



DHMH

Maryland Department of Health and Mental Hygiene
Office of Health Care Quality

Spring Grove Center • Bland Bryant Building
55 Wade Avenue • Catonsville, Maryland 21228-4663

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

TRANSMITTAL

TO: Maryland Hospitals, Nursing Homes, Residential Treatment Centers and Assisted Living Facilities

FROM: Wendy Kronmiller, Director, OHCQ

RE: Implementation of Senate Bill 566--Health Care Facility Visitation and Medical Decisions—Domestic Partners

Date: August 18, 2008

Effective July 1, legislation became effective which extends decision making and other rights to domestic partners. The purpose of this transmittal is to direct your attention to this new law, and to briefly summarize its impact in health care facilities regulated by OHCQ. I invite you to review Senate Bill 566 (portions attached) and related advice from the Office of the Attorney General <http://www.oag.state.md.us/Healthpol/sollins2.pdf>

Summary: As discussed below, Senate Bill 566 amends the Health Care Decisions act to give surrogate decision making authority to domestic partners as is given to spouses. The Act also gives domestic partners rights to visitation in health care facilities. With regard to nursing homes, the Act specifies that domestic partners have rights to share rooms and to privacy.

What is a Domestic Partner According to SB 566? The law defines a domestic partnership as a relationship between two people who are at least 18 years old, are not related to one another, are not married or in a civil union or in a domestic partnership with someone else, and agrees to be in a relationship of mutual interdependence in which each contributes to the maintenance and support of the other, although they are not required to contribute equally.

Must a facility require proof of domestic partnership? A recent letter from the former Director of Health Care Policy Development of the Attorney General's Office clarifies that the legislation does not require any particular process or format for establishing an individual's status as domestic partner. That is, proof is not required. A facility may, however, request evidence and certain forms of evidence are listed in the law. Specifically, a facility may request an affidavit signed by the individuals stating that they have established a domestic partnership as well as documentary proof of the relationship. In

the event of a medical emergency, however, a hospital must allow visitation by a domestic partner on the same basis as a member of an adult patient's immediate family, even if documents are not available.

Visitation and Medical Emergencies: The new law provides that domestic partners and children of domestic partners must be afforded the same visitation rights as other immediate family members. This part of the SB 566 applies to hospitals and "related institutions," including assisted living facilities, nursing homes, state residential centers, and forensic residential centers, and residential treatment centers.

SB 566 and Surrogate Decision Making under the Health Care Decisions Act: One aspect of SB 566 amends the surrogate decision making provision of the Health Care Decisions Act by assigning to a domestic partner the same high-priority status among surrogates as a spouse. Prior to this amendment, an individual in an intimate but non-marital relationship with the patient had the lowest priority status, as a "friend." Of course, surrogate decision making is only necessary when an individual cannot make his or her own decisions and has not executed an advance directive that appoints a health care agent or gives clear instructions regarding treatment decisions.

Nursing homes, right to share a room and right to privacy: SB 566 amends the Title 19 of the Health General Article extending patient rights in nursing homes. Specifically, domestic partners who are both residents of a nursing homes must be afforded the same right as a spouse to share a room, (if it is consensual, feasible, and not medically contraindicated). Additionally, even if both partners are not residents, if a nursing home resident has a partner in a nursing home, he or she must be given privacy during visits.

Once again, this brief summary is not a substitute for being familiar with the new law. If you have any questions about the law, please contact the appropriate program manager, Vanessa Leuthold, nursing homes, vleuthold@dhmh.state.md.us; Lester Brown, assisted living, lbrown@dhmh.state.md.us; Renee Webster, hospitals, rwebster@dhmh.state.md.us.

cc: Pat Bayliss, Ombudsman
Robyn Elliott
HFAM
Lifespan
Maryland Hospital Association
Mental Hygiene Administration
Developmental Disabilities Administration

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CHAPTER 590

(Senate Bill 566)

AN ACT concerning

Health Care Facility Visitation and Medical Decisions – Domestic Partners

FOR the purpose of requiring certain health care facilities to allow domestic partners and certain relatives of domestic partners to visit a domestic partner except under certain circumstances; requiring two adults to be treated as domestic partners under certain circumstances related to medical emergencies; providing that a health care agent retains certain authority to make certain decisions notwithstanding certain provisions of law; providing that an individual who asserts a domestic partnership may be required to provide certain proof; prohibiting the Department of Health and Mental Hygiene from denying a domestic partner the right to inspect a record to permit a disinterment or reinterment of a body; authorizing a domestic partner to give consent to conduct a postmortem examination of a certain body; authorizing a domestic partner to arrange for the final disposition of the body of a decedent under certain circumstances; authorizing a domestic partner to make the health care decisions for a certain person; authorizing a domestic partner of a certain patient to petition a court to enjoin the actions of a certain health care provider; authorizing a domestic partner to accompany an individual being transported from one health care facility to another health care facility under certain circumstances; establishing that a domestic partner may be a representative of a deceased from whom a hospital is asking for authorization for a human organ donation; prohibiting a hospital from billing a domestic partner for the costs associated with the deceased domestic partner's organ donation; requiring that domestic partners be given the opportunity to share a room in a certain facility under certain circumstances; requiring certain related institutions to allow a resident who is a party to a domestic partnership to have privacy during a visit by the other domestic partner; authorizing a domestic partner of a resident of a facility to file a certain complaint; authorizing a domestic partner to arrange the final disposition of the body of a decedent with a mortician under certain circumstances; establishing that for purposes of an interest in the property of a burial site, a domestic partner is a person in interest; establishing that a domestic partner is a next of kin for purposes of making anatomical gifts of a decedent; defining certain terms; making the provisions of this Act severable; providing for the construction of this Act; and generally relating to health care facility visitation and medical decisions by a domestic partner.

BY repealing and reenacting, with amendments,
Article – Health – General

- (iv) A parent of the patient;
- (v) An adult brother or sister of the patient; or
- (vi) A friend or other relative of the patient who meets the requirements of paragraph (3) of this subsection.

5-612.

(a) (1) A health care provider for an individual incapable of making an informed decision who believes that an instruction to withhold or withdraw a life-sustaining procedure from the patient is inconsistent with generally accepted standards of patient care shall:

(i) Petition a patient care advisory committee for advice concerning the withholding or withdrawal of the life-sustaining procedure from the patient if the patient is in a hospital or related institution; or

(ii) File a petition in a court of competent jurisdiction seeking injunctive or other relief relating to the withholding or withdrawal of the life-sustaining procedure from the patient.

(2) In reviewing a petition filed under paragraph (1) of this subsection, the court shall follow the standards set forth in §§ 13-711 through 13-713 of the Estates and Trusts Article.

(b) On petition of the patient's spouse, **DOMESTIC PARTNER**, a parent, adult child, grandchild, brother, or sister of the patient, or a friend or other relative who has qualified as a surrogate under § 5-605 of this subtitle to a circuit court of the county or city in which the patient for whom treatment will be or is currently being provided, withheld, or withdrawn under this subtitle resides or is located, the court may enjoin that action upon finding by a preponderance of the evidence that the action is not lawfully authorized by this subtitle or by other State or federal law.

TITLE 6. HEALTH CARE FACILITY VISITATION AND MEDICAL EMERGENCIES.

SUBTITLE 1. IN GENERAL.

6-101.

(A) **IN THIS TITLE, "DOMESTIC PARTNERSHIP" MEANS A RELATIONSHIP BETWEEN TWO INDIVIDUALS WHO:**

- (1) **ARE AT LEAST 18 YEARS OLD;**

(2) ARE NOT RELATED TO EACH OTHER BY BLOOD OR MARRIAGE WITHIN FOUR DEGREES OF CONSANGUINITY UNDER CIVIL LAW RULE;

(3) ARE NOT MARRIED OR IN A CIVIL UNION OR DOMESTIC PARTNERSHIP WITH ANOTHER INDIVIDUAL; AND

(4) AGREE TO BE IN A RELATIONSHIP OF MUTUAL INTERDEPENDENCE IN WHICH EACH INDIVIDUAL CONTRIBUTES TO THE MAINTENANCE AND SUPPORT OF THE OTHER INDIVIDUAL AND THE RELATIONSHIP, EVEN IF BOTH INDIVIDUALS ARE NOT REQUIRED TO CONTRIBUTE EQUALLY TO THE RELATIONSHIP.

(B) AN INDIVIDUAL WHO ASSERTS A DOMESTIC PARTNERSHIP UNDER SUBSECTION (A) OF THIS SECTION MAY BE REQUIRED TO PROVIDE ~~PROOF~~:

(1) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO INDIVIDUALS STATING THAT THEY HAVE ESTABLISHED A DOMESTIC PARTNERSHIP; AND

(2) PROOF OF ANY TWO OF THE FOLLOWING DOCUMENTS:

(1) (I) JOINT LIABILITY OF THE INDIVIDUALS FOR A MORTGAGE, LEASE, OR LOAN;

(2) (II) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE PRIMARY BENEFICIARY UNDER A LIFE INSURANCE POLICY ON THE LIFE OF THE OTHER INDIVIDUAL OR UNDER A RETIREMENT PLAN OF THE OTHER INDIVIDUAL;

(3) (III) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE PRIMARY BENEFICIARY OF THE WILL OF THE OTHER INDIVIDUAL;

(4) (IV) A DURABLE POWER OF ATTORNEY FOR HEALTH CARE OR FINANCIAL MANAGEMENT GRANTED BY ONE OF THE INDIVIDUALS TO THE OTHER INDIVIDUAL;

(5) (V) JOINT OWNERSHIP OR LEASE BY THE INDIVIDUALS OF A MOTOR VEHICLE;

(6) ~~A JOINT CHECKING ACCOUNT, JOINT INVESTMENTS, OR A JOINT CREDIT ACCOUNT;~~

(VI) A JOINT CHECKING ACCOUNT, JOINT INVESTMENTS, OR A JOINT CREDIT ACCOUNT;

~~(7)~~ ~~(VI)~~ (VII) A JOINT RENTER'S OR HOMEOWNER'S INSURANCE POLICY;

~~(8)~~ ~~(VII)~~ (VIII) COVERAGE ON A HEALTH INSURANCE POLICY;

~~(9)~~ ~~(VIII)~~ (IX) JOINT RESPONSIBILITY FOR CHILD CARE, SUCH AS GUARDIANSHIP OR SCHOOL DOCUMENTS; OR

~~(10)~~ ~~(IX)~~ (X) A RELATIONSHIP OR COHABITATION CONTRACT; OR.

~~(11) DOCUMENTATION OF A MARRIAGE, CIVIL UNION, OR DOMESTIC PARTNERSHIP ENTERED INTO SUBJECT TO THE LAWS OF THE UNITED STATES, ANY STATE, OR LOCAL OR FOREIGN JURISDICTION.~~

SUBTITLE 2. VISITATION AND MEDICAL EMERGENCIES.

6-201.

(A) A HOSPITAL, RELATED INSTITUTION, OR RESIDENTIAL TREATMENT CENTER, AS DEFINED IN § 19-301 OF THIS ARTICLE, SHALL ALLOW A PATIENT'S OR RESIDENT'S DOMESTIC PARTNER, THE CHILDREN OF THE PATIENT'S OR RESIDENT'S DOMESTIC PARTNER, AND THE DOMESTIC PARTNER OF THE PATIENT'S OR RESIDENT'S PARENT OR CHILD TO VISIT, UNLESS:

(1) NO VISITORS ARE ALLOWED;

(2) THE FACILITY REASONABLY DETERMINES THAT THE PRESENCE OF A PARTICULAR VISITOR WOULD ENDANGER THE HEALTH OR SAFETY OF A PATIENT, RESIDENT, OR MEMBER OF THE FACILITY STAFF; OR

(3) THE PATIENT OR RESIDENT OR THE PATIENT'S OR RESIDENT'S PERSONAL REPRESENTATIVE TELLS THE FACILITY STAFF THAT THE PATIENT OR RESIDENT DOES NOT WANT A PARTICULAR PERSON TO VISIT.

(B) THIS SECTION DOES NOT PROHIBIT A HOSPITAL, RELATED INSTITUTION, OR RESIDENTIAL TREATMENT CENTER FROM ESTABLISHING REASONABLE RESTRICTIONS ON VISITATION, INCLUDING RESTRICTIONS ON THE HOURS OF VISITATION AND NUMBER OF VISITORS.

6-202.

(A) IN THE CASE OF A MEDICAL EMERGENCY, TWO ADULTS SHALL BE TREATED AS DOMESTIC PARTNERS IF ONE OF THE ADULTS, IN GOOD FAITH, TELLS THE EMERGENCY MEDICAL PROVIDER OR HOSPITAL PERSONNEL THAT THE ADULTS ARE IN A MUTUALLY INTERDEPENDENT RELATIONSHIP, FOR THE FOLLOWING PURPOSES ONLY:

(1) ALLOWING ONE ADULT TO ACCOMPANY THE ILL OR INJURED ADULT BEING TRANSPORTED TO A HOSPITAL IN AN EMERGENCY VEHICLE; AND

(2) VISITATION WITH THE ILL OR INJURED ADULT ADMITTED TO A HOSPITAL ON AN EMERGENCY BASIS ON THE SAME BASIS AS A MEMBER OF THE ILL OR INJURED ADULT'S IMMEDIATE FAMILY.

6-203.

NOTWITHSTANDING ANY PROVISIONS OF THIS TITLE OR ANY OTHER PROVISION OF LAW, IF A DOMESTIC PARTNER HAS SELECTED A HEALTH CARE AGENT IN ACCORDANCE WITH TITLE 5, SUBTITLE 6 OF THIS ARTICLE, THAT HEALTH CARE AGENT RETAINS THE AUTHORITY TO MAKE ANY DECISIONS FOR THE DOMESTIC PARTNER THAT ARE PROVIDED FOR IN THE SELECTION OF THE HEALTH CARE AGENT UNTIL THE HEALTH CARE AGENCY HAS BEEN REVOKED IN ACCORDANCE WITH THE PROVISIONS OF TITLE 5, SUBTITLE 6 OF THIS ARTICLE.

10-807.

(a) The Director may transfer an individual from a public facility to another public facility or, if a private facility agrees, to that private facility, if the Director finds that:

(1) The individual either can receive better care or treatment in or would be more likely to benefit from care or treatment at the other facility; or

(2) The safety or welfare of other individuals would be furthered.

(e) An individual may not be transported to or from any facility unless accompanied by:

(1) An ambulance attendant or other individual who is authorized by the facility and is of the same sex. However, the chief executive officer of the facility or that officer's designee may designate an ambulance attendant or other person of either sex to provide transportation to an individual, if deemed appropriate; or

(2) The parent, spouse, **DOMESTIC PARTNER**, adult sibling, or adult offspring of the individual.

19-310.

(a) (4) (i) Except as provided in paragraph (10) of this subsection, when an individual dies in a hospital in accordance with § 5-202 of this article, a representative of the appropriate organ, tissue, or eye recovery agency or a designated requestor shall request, with sensitivity, in the order of stated priority, that the individual's representative consent to the donation of all or any of the decedent's organs or tissues as an anatomical donation if suitable.

(ii) For the purposes of subparagraph (i) of this paragraph, the representative of the deceased individual is 1 of the following individuals listed in the following order of priority:

1. A spouse **OR DOMESTIC PARTNER**, but, if not alive or not competent, then;

2. A son or daughter who is at least 18 years old, but, if not alive, competent, or immediately available, then;

3. A parent, but, if not alive, competent, or immediately available, then;

4. A brother or sister who is at least 18 years old, but, if not alive or not competent, then;

5. A guardian;

6. A friend or other relative of the decedent, if the individual:

A. Is a competent individual; and

B. Presents an affidavit to the attending physician stating:

I. That the individual is a relative or close friend of the decedent; and

II. Specific facts and circumstances demonstrating that the individual maintained regular contact with the decedent sufficient to be familiar with the decedent's activities, health, and personal beliefs; or

7. Any other person authorized or required to dispose of the body.

(iii) 1. This paragraph does not apply if the decedent has given contrary directions.

2. The failure of the decedent to make a gift is not a contrary direction for purposes of this paragraph.

(iv) Contrary directions given by the decedent under this paragraph shall be recorded in the decedent's medical record.

(v) The representative of the appropriate organ, tissue, or eye recovery agency or the designated requestor and the representative of the deceased patient are entitled to protection from civil and criminal liability as provided in § 4-508(b) of the Estates and Trusts Article.

(7) A hospital may not bill the estate of the decedent, a surviving spouse **OR DOMESTIC PARTNER** of the decedent, any heirs of the decedent, or an insurer of the decedent for the costs associated with the removal of all or any of the decedent's organs or tissues for the purpose of an anatomical donation.

19-344.

(a) To carry out the policy set forth in § 19-343 of this subtitle, the following procedures are required for all services provided to a resident of a facility.

(h) If it is feasible to do so and not medically contraindicated, spouses **OR DOMESTIC PARTNERS** who are both residents of the facility shall be given the opportunity to share a room.

(k) (1) Each married resident of a facility shall have privacy during a visit by the spouse.

(2) **EACH RESIDENT OF A FACILITY WHO HAS A DOMESTIC PARTNER SHALL HAVE PRIVACY DURING A VISIT BY THE OTHER DOMESTIC PARTNER.**

(q) (1) A resident of a facility or the next of kin **OR DOMESTIC PARTNER** or guardian of the person of a resident may file a complaint about an alleged violation of this section.

Article - Health Occupations

7-410.

(a) Any individual who is 18 years of age or older may decide the disposition of the individual's own body after the individual's death without the pre-death or post-death consent of another person by executing a document that expresses the individual's wishes or by entering into a pre-need contract.

(c) Unless a person has knowledge that contrary directions have been given by the decedent, if a decedent has not executed a document under subsection (a) of this section, the following persons, in the order of priority stated, have the right to arrange for the final disposition of the body of the decedent under this section and are liable for the reasonable costs of preparation, care, and disposition of the decedent:

(1) The surviving spouse **OR DOMESTIC PARTNER, AS DEFINED IN § 1-101 OF THE HEALTH - GENERAL ARTICLE**, of the decedent;

(2) An adult child of the decedent;

(3) A parent of the decedent;

(4) An adult brother or sister of the decedent;

(5) A person acting as a representative of the decedent under a signed authorization of the decedent;

(6) The guardian of the person of the decedent at the time of the decedent's death, if a guardian has been appointed; or

(7) In the absence of any person under paragraphs (1) through (6) of this subsection, any other person willing to assume the responsibility to act as the authorizing agent for purposes of arranging the final disposition of the decedent's body, including the personal representative of the decedent's estate, after attesting in writing that a good faith effort has been made to no avail to contact the persons described in paragraphs (1) through (6) of this subsection.

Article - Real Property

14-121.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Burial site" means any natural or prepared physical location, whether originally located below, on, or above the surface of the earth into which human remains or associated funerary objects are deposited as a part of a death rite or ceremony of any culture, religion, or group.