

Re: In Support of House Bill 1323 – Health Care Decisions Act – Surrogate Decision Making – Hospital Surrogate Committee

Before the Maryland House Health Committee

Chair Bagnell, Vice Chair Cullison, and Members of the Committee,

On behalf of the Maryland Advisory Council on Serious Illness Care, I write to express our strong support for HB 1323, “Health Care Decisions Act – Surrogate Decision Making – Hospital Surrogate Committee.” HB 1323 addresses a long-standing gap in Maryland law by creating a clear, ethically-grounded framework for decision making for unrepresented patients who lack capacity, have no advance directive, and have no available surrogate decision maker.

Every hospital in Maryland cares for seriously ill, incapacitated patients who are “unrepresented” under the Health Care Decisions Act and for whom time-sensitive decisions about treatment, goals of care, and the use or limitation of life-sustaining treatment must be made. In the absence of statutory guidance, hospitals have relied on ad hoc processes that expose patients, clinicians, and institutions to variability, inequity, and legal uncertainty. When necessary, medical teams need to go to court to seek guardianship- a process that can delay important clinical decision making as well. HB 1323 offers a carefully structured process that centers patient rights and due process while enabling necessary decisions to be made in a timely manner.

The Council particularly supports the bill’s requirement that each hospital establish a multidisciplinary surrogate committee to make treatment decisions for unrepresented patients only after incapacity has been properly certified and reasonable efforts to locate a surrogate have failed. The required composition of the surrogate committee—clinicians not involved in the patient’s care, social work or clergy, a member of the hospital’s patient care advisory committee, a patient advocate unaffiliated with the hospital, a former patient or caregiver, and a representative of disability or aging interests—creates a balanced body that incorporates clinical expertise, ethics, lived experience, and the perspectives of people with disabilities and older adults.

We also strongly support the bill’s emphasis on training, ethics, and equity. HB 1323 mandates a training course, developed or endorsed by the Office of Health Care Quality and the Department of Human Services with input from the Department of Disabilities, covering core bioethical principles, informed consent, capacity, substituted judgment, best-interest standards, due process protections, patient rights, confidentiality, conflicts of interest, and implicit bias with a focus on race, ethnicity, sex, gender, disability, socioeconomic status, and immigration status. These provisions are essential to ensuring that decisions for highly vulnerable patients

are grounded in the same ethical and legal standards that apply when a known surrogate is present, and that discriminatory assumptions do not drive decisions.

HB 1323 also appropriately limits the authority of the surrogate committee and includes guardrails that protect patients. The bill clarifies that the committee is added at the end of the current statutory hierarchy in Health-General § 5-605(a), and that its authority is confined to medical treatment decisions for unrepresented patients in the hospital. The committee may not authorize sterilization, treatment for a mental disorder, or discharge from the hospital; decisions regarding discharge and guardianship remain subject to existing processes and protections. The requirement that decisions be supported by a majority of members, including at least two members from the clinical group and two from the advocacy and community group, ensures that no single professional discipline or institutional perspective can dominate.

The Council further endorses the bill's transparency and accountability measures. HB 1323 requires hospitals that use a surrogate committee to report annually to the Office of Health Care Quality on committee utilization, case characteristics, demographics, decisions, and whether the patient left the hospital or required guardianship, and to make these reports available to the public with appropriate safeguards for confidentiality. These data will allow the state, hospitals, and advocates to monitor patterns, identify disparities, and refine practice over time, which is particularly important in the context of serious illness and end-of-life care.

From the standpoint of serious illness care, HB 1323 fills a critical gap by providing a deliberative, multidisciplinary, and accountable process for making complex treatment decisions when no surrogate is available, while preserving the central principles of substituted judgment and best interest that undergird the Health Care Decisions Act. It supports clinicians who are striving to do the right thing for profoundly vulnerable patients and strengthens protections for patients who otherwise have no one to speak on their behalf.

For these reasons, the Maryland Advisory Council on Serious Illness Care respectfully urges a favorable report on HB 1323. We appreciate your leadership on behalf of Marylanders living with serious illness and would be pleased to serve as a resource to the Committee as you consider this important legislation.

Sincerely,

Marian Grant

Dr. Marian Grant

Chair, [Maryland Advisory Council on Serious Illness Care](#)

Mariangrant1@icloud.com