

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 562

(Senators Kelley and Lee)

Finance

Health and Government Operations

**Health Care Decisions Act - Advance Directives and Surrogate Decision Making -
Disqualified Individuals**

This bill expands the definition of “disqualified person” and generally prohibits an individual from serving as either a health care agent or surrogate decision maker for a declarant or patient if the individual is either (1) the subject of an interim, temporary, or final protective order where the declarant or patient is a person eligible for relief under the order or (2) a spouse of the declarant or patient, and the individual and declarant or patient have executed a separation agreement or either party has filed an application for divorce. An individual may serve as a health care agent for a declarant after the date of the execution of a separation agreement or the filing of an application for divorce if the declarant (1) is able to make a decision about the individual’s appointment as the declarant’s health care agent or (2) has otherwise indicated an intent to have the individual serve as the declarant’s health care agent.

Fiscal Summary

State Effect: None. The bill does not affect State operations or finances.

Local Effect: None. The bill does not affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “Person eligible for relief” has the meaning stated in § 4-501 of the Family Law Article.

A person who obtains new information that would prohibit an individual from serving as a declarant's health care agent or making health care decisions for a patient has to provide the information to any health care provider or health care facility providing services to the declarant or patient.

Current Law: Under § 4-501 of the Family Law Article, a "person eligible for relief" is often defined by the relationship that the individual has to a person alleged in a specified petition to have committed abuse (referred to as the "respondent") and includes:

- the current or former spouse of the respondent;
- a cohabitant of the respondent;
- a person related to the respondent by blood, marriage, or adoption;
- a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition;
- an individual who has a child in common with the respondent;
- an individual who has had a sexual relationship with the respondent within one year before the filing of the petition; or
- a vulnerable adult.

Advance Directive Health Care Agent

Generally, any competent individual, commonly referred to as the "declarant," may make a written or electronic advance directive regarding the provision of health care to the declarant, including the withholding or withdrawal of health care. Additionally, the written or electronic advance directive may appoint a health care agent to make health care decisions for the declarant under the circumstances stated in the advance directive. A health care agent has decision-making priority over any other individuals authorized to make health care decisions for a declarant.

With specified exceptions, a "disqualified person" may not serve as a health care agent. "Disqualified person" means (1) an owner, operator, or employee of a health care facility from which the declarant is receiving health care or (2) a spouse, parent, child, or sibling of an owner, operator, or employee of a health care facility from which the declarant is receiving health care.

A disqualified person may not serve as a health care agent unless the person (1) would separately qualify as a surrogate decision maker or (2) was appointed by the declarant before the declarant received, or contracted to receive, health care from the facility.

Surrogate Decision Making

When a patient has been certified as being incapable of making an informed decision and has not appointed a health care agent, or when the health care agent is unavailable, the following individuals or groups, in the specified order of priority, may make decisions about health care for a patient:

- a guardian for the patient, if one has been appointed;
- the patient's spouse or domestic partner;
- an adult child of the patient;
- a parent of the patient;
- an adult brother or sister of the patient; or
- a friend or other relative of the patient who meets specified qualifications.

Individuals in a particular class may only be consulted to make a decision if all individuals in the next higher class are unavailable.

Generally, "unavailable" means:

- after reasonable inquiry, a health care provider is unaware of the existence of a health care agent or surrogate decision maker;
- after reasonable inquiry, a health care provider cannot locate a health care agent or surrogate decision maker;
- a health care agent or surrogate decision maker has not responded in a timely manner, taking into account the health care needs of the individual, to a written or oral message from a health care provider;
- a health care agent or surrogate decision maker is incapacitated; or
- a health care agent or surrogate decision maker is unwilling to make decisions concerning health care for the individual.

Additional Information

Prior Introductions: None.

Cross File: HB 498 (Delegate Hettleman) - Health and Government Operations.

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

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