

HOUSE BILL 188

J1, C3

7lr0989
CF 7lr1288

By: **Delegates Morhaim, Kipke, Lam, Oaks, and K. Young**

Introduced and read first time: January 19, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Advance Directives – Witness Requirements, Advance**
3 **Directives Services, and Fund**

4 FOR the purpose of altering the circumstances under which a witness's subscription is not
5 required for an electronic advance directive; requiring the Maryland Health Care
6 Commission to adopt regulations specifying the manner in which a declarant's
7 identity may be established without a witness's subscription; clarifying that the
8 Department of Health and Mental Hygiene may contract with multiple electronic
9 advance directives services; repealing a certain provision of law requiring the
10 Department to review an advance directive and verify that the advance directive
11 includes certain items before accepting the advance directive into an electronic
12 advance directives service; establishing the Advance Directive Program Fund as a
13 special, nonlapsing fund; specifying the purpose of the Fund; requiring the
14 Department to administer the Fund; requiring the State Treasurer to hold the Fund
15 and the Comptroller to account for the Fund; specifying the contents of the Fund;
16 specifying the purpose for which the Fund may be used; providing for the investment
17 of money in and expenditures from the Fund; requiring interest earnings of the Fund
18 to be credited to the Fund; exempting the Fund from a certain provision of law
19 requiring interest earnings on State money to accrue to the General Fund of the
20 State; repealing certain provisions of law relating to the establishment, operation,
21 and duties of the State Board of Spinal Cord Injury Research; repealing certain
22 provisions of law establishing the Spinal Cord Injury Research Trust Fund; repealing
23 certain provisions of law authorizing the Secretary of Health and Mental Hygiene to
24 take certain actions relating to grants made from money in the Spinal Cord Injury
25 Research Trust Fund; requiring a certain amount of a certain tax on certain health
26 insurers to be distributed annually to the Advance Directive Program Fund instead
27 of to the Spinal Cord Injury Research Trust Fund; transferring money remaining in
28 the Spinal Cord Injury Research Trust Fund to the Advance Directive Program
29 Fund; defining a certain term; altering a certain definition; repealing certain
30 definitions; and generally relating to advance directives, advance directives services,
31 and the Advance Directive Program Fund.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, without amendments,
2 Article – Health – General
3 Section 5–601(a) and 5–620
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2016 Supplement)
- 6 BY repealing and reenacting, with amendments,
7 Article – Health – General
8 Section 5–601(b), 5–602(c), and 5–622(a)(1)
9 Annotated Code of Maryland
10 (2015 Replacement Volume and 2016 Supplement)
- 11 BY repealing
12 Article – Health – General
13 Section 5–624; and 13–1401 through 13–1407 and the subtitle “Subtitle 14. State
14 Board of Spinal Cord Injury Research”
15 Annotated Code of Maryland
16 (2015 Replacement Volume and 2016 Supplement)
- 17 BY adding to
18 Article – Health – General
19 Section 5–626
20 Annotated Code of Maryland
21 (2015 Replacement Volume and 2016 Supplement)
- 22 BY repealing and reenacting, with amendments,
23 Article – Insurance
24 Section 6–103.1
25 Annotated Code of Maryland
26 (2011 Replacement Volume and 2016 Supplement)
- 27 BY repealing and reenacting, without amendments,
28 Article – State Finance and Procurement
29 Section 6–226(a)(2)(i)
30 Annotated Code of Maryland
31 (2015 Replacement Volume and 2016 Supplement)
- 32 BY repealing and reenacting, with amendments,
33 Article – State Finance and Procurement
34 Section 6–226(a)(2)(ii)94. and 95.
35 Annotated Code of Maryland
36 (2015 Replacement Volume and 2016 Supplement)
- 37 BY adding to
38 Article – State Finance and Procurement
39 Section 6–226(a)(2)(ii)96.

Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

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

Article – Health – General

5–601.

(a) In this subtitle the following words have the meanings indicated.

(b) “Advance directive” means:

(1) A witnessed written or electronic document, voluntarily executed by the declarant in accordance with the requirements of this subtitle; [or]

(2) A witnessed oral statement, made by the declarant in accordance with the provisions of this subtitle; **OR**

(3) AN ELECTRONIC DOCUMENT, VOLUNTARILY EXECUTED BY THE DECLARANT, IN WHICH THE DECLARANT’S IDENTITY IS ESTABLISHED IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER § 5–602(C)(3)(II) OF THIS SUBTITLE.

5–602.

(c) (1) **[A] EXCEPT AS PROVIDED FOR IN PARAGRAPH (3) OF THIS SUBSECTION,** A written or electronic advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

(2) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, any competent individual may serve as a witness to an advance directive, including an employee of a health care facility, nurse practitioner, physician assistant, or physician caring for the declarant if acting in good faith.

(ii) The health care agent of the declarant may not serve as a witness.

(iii) At least one of the witnesses must be an individual who is not knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any financial benefit by reason of the death of the declarant.

(3) **(I)** A witness is not required for an electronic advance directive if the declarant’s identity has been established in accordance with [the National Institute of Standards and Technology Special Publication 800–63–2: Electronic Authentication

Guideline] REGULATIONS ADOPTED BY THE MARYLAND HEALTH CARE COMMISSION
UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

(II) THE MARYLAND HEALTH CARE COMMISSION SHALL
ADOPT REGULATIONS SPECIFYING THE MANNER IN WHICH THE DECLARANT'S
IDENTITY MAY BE ESTABLISHED WITHOUT A WITNESS'S SUBSCRIPTION.

(4) The State-designated health information exchange may accept as valid
an unwitnessed electronic advance directive in the form of a video record or file to state the
declarant's wishes regarding health care for the declarant or to appoint an agent if the
video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives
service recognized by the Maryland Health Care Commission.

5-620.

There is an Advance Directive Program in the Department.

5-622.

(a) (1) To facilitate the use of cloud-based technology for electronic advance
directives, the Department shall contract with an electronic advance directives service **OR**
MULTIPLE ELECTRONIC ADVANCE DIRECTIVES SERVICES to connect with health care
providers at the point of care through the State-designated health information exchange.

[5-624.

Before accepting an advance directive into an electronic advance directives service
recognized by the Maryland Health Care Commission, the Department shall review and
verify that the advance directive includes:

(1) The signature of the declarant;

(2) The date on which the advance directive was signed by the declarant;

and

(3) The signature of two witnesses as provided in § 5-602(c) of this
subtitle.]

5-626.

(A) IN THIS SECTION, "FUND" MEANS THE ADVANCE DIRECTIVE PROGRAM
FUND.

1 **(B) THERE IS AN ADVANCE DIRECTIVE PROGRAM FUND.**

2 **(C) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING TO CARRY OUT**
3 **THE PURPOSES OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER §**
4 **5–620 OF THIS SUBTITLE.**

5 **(D) THE DEPARTMENT SHALL ADMINISTER THE FUND.**

6 **(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**
7 **SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

8 **(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,**
9 **AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

10 **(F) THE FUND CONSISTS OF:**

11 **(1) MONEY TRANSFERRED TO THE FUND UNDER § 6–103.1 OF THE**
12 **INSURANCE ARTICLE;**

13 **(2) INTEREST EARNED UNDER SUBSECTION (H) OF THIS SECTION;**
14 **AND**

15 **(3) ANY OTHER MONEY RECEIVED FROM ANY OTHER LAWFUL SOURCE**
16 **ACCEPTED FOR THE BENEFIT OF THE FUND.**

17 **(G) MONEY IN THE FUND MAY BE USED ONLY TO CARRY OUT THE PURPOSES**
18 **OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER § 5–620 OF THIS**
19 **SUBTITLE.**

20 **(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND**
21 **IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

22 **(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO**
23 **THE FUND.**

24 **[Subtitle 14. State Board of Spinal Cord Injury Research.]**

25 **[13–1401.**

26 **(a) In this subtitle the following words have the meanings indicated.**

27 **(b) “Board” means the State Board of Spinal Cord Injury Research.**

(c) “Fund” means the Spinal Cord Injury Research Trust Fund.]

[13–1402.

There is a State Board of Spinal Cord Injury Research in the Department.]

[13–1403.

(a) (1) The Board consists of 11 members.

(2) Of the 11 members of the Board:

(i) One shall be a member of the Maryland House of Delegates appointed by the Speaker of the House;

(ii) One shall be a member of the Senate of Maryland appointed by the President of the Senate;

(iii) Four shall be individuals with knowledge and expertise concerning spinal cord injuries appointed by the Governor from separate lists submitted to the Governor by the University of Maryland School of Medicine and the Johns Hopkins School of Medicine, with:

1. Two individuals from the University of Maryland School of Medicine; and

2. Two individuals from the Johns Hopkins School of Medicine;

(iv) Two shall be nurses with knowledge and expertise concerning spinal cord injuries appointed by the Governor from separate lists submitted to the Governor by the University of Maryland School of Nursing and the Johns Hopkins School of Nursing, with:

1. One nurse from the University of Maryland School of Nursing; and

2. One nurse from the Johns Hopkins School of Nursing;

(v) Two members, appointed by the Governor from a list submitted by the Department of Disabilities, shall be individuals who have a spinal cord injury or who have a family member with a spinal cord injury; and

(vi) One member, appointed by the Governor, shall be an individual from the general public with knowledge and expertise concerning spinal cord injuries.

1 (b) (1) Subject to paragraph (2) of this subsection, the term of a member is 4
2 years.

3 (2) The Governor shall stagger the terms of the initial members.

4 (3) At the end of a term, a member continues to serve until a successor is
5 appointed and qualifies.

6 (4) A member who is appointed after a term has begun serves only for the
7 remainder of the term and until a successor is appointed and qualifies.

8 (5) A member who serves 2 consecutive 4-year terms may not be
9 reappointed until 4 years after completion of those terms.

10 (6) (i) If a vacancy occurs, the Governor promptly shall appoint a
11 successor who will serve until the term expires.

12 (ii) The successor may be reappointed for a full term.]

13 [13–1404.

14 (a) The Governor shall appoint the chairman of the Board.

15 (b) A majority of the authorized membership of the Board is a quorum.

16 (c) At the times and places that it determines, the Board:

17 (1) Shall meet at least twice a year; and

18 (2) Subject to the call by the chairman or by request of a majority of the
19 members of the Board, may meet more frequently as deemed necessary.

20 (d) A member of the Board:

21 (1) May not receive compensation; but

22 (2) Is entitled to reimbursement for expenses under the Standard State
23 Travel Regulations, as provided in the State budget.]

24 [13–1405.

25 (a) The Board shall:

26 (1) Develop criteria, subject to the approval of the Secretary, for the award
27 of grants for the purpose specified in § 13–1406(c) of this subtitle;

28 (2) Subject to § 13–1407 of this subtitle, administer:

(i) A grants program for the purpose specified in § 13–1406(c)(1) of this subtitle; and

(ii) The Fund;

(3) Make recommendations to the Secretary for approval of applications for grants from the Fund; and

(4) On or before January 1 of each year beginning in 2002, submit a report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly concerning:

(i) The activities of the Board in administering the grant program specified in this subtitle, including the status of money in the Fund;

(ii) The status of spinal cord injury neurological research projects that are funded by grants issued by the Board; and

(iii) Any other matter determined by the Board.

(b) A member of the Board who is a member of the General Assembly may not vote on matters before the Board relating to the exercise of the sovereign powers of the State.]

[13–1406.

(a) There is a Spinal Cord Injury Research Trust Fund.

(b) The Fund shall consist of money transferred to the Fund under § 6–103.1 of the Insurance Article or received from any other lawful source.

(c) (1) Money in the Fund shall be used to:

(i) Make grants for spinal cord injury research that is focused on basic, preclinical, and clinical research for developing new therapies to restore neurological function in individuals with spinal cord injuries; and

(ii) Administer the Advance Directive Program established under § 5–620 of this article.

(2) For the purpose specified in paragraph (1) of this subsection, a grant may include an award to or for:

(i) A public or private entity;

(ii) A university researcher;

(iii) A research institution;

(iv) Private industry;

(v) A clinical trial;

(vi) A supplement to an existing charitable or private industry grant;

(vii) A matching fund;

(viii) A fellowship in spinal cord injury research;

(ix) A research meeting concerning spinal cord injury research; or

(x) Any other recipient or purpose which the Board determines is consistent with the purpose specified in paragraph (1) of this subsection.

(d) (1) The Fund is a continuing, nonlapsing fund, not subject to § 7–302 of the State Finance and Procurement Article.

(2) (i) The Fund shall be used exclusively to offset the actual documented direct costs of fulfilling the statutory and regulatory duties of the Board under this subtitle.

(ii) The Department shall pay the indirect costs the Board incurs in fulfilling the statutory and regulatory duties of the Board under this subtitle.

(3) Any unspent portions of the Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Fund to be used for the purpose specified in subsection (c) of this section.

(e) The chairman of the Board or the designee of the chairman shall administer the Fund.

(f) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2–1220 of the State Government Article.]

[13–1407.

The Secretary:

(1) May:

(i) Approve an application for a grant for the purpose specified in § 13–1406(c) of this subtitle, if the Board has recommended approval of that application; and

(ii) On recommendation by the Board, adopt any regulation necessary to carry out this subtitle; and

(2) Shall:

(i) Ensure that recipients of grant funds under this subtitle use the funds for the purposes authorized by this subtitle; and

(ii) Designate the staff necessary to assist the Board in carrying out its functions under this subtitle.]

Article – Insurance

6–103.1.

Notwithstanding § 2–114 of this article, beginning [January 15, 2006] **JULY 1, 2017**, from the tax imposed on the health insurers under this subtitle, \$500,000 shall be distributed annually to the [Spinal Cord Injury Research Trust] **ADVANCE DIRECTIVE PROGRAM** Fund created under [§ 13–1406] **§ 5–626** of the Health – General Article.

Article – State Finance and Procurement

6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

94. the Community Program Fund; [and]

95. the Maryland Corps Program Fund; AND

96. THE ADVANCE DIRECTIVE PROGRAM FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That all money remaining in the Spinal Cord Injury Research Trust Fund shall be transferred to the Advance Directive Program Fund on July 1, 2017.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2017.