

HOUSE BILL 1167

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By: **Delegate Cox**

Introduced and read first time: February 8, 2021

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 certain care under certain circumstances;
5 authorizing a certain health care provider or health care institution to transfer a
6 patient to a certain health care provider or health care institution under certain
7 circumstances and in a certain manner; prohibiting an agency from developing or
8 using certain measures as a threshold for certain determinations and decisions;
9 requiring each agency proposing certain measures to post for public comment certain
10 information; requiring each agency making certain decisions to consult with certain
11 organizations and representatives; requiring each agency making certain decisions
12 to ensure that a certain process is in place; stating certain findings of the General
13 Assembly; declaring the intent of the General Assembly; establishing a certain short
14 title; defining certain terms; making the provisions of this Act severable; authorizing
15 the General Assembly to appoint certain members to intervene in certain cases; and
16 generally relating to the provision of health care and health care coverage decisions.

17 BY adding to

18 Article – Health – General

19 Section 5–6A–01 through 5–6A–06 to be under the new subtitle “Subtitle 6A.
20 Nondiscrimination in Health Care Coverage Act”

21 Annotated Code of Maryland

22 (2019 Replacement Volume and 2020 Supplement)

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

25 **Article – Health – General**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **5-6A-01.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "AGENCY" INCLUDES:

5 (1) THE STATE;

6 (2) A UNIT OF THE STATE;

7 (3) AN ENTITY ESTABLISHED UNDER THE MARYLAND CONSTITUTION
8 OR STATE LAW; AND

9 (4) AN ENTITY ESTABLISHED BY AN ENTITY ESTABLISHED UNDER
10 THE MARYLAND CONSTITUTION OR STATE LAW.

11 (C) "HEALTH CARE INSTITUTION" MEANS ANY PUBLIC OR PRIVATE
12 ORGANIZATION, CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP,
13 ASSOCIATION, AGENCY, NETWORK, JOINT VENTURE, OR OTHER ENTITY THAT IS
14 INVOLVED IN PROVIDING HEALTH CARE SERVICES, INCLUDING A HOSPITAL, A
15 CLINIC, A MEDICAL CENTER, AN AMBULATORY SURGICAL CENTER, A PRIVATE
16 PHYSICIAN'S OFFICE, A NURSING HOME, OR ANY OTHER FACILITY OR LOCATION
17 WHERE HEALTH CARE SERVICES ARE PROVIDED TO AN INDIVIDUAL.

18 (D) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS LICENSED,
19 CERTIFIED, OR OTHERWISE AUTHORIZED BY STATE LAW TO PRACTICE A HEALTH
20 CARE OCCUPATION OR WHO ADMINISTERS HEALTH CARE IN THE ORDINARY COURSE
21 OF BUSINESS.

22 (E) "HEALTH CARE SERVICE" MEANS ANY PHASE OF PATIENT MEDICAL
23 CARE, TREATMENT, OR PROCEDURE, INCLUDING:

24 (1) THERAPY;

25 (2) TESTING;

26 (3) DIAGNOSIS OR PROGNOSIS;

27 (4) PRESCRIBING, DISPENSING, OR ADMINISTERING ANY DEVICE,
28 DRUG, OR MEDICATION;

(5) SURGERY; AND

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

(F) “LIFE-SUSTAINING CARE” MEANS HEALTH CARE INCLUDING MECHANICAL VENTILATION, RENAL DIALYSIS, CHEMOTHERAPY, ANTIBIOTICS, AND NUTRITION AND HYDRATION THAT, IN REASONABLE MEDICAL JUDGMENT, HAS A SIGNIFICANT POSSIBILITY OF SUSTAINING THE LIFE OF THE PATIENT.

(G) “SELF-ADVOCACY ORGANIZATION” MEANS AN ORGANIZATION:

(1) DIRECTED BY INDIVIDUALS WITH DISABILITIES; AND

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

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

5-6A-02.

THE GENERAL ASSEMBLY FINDS THAT:

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

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

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

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

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

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

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

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

5-6A-03.

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

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

(2) IF A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION TRANSFERS A PATIENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH

CARE PROVIDER OR HEALTH CARE INSTITUTION SHALL ENSURE THE PROVISION OF THE DIRECTED LIFE-SUSTAINING CARE UNTIL THE PATIENT IS TRANSFERRED.

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

5-6A-04.

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

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

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

(1) THE AVAILABILITY OF ALTERNATIVE MEASURES;

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

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

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

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

(1) ORGANIZATIONS REPRESENTING PATIENTS AND INDIVIDUALS WITH DISABILITIES, INCLUDING SELF-ADVOCACY ORGANIZATIONS AND

1 ORGANIZATIONS REPRESENTING PATIENTS, BEFORE PROCEEDING ON ANY
2 MEASURE LIKELY TO IMPACT THE RELEVANT PATIENT OR DISABILITY COMMUNITY;

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

6 (3) REPRESENTATIVES OF ORGANIZATIONS THAT ADVOCATE FOR
7 THE RIGHTS OF OLDER INDIVIDUALS TO RECEIVE HEALTH CARE.

8 5-6A-05.

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

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

19 (2) SUBJECTING RESEARCH AND ANALYSIS RELIED ON BY AN AGENCY
20 TO A MEANINGFUL NOTICE AND COMMENT PROCESS;

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

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

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

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

1 **(7) PREPARING AN ANNUAL REPORT ON ACCESS TO HEALTH CARE**
2 **TREATMENTS AND SERVICES THAT ASSESSES THE IMPACT OF ANY FORM OF**
3 **UTILIZATION MANAGEMENT ON ACCESS TO CARE WITH A SPECIFIC ANALYSIS OF THE**
4 **IMPACT ON INDIVIDUALS WITH DISABILITIES, CHRONIC ILLNESS, AND ADVANCED**
5 **AGE THAT:**

6 **(I) PROVIDES AN OPPORTUNITY FOR PUBLIC COMMENT;**

7 **(II) IS POSTED ON THE DEPARTMENT’S WEBSITE; AND**

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

10 **5-6A-06.**

11 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND NONDISCRIMINATION IN**
12 **HEALTH CARE COVERAGE ACT.**

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

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

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

28 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2021.