
By: **Chairman, Health and Government Operations Committee (By Request
- Departmental - Aging)**

Introduced and read first time: January 22, 2004

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2004

CHAPTER 327

1 AN ACT concerning

2 **Health Care Decisions Act - Appointment of Agent - Prohibition**

3 FOR the purpose of prohibiting certain family members of certain persons from
4 serving as the health care agent for certain individuals receiving health care
5 from a health care facility under certain circumstances; providing for a certain
6 exception to the prohibition against a certain person serving as a health care
7 agent; and generally relating to the appointment of a health care agent under
8 the Health Care Decisions Act.

9 BY repealing and reenacting, with amendments,
10 Article - Health - General
11 Section 5-602
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2003 Supplement)

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

16 **Article - Health - General**

17 5-602.

18 (a) Any competent individual may, at any time, make a written advance
19 directive regarding the provision of health care to that individual, or the withholding
20 or withdrawal of health care from that individual.

21 (b) (1) IN THIS SUBSECTION, "DISQUALIFIED PERSON" MEANS:

1 (I) AN OWNER, OPERATOR, OR EMPLOYEE OF A HEALTH CARE
2 FACILITY FROM WHICH THE DECLARANT IS RECEIVING HEALTH CARE; OR

3 (II) A SPOUSE, PARENT, CHILD, OR SIBLING OF AN OWNER,
4 OPERATOR, OR EMPLOYEE OF A HEALTH CARE FACILITY FROM WHICH THE
5 DECLARANT IS RECEIVING HEALTH CARE.

6 [(1)] (2) Any competent individual may, at any time, make a written
7 advance directive appointing an agent to make health care decisions for the
8 individual under the circumstances stated in the advance directive.

9 [(2)] (3) [An owner, operator, or employee of a health care facility from
10 which the declarant is receiving health care] A DISQUALIFIED PERSON may not serve
11 as a health care agent unless the person ~~would~~:

12 (I) WOULD qualify as a surrogate decision maker under § 5-605(a)
13 of this subtitle; OR

14 (II) WAS APPOINTED BY THE DECLARANT BEFORE THE DATE ON
15 WHICH THE DECLARANT RECEIVED, OR CONTRACTED TO RECEIVE, HEALTH CARE
16 FROM THE FACILITY.

17 [(3)] (4) An agent appointed under this subtitle has decision making
18 priority over any individuals otherwise authorized under this subtitle to make health
19 care decisions for a declarant.

20 (c) (1) A written advance directive shall be dated, signed by or at the
21 express direction of the declarant, and subscribed by two witnesses.

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

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

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

31 (d) (1) Any competent individual may make an oral advance directive to
32 authorize the providing, withholding, or withdrawing of any life-sustaining
33 procedure or to appoint an agent to make health care decisions for the individual.

34 (2) An oral advance directive shall have the same effect as a written
35 advance directive if made in the presence of the attending physician and one witness
36 and if the substance of the oral advance directive is documented as part of the
37 individual's medical record. The documentation shall be dated and signed by the
38 attending physician and the witness.

1 (e) (1) Unless otherwise provided in the document, an advance directive
2 shall become effective when the declarant's attending physician and a second
3 physician certify in writing that the patient is incapable of making an informed
4 decision.

5 (2) If a patient is unconscious, or unable to communicate by any means,
6 the certification of a second physician is not required under paragraph (1) of this
7 subsection.

8 (f) (1) It shall be the responsibility of the declarant to notify the attending
9 physician that an advance directive has been made. In the event the declarant
10 becomes comatose, incompetent, or otherwise incapable of communication, any other
11 person may notify the physician of the existence of an advance directive.

12 (2) An attending physician who is notified of the existence of the advance
13 directive shall promptly:

14 (i) If the advance directive is written, make the advance directive
15 or a copy of the advance directive a part of the declarant's medical records; or

16 (ii) If the advance directive is oral, make the substance of the
17 advance directive, including the date the advance directive was made and the name of
18 the attending physician, a part of the declarant's medical records.

19 (g) It shall be the responsibility of the declarant to notify a health care agent
20 that the agent has been named in an advance directive to act on the declarant's
21 behalf.

22 (h) Unless otherwise provided in the patient's advance directive, a patient's
23 agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

24 (i) The absence of an advance directive creates no presumption as to the
25 patient's intent to consent to or refuse life-sustaining procedures.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2004.