic partner.

A life partner may petition the circuit court to enjoin the provision or withholding of medical treatment to the patient upon a finding by a preponderance of the evidence that the action is not lawfully authorized by State or federal law.

When an individual dies in a hospital, a representative of an organ recovery agency must request, with sensitivity, that the individual’s representative consent to the donation of all or any of the decedent’s organs, if suitable. The decedent’s representatives are, in the following order of priority: (1) a spouse or life partner; (2) an adult son or daughter; (3) a parent; (4) an adult brother or sister; (5) a guardian; (6) a friend or other relative; or (7) any other person authorized or required to dispose of the body. A life partner is considered “next of kin” for the purposes of making an anatomical gift.

Nursing Homes: If feasible, spouses or life partners who are both residents must be given the opportunity to share a room. Each resident who is party to a life partnership must have privacy during a visit by the other life partner. A life partner of a resident may file a complaint about an alleged violation of these provisions.

Penalties: An individual may not knowingly make any material false statement to obtain or help another obtain a certificate of life partnership. An individual who violates this provision is guilty of perjury.

The provisions of the bill are severable.

Current Law: The circumstances that the bill addresses generally apply to spouses or court-appointed guardians.

Background: Nationally, many local jurisdictions recognize domestic partnerships for a variety of reasons. Washington, DC permits government employees to register as a domestic partnership in order to obtain family health insurance coverage as well as family leave benefits. Other municipalities certify domestic partnerships to extend adoption rights and health care decision-making rights. Domestic partnership, depending on jurisdiction, may apply to same-sex couples, unmarried opposite-sex couples over the age of 62, or to any unmarried couple, regardless of sexual orientation or age.

Six states and the District of Columbia have laws that confer benefits to same-sex or unmarried couples:

California: Began a domestic partner registry in 2000 with a handful of state-level rights. The registry was open to all same-sex couples and to different sex couples with one member being at least 62 years old. The rights were expanded in 2002 and 2003. On January 1, 2005, Governor Arnold Schwarzenegger signed into law a measure that extends nearly all legal rights of married couples to same-sex partnerships.

Hawaii: Hawaii permits two individuals of the same sex to enter into a reciprocal beneficiary relationship. The status confers several state-level rights to couples.

Maine: In April 2004, Maine enacted a domestic partnership law that provides to unmarried couples who have lived together for longer than one year in a committed relationship many of the benefits that married couples enjoy.

Massachusetts: Massachusetts recognizes same-sex marriage with all marital rights, including making health care decisions for a spouse.

New Jersey: In January 2004, New Jersey's domestic partner registration was signed into law. The law creates a statewide domestic partner registry, open to all same-sex couples and different sex couples over the age of 62.

Vermont: Allows same-sex couples to enter into civil unions and couples who enter these unions receive the same state-level protection, benefits, and responsibilities as married couples if they reside in Vermont.

Washington, DC: The federal government enacted a domestic partnership law in 2002 that provides registered domestic partners visitation rights in hospitals and nursing homes. The law also extends a number of benefits to district government employees and their domestic partners, including health insurance coverage.

State Effect: DHMH general fund expenditures could increase by an estimated \$129,122 in fiscal 2006, which reflects the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one administrative officer and one administrative specialist to develop the life partnership forms, collect forms, maintain complete records of each form issued, and issue termination of life partnership forms when a written request is received. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salaries and Fringe Benefits	\$105,113
Operating Expenses	<u>24,009</u>
Total FY 2006 State Expenditures	\$129,122

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

DHMH general fund revenues could increase by about \$129,122 in fiscal 2006. It is assumed DHMH would set a filing fee in an amount that approximates estimated costs.

Additional Information

Prior Introductions: A similar bill, HB 1284, was introduced in 2004. An amended version (identical to this bill), was passed by the House, but was reported unfavorably by the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Health and Mental Hygiene (Vital Statistics Administration, Medicaid); Department of Legislative Services

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