

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

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

Senate Bill 369

(Senator Hollinger)

Education, Health, and Environmental Affairs

Health and Government Operations

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

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

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**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

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**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 and provisions for the disposition of the body and funeral arrangements.

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. It also permits an individual to specify that a health care

agent may ride in an ambulance with the individual and visit the individual in the hospital or any other health care 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.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 592 (Delegate Hubbard, *et al.*) – Health and Government Operations.

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

**Fiscal Note History:** First Reader - February 13, 2006  
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