

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 449 (Delegate Morhaim)
Health and Government Operations

Health Care Decisions by Surrogates - Donations of Nonvital Organs

This bill allows a person who is authorized to make health care decisions for a patient certified to be in a persistent vegetative state to authorize the donation of a nonvital organ. The bill specifies that the donation must be based on either the previously expressed wishes of the patient or a determination of the surrogate that the donation is consistent with the patient's relevant religious and moral beliefs and personal values. Under the bill, "nonvital organ" is defined as one kidney (if a patient has two functioning kidneys) or a lobe of a liver.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under the Maryland Health Care Decisions Act, an "agent" 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 "persistent vegetative state" is a condition caused by injury, disease, or illness (1) in which a patient has suffered a loss of consciousness, exhibiting no behavioral evidence of awareness of self or surroundings in a learned manner other than reflex activity for muscles and nerves for low-level conditioned response; and (2) from which, after the passage of a medically appropriate period of time, it can be determined to a reasonable degree of medical certainty that there can be no recovery.

Background: On average, according to the U.S. Department of Health and Human Services, 18 individuals die each day waiting for transplants that do not take place due to a shortage of donated organs. As of February 2012, more than 110,000 candidates are on the waiting list for an organ transplant. Of these candidates, more than 90,000 are on the waiting list for a kidney transplant and more than 16,000 are waiting for a liver; some candidates need multiple organs. About 20% of the transplants performed in 2011 involved organs from living donors.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2012
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