

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 236 (The President, *et al.*) (By Request – Administration)
 Education, Health, and Environmental Affairs Health and Government Operations

Health - Advance Directives - Registry - Drivers' Licenses and Identification Cards

This Administration bill creates the Advance Directive Registry within the Department of Health and Mental Hygiene (DHMH) and requires the Maryland Department of Transportation (MDOT) to add an advance directive notation on driver's licenses and identification cards.

The bill takes effect July 1, 2007, contingent on enactment of SB 369/HB 592 of 2006.

Fiscal Summary

State Effect: MDOT special fund expenditures increase by \$185,900 in FY 2008 and DHMH general fund expenditures increase by \$321,300. DHMH general fund revenues could increase by \$10,000 in FY 2008 from registration fees. Future year estimates reflect annualization, inflation, ongoing programming costs, and increased number of registrations.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	\$0	\$10,000	\$15,000	\$20,000	\$25,000
GF Expenditure	0	321,300	198,000	205,400	213,300
SF Expenditure	0	185,900	8,500	8,500	8,600
Net Effect	\$0	(\$497,200)	(\$191,500)	(\$193,900)	(\$196,900)

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

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: An individual may register an advance directive with DHMH, but is not required to do so. The registry must be a secure, electronic database to which authorized access is available 24 hours per day, seven days per week. DHMH must specify in regulation the persons who are authorized to access the registry, including: (1) the registrant or the registrant's designee; and (2) representatives of a health care facility in which a registrant is receiving health care.

Before DHMH accepts an advance directive into the registry, it must verify the advance directive is signed, dated, and witnessed properly. A health care provider is not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct for failure to access the registry, or for relying on information in the registry.

DHMH, in consultation with appropriate stakeholders, must adopt regulations providing for a review for the compliance with advance directives by certain licensed health care facilities.

MDOT must provide for a method that allows an applicant for a driver's license or identification card to indicate that the individual has an advance directive registered with DHMH.

The Secretary of Health and Mental Hygiene may set by regulation a fee for any service of the registry, including an initial fee and renewal fees. The fees may not, in the aggregate, exceed DHMH's costs to establish and operate the registry.

DHMH, in consultation with stakeholders, must adopt regulations to implement the Advance Directives Registry including education and outreach programs.

Current Law: The federal Patient Self-Determination Act 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: Advance directives are designed to accomplish a number of functions. They protect an individual's right to choose or to refuse various forms of health care, even in the face of the development of decisional incapacity. They provide additional assurance that the care provided for an incompetent patient will actually match that patient's personal values. They transfer a critical health care decision point from the time of a patient's decisional incapacity to an earlier time when the person is fully competent.

It is sometimes difficult for a health care provider to determine whether a specific patient has an advance directive. If a patient is unresponsive or has no accompanying family members or friends, it is difficult for a health care provider to determine if such a directive exists. There are several national registries that permit health care providers to search for directives; however, these registries may not be widely publicized within Maryland.

There are approximately 3.8 million licensed drivers in Maryland and 575,000 individuals who hold identification cards. According to DHMH, studies in other states indicate that about 20% of a state's population has an advance directive. In states that have similar advance directive programs, the number of advance directives filed with the states ranges from 267 in North Carolina to 4,500 in Arizona. California, which is implementing a similar program, expects to receive about 1,000 advance directives.

SB 369/HB 592 of 2006 modify and update sample advance health care directives that individuals may use to designate end-of-life care options.

State Expenditures: Total State expenditures increase by \$507,184 in fiscal 2008, which includes \$185,884 MDOT special funds and \$321,340 DHMH general funds.

MDOT Costs to Add Advance Directive Identifier to License/Identification Card: MDOT special fund expenditures could increase by \$185,884 in fiscal 2008, which reflects the bill's July 1, 2007 effective date. This estimate reflects a one-time \$150,000 cost to program MDOT computers and update card templates to create an advance directive identifier on drivers' licenses and identification cards. It also includes \$35,884 for the development, production, and revision of forms and brochures. Due to the small number of individuals expected to request notation of an advance directive on their driver's license or identification card, MDOT would not require any additional staff to handle the

bill's requirements. It is expected that about 1,000 people will request an advance directive notation in fiscal 2008. Future year estimates reflect ongoing printing costs.

DHMH Costs to Establish and Maintain Registry: DHMH general fund expenditures could increase by \$321,340 in fiscal 2008, which reflects the bill's July 1, 2007 effective date. This estimate reflects a one-time \$50,000 cost to set up the computerized registry, \$75,000 to contract with a vendor to operate the registry, \$60,000 for a high-quality scanner, one administrator and one service clerk to manage the contract with the vendor, review advance directives for completeness, collect registration and renewal fees, accept terminations of advance directives, scan registrations and terminations, electronically transfer documents to the vendor, and handle public inquiries. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	98,474
One-time Registry Set-up	50,000
High-quality/High-volume Scanner	60,000
Vendor Fee	75,000
Other Operating Expenses	<u>37,866</u>
Total FY 2008 DHMH Expenditures	\$321,340

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.

State Revenues: DHMH general fund revenues could increase by \$10,000, beginning in fiscal 2008. It is assumed that 1,000 individuals would register an advance directive in the first year of registry operation, 1,500 the second year, 2,000 the third year, and 2,500 each year thereafter. The bill permits DHMH to charge fees for the program. DHMH advises it intends to charge a \$10 fee for the registration of an advance directive, a \$10 renewal fee every five years, and no fee for termination. These fee levels would not cover the cost of the registry, but they are in line with what other states are charging.

MDOT advises it would not charge a corrected license or corrected card fee, which is currently \$30. If MDOT were to do so, special fund revenues could exceed \$30,000 in fiscal 2007.

Additional Information

Prior Introductions: None.

Cross File: HB 319 (The Speaker, *et al.*) (By Request – Administration) – Health and Government Operations.

Information Source(s): Maryland Department of Transportation (Motor Vehicle Administration), Department of Health and Mental Hygiene (Vital Statistics Administration), Department of Legislative Services

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