

HOUSE BILL 903

J1, J3
HB 1167/21 – HGO

2lr2544

By: **Delegate Cox**

Introduced and read first time: February 7, 2022

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Nondiscrimination in Health Care Coverage Act**

3 FOR the purpose of requiring a health care provider or health care institution to ensure
4 the provision or continuation of life-sustaining care under certain circumstances;
5 regulating the development and use by agencies of measures that discount the value
6 of a life based on an individual's disability and utilization management measures;
7 authorizing the General Assembly to appoint certain members to intervene in certain
8 cases; and generally relating to the provision of health care and health care coverage
9 decisions.

10 BY adding to

11 Article – Health – General

12 Section 5–6A–01 through 5–6A–06 to be under the new subtitle “Subtitle 6A.

13 Nondiscrimination in Health Care Coverage Act”

14 Annotated Code of Maryland

15 (2019 Replacement Volume and 2021 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Health – General**

19 **SUBTITLE 6A. NONDISCRIMINATION IN HEALTH CARE COVERAGE ACT.**

20 **5–6A–01.**

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (B) “AGENCY” INCLUDES:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) **THE STATE;**

2 (2) **A UNIT OF THE STATE;**

3 (3) **AN ENTITY ESTABLISHED UNDER THE MARYLAND CONSTITUTION**
4 **OR STATE LAW; AND**

5 (4) **AN ENTITY ESTABLISHED BY AN ENTITY ESTABLISHED UNDER**
6 **THE MARYLAND CONSTITUTION OR STATE LAW.**

7 (C) **“HEALTH CARE INSTITUTION” MEANS ANY PUBLIC OR PRIVATE**
8 **ORGANIZATION, CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP,**
9 **ASSOCIATION, AGENCY, NETWORK, JOINT VENTURE, OR OTHER ENTITY THAT IS**
10 **INVOLVED IN PROVIDING HEALTH CARE SERVICES, INCLUDING A HOSPITAL, A**
11 **CLINIC, A MEDICAL CENTER, AN AMBULATORY SURGICAL CENTER, A PRIVATE**
12 **PHYSICIAN’S OFFICE, A NURSING HOME, AND ANY OTHER FACILITY OR LOCATION**
13 **WHERE HEALTH CARE SERVICES ARE PROVIDED TO AN INDIVIDUAL.**

14 (D) **“HEALTH CARE PROVIDER” MEANS AN INDIVIDUAL WHO IS LICENSED,**
15 **CERTIFIED, OR OTHERWISE AUTHORIZED BY STATE LAW TO PRACTICE A HEALTH**
16 **CARE OCCUPATION OR WHO ADMINISTERS HEALTH CARE IN THE ORDINARY COURSE**
17 **OF BUSINESS.**

18 (E) **“HEALTH CARE SERVICE” MEANS ANY PHASE OF PATIENT MEDICAL**
19 **CARE, TREATMENT, OR PROCEDURE, INCLUDING:**

20 (1) **THERAPY;**

21 (2) **TESTING;**

22 (3) **DIAGNOSIS OR PROGNOSIS;**

23 (4) **PRESCRIBING, DISPENSING, OR ADMINISTERING ANY DEVICE,**
24 **DRUG, OR MEDICATION;**

25 (5) **SURGERY; AND**

26 (6) **ANY OTHER CARE OR TREATMENT PROVIDED BY A HEALTH CARE**
27 **PROVIDER.**

28 (F) **“LIFE-SUSTAINING CARE” MEANS HEALTH CARE INCLUDING**
29 **MECHANICAL VENTILATION, RENAL DIALYSIS, CHEMOTHERAPY, ANTIBIOTICS, AND**

1 NUTRITION AND HYDRATION THAT, IN REASONABLE MEDICAL JUDGMENT, HAS A
2 SIGNIFICANT POSSIBILITY OF SUSTAINING THE LIFE OF THE PATIENT.

3 (G) "SELF-ADVOCACY ORGANIZATION" MEANS AN ORGANIZATION:

4 (1) DIRECTED BY INDIVIDUALS WITH DISABILITIES; AND

5 (2) WITH A MAJORITY OF BOARD MEMBERS AND EMPLOYEES WHO
6 ARE INDIVIDUALS WITH DISABILITIES.

7 (H) "UTILIZATION MANAGEMENT" INCLUDES STEP THERAPY, PRIOR
8 AUTHORIZATION RESTRICTIONS, AND THE USE OF FORMULARY RESTRICTIONS TO
9 RESTRICT ACCESS TO A DRUG OR OTHER HEALTH CARE SERVICE PRESCRIBED BY A
10 HEALTH CARE PROVIDER.

11 5-6A-02.

12 THE GENERAL ASSEMBLY FINDS THAT:

13 (1) IN SOME CIRCUMSTANCES, INCLUDING DURING A MEDICAL CRISIS
14 OR SCARCITY, LIFE-SUSTAINING CARE IS WITHHELD OR WITHDRAWN AT THE
15 DISCRETION OF THE HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION,
16 DESPITE THE WISHES OF THE PATIENT OR THE PATIENT'S FAMILY;

17 (2) THE AMERICAN MEDICAL ASSOCIATION DEFINES
18 LIFE-SUSTAINING TREATMENT AS INCLUDING MECHANICAL VENTILATION, RENAL
19 DIALYSIS, CHEMOTHERAPY, ANTIBIOTICS, AND ARTIFICIAL NUTRITION AND
20 HYDRATION;

21 (3) FUTILE CARE THEORY, WHICH PROVIDES THAT A HEALTH CARE
22 PROVIDER, HEALTH CARE INSTITUTION, OR HEALTH CARE PAYOR MAY
23 UNILATERALLY WITHHOLD MEDICAL TREATMENT OR INSURANCE COVERAGE FOR
24 MEDICAL TREATMENT DUE TO A BELIEF THAT A PATIENT'S QUALITY OF LIFE IS NOT
25 WORTH CONTINUING CARE OR NOT WORTH THE COST OF CARE, DESPITE THE WISHES
26 OF THE PATIENT OR THE PATIENT'S FAMILY, IS RAPIDLY PENETRATING HOSPITAL
27 AND EMERGENCY SERVICES CARE PROTOCOLS, ESPECIALLY CRISIS STANDARD OF
28 CARE TRIAGE PROTOCOLS;

29 (4) A PHYSICAL OR MENTAL DISABILITY, AGE, OR CHRONIC ILLNESS
30 SHOULD IN NO WAY DIMINISH AN INDIVIDUAL'S RIGHT TO LIFE, HUMAN DIGNITY,
31 AND EQUAL ACCESS TO MEDICAL CARE;

1 **(5) HISTORICALLY, INDIVIDUALS WITH DISABILITIES, OF ADVANCED**
2 **AGE, OR WITH CHRONIC ILLNESS HAVE EXPERIENCED DISCRIMINATION IN THE**
3 **HEALTH CARE SYSTEM, INCLUDING THE DENIAL OF ACCESS TO LIFE-SUSTAINING**
4 **CARE, AND THIS DISCRIMINATION IS INCONSISTENT WITH SOCIETY'S COMMITMENT**
5 **TO HUMAN DIGNITY AND THE FULL INCLUSION OF INDIVIDUALS WITH DISABILITIES**
6 **THROUGHOUT SOCIETY;**

7 **(6) LACK OF ACCESS TO APPROPRIATE HEALTH CARE CAN RESULT IN**
8 **SIGNIFICANT ADVERSE HEALTH CONSEQUENCES FOR INDIVIDUALS WITH**
9 **DISABILITIES, WITH CHRONIC ILLNESS, OR OF ADVANCED AGE, INCLUDING LOSS OF**
10 **FUNCTION, REDUCED QUALITY OF LIFE, OR EVEN DEATH;**

11 **(7) BOTH PUBLIC AND PRIVATE PAYORS HAVE A MORAL, LEGAL, AND**
12 **ETHICAL OBLIGATION TO MAKE HEALTH CARE REIMBURSEMENT DECISIONS IN A**
13 **TRANSPARENT MANNER USING NONDISCRIMINATORY CRITERIA; AND**

14 **(8) THE RIGHT OF EACH INDIVIDUAL TO EQUAL ACCESS TO QUALITY**
15 **HEALTH CARE SHALL BE PROTECTED IN A MEDICAL EMERGENCY AND MAY NOT BE**
16 **DEPRIVED OR CURTAILED AS PART OF A MEDICAL CRISIS STANDARD OF CARE OR**
17 **RELATED TRIAGE PROTOCOLS.**

18 **5-6A-03.**

19 **(A) IF A PATIENT, A PATIENT'S FAMILY, OR A PATIENT'S ADVANCE**
20 **DIRECTIVE DIRECTS THE PROVISION OR OPPOSES THE WITHDRAWAL OF**
21 **LIFE-SUSTAINING CARE THAT, IN REASONABLE MEDICAL JUDGMENT, HAS A**
22 **SIGNIFICANT POSSIBILITY OF SUSTAINING THE LIFE OF THE PATIENT, A HEALTH**
23 **CARE PROVIDER OR HEALTH CARE INSTITUTION SHALL ENSURE THE PROVISION OR**
24 **CONTINUATION OF THE DIRECTED LIFE-SUSTAINING CARE.**

25 **(B) (1) A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION THAT**
26 **IS UNWILLING TO PROVIDE DIRECTED LIFE-SUSTAINING CARE UNDER SUBSECTION**
27 **(A) OF THIS SECTION MAY TRANSFER THE PATIENT TO ANOTHER HEALTH CARE**
28 **PROVIDER OR HEALTH CARE INSTITUTION THAT IS CAPABLE OF PROVIDING AND**
29 **WILLING TO PROVIDE THE DIRECTED LIFE-SUSTAINING CARE.**

30 **(2) IF A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION**
31 **TRANSFERS A PATIENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH**
32 **CARE PROVIDER OR HEALTH CARE INSTITUTION SHALL ENSURE THE PROVISION OF**
33 **THE DIRECTED LIFE-SUSTAINING CARE UNTIL THE PATIENT IS TRANSFERRED.**

1 **(3) ANY TRANSFER OF A PATIENT IN ACCORDANCE WITH THIS**
2 **SECTION SHALL BE DONE PROMPTLY ON THE AGREEMENT BY THE RECEIVING**
3 **HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION TO ADMIT THE PATIENT.**

4 **5-6A-04.**

5 **(A) AN AGENCY MAY NOT DEVELOP OR USE A DOLLARS-PER-QUALITY**
6 **ADJUSTED LIFE YEAR OR A SIMILAR MEASURE THAT DISCOUNTS THE VALUE OF A**
7 **LIFE BASED ON AN INDIVIDUAL'S DISABILITY, INCLUDING AGE OR CHRONIC**
8 **ILLNESS, AS A THRESHOLD TO ESTABLISH WHAT TYPE OF HEALTH CARE IS**
9 **COST-EFFECTIVE OR RECOMMENDED.**

10 **(B) AN AGENCY MAY NOT USE A DOLLARS-PER-QUALITY ADJUSTED LIFE**
11 **YEAR OR SIMILAR MEASURE AS A THRESHOLD TO MAKE COVERAGE,**
12 **REIMBURSEMENT, INCENTIVE PROGRAM, OR UTILIZATION MANAGEMENT**
13 **DECISIONS, WHETHER THE DECISIONS ARE BY THE AGENCY OR FROM A THIRD**
14 **PARTY.**

15 **(C) EACH AGENCY PROPOSING NEW UTILIZATION MANAGEMENT MEASURES**
16 **SHALL POST FOR PUBLIC COMMENT BOTH THE PROPOSED MEASURE AND THE**
17 **RATIONALE FOR THE PROPOSED MEASURE, INCLUDING:**

18 **(1) THE AVAILABILITY OF ALTERNATIVE MEASURES;**

19 **(2) AN ANALYSIS OF THE POTENTIAL IMPACT ON ATYPICAL PATIENT**
20 **POPULATIONS AND SUBGROUPS;**

21 **(3) AN ESTIMATE OF THE POPULATION LIKELY TO BE IMPACTED BY**
22 **THE MEASURE; AND**

23 **(4) A DESCRIPTION OF BOTH INTERNAL AND THIRD-PARTY VALUE**
24 **ASSESSMENTS USED IN INTERNAL DELIBERATIONS ON THE MEASURE.**

25 **(D) EACH AGENCY MAKING DECISIONS ON UTILIZATION MANAGEMENT**
26 **MEASURES, COVERAGE, REIMBURSEMENT, OR INCENTIVE PROGRAMS SHALL**
27 **CONSULT WITH:**

28 **(1) ORGANIZATIONS REPRESENTING PATIENTS AND INDIVIDUALS**
29 **WITH DISABILITIES, INCLUDING SELF-ADVOCACY ORGANIZATIONS AND**
30 **ORGANIZATIONS REPRESENTING PATIENTS, BEFORE PROCEEDING ON ANY**
31 **MEASURE LIKELY TO IMPACT THE RELEVANT PATIENT OR DISABILITY COMMUNITY;**

1 **(2) ORGANIZATIONS REPRESENTING PATIENTS AND INDIVIDUALS**
2 **WHO ADVOCATE FOR THE RIGHTS OF PATIENTS TO OBTAIN TREATMENT WITHOUT**
3 **REGARD TO THE PATIENT’S QUALITY OF LIFE; AND**

4 **(3) REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE FOR**
5 **THE RIGHTS OF OLDER INDIVIDUALS TO RECEIVE HEALTH CARE.**

6 **5-6A-05.**

7 **EACH AGENCY MAKING DECISIONS ON UTILIZATION MANAGEMENT**
8 **MEASURES, COVERAGE, REIMBURSEMENT, OR INCENTIVE PROGRAMS SHALL**
9 **ENSURE THAT A PROCESS IS IN PLACE TO ENSURE ROBUST STAKEHOLDER**
10 **ENGAGEMENT AND FULL TRANSPARENCY REGARDING THE PROVISION OF ANY**
11 **RESEARCH AND ANALYSIS RELIED ON FOR DECISION MAKING THAT WOULD IMPACT**
12 **ACCESS TO HEALTH CARE TREATMENTS AND SERVICES BY PATIENT GROUPS**
13 **PROVIDED FOR IN THIS SUBTITLE, INCLUDING:**

14 **(1) PROVIDING STAKEHOLDERS WITH MEANINGFUL NOTICE AND THE**
15 **OPPORTUNITY TO COMMENT ON THE RETENTION OF ANY VENDOR PROVIDING**
16 **RESEARCH AND ANALYSIS TO THE AGENCY;**

17 **(2) SUBJECTING RESEARCH AND ANALYSIS RELIED ON BY AN AGENCY**
18 **TO A MEANINGFUL NOTICE AND COMMENT PROCESS;**

19 **(3) ENSURING THAT DELIBERATION ON THE COVERAGE OR**
20 **REIMBURSEMENT FOR HEALTH CARE TREATMENT AND SERVICES OCCURS IN OPEN**
21 **MEETINGS;**

22 **(4) PRESENTING AND RELEASING ANY RESEARCH AND ANALYSIS**
23 **RELIED ON FOR DECISION MAKING IN PUBLIC MEETINGS OR THAT IS PUBLICLY**
24 **RELEASED BEFORE DELIBERATION;**

25 **(5) REQUIRING FULL DISCLOSURE INTO FUNDING SOURCES AND**
26 **CONFLICTS OF INTEREST OF ANY THIRD PARTY PROVIDING RESEARCH AND**
27 **ANALYSIS TO THE STATE;**

28 **(6) PROHIBITING SOLE SOURCE CONTRACTS FOR RESEARCH AND**
29 **ANALYSIS TO ENSURE RELIANCE ON A RANGE OF EVIDENCE; AND**

30 **(7) PREPARING AN ANNUAL REPORT ON ACCESS TO HEALTH CARE**
31 **TREATMENTS AND SERVICES THAT ASSESSES THE IMPACT OF ANY FORM OF**
32 **UTILIZATION MANAGEMENT ON ACCESS TO CARE WITH A SPECIFIC ANALYSIS OF THE**

1 IMPACT ON INDIVIDUALS WITH DISABILITIES, CHRONIC ILLNESS, AND ADVANCED
2 AGE THAT:

3 (I) PROVIDES AN OPPORTUNITY FOR PUBLIC COMMENT;

4 (II) IS POSTED ON THE DEPARTMENT'S WEBSITE; AND

5 (III) IS SUBMITTED TO THE GENERAL ASSEMBLY IN
6 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE.

7 5-6A-06.

8 THIS SUBTITLE MAY BE CITED AS THE MARYLAND NONDISCRIMINATION IN
9 HEALTH CARE COVERAGE ACT.

10 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
11 Assembly that the Governor shall develop and implement a plan to facilitate the
12 appropriate State departments, agencies, and licensing authorities in regulating health
13 care providers and payors licensed or otherwise participating in the State, for the purpose
14 of ensuring patients equal access to health care, especially during a time of medical scarcity
15 or shortage.

16 SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
17 the application thereof to any person or circumstance is held invalid for any reason in a
18 court of competent jurisdiction, the invalidity does not affect other provisions or any other
19 application of this Act that can be given effect without the invalid provision or application,
20 and for this purpose the provisions of this Act are declared severable.

21 SECTION 4. AND BE IT FURTHER ENACTED, That the General Assembly, by
22 joint resolution, may appoint one or more of its members who sponsored or cosponsored this
23 Act in the member's official capacity to intervene as a matter of right in any case in which
24 the constitutionality of this Act or any portion thereof is challenged.

25 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2022.