

Chapter 657

(House Bill 498)

AN ACT concerning

**Health Care Decisions Act – Advance Directives and Surrogate Decision Making
– Disqualified Individuals**

FOR the purpose of prohibiting certain individuals from serving as a health care agent under certain circumstances; ~~establishing a certain exception~~; prohibiting certain individuals from making decisions about health care for certain individuals ~~who have been certified to be incapable of making an informed decision~~; under certain circumstances; requiring a person who obtains certain information that would prohibit an individual from serving as a health care agent or making health care decisions for a certain individual to provide the information to a certain health care provider or a certain health care facility; defining a certain term; and generally relating to the Health Care Decisions Act and decision making by health care agents and surrogates.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 5–602(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 5–602(b) and 5–605(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

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

Article – Health – General

5–602.

(a) (1) Any competent individual may, at any time, make a written or electronic advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual.

(2) Notwithstanding any other provision of law, in the absence of a validly executed or witnessed advance directive, any authentic expression made by an individual while competent of the individual's wishes regarding health care for the individual shall be considered.

(b) (1) (I) In this subsection[, “disqualified person” means:] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(II) “DISQUALIFIED PERSON” MEANS:

[(i)] 1. An owner, operator, or employee of a health care facility from which the declarant is receiving health care; or

[(ii)] 2. A spouse, parent, child, or sibling of an owner, operator, or employee of a health care facility from which the declarant is receiving health care.

(III) “PERSON ELIGIBLE FOR RELIEF” HAS THE MEANING STATED IN § 4–501 OF THE FAMILY LAW ARTICLE.

(2) Any competent individual may, at any time, make a written or electronic advance directive appointing an agent to make health care decisions for the individual under the circumstances stated in the advance directive.

(3) (I) A disqualified person may not serve as a health care agent unless the person:

[(i)] 1. Would qualify as a surrogate decision maker under § 5–605(a) of this subtitle; or

[(ii)] 2. Was appointed by the declarant before the date on which the declarant received, or contracted to receive, health care from the facility.

(II) AN INDIVIDUAL MAY NOT SERVE AS A HEALTH CARE AGENT IF:

1. THE INDIVIDUAL IS THE SUBJECT OF AN INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER AND THE DECLARANT IS A PERSON ELIGIBLE FOR RELIEF UNDER THE ORDER; OR

2. ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, THE INDIVIDUAL IS THE SPOUSE OF THE DECLARANT AND:

A. THE INDIVIDUAL AND DECLARANT HAVE EXECUTED A SEPARATION AGREEMENT; OR

B. THE INDIVIDUAL OR DECLARANT HAS FILED AN APPLICATION FOR DIVORCE.

(III) AN INDIVIDUAL MAY SERVE AS A HEALTH CARE AGENT FOR A DECLARANT AFTER THE DATE OF THE EXECUTION OF A SEPARATION AGREEMENT OR THE FILING OF AN APPLICATION FOR DIVORCE IF THE DECLARANT:

1. IS ABLE TO MAKE A DECISION ABOUT THE INDIVIDUAL’S APPOINTMENT AS THE DECLARANT’S HEALTH CARE AGENT; OR

2. HAS OTHERWISE INDICATED AN INTENT TO HAVE THE INDIVIDUAL SERVE AS THE DECLARANT’S HEALTH CARE AGENT.

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

(5) A PERSON WHO OBTAINS NEW INFORMATION THAT WOULD PROHIBIT AN INDIVIDUAL FROM SERVING AS A DECLARANT’S HEALTH CARE AGENT UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION SHALL PROVIDE THE INFORMATION TO ANY HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING SERVICES TO THE DECLARANT.

5-605.

(a) (1) (I) In this subsection[, “unavailable” means:] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(II) **“PERSON ELIGIBLE FOR RELIEF” HAS THE MEANING STATED IN § 4-501 OF THE FAMILY LAW ARTICLE.**

(III) **“UNAVAILABLE” MEANS:**

[(i)] 1. After reasonable inquiry, a health care provider is unaware of the existence of a health care agent or surrogate decision maker;

[(ii)] 2. After reasonable inquiry, a health care provider cannot ascertain the whereabouts of a health care agent or surrogate decision maker;

[(iii)] 3. A health care agent or surrogate decision maker has not responded in a timely manner, taking into account the health care needs of the individual, to a written or oral message from a health care provider;

[(iv)] 4. A health care agent or surrogate decision maker is incapacitated; or

[(v)] 5. A health care agent or surrogate decision maker is unwilling to make decisions concerning health care for the individual.

(2) **[The] SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE** following individuals or groups, in the specified order of priority, may make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent in accordance with this subtitle or whose health care agent is unavailable. Individuals in a particular class may be consulted to make a decision only if all individuals in the next higher class are unavailable:

- (i) A guardian for the patient, if one has been appointed;
- (ii) The patient's spouse or domestic partner;
- (iii) An adult child of the patient;
- (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.

(3) A friend or other relative may make decisions about health care for a patient under paragraph (2) of this subsection if the person:

- (i) Is a competent individual; and
- (ii) Presents an affidavit to the attending physician stating:

1. That the person is a relative or close friend of the patient;
and

2. Specific facts and circumstances demonstrating that the person has maintained regular contact with the patient sufficient to be familiar with the patient's activities, health, and personal beliefs.

(4) AN INDIVIDUAL MAY NOT MAKE DECISIONS ABOUT HEALTH CARE FOR A PATIENT UNDER PARAGRAPH (2) OF THIS SUBSECTION IF:

(I) THE INDIVIDUAL IS THE SUBJECT OF AN INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER AND THE PATIENT IS A PERSON ELIGIBLE FOR RELIEF UNDER THE ORDER; OR

(II) THE INDIVIDUAL IS THE SPOUSE OF THE PATIENT AND:

1. THE INDIVIDUAL AND PATIENT HAVE EXECUTED A SEPARATION AGREEMENT; OR

2. THE INDIVIDUAL OR PATIENT HAS FILED AN APPLICATION FOR DIVORCE.

[(4)] (5) The attending physician shall include the affidavit presented under paragraph (3) of this subsection in the patient's medical record.

(6) A PERSON WHO OBTAINS NEW INFORMATION THAT WOULD PROHIBIT AN INDIVIDUAL FROM MAKING HEALTH CARE DECISIONS FOR A PATIENT UNDER PARAGRAPH (4) OF THIS SUBSECTION SHALL PROVIDE THE INFORMATION TO ANY HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING SERVICES TO THE PATIENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, May 25, 2017.