

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 510

(Delegate Pendergrass, *et al.*)

Health and Government Operations

Finance

**Health Care Decisions Act - Advance Directives - Electronic Documents and
Electronic Signatures**

This bill establishes electronic signatures as having the same effect as manual signatures on advance directive documents and establishes electronic advance directives as having the same effect as written advance directives.

Fiscal Summary

State Effect: The bill would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Electronic signature” means an electronic sound, symbol, or process attached to or associated with a record and executed or adopted by a person who intends to sign the record. Electronic signatures have to meet the following requirements: • use an algorithm approved by the National Institute of Standards and Technology; • be unique to the individual using it; • be capable of verification; • be under the sole control of the individual using it; • be linked to data in a way that if the data change, the electronic signature is invalidated; • persist with the document and not by association in separate files; and • be bound to a digital certificate.

Current Law: The federal Patient Self-Determination Act of 1990 requires health care providers to inform all adult patients about their rights to accept or refuse medical or surgical treatment and the right to execute an “advance directive.” An advance directive is a written instruction, such as a living will or durable power of attorney, for health care when the individual is incapacitated.

In Maryland, advance directives permit an individual to select a health care agent, give health care instructions, or both. An advance directive that appoints a health care agent permits the agent to make all health care decisions for an individual, subject to any limitations specified in writing on the directive. An advance medical directive specifies health care instructions in the event an individual cannot make an informed decision regarding health care. The advance directives must be signed by two witnesses, at least one of whom cannot financially benefit by reason of the individual’s death.

Background: Advance directives are designed to accomplish a number of functions. They protect an individual’s right to choose or to refuse various forms of health care, even in the face of the development of decisional incapacity. They provide additional assurance that the care provided for an incompetent patient will actually match that patient’s personal values. They transfer a critical health care decision point from the time of a patient’s decisional incapacity to an earlier time when the person is fully competent.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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