

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 954 (Delegate Kipke, *et al.*)
Health and Government Operations

Health Care Decisions Act - Petitions by Surrogates - Court Actions

This bill authorizes a court to take specified actions on the petition of a qualified surrogate alleging that a decision made for a patient by the patient's health care agent or surrogate violates the patient's advance directive or (if there is no advance directive) the wishes of the patient as determined by existing standards. Specifically, a court may enjoin the action on finding by a preponderance of the evidence that the action is in violation of the patient's advance directive or wishes. In addition, the court may (1) limit or remove the authority of the consenting health care agent or surrogate and appoint a substitute; or (2) require the health care agent or surrogate to consult with or obtain the consent of another designated alternative health care agent or surrogate for future decisions.

Fiscal Summary

State Effect: The bill is not expected to materially affect governmental operations or finances.

Local Effect: The bill is not expected to materially affect governmental operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: A surrogate who files a petition under the bill – or a health care agent or surrogate who is the subject of such a petition – may not be denied access to the patient’s health care records for purposes of pursuing or defending an action under the bill.

In addition, the court must ensure that any health care agent or qualified surrogate is allowed to have reasonable visitation with the patient.

During pendency of an action, including any appeals, regarding an action to withhold or withdraw a life-sustaining procedure from a patient (when such withdrawal or withholding is likely to result in or hasten the patient's death), the court must require provision of the life-sustaining procedure until a final order is issued.

Current Law: A health care provider for an individual incapable of making an informed decision who believes that an instruction to withhold or withdraw a life-sustaining procedure from the patient is inconsistent with generally accepted standards of patient care must (1) petition a patient care advisory committee for advice concerning the withholding or withdrawal of the life-sustaining procedure from the patient if the patient is in a hospital or related institution; or (2) file a petition in a court of competent jurisdiction seeking injunctive or other relief relating to the withholding or withdrawal of the life-sustaining procedure from the patient. Upon finding by a preponderance of the evidence that such an action is not lawfully authorized, a circuit court may enjoin that action on petition of a qualified surrogate decision maker. Except for cases that the court considers of greater importance, such a proceeding (including an appeal) must take precedence on the docket, be heard at the earliest practicable date, and be expedited in every way.

Under the Maryland Health Care Decisions Act, a surrogate decision maker is an adult appointed by the declarant under an advance directive to make health care decisions for the declarant. If a patient who has been certified to be incapable of making an informed decision has not appointed a health care agent (or if the agent is unavailable), the following persons (in the specified order of priority) may make health care decisions for the patient: (1) a guardian for the patient, if one has been appointed; (2) the patient's spouse or domestic 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 who is a competent individual and who presents an affidavit stating that the person is a relative or close friend of the patient as well as specific facts and circumstances demonstrating that the person has maintained regular contact with the patient sufficient to be familiar with the patient's activities, health, and personal beliefs.

A surrogate decision maker must base his or her decisions on the patient's wishes and, if the patient's wishes are unknown or unclear, the patient's best interest. In determining the wishes of the patient, a surrogate must consider the patient's (1) current diagnosis and prognosis without the treatment at issue; (2) expressed preferences regarding the treatment or similar treatments; (3) relevant religious and moral beliefs and personal values; (4) behavior, attitudes, and past conduct with respect to the treatment at issue and medical treatment generally; (5) reactions regarding similar treatment for another

individual; and (6) expressed concerns regarding effects on the patient's family or intimate friends. The decision of a surrogate regarding whether life-sustaining procedures should be provided, withheld, or withdrawn may not be based on either a patient's preexisting, long-term disability or a patient's economic disadvantage. A surrogate must inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision about that procedure.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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