HB 1323

Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1323 (Delegate Rosenberg)
Health

Health Care Decisions Act - Surrogate Decision Making - Hospital Surrogate Committee

This bill requires each hospital to establish a surrogate committee to provide surrogate decision making for an "unrepresented patient" who has not appointed a health care agent. A surrogate committee may only provide surrogate decision making if individuals otherwise authorized to make an informed decision are unavailable. Before serving on a surrogate committee, an individual must complete a training course developed or endorsed by the Office of Health Care Quality (OHCQ) and the Department of Human Services (DHS), with input from the Maryland Department of Disabilities (MDOD). By January 31 each year, a hospital that has used a surrogate committee during the immediately preceding calendar year must submit a report to OHCQ. A hospital must make the report available to the public on request, with appropriate redactions to protect patient confidentiality. A hospital must include information on its website of how to obtain a copy of the report.

Fiscal Summary

State Effect: Maryland Department of Health (MDH) general fund expenditures increase by $275,200 in FY 2027 for staff, as discussed below. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	$0	$0	$0	$0	$0
GF Expenditure	275,200	330,900	345,900	361,300	377,100
Net Effect	($275,200)	($330,900)	($345,900)	($361,300)	($377,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: "Unrepresented patient" means a patient (1) who has been certified to be incapable of making an informed decision, as specified; (2) who is receiving care in a hospital; (3) who does not have an advance directive; (4) for whom an identifiable surrogate is unavailable; and (5) for whom there is no other evidence from the patient's history or from other parties that is sufficient to support a reasonably conclusive judgement about what the patient would likely choose regarding medical treatment.

Surrogate Committee Member Requirements

A surrogate committee must consist of a specified physician; a specified nurse; a social worker or a member of the clergy who works or has worked in the hospital; a member of the hospital's patient care advisory committee; a specified patient advocate; a specified individual who is not employed by the hospital; and an employee or a volunteer affiliated with a disability or aging persons advocacy organization or an individual with a disability.

Before serving on a surrogate committee, an individual must complete a training course that includes content addressing:

- core bioethical principles and the relevant provisions of the Health Care Decisions Act including (1) surrogate decision making; (2) informed consent and emergency exceptions to informed consent requirements; (3) capacity assessment; (4) substituted judgement; and (5) the best interest standard;
- due process protections;
- patient rights;
- information on when consultation with the patient care advisory committee is appropriate;
- patient confidentiality;
- documentation requirements;
- conflicts of interest; and
- implicit bias, with a focus on bias related to race, ethnicity, sex, gender, disability, socioeconomic status, and immigration status.

Surrogate Committee Requirements

The proceedings and deliberations of a surrogate committee must be confidential. The surrogate committee must be able to receive and review all relevant medical records subject to applicable federal and State law and regulation. The surrogate committee may not disclose documents or material that are confidential under law or regulation.

If an unrepresented patient's attending physician determines that there is a need to make health care decisions for the unrepresented patient, the attending physician must convene the surrogate committee. The surrogate committee must meet promptly, and if practicable, all surrogate committee members must personally observe the unrepresented patient before making a treatment decision. The final decision of the surrogate committee must be supported by a majority of members, as specified.

If a surrogate committee has been convened, a member of the committee must inform the unrepresented patient, orally and in writing, to the extent possible, that the committee has been convened and the decision of the surrogate committee may include the provision, withholding, or withdrawing of treatment. The written notice must include the names of the members of the surrogate committee and an explanation of, and the basis for, its decision. The attending physician must include the written explanation in the unrepresented patient's medical record.

A surrogate committee may not authorize the discharge of an unrepresented patient. A request by a hospital to move the unrepresented patient to a higher level of care at another facility may not be considered a discharge. A surrogate committee's decision-making authority is limited to the time during which the unrepresented patient is in the hospital.

Required Reporting

By January 31 each year, a hospital that has used a surrogate committee during the immediately preceding calendar year must report to OHCQ the number of times the surrogate committee was convened to make a treatment decision for an unrepresented patient and for each unrepresented patient:

- the names of the members of the surrogate committee present at the meeting at which the treatment decision was made;
- a description of the unrepresented patient's condition;
- demographic information regarding the unrepresented patient, including race, sex, gender, and disability;
- the efforts made by the hospital to locate a surrogate;
- the treatment decisions considered by the surrogate committee;
- the decision of the surrogate committee;
- the basis for the surrogate committee's decision;
- whether the unrepresented patient was able to leave the hospital; and
- whether the hospital was required to file for guardianship of the unrepresented patient before discharge.

A hospital must make the report available to the public on request, with appropriate redactions to protect patient confidentiality. A hospital must include information on the hospital's website altering the public of how to obtain a copy of the report.

Current Law: The Health Care Decisions Act (Title 5, Subtitle 6 of the Health-General Article) specifies the procedures for making an advance directive and living will, as well as the revocation of such documents and surrogate decision making.

Prior to providing, withholding, or withdrawing treatment for which authorization has been obtained or will be sought, the attending physician and a second physician, one of whom must have examined the patient within two hours before making the certification, must certify in writing that the patient is incapable of making an informed decision regarding the treatment. The certification must be based on a personal examination of the patient. If a patient is unconscious, or unable to communicate by any means, the certification of a second physician is not required. When authorization is sought for treatment of a mental illness, the second physician may not be otherwise currently involved in the treatment of the person assessed.

A health care provider may not withhold or withdraw life-sustaining procedures on the basis of an advance directive where no agent has been appointed or on the basis of the authorization of a surrogate, unless (1) the patient's attending physician and a second physician have certified that the patient is in a terminal condition or has an end-stage condition or (2) two physicians, one of whom is a neurologist, neurosurgeon, or other physician who has special expertise in the evaluation of cognitive functioning, certify that the patient is in a persistent vegetative state.

Except under specified circumstances, the following individuals or groups, in the specified order of priority, may make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent, or whose health care agent is unavailable. Individuals in a particular class may be consulted to make a decision only if all individuals in the next higher class are unavailable:

- 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 the specified requirements.

A person who obtains new information that would prohibit an individual from making health care decisions for a patient must provide the information to any health care provider

or facility providing services to the patient. Any person authorized to make health care decisions for another must base those decisions on the wishes of the patient and, if the wishes of the patient are unknown or unclear, on the patient's best interest.

The decision of a surrogate regarding whether life-sustaining procedures should be provided, withheld, or withdrawn must not be based, in whole or in part, on either a patient's preexisting, long-term mental or physical 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 regarding that procedure.

A surrogate may not authorize sterilization or treatment for a mental disorder.

Office of Health Care Quality

The Secretary of Health must adopt reasonable rules and regulations that set standards of services for related institutions, hospitals, and residential treatment centers in the following areas: (1) the care of patients; (2) the medical supervision of patients; (3) the physical environment; (4) disease control; (5) sanitation; (6) safety; and (7) dietary matters. To ensure compliance with these rules and regulations, OHCQ inspects each related institution, hospital, and residential treatment center. In general, OHCQ inspects facilities for which a license is sought and periodically after a license has been issued. MDH submits an annual report to the General Assembly regarding the inspections conducted during the immediately preceding year.

State Fiscal Effect: The bill requires OHCQ and DHS, with input from MDOD, to develop or endorse a specified training course for individuals prior to serving on a surrogate committee. OHCQ must also collect reports from each hospital that has used a surrogate committee during the immediately preceding calendar year.

MDH advises that the department is unable to endorse an existing surrogate committee training course, as it is unaware of an existing training course that meets the bill's requirements. MDH further advises that additional physician staff are required to research and develop a training course that includes specified medical, legal, and bioethical standards as they relate to specified surrogate decision-making. Therefore, MDH general fund expenditures increase by $275,171 in fiscal 2027, which accounts for the bill's October 1, 2026 effective date. This estimate reflects the cost of hiring two physicians to develop the training program, conduct ongoing training for hospital staff, and review hospital reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	$256,889
Operating Expenses	18,282
Total FY 2027 State Expenditures	**$275,171**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

To the extent that OHCQ can identify an existing training course that meets the bill's requirements, costs decrease accordingly.

This analysis assumes that DHS and MDOD can provide input on the surrogate committee training course with existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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