

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 67 (Delegate Kipke)  
Health and Government Operations

---

**Health Care Decisions Act - Incapacity to Make Informed Decision - Certification  
by Psychologist**

---

The bill alters the certification requirement regarding a patient's incapacity to make an informed decision regarding treatment. Specifically, the bill allows a psychologist (instead of a second physician) to be the second individual making the certification.

---

**Fiscal Summary**

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

**Local Effect:** None.

**Small Business Effect:** None.

---

**Analysis**

**Bill Summary/Current Law:** Current law specifies that, prior to providing, withholding, or withdrawing life-sustaining treatment for which authorization has been obtained (or will be sought) under the Maryland Health Care Decisions Act, the attending physician and a second physician – one of whom must have examined the patient within the past two hours – must certify in writing that, based on a personal examination, the patient is incapable of making an informed decision regarding the treatment. Certification by a second individual is not required only if the patient is unconscious or unable to communicate by any means. Current law further specifies that, when authorization is sought for treatment of a mental illness, the second individual may not be otherwise currently involved in the patient's treatment. The bill alters these provisions to

specify that the second individual making the certification may be either a second physician *or* a psychologist.

Current law also prohibits a health care provider from withholding or withdrawing 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 one of two requirements are met: (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. The bill does not alter these provisions.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 121 (Senator Klausmeier) - Finance.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - January 22, 2013  
ncs/ljm

---

Analysis by: Jennifer A. Ellick

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510