

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 691

(Senator Bates)

Judicial Proceedings

Public Health - Provision of Life-Preserving Health Care Services (Vulnerable Protection Act)

This bill establishes prohibitions, duties, and rights related to when a patient or the person legally authorized to make health care decisions for the patient directs a health care practitioner or a health care facility to provide to the patient a “life-preserving health care service.” Specifically, a health care practitioner or health care facility may not deny a life-preserving health care service that the practitioner or facility provides to other patients to the patient on the basis of (1) the practitioner’s or facility’s beliefs about the value of extending the life of specified individuals or (2) a disagreement about how the patient (or his or her representative) values the trade-off between extending the length of the patient’s life and the risk that the life-preserving health care service may result in a disability. A practitioner or facility must provide the patient (or his or her representative) with specified notice in the event of a disagreement. A practitioner who fails to provide such notice is guilty of a misdemeanor and on conviction is subject to a \$100 fine. The bill also outlines basic requirements for a court hearing on whether to grant injunctive relief regarding specified violations.

Fiscal Summary

State Effect: The bill, including the criminal penalty provision, is not anticipated to materially impact the operations or finances of the State.

Local Effect: The bill is not anticipated to impact the operations or finances of local governments.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Life-preserving health care service” means a health care service the denial of which, in reasonable medical judgment, will result in or hasten the death of a patient. “Health care practitioner” means a person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services in the ordinary course of business or practice of a profession.

Denial of Life-preserving Health Care Services

A practitioner or facility may not deny a life-preserving health care service to a patient on the basis of a view held by the practitioner or facility that extending the life of an elderly, disabled, terminally ill, economically disadvantaged, or mentally ill individual is of lower value than extending the life of an individual who is younger, not disabled, not terminally ill, not economically disadvantaged, or not mentally ill.

Required Notice

If a practitioner or facility disagrees with the provision of a life-preserving health care service that a patient (or his or her representative) directed the practitioner or facility to provide, the practitioner in charge of the medical care of the patient must notify the patient (or his or her representative) of the right to (1) appeal the decision to the ethics committee or similar entity to which the practitioner is subject or that was established by the facility and (2) file for injunctive relief in court. The practitioner must document in the patient’s records that the practitioner provided this required notice.

Filing an Action for Injunctive Relief

If a patient (or his or her representative) reasonably believes that a practitioner is (1) about to violate; (2) is in the course of violating; or (3) has violated the bill’s prohibitions, the patient (or his or her representative) may file an action for an injunction in court. If the patient (or his or her representative) pleads a *prima facie* case, the practitioner may claim legitimate, nondiscriminatory reasons for the denial of the life-preserving health care service as a defense. The court must then provide an opportunity to the patient (or his or her representative) to argue that the reasons in the application are discriminatory.

A violation of the bill’s requirements does not constitute negligence *per se* for purposes of a civil action for damages.

Current Law/Background: State law contains multiple provisions that prohibit a health care provider from refusing to provide treatment to a patient, regardless of the patient’s status as elderly, disabled, terminally ill, economically disadvantaged, or mentally ill. For

example, under the Maryland Health Care Decisions Act (HCDA), with specified exceptions, a health care facility is required to comply with all medical orders contained in a Medical Orders for Life-Sustaining Treatment form which addresses the use of life-sustaining procedures, medical tests, transfer, and any other matters related to the treatment preferences for an individual. Additional provisions of HCDA require providers to comply with the directions of patients or their representatives and require certain procedures to be followed in the event of a disagreement between the patient or their representative and a provider, as discussed below.

Refusal to Provide Care and Required Transfer

Under HCDA, a health care provider that intends not to comply with an instruction of a health care agent or a surrogate must:

- inform the person giving the instruction that the health care provider declines to carry out the instruction, that the person may request a transfer to another health care provider, and that the health care provider will make every reasonable effort to transfer the patient to another health care provider;
- assist in the transfer; and
- while awaiting transfer, comply with an instruction of a competent individual, or of a health care agent or surrogate, if a failure to comply with the instruction would likely result in the death of the individual.

Mercy Killing or Euthanasia Prohibited

Nothing in HCDA or State law generally authorizes mercy killings or euthanasia, or permits any affirmative or deliberate act or omission that would end life other than to permit the natural process of dying to occur.

Medically Ineffective Treatment Not Required

With specified exceptions, a patient's attending physician may withhold or withdraw life-sustaining treatment only if the patient's attending physician and a second physician certify, in writing, that the treatment is medically ineffective and the attending physician informs the patient or the patient's agent or surrogate of the physician's decision.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 644 (Delegate Aumann, *et al.* – Health and Government Operations) is not identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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