



Maryland Domestic Partners Law: What It Is, What It Isn't

Jack Schwartz

Visiting Professor, University of
Maryland School of Law

June 3, 2009



What Was the Problem?

- Unjust treatment of intimate partners
 - Denial of visitation in health care facilities
 - Denial of health care decision-making priority
 - Denial of right to make funeral arrangements
- Could have been partially remedied by advance directives, wills
- But: legal default ethically unsound



Possible Solutions

- (1) Broadening the opportunity to marry
 - Would require repeal of law prohibiting same-sex marriage
- (2) Non-marital civil union with rights broadly equal to spouses
- Both politically infeasible (currently)
- Therefore, (3) specific grant of rights



2005 Failed Effort

- Medical Decision Making Act (Senate Bill 796)
 - Would have created State registry recognizing “life partners”
 - Would have granted life partners various rights related to medical care
- Passed but vetoed
 - Gov. Ehrlich: “Could lead to the erosion of the sanctity of traditional marriage”



2008 Successful Effort

- Health Care Facility Visitation and Medical Decisions – Domestic Partners (Senate Bill 566)
 - Full text available at this link:
 - <http://mlis.state.md.us/2008rs/bills/sb/sb0566t.pdf>
- Key difference in legislation: no State recognition via registry
- Key difference politically: different Governor



Who Are “Domestic Partners”?

- 18+ years old, not related
- Not married or in another domestic partnership
- In a relationship characterized by:
 - “Mutual interdependence”
 - Each partner “contributing to the maintenance and support of the other,” though not necessarily equally
- Gender immaterial



What Is Evidence of a Domestic Partnership?

- Affidavit stating existence of domestic partnership, plus two other types of documentation
 - Joint financial liability or assets
 - Beneficiary designations (life insurance, retirement, will)
 - Durable power of attorney
 - Insurance coverage
 - Joint responsibility for child care



Must a Facility Ask for This Evidence?

- Attorney General's advice: no
 - <http://www.oag.state.md.us/Healthpol/sollins2.pdf>
- Left to facility policy choice
- Policy can be simply to accept assertion of partner status unless challenged
- Or, policy can be to require affidavit + two pieces of evidence



What Are the Rights of a Domestic Partner?

- Health care facility visitation
- Nursing home privacy, room sharing
- Accompany in ambulance and in ED
- Priority for surrogate decision making re health care equal to spouse
 - Does not affect higher priority given to health care agent under advance directive
- Organ donation priority equal to spouse
- Priority re final disposition of body equal to spouse