

HOUSE BILL 188

J1, C3

7lr0989
CF 7lr1288

By: **Delegates Morhaim, Kipke, Lam, Oaks, ~~and K. Young~~ K. Young, Krebs, Morgan, Pena-Melnyk, and Saab**

Introduced and read first time: January 19, 2017

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2017

CHAPTER _____

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~~ clarifying that
7 certain guidelines, in accordance with which a declarant's identity may be
8 ~~established~~ authenticated without a witness's subscription apply as periodically
9 updated; requiring the Department of Health and Mental Hygiene to issue a request
10 for proposals from electronic advance directives services for a certain purpose;
11 clarifying that the Department of Health and Mental Hygiene may contract with
12 multiple electronic advance directives services; requiring an electronic advance
13 directives service to use certain guidelines to authenticate a declarant's identity for
14 an electronic advance directive that is not witnessed; requiring the Maryland Health
15 Care Commission and the Department to approve only electronic advance directives
16 services that use certain guidelines to authenticate a declarant's identity for an
17 electronic advance directive that is not witnessed; requiring an individual to submit
18 an electronic advance directive that is not witnessed to an electronic advance
19 directives service recognized by the Commission; repealing a certain provision of law
20 requiring the Department to review an advance directive and verify that the advance
21 directive includes certain items before accepting the advance directive into an
22 electronic advance directives service; establishing the Advance Directive Program
23 Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the
24 Department to administer the Fund; requiring the State Treasurer to hold the Fund

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 and the Comptroller to account for the Fund; specifying the contents of the Fund;
2 specifying the purpose for which the Fund may be used; providing for the investment
3 of money in and expenditures from the Fund; requiring interest earnings of the Fund
4 to be credited to the Fund; exempting the Fund from a certain provision of law
5 requiring interest earnings on State money to accrue to the General Fund of the
6 State; requiring, on or before a certain date each year, the Department to report to
7 the Governor and certain committees of the General Assembly on the Advance
8 Directive Program; repealing certain provisions of law relating to the establishment,
9 operation, and duties of the State Board of Spinal Cord Injury Research; repealing
10 certain provisions of law establishing the Spinal Cord Injury Research Trust Fund;
11 repealing certain provisions of law authorizing the Secretary of Health and Mental
12 Hygiene to take certain actions relating to grants made from money in the Spinal
13 Cord Injury Research Trust Fund; requiring a certain amount of a certain tax on
14 certain health insurers to be distributed annually to the Advance Directive Program
15 Fund instead of to the Spinal Cord Injury Research Trust Fund; transferring money
16 remaining in the Spinal Cord Injury Research Trust Fund to the Advance Directive
17 Program Fund; defining a certain term; altering a certain definition; repealing
18 certain definitions; and generally relating to advance directives, advance directives
19 services, and the Advance Directive Program Fund.

20 BY repealing and reenacting, without amendments,
21 Article – Health – General
22 Section 5–601(a) and 5–620
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2016 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Health – General
27 Section 5–601(b), 5–602(c), ~~and 5–622(a)(1)~~ 5–622(a), and 5–623(c)
28 Annotated Code of Maryland
29 (2015 Replacement Volume and 2016 Supplement)

30 BY repealing
31 Article – Health – General
32 Section 5–624; and 13–1401 through 13–1407 and the subtitle “Subtitle 14. State
33 Board of Spinal Cord Injury Research”
34 Annotated Code of Maryland
35 (2015 Replacement Volume and 2016 Supplement)

36 BY adding to
37 Article – Health – General
38 Section 5–626 and 5–627
39 Annotated Code of Maryland
40 (2015 Replacement Volume and 2016 Supplement)

41 BY repealing and reenacting, with amendments,
42 Article – Insurance

1 Section 6–103.1
 2 Annotated Code of Maryland
 3 (2011 Replacement Volume and 2016 Supplement)

4 BY repealing and reenacting, without amendments,
 5 Article – State Finance and Procurement
 6 Section 6–226(a)(2)(i)
 7 Annotated Code of Maryland
 8 (2015 Replacement Volume and 2016 Supplement)

9 BY repealing and reenacting, with amendments,
 10 Article – State Finance and Procurement
 11 Section 6–226(a)(2)(ii)94. and 95.
 12 Annotated Code of Maryland
 13 (2015 Replacement Volume and 2016 Supplement)

14 BY adding to
 15 Article – State Finance and Procurement
 16 Section 6–226(a)(2)(ii)96.
 17 Annotated Code of Maryland
 18 (2015 Replacement Volume and 2016 Supplement)

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

21 **Article – Health – General**

22 5–601.

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

24 (b) “Advance directive” means:

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

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

29 **(3) AN ELECTRONIC DOCUMENT, VOLUNTARILY EXECUTED BY THE**
 30 **DECLARANT, IN WHICH THE DECLARANT’S IDENTITY IS ~~ESTABLISHED~~**
 31 **AUTHENTICATED IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER §**
 32 **5–602(C)(3)(H) OF THIS SUBTITLE THE GUIDELINES DESCRIBED IN § 5–602(C)(3) OF**
 33 **THIS SUBTITLE.**

34 5–602.

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

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

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

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

13 (3) ~~(H)~~ A witness is not required for an electronic advance directive if
 14 the declarant's identity has been ~~established~~ AUTHENTICATED in accordance with ~~the~~
 15 National Institute of Standards and Technology Special Publication 800-63-2: Electronic
 16 Authentication Guideline] ~~REGULATIONS ADOPTED BY THE MARYLAND HEALTH~~
 17 ~~CARE COMMISSION UNDER SUBPARAGRAPH (H) OF THIS PARAGRAPH, AS~~
 18 PERIODICALLY UPDATED.

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

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

26 (i) Is dated; and

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

29 5-620.

30 There is an Advance Directive Program in the Department.

31 5-622.

32 (a) (1) To facilitate the use of cloud-based technology for electronic advance
 33 directives, the Department shall ISSUE A REQUEST FOR PROPOSALS FROM AND contract

1 with an electronic advance directives service **OR MULTIPLE ELECTRONIC ADVANCE**
 2 **DIRECTIVES SERVICES** to connect with health care providers at the point of care through
 3 the State–designated health information exchange.

4 (2) [The] AN electronic advance directives service shall:

5 (i) Be approved by the Maryland Health Care Commission and the
 6 Department; [and]

7 (ii) Meet the technology, security, and privacy standards set by the
 8 Maryland Health Care Commission; AND

9 (iii) USE THE GUIDELINES DESCRIBED IN § 5–602(C)(3) OF THIS
 10 SUBTITLE TO AUTHENTICATE A DECLARANT’S IDENTITY FOR AN ELECTRONIC
 11 ADVANCE DIRECTIVE THAT IS NOT WITNESSED.

12 (3) THE MARYLAND HEALTH CARE COMMISSION AND THE
 13 DEPARTMENT MAY APPROVE ONLY ADVANCE DIRECTIVES SERVICES THAT USE THE
 14 GUIDELINES DESCRIBED IN § 5–602(C)(3) OF THIS SUBTITLE TO AUTHENTICATE A
 15 DECLARANT’S IDENTITY FOR AN ELECTRONIC ADVANCE DIRECTIVE THAT IS NOT
 16 WITNESSED.

17 5–623.

18 (c) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
 19 SUBSECTION, AN individual is not required to submit an advance directive to an electronic
 20 advance directives service recognized by the Maryland Health Care Commission.

21 (2) AN INDIVIDUAL SHALL SUBMIT AN ELECTRONIC ADVANCE
 22 DIRECTIVE THAT IS NOT WITNESSED TO AN ELECTRONIC ADVANCE DIRECTIVES
 23 SERVICE THAT IS RECOGNIZED BY THE MARYLAND HEALTH CARE COMMISSION.

24 [5–624.

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

28 (1) The signature of the declarant;

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

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

1 **5-626.**

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

4 (B) THERE IS AN ADVANCE DIRECTIVE PROGRAM FUND.

5 (C) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING TO CARRY OUT
6 THE PURPOSES OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER §
7 5-620 OF THIS SUBTITLE.

8 (D) THE DEPARTMENT SHALL ADMINISTER THE FUND.

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

11 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
12 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

13 (F) THE FUND CONSISTS OF:

14 (1) MONEY TRANSFERRED TO THE FUND UNDER § 6-103.1 OF THE
15 INSURANCE ARTICLE;

16 (2) INTEREST EARNED UNDER SUBSECTION (H) OF THIS SECTION;
17 AND

18 (3) ANY OTHER MONEY RECEIVED FROM ANY OTHER LAWFUL SOURCE
19 ACCEPTED FOR THE BENEFIT OF THE FUND.

20 (G) MONEY IN THE FUND MAY BE USED ONLY TO CARRY OUT THE PURPOSES
21 OF THE ADVANCE DIRECTIVE PROGRAM ESTABLISHED UNDER § 5-620 OF THIS
22 SUBTITLE.

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

25 (2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO
26 THE FUND.

27 **5-627.**

28 **ON OR BEFORE JANUARY 15 EACH YEAR, THE DEPARTMENT SHALL REPORT**
29 **TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE**

1 GOVERNMENT ARTICLE, THE HOUSE APPROPRIATIONS COMMITTEE, THE HOUSE
2 HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, THE SENATE BUDGET AND
3 TAXATION COMMITTEE, AND THE SENATE FINANCE COMMITTEE ON THE PROGRAM,
4 INCLUDING, FOR THE PRIOR CALENDAR YEAR, THE COSTS TO ESTABLISH AND
5 MAINTAIN THE PROGRAM AND THE FEES CHARGED TO REGISTRANTS UNDER THE
6 PROGRAM.

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

8 [13–1401.

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

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

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

12 [13–1402.

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

14 [13–1403.

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

16 (2) Of the 11 members of the Board:

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

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

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

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

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

29 (iv) Two shall be nurses with knowledge and expertise concerning
30 spinal cord injuries appointed by the Governor from separate lists submitted to the

1 Governor by the University of Maryland School of Nursing and the Johns Hopkins School
2 of Nursing, with:

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

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

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

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

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

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

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

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

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

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

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

23 [13-1404.

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

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

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

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

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

1 (d) A member of the Board:

2 (1) May not receive compensation; but

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

5 [13–1405.

6 (a) The Board shall:

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

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

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

12 (ii) The Fund;

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

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

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

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

22 (iii) Any other matter determined by the Board.

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

26 [13–1406.

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

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

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

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

5 (ii) Administer the Advance Directive Program established under §
6 5–620 of this article.

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

9 (i) A public or private entity;

10 (ii) A university researcher;

11 (iii) A research institution;

12 (iv) Private industry;

13 (v) A clinical trial;

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

15 (vii) A matching fund;

16 (viii) A fellowship in spinal cord injury research;

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

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

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

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

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

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

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

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

5 [13–1407.

6 The Secretary:

7 (1) May:

8 (i) Approve an application for a grant for the purpose specified in §
9 13–1406(c) of this subtitle, if the Board has recommended approval of that application; and

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

12 (2) Shall:

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

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

17 **Article – Insurance**

18 6–103.1.

19 Notwithstanding § 2–114 of this article, beginning [January 15, 2006] **JULY 1,**
20 **2017**, from the tax imposed on the health insurers under this subtitle, \$500,000 shall be
21 distributed annually to the [Spinal Cord Injury Research Trust] **ADVANCE DIRECTIVE**
22 **PROGRAM** Fund created under [§ 13–1406] **§ 5–626** of the Health – General Article.

23 **Article – State Finance and Procurement**

24 6–226.

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

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

3 94. the Community Program Fund; [and]

4 95. the Maryland Corps Program Fund; AND

5 **96. THE ADVANCE DIRECTIVE PROGRAM FUND.**

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

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
10 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.