

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 592

(Delegate Hubbard, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Health Care Decisions Act - Advance Directives - Selection of Health Care Agent
and Treatment Preferences

This bill changes the suggested forms to be used for living wills or advance directives.

Fiscal Summary

State Effect: None. The bill pertains exclusively to private sector activities.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill modifies the existing suggested living will and advance directive forms listed in statute. The bill provides a model advance directive form, divided into three parts. The first part specifies the selection of a health care agent, allowing primary and back-up agent designations. The second part specifies treatment preferences in the case of a terminal condition, persistent vegetative state, or end-stage condition. The third part specifies required signatures and witnesses for the advance directive. Also included is a suggested organ and body donation form.

The bill also specifies that a health care provider cannot seek someone other than a health care agent or a surrogate decision-maker to make decisions about health care unless the health care agent is unavailable. In addition, the bill allows a person to specify that the person's health care agent may visit the person in a hospital or any other medical facility.

Current Law: The federal Patient Self-Determination Act (PSDA) of 1990 requires health care providers to inform all adult patients about their rights to accept or refuse medical or surgical treatment and the right to execute an “advance directive.” An advance directive is a written instruction, such as a living will or durable power of attorney, for health care when the individual is incapacitated.

In Maryland, advance directives permit an individual to select a health care agent, give health care instructions, or both. An advance directive that appoints a health care agent permits the agent to make all health care decisions for an individual, subject to any limitations specified in writing on the directive. An advance medical directive specifies health care instructions in the event an individual cannot make an informed decision regarding health care. The advance directives must be signed by two witnesses, at least one of whom cannot financially benefit by reason of the individual’s death.

Background: There has been concern that the current advance directive forms are not as clear as they should be. It is not always clear if a person should choose to fill out the living will portion of the advance directive, or fill out Part B – Health Care Instructions, which each enumerate many of the same health care choices. Palliative care or pain management options are also vague on the current forms.

Additional Information

Prior Introductions: None.

Cross File: SB 369 (Senator Hollinger) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2006
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