

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 870
Judiciary

(Delegate Hill)

Judicial Proceedings

**Maryland General and Limited Power of Attorney Act – Assistance With
Governmental Benefits and Programs**

This bill amends the statutory forms under the Maryland General and Limited Power of Attorney Act to include an authorization for an agent to perform the acts necessary to enable the principal to qualify for a benefit or program, including obtaining personal and financial records and, to the extent specifically authorized, to transfer or gift the principal’s property. The bill also makes related changes to a specified grant of authority and optional grants of specific authority in the limited statutory form regarding gifts and transfers and the creation and funding of specified trusts or accounts.

Fiscal Summary

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

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill amends the “Maryland Statutory Form Personal Financial Power of Attorney” and the “Maryland Statutory Form Limited Power of Attorney” to include an authorization on each statutory form for the agent to perform the acts necessary to enable the principal to qualify for a benefit or program, including obtaining personal and financial records and, to the extent specifically authorized, to transfer or gift the principal’s property. The authorization is included under provisions regarding benefits from governmental

programs or civil or military service, “including any benefit, program, or assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.”

Additionally, in the “Maryland Statutory Form Limited Power of Attorney,” the bill modifies a grant of authority to the agent to make specified gifts, including gifts to specified trusts or accounts (or a prepaid tuition plan), in an amount for each donee up to the annual dollar limits of the federal gift tax exclusion under the Internal Revenue Code, or twice that amount if the principal’s spouse agrees to consent to a split gift. The grant of authority is modified by the bill so that it applies to a gift or transfer to a person, or the creation and funding for the benefit of a person, including the principal, of specified trusts or accounts (or a prepaid tuition plan), including a special needs trust or any trust authorized under § 1917 of the federal Social Security Act, subject to the same federal gift tax exclusion limits on the amount for each donee.

The bill also includes options to grant the same gift/transfer authority (and/or separate authority to consent to the splitting of a gift made by the principal’s spouse), in the section of the limited statutory form containing optional grants of specific authority, but (1) without restriction on the amount of the gift or transfer and/or (2) with the ability to take an action in favor of the agent. In the same section, the bill modifies an optional grant of specific authority to create an *inter vivos* trust, by specifying that it includes the authority to fund the trust, to create and fund a special needs trust, any trust authorized under § 1917 of the federal Social Security Act, or a third-party special needs trust, or establish and fund an Achieving a Better Life Experience account as defined under the Internal Revenue Code, for the benefit of the principal or the principal’s family, heirs at law, or descendants, or any other person designated by the principal as a beneficiary under an existing will, trust, or other instrument. Finally, the bill also modifies another optional grant of specific authority, to make a gift subject to any special instructions in the power of attorney, by specifying that it includes the authority to make a gift of the principal’s assets to assist the principal in meeting the eligibility requirements and qualifying for a benefit or program.

Current Law: Chapter 690 of 2010 enacted the Maryland General and Limited Power of Attorney Act and established two statutory form powers of attorney and a form for use by an agent to certify facts concerning a power of attorney. One of the statutory forms (the “Maryland Statutory Form Personal Financial Power of Attorney”) provides an agent with broad authority as specified on the form, while the other statutory form (the “Maryland Statutory Form Limited Power of Attorney”) allows a principal to specifically indicate which of various powers are given to an agent.

Both forms are located under Title 17, Subtitle 2 of the Estates and Trusts Article. A person may not require an additional or different form of power of attorney for any authority granted in a statutory form power of attorney. A principal may delegate to one or more agents the authority to do any act specified in the statutory forms. However, the acts

specified in the statutory forms may not be deemed to invalidate or limit the validity of other authorized acts that a principal may delegate to an agent.

The statutory forms include a number of authorizations relating to benefits from governmental programs, including the authority to (1) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program and (2) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation.

The "Maryland Statutory Form Limited Power of Attorney" includes a grant of authority to make outright to, or for the benefit of, a person, a gift of part or all of the principal's property, in an amount for each donee of up to the annual dollar limits of the federal gift tax exclusion under the Internal Revenue Code, or twice that amount if the principal's spouse agrees to consent to a split gift. There is also a grant of authority to consent to the splitting of a gift made by the principal's spouse, pursuant to the Internal Revenue Code, in an amount for each donee up to the aggregate annual gift tax exclusions for both spouses. The limited statutory form specifies that an agent may only make a gift of the principal's property as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including, among other factors, eligibility for a benefit, a program, or assistance under a statute or regulation.

The limited statutory form also includes optional grants of specific authority that a principal may choose to grant to their agent, including the authority to create an *inter vivos* trust and to make a gift (without any specified limit on the amount of the gift, but subject to any special instructions in the power of attorney).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

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