

SENATE BILL 230
EMERGENCY BILL

Unofficial Copy
J1

1998 Regular Session
8r0615
CF 8r1400

By: **Senators Hollinger, Derr, and Dorman (Joint Legislative Task Force on Organ and Tissue Donation)**

Introduced and read first time: January 30, 1998

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **The William H. Amoss Organ and Tissue Donation Act of 1998**

3 FOR the purpose of clarifying that certain provisions of law authorizing certain
4 persons to give all or part of a decedent's body apply if the decedent has not
5 made a gift of all or part of the decedent's body for purposes of the Maryland
6 Anatomical Gift Act; authorizing certain friends and relatives to give all or part
7 of a decedent's body under certain circumstances; specifying that the failure of a
8 decedent to make a gift is not a contrary direction for certain purposes; adding a
9 witness telephone statement to the ways in which an anatomical gift may be
10 made; authorizing certain persons and entities to examine a decedent and the
11 decedent's medical records and to conduct certain inquiries for certain purposes;
12 adding certain organ procurement organizations to the list of persons eligible to
13 receive gifts of human bodies or parts; specifying that a gift of all or part of a
14 body for purposes of the Maryland Anatomical Gift Act may be made by a
15 designation on the donor's driver's license or identification card; specifying the
16 manner in which a gift made by a designation on the donor's driver's license or
17 identification card may be revoked; modifying certain provisions of law
18 governing acceptance and utilization of anatomical gifts; authorizing certain
19 medical examiners to provide certain organs or tissues upon the request of
20 certain organ procurement organizations and certain tissue banks; altering the
21 conditions under which organs or tissues may be provided; altering certain
22 immunity provisions; authorizing a health care provider to disclose a medical
23 record without the authorization of a person in interest to the Department of
24 Health and Mental Hygiene and certain organ, tissue, or eye recovery agencies
25 for certain purposes; adding certain language concerning organ and tissue
26 donation to certain statutory health care decision making forms; requiring
27 hospitals to contact an appropriate organ, tissue, or eye recovery agency in order
28 to determine a patient's suitability for organ, tissue, or eye donation on or before
29 each death in a hospital; requiring the contact and its disposition to be noted in
30 the patient's medical record; requiring the appropriate organ, tissue, or eye

1 recovery agency, in consultation with the patient's physician or the physician's
2 designee, to determine the patient's suitability for organ, tissue, or eye donation;
3 requiring a representative of the appropriate organ, tissue, or eye recovery
4 agency or a designated requestor to request that certain persons consent to the
5 donation of all or any of a decedent's organs or tissues under certain
6 circumstances; providing that a representative of the appropriate organ, tissue,
7 or eye recovery agency or a designated requestor is entitled to certain protection
8 from civil and criminal liability; requiring certain documentation of a request
9 and its disposition; requiring the Secretary of Health and Mental Hygiene to
10 publish certain guidelines; clarifying that the consent of a decedent's
11 representative is not necessary and a request for consent to donation of a
12 decedent's organs or tissues need not be made under certain circumstances;
13 providing that certain persons who act in good faith to recover organs or tissues
14 under certain circumstances are immune from criminal prosecution or civil
15 liability; requiring the Department of Health and Mental Hygiene to conduct
16 certain hospital death record reviews; authorizing the Department to delegate
17 its duty to certain persons; establishing a State Advisory Council on Organ and
18 Tissue Donation Awareness; providing for the membership of the Council;
19 specifying the terms of the members of the Council; establishing the duties of
20 the Council; establishing an Organ and Tissue Donation Awareness Fund;
21 requiring the Motor Vehicle Administration to offer certain individuals the
22 option to make a voluntary contribution to the Fund; authorizing a donor
23 designation to be noted on the driver's license or identification card of certain
24 minors under certain circumstances; requiring the Secretary of Health and
25 Mental Hygiene and the Motor Vehicle Administrator to make certain reports to
26 the General Assembly; defining a certain term; declaring the intent of the
27 General Assembly; making this Act an emergency measure; and generally
28 relating to organ and tissue donation.

29 BY repealing and reenacting, without amendments,
30 Article - Estates and Trusts
31 Section 4-501, 4-502, 4-506, 4-508, 4-509.1, 4-510, 4-511, and 4-512
32 Annotated Code of Maryland
33 (1991 Replacement Volume and 1997 Supplement)

34 BY repealing and reenacting, with amendments,
35 Article - Estates and Trusts
36 Section 4-503, 4-504, 4-505, 4-507, and 4-509
37 Annotated Code of Maryland
38 (1991 Replacement Volume and 1997 Supplement)

39 BY repealing and reenacting, with amendments,
40 Article - Health - General
41 Section 4-305
42 Annotated Code of Maryland
43 (1994 Replacement Volume and 1997 Supplement)

1 BY repealing and reenacting, without amendments,
2 Article - Health - General
3 Section 5-202
4 Annotated Code of Maryland
5 (1994 Replacement Volume and 1997 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - Health - General
8 Section 5-603
9 Annotated Code of Maryland
10 (1994 Replacement Volume and 1997 Supplement)
11 (As enacted by Chapter 545 of the Acts of the General Assembly of 1996)

12 BY adding to
13 Article - Health - General
14 Section 13-901 through 13-906, inclusive, to be under the new subtitle
15 "Subtitle 9. Organ and Tissue Donation Awareness"
16 Annotated Code of Maryland
17 (1994 Replacement Volume and 1997 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 19-310
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 1997 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Transportation
25 Section 12-303 and 16-111.1
26 Annotated Code of Maryland
27 (1992 Replacement Volume and 1997 Supplement)

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

30 **Article - Estates and Trusts**

31 4-501.

32 (a) In this subtitle the following words have the meanings indicated.

33 (b) "Body" or "part of body" includes organs, tissues, bones, blood, and other
34 body fluids.

1 (c) "Licensed hospital" includes any hospital licensed by the State Department
2 of Health and Mental Hygiene under the laws of the State, and any hospital operated
3 by the United States government, although not required to be licensed under the laws
4 of the State.

5 (d) "Next of kin" includes spouse.

6 (e) "Person" means any individual, corporation, government or governmental
7 agency or subdivision, estate, trust, partnership or association, or any other legal
8 entity.

9 (f) "Physician" or "surgeon" means any physician or surgeon licensed to
10 practice under the laws of the State.

11 4-502.

12 (a) Because of the rapid medical progress in the field of tissue and organ
13 preservation, the transplantation of tissue, and tissue culture, and because it is in the
14 public interest to aid the development of this field of medicine, it is the policy and
15 purpose of the General Assembly of Maryland in enacting this subtitle to encourage
16 and aid the development of reconstructive medicine and surgery and the development
17 of medical research by facilitating authorizations for premortem and postmortem
18 donations of tissue and organs.

19 (b) It is the purpose of this subtitle to regulate only the gift of a body or parts
20 of a body to be made after the death of a donor.

21 4-503.

22 (a) Any individual who is 18 years of age or over and who is competent to
23 execute a will may give all or any part of his body for any one or more of the purposes
24 specified in this subtitle. The gift takes effect after death of the donor.

25 (b) (1) [Unless he] IF THE DECEDENT HAS NOT MADE A GIFT OF ALL OR
26 PART OF THE DECEDENT'S BODY FOR PURPOSES OF THIS SUBTITLE, UNLESS THE
27 PERSON has knowledge that contrary directions have been given by the decedent, the
28 following persons, in the order of priority stated, may give all or any part of a body of
29 a decedent for any one or more of the purposes specified in this subtitle:

30 [(1)] (I) The spouse, if one survives;

31 [(2)] (II) An adult son or daughter;

32 [(3)] (III) Either parent;

33 [(4)] (IV) An adult brother or sister;

34 [(5)] (V) The guardian of the person of the decedent at the time of his
35 death;

1 (VI) A FRIEND OR OTHER RELATIVE OF THE DECEDENT, IF THE
2 INDIVIDUAL:

3 1. IS A COMPETENT INDIVIDUAL; AND

4 2. PRESENTS AN AFFIDAVIT TO THE ATTENDING PHYSICIAN
5 STATING:

6 A. THAT THE INDIVIDUAL IS A RELATIVE OR CLOSE FRIEND
7 OF THE DECEDENT; AND

8 B. SPECIFIC FACTS AND CIRCUMSTANCES DEMONSTRATING
9 THAT THE INDIVIDUAL MAINTAINED REGULAR CONTACT WITH THE DECEDENT
10 SUFFICIENT TO BE FAMILIAR WITH THE DECEDENT'S ACTIVITIES, HEALTH, AND
11 PERSONAL BELIEFS; OR

12 [(6)] (VII) Any other person or agency authorized or under obligation to
13 dispose of the body.

14 (2) If there is no surviving spouse and an adult son or daughter is not
15 immediately available at the time of death of a decedent, the gift may be made by
16 either parent. If a parent of decedent is not immediately available, the gift may be
17 made by any adult brother or sister of decedent. If there is known to be a controversy
18 within the class of persons first entitled to make the gift, the gift may not be accepted.
19 The persons authorized by this subsection to make the gift may execute the document
20 of gift either after death or during a terminal illness.

21 (C) THE FAILURE OF THE DECEDENT TO MAKE A GIFT IS NOT A CONTRARY
22 DIRECTION FOR PURPOSES OF THIS SECTION.

23 [(c)] (D) If the gift is made by a person designated in § 4-503(b) of this
24 section, it shall be by a document signed by him [or], by his telegraphic, recorded
25 telephonic, or other recorded message, OR BY A WITNESSED TELEPHONIC
26 STATEMENT.

27 [(d)] (E) A gift of all or part of a body authorizes any examination of the body,
28 or any other procedure, necessary to assure medical acceptability of the gift for the
29 purposes intended. A PERSON OR ENTITY REQUIRED TO MAKE A DETERMINATION OF
30 SUITABILITY UNDER § 19-310 OF THE HEALTH - GENERAL ARTICLE MAY EXAMINE
31 THE DECEDENT AND THE DECEDENT'S MEDICAL RECORDS AND CONDUCT ANY
32 INQUIRY NECESSARY TO DETERMINE SUITABILITY FOR DONATION.

33 [(e)] (F) Except as provided in § 4-507 of this subtitle, the rights of the donee
34 created by the gift are paramount to the rights of others.

35 4-504.

36 (a) The persons listed in this section are eligible to receive gifts of human
37 bodies or parts of them for the purposes stated.

1 (b) (1) Any licensed hospital, surgeon, or physician may receive a gift for
2 medical education, research, advancement of medical science, therapy, or
3 transplantation to individuals.

4 (2) A licensed hospital, surgeon, or physician that receives a gift for the
5 purpose of a transplantation may not bill the estate of the donor, a surviving spouse of
6 the donor, any heirs of the donor, or an insurer of the donor for the costs associated
7 with the removal of the gift.

8 (c) An accredited medical school, college, or university engaged in medical
9 education or research may receive a gift for therapy, educational research, or medical
10 science purposes.

11 (d) Any licensed person operating a bank or storage facility for blood, arteries,
12 eyes, pituitaries, or other human parts may receive a gift for use in medical
13 education, research, therapy, or transplantation to individuals.

14 (e) Any specified donee may receive a gift for therapy or transplantation
15 needed by him.

16 (F) THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION
17 FOR THE REGION IN WHICH THE HOSPITAL IS LOCATED MAY RECEIVE A GIFT FOR
18 USE IN ACCORDANCE WITH FEDERAL AND STATE POLICIES REGARDING ORGAN
19 ALLOCATION.

20 4-505.

21 (a) A gift of all or part of the body for purposes of this subtitle may be made by
22 will, in which case the gift becomes effective immediately upon death of the testator
23 without waiting for probate. If the will is not probated, or if it is declared invalid for
24 testamentary purposes, the gift, to the extent that it has been acted upon in good
25 faith, is nevertheless valid and effective.

26 (b) A gift of all or part of the body for purposes of this subtitle also may be
27 made by document other than a will. The document must be signed by the donor in
28 the presence of two witnesses, who, in turn, shall sign the document in the presence
29 of the donor. If the donor cannot sign in person, the document may be signed for him,
30 at his direction and in his presence, and in the presence of two witnesses, who, in
31 turn, shall sign the document in the presence of the donor. Delivery of the document
32 or gift during the lifetime of the donor is not necessary to make the gift valid. The
33 document may consist of a properly executed card carried on the person of the donor
34 or in his effects. The document and card may conform substantially to the following
35 form:

36 ANATOMICAL GIFT BY A LIVING DONOR

37 I am at least 18 years of age and make this anatomical gift to take effect upon
38 my death. The marks in the appropriate squares and words filled into the blanks
39 below indicate my desires.

1 1. I give: my body; any needed organs or parts; the following organs
 2 or parts.....
 3

4 2. To the following person, agency, or institution: any person, tissue bank,
 5 or institution authorized by law;

6 the Anatomy Board of Maryland;

7 the following named physician, hospital, tissue bank or other medical
 8 institution
 9
 10

11 3. For the following purposes: any purpose authorized by law;
 12 transplantation; therapy; medical research and education.

13 Dated City and State

14 Signed by the Donor in
 15 the presence of the following
 16 who sign as witnesses:

17
18 Witness	Signature of Donor
19
20 Witness	Address of Donor

21 (C) A GIFT OF ALL OR PART OF THE BODY FOR PURPOSES OF THIS SUBTITLE
 22 ALSO MAY BE MADE BY A DESIGNATION ON THE DONOR'S DRIVER'S LICENSE OR
 23 IDENTIFICATION CARD UNDER § 12-303 OF THE TRANSPORTATION ARTICLE.

24 [(c)] (D) The gift may be made either to a named donee, or without the
 25 naming of a donee. If the latter, the gift OF AN ORGAN FOR TRANSPLANTATION may
 26 be accepted by [and utilized at the discretion of the attending physician at or
 27 following death. If the gift is made to a named donee who is not readily available at
 28 the time and place of death, and if the gift is evidenced by a properly executed card or
 29 other document carried on the person of the donor, or in his effects, the attending
 30 physician at or following death, in reliance upon the card or other document, may
 31 accept and utilize the gift in his discretion, as the agent of the donee] AN ORGAN
 32 PROCUREMENT ORGANIZATION AND UTILIZED IN ACCORDANCE WITH FEDERAL AND
 33 STATE POLICIES REGARDING ORGAN ALLOCATION. IF THE GIFT IS TISSUE, THE GIFT
 34 MAY BE ACCEPTED BY THE ORGAN PROCUREMENT ORGANIZATION, TISSUE BANK, OR
 35 EYE BANK AFFILIATED WITH THE HOSPITAL AND UTILIZED AT THE ORGANIZATION'S
 36 DISCRETION AND AS REQUIRED BY LAW. The [agent] ORGAN PROCUREMENT
 37 ORGANIZATION, TISSUE BANK, OR EYE BANK possesses and may exercise all rights
 38 and is entitled to all immunities of the donee under this subtitle.

39 [(d)] (E) The donor may designate in his will or other document of gift the
 40 surgeon, physician, or technician to carry out the appropriate procedures. In the
 41 event the designee is not available, or in the absence of a designation, the donee or

1 other person authorized to accept the gift may employ or authorize any licensed
2 surgeon, licensed physician, or technician for the purpose.

3 [(e)] (F) A document of gift executed in another state and in accord with the
4 laws of that state or executed in a territory or possession of the United States under
5 the control and dominion of the federal government exclusively, and in accord with a
6 federal law is valid as a document of gift within the state, even if the document does
7 not substantially conform to the requirements of [§ 4-505(b) of this subtitle]

8 SUBSECTION (B) OF THIS SECTION.

9 4-506.

10 (a) Immediately after death if the gift is made to a named donee, the will or
11 other document or an attested true copy of it may be delivered to him to expedite the
12 appropriate procedure, but delivery is not necessary to validate the gift.

13 (b) Upon request of the named donee or his agent after the death of the donor,
14 the person in possession shall produce the will or other document of gift for
15 examination.

16 4-507.

17 (a) Any document of gift which has been delivered to the donee may be
18 revoked by:

19 (1) The execution and delivery to the donee or his agent of a revocation in
20 writing, signed by the donor;

21 (2) An oral statement of revocation witnessed by two persons, and
22 communicated to the donee or his agent;

23 (3) A statement during a terminal illness addressed to the attending
24 physician and communicated to the donee, or his agent; or

25 (4) A card or other writing signed by the donor and carried on his person
26 or in his effects, revoking the gift.

27 (b) Any document of gift which has not been delivered to the donee may be
28 revoked in the manner set out in subsection (a) of this section, or by destruction,
29 cancellation, or mutilation of the document.

30 (c) Any gift made by a will may be revoked in the manner set out in subsection
31 (a) of this section, or in the manner provided for revocation or amendment of wills.

32 (D) A GIFT MADE BY A DONOR DESIGNATION ON THE DRIVER'S LICENSE OR
33 IDENTIFICATION CARD OF THE DONOR MAY BE REVOKED BY GIVING WRITTEN
34 NOTICE TO THE MOTOR VEHICLE ADMINISTRATION IN ACCORDANCE WITH § 12-303
35 OF THE TRANSPORTATION ARTICLE.

1 4-508.

2 (a) The donee may accept or reject the gift. If the gift is only a part of the body,
3 promptly following the removal of the part named, custody of the remaining parts of
4 the body shall be transferred to the next of kin or other person or agency authorized
5 or under obligation to dispose of the body. The time of death shall be determined by
6 the physician in attendance upon the terminal illness of the donor or certifying his
7 death, and the physician may not be a member of the team of physicians which
8 transplants the part to another individual.

9 (b) A person who, in good faith and acting in reliance upon an authorization
10 made under the provisions of this subtitle or under the anatomical gift laws of
11 another state or foreign country and without notice of revocation, takes possession of,
12 performs surgical operations upon, or removes tissue, substances, or parts from the
13 human body or refuses the gift, or a person who unknowingly fails to carry out the
14 wishes of the donor according to the provisions of this subtitle or under the
15 anatomical gift laws of another state or foreign country, is not subject to prosecution
16 in any criminal proceedings or liable for damages in a civil action brought against him
17 for the act or failure to act.

18 (c) The provisions of this subtitle are subject to the laws prescribing powers
19 and duties with respect to autopsies and are not in contravention of them.

20 4-509.

21 (a) [In any case where a patient is in immediate need for an internal organ as
22 a transplant, the] THE Chief Medical Examiner, the deputy chief medical examiner,
23 or an assistant medical examiner may provide [the] AN organ OR TISSUE upon the
24 request of the [transplanting surgeon] FEDERALLY DESIGNATED ORGAN
25 PROCUREMENT ORGANIZATION OR TISSUE BANK under the following conditions:

26 (1) The medical examiner has charge of a decedent who may provide a
27 suitable organ OR TISSUE for [the] transplant;

28 (2) A reasonable, unsuccessful search has been made by the treating
29 physician and the hospital where the patient is located to contact the next of kin;

30 (3) No [known] objection by the next of kin is [foreseen] KNOWN by the
31 medical examiner; and

32 (4) The organ OR TISSUE for transplant will not interfere with the
33 subsequent course of an investigation or autopsy.

34 (b) (1) The Chief Medical Examiner, the deputy chief medical examiner,
35 [and] an assistant chief medical examiner, THE ORGAN PROCUREMENT
36 ORGANIZATION, AND THE TISSUE BANK are not liable for civil action if the next of kin
37 is located subsequently and contends that authorization of that kin was required, if
38 the Chief Medical Examiner has obtained a written OR VERBAL statement from the
39 treating physician, ORGAN PROCUREMENT ORGANIZATION, TISSUE BANK, or [the]
40 hospital where the [patient] DECEDENT was located that a reasonable unsuccessful

1 search was conducted for the next of kin prior to the removal of the ORGAN OR tissue
2 for transplantation.

3 (2) A VERBAL STATEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION
4 SHALL BE DOCUMENTED IN THE DECEDENT'S MEDICAL RECORD.

5 4-509.1.

6 (a) In any case where there is a need for corneal tissue for a transplant or
7 research, the Chief Medical Examiner, the deputy chief medical examiner, or an
8 assistant medical examiner shall provide the cornea upon the request of the Medical
9 Eye Bank of Maryland, Incorporated, or the Lions of District 22-C Eye Bank and
10 Research Foundation, Incorporated, subject to the provisions of subsection (b) of this
11 section, and under the following conditions:

12 (1) The medical examiner has charge of a decedent who may provide a
13 suitable cornea for the transplant or research;

14 (2) An autopsy will be required;

15 (3) No objection by the next of kin is known by the medical examiner;

16 (4) No religious objection made by the decedent before death is known by
17 the medical examiner; and

18 (5) Removal of the cornea for transplant will not interfere with the
19 subsequent course of an investigation or autopsy or alter the postmortem facial
20 appearance.

21 (b) Corneal tissue provided under subsection (a) of this section shall be
22 distributed as follows:

23 (1) If the decedent died in Prince George's County, Montgomery County,
24 Charles County, Calvert County, or St. Mary's County, the corneal tissue shall be
25 distributed to the Lions of District 22-C Eye Bank and Research Foundation,
26 Incorporated; or

27 (2) If the decedent died in any other county or in Baltimore City, the
28 corneal tissue shall be distributed to the Medical Eye Bank of Maryland,
29 Incorporated.

30 (c) The Chief Medical Examiner, the deputy chief medical examiner, an
31 assistant medical examiner, the Medical Eye Bank of Maryland, Incorporated, or the
32 Lions of District 22-C Eye Bank and Research Foundation, Incorporated, are not
33 liable for civil action if the next of kin subsequently contends that authorization of
34 that kin was required.

1 4-510.

2 The provisions of this subtitle do not apply to gifts of parts of the body if the gifts
3 are made during the lifetime of the donor with the intention that the part of the body
4 is delivered to the donee during the lifetime of the donor.

5 4-511.

6 Nothing in this subtitle invalidates any authority or instrument executed prior
7 to July 1, 1968.

8 4-512.

9 This subtitle may be cited as the Maryland Anatomical Gift Act.

10 **Article - Health - General**

11 4-305.

12 (a) This section may not be construed to impose an obligation on a health care
13 provider to disclose a medical record.

14 (b) A health care provider may disclose a medical record without the
15 authorization of a person in interest:

16 (1) (i) To the provider's authorized employees, agents, medical staff,
17 medical students, or consultants for the sole purpose of offering, providing,
18 evaluating, or seeking payment for health care to patients or recipients by the
19 provider;

20 (ii) To the provider's legal counsel regarding only the information in
21 the medical record that relates to the subject matter of the representation; or

22 (iii) To any provider's insurer or legal counsel, or the authorized
23 employees or agents of a provider's insurer or legal counsel, for the sole purpose of
24 handling a potential or actual claim against any provider;

25 (2) If the person given access to the medical record signs an
26 acknowledgment of the duty under this Act not to disclose any patient identifying
27 information, to a person for:

28 (i) Educational or research purposes, subject to the applicable
29 requirements of an institutional review board;

30 (ii) Evaluation and management of health care delivery systems; or

31 (iii) Accreditation of a facility by professional standard setting
32 entities;

33 (3) Subject to the additional limitations for a medical record developed
34 primarily in connection with the provision of mental health services in § 4-307 of this

1 subtitle, to a government agency performing its lawful duties as authorized by an act
2 of the Maryland General Assembly or the United States Congress;

3 (4) Subject to the additional limitations for a medical record developed
4 primarily in connection with the provision of mental health services in § 4-307 of this
5 subtitle, to another health care provider for the sole purpose of treating the patient or
6 recipient on whom the medical record is kept;

7 (5) If a claim has been or may be filed by, or with the authorization of a
8 patient or recipient on behalf of the patient or recipient, for covered insureds, covered
9 beneficiaries, or enrolled recipients only, to third party payors and their agents, if the
10 payors or agents have met the applicable provisions of Title 19, Subtitle 13 of the
11 Health - General Article, including nonprofit health service plans, health
12 maintenance organizations, fiscal intermediaries and carriers, the Department of
13 Health and Mental Hygiene and its agents, the United States Department of Health
14 and Human Services and its agents, or any other person obligated by contract or law
15 to pay for the health care rendered for the sole purposes of:

16 (i) Submitting a bill to the third party payor;

17 (ii) Reasonable prospective, concurrent, or retrospective utilization
18 review or predetermination of benefit coverage;

19 (iii) Review, audit, and investigation of a specific claim for payment
20 of benefits; or

21 (iv) Coordinating benefit payments in accordance with the
22 provisions of the Insurance Article under more than 1 sickness and accident, dental,
23 or hospital and medical insurance policy;

24 (6) If a health care provider makes a professional determination that an
25 immediate disclosure is necessary, to provide for the emergency health care needs of a
26 patient or recipient;

27 (7) Except if the patient has instructed the health care provider not to
28 make the disclosure, or if the record has been developed primarily in connection with
29 the provision of mental health services, to immediate family members of the patient
30 or any other individual with whom the patient is known to have a close personal
31 relationship, if made in accordance with good medical or other professional practice;

32 (8) To [organ and tissue procurement personnel] AN APPROPRIATE
33 ORGAN, TISSUE, OR EYE RECOVERY AGENCY under the restrictions of § 5-408 of this
34 article [at the request of a physician] for a patient whose organs and tissues may be
35 donated for the purpose of evaluating the patient for possible organ and tissue
36 donation; [or]

37 (9) TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR AN
38 ORGAN, TISSUE, OR EYE RECOVERY AGENCY DESIGNATED BY THE DEPARTMENT FOR
39 THE PURPOSE OF CONDUCTING DEATH RECORD REVIEWS UNDER § 19-310 OF THIS
40 ARTICLE; OR

1 (10) Subject to subsection (c) of this section, if the purpose of the medical
2 record disclosure is for the coordination of services and record retention within the
3 Montgomery County Department of Health and Human Services.

4 (c) (1) The disclosure of medical records under subsection (b)(9) of this
5 section to a person that is not employed by or under contract with the Montgomery
6 County Department of Health and Human Services shall be conducted in accordance
7 with this subtitle.

8 (2) Under provisions of State law regarding confidentiality, the
9 Montgomery County Department of Health and Human Services shall be considered
10 to be one agency.

11 5-202.

12 (a) An individual is dead if, based on ordinary standards of medical practice,
13 the individual has sustained either:

14 (1) Irreversible cessation of circulatory and respiratory functions; or

15 (2) Irreversible cessation of all functions of the entire brain, including
16 the brain stem.

17 (b) (1) This subsection does not apply to the removal of a vital organ while
18 the individual is alive, if the individual gives informed consent to the removal.

19 (2) A pronouncement of death under this section shall be made before
20 any vital organ is removed for transplantation.

21 5-603.

22 Health Care Decision Making Forms

23 The following forms allow you to make some decisions about future health care
24 issues. Form I, called a "Living Will", allows you to make decisions about
25 life-sustaining procedures if, in the future, your death from a terminal condition is
26 imminent despite the application of life-sustaining procedures or you are in a
27 persistent vegetative state. Form II, called an "Advance Directive", allows you to
28 select a health care agent, give health care instructions, or both. If you use the
29 advance directive, you can make decisions about life-sustaining procedures in the
30 event of terminal condition, persistent vegetative state, or end-stage condition. You
31 can also use the advance directive to make any other health care decisions.

32 These forms are intended to be guides. You can use one form or both, and you
33 may complete all or only part of the forms that you use. Different forms may also be
34 used.

35 Please note: if you decide to select a health care agent that person may not be a
36 witness to your advance directive. Also, at least one of your witnesses may not be a
37 person who may financially benefit by reason of your death.

1 Form I Living Will

2 (Optional Form)

3 If I am not able to make an informed decision regarding my health care, I direct
4 my health care providers to follow my instructions as set forth below. (Initial those
5 statements you wish to be included in the document and cross through those
6 statements which do not apply.)

7 a. If my death from a terminal condition is imminent and even if
8 life-sustaining procedures are used there is no reasonable expectation of my recovery

9 _____ I direct that my life not be extended by life-sustaining procedures, including
10 the administration of nutrition and hydration artificially.

11 _____ I direct that my life not be extended by life-sustaining procedures, except
12 that, if I am unable to take food by mouth, I wish to receive nutrition and hydration
13 artificially.

14 _____ I direct that, even in a terminal condition, I be given all available medical
15 treatment in accordance with accepted health care standards.

16 [_____ I direct that if I am brain dead, an anatomical gift be offered on my behalf to
17 a patient in need of an organ or tissue transplant. If a transplant occurs, I want
18 artificial heart/lung support devices to be continued on my behalf only until organ or
19 tissue suitability of the patient is confirmed and organ or tissue recovery has taken
20 place.]

21 b. If I am in a persistent vegetative state, that is if I am not conscious and am
22 not aware of my environment nor able to interact with others, and there is no
23 reasonable expectation of my recovery within a medically appropriate period

24 _____ I direct that my life not be extended by life-sustaining procedures, including
25 the administration of nutrition and hydration artificially.

26 [_____ I direct that if I am brain dead, an anatomical gift be offered on my behalf to
27 a patient in need of an organ or tissue transplant. If a transplant occurs, I want
28 artificial heart/lung support devices to be continued on my behalf only until organ or
29 tissue suitability of the patient is confirmed and organ or tissue recovery has taken
30 place.]

31 _____ I direct that my life not be extended by life-sustaining procedures, except
32 that if I am unable to take in food by mouth, I wish to receive nutrition and hydration
33 artificially.

34 _____ I direct that I be given all available medical treatment in accordance with
35 accepted health care standards.

36 c. If I am pregnant my agent shall follow these specific instructions:

1 _____
2 _____
3 _____

4 D. UPON MY DEATH, I WISH TO DONATE:

5 _____ ANY NEEDED ORGANS, TISSUES, OR EYES.

6 _____ ONLY THE FOLLOWING ORGANS, TISSUES, OR EYES:

7 _____
8 _____

9 I AUTHORIZE THE USE OF MY ORGANS, TISSUES, OR EYES:

10 _____ FOR TRANSPLANTATION

11 _____ FOR THERAPY

12 _____ FOR RESEARCH

13 _____ FOR MEDICAL EDUCATION

14 _____ FOR ANY PURPOSE AUTHORIZED BY LAW.

15 I UNDERSTAND THAT BEFORE ANY VITAL ORGAN, TISSUE, OR EYE MAY BE
16 REMOVED FOR TRANSPLANTATION, I MUST BE PRONOUNCED DEAD. AFTER DEATH, I
17 DIRECT THAT ALL SUPPORT MEASURES BE CONTINUED TO MAINTAIN THE VIABILITY
18 FOR TRANSPLANTATION OF MY ORGANS, TISSUES, AND EYES UNTIL ORGAN, TISSUE,
19 AND EYE RECOVERY HAS BEEN COMPLETED.

20 I UNDERSTAND THAT MY ESTATE WILL NOT BE CHARGED FOR ANY COSTS
21 ASSOCIATED WITH MY DECISION TO DONATE MY ORGANS, TISSUES, OR EYES OR THE
22 ACTUAL DISPOSITION OF MY ORGANS, TISSUES, OR EYES.

23 By signing below, I indicate that I am emotionally and mentally competent to
24 make this living will and that I understand its purpose and effect.

25 _____
26 (Date) (Signature of Declarant)

27 The declarant signed or acknowledged signing this living will in my presence
28 and based upon my personal observation the declarant appears to be a competent
29 individual.

30 _____
31 (Witness) (Witness)

32 (Signature of Two Witnesses)

1 Form II

2 Advance Directive

3 Part A

4 Appointment of Health Care Agent

5 (Optional Form)

6 (Cross through if you do not want to appoint a health care agent to make health care
7 decisions for you. If you do want to appoint an agent, cross through any items in the
8 form that you do not want to apply.)

9 (1) I, _____, residing at _____

10 _____

11 appoint the following individual as my agent to make health care decisions for me

12 _____

13 _____

14 (Full Name, Address, and Telephone Number)

15 Optional: If this agent is unavailable or is unable or unwilling to act as my agent,
16 then I appoint the following person to act in this capacity

17 _____

18 _____

19 (Full Name, Address, and Telephone Number)

20 (2) My agent has full power and authority to make health care decisions for me,
21 including the power to:

22 a. Request, receive, and review any information, oral or written, regarding my
23 physical or mental health, including, but not limited to, medical and hospital records,
24 and consent to disclosure of this information;

25 b. Employ and discharge my health care providers;

26 c. Authorize my admission to or discharge from (including transfer to
27 another facility) any hospital, hospice, nursing home, adult home, or other medical
28 care facility; and

29 d. Consent to the provision, withholding, or withdrawal of health care,
30 including, in appropriate circumstances, life-sustaining procedures.

1 (3) The authority of my agent is subject to the following provisions and limitations:

2 _____
3 _____
4 _____

5 (4) My agent's authority becomes operative (initial the option that applies):

6 _____ When my attending physician and a second physician determine that I am
7 incapable of making an informed decision regarding my health care; or

8 _____ When this document is signed.

9 (5) My agent is to make health care decisions for me based on the health care
10 instructions I give in this document and on my wishes as otherwise known to my
11 agent. If my wishes are unknown or unclear, my agent is to make health care
12 decisions for me in accordance with my best interest, to be determined by my agent
13 after considering the benefits, burdens, and risks that might result from a given
14 treatment or course of treatment, or from the withholding or withdrawal of a
15 treatment or course of treatment.

16 (6) My agent shall not be liable for the costs of care based solely on this authorization.

17 By signing below, I indicate that I am emotionally and mentally competent to
18 make this appointment of a health care agent and that I understand its purpose and
19 effect.

20 _____
21 (Date) (Signature of Declarant)

22 The declarant signed or acknowledged signing this appointment of a health care
23 agent in my presence and based upon my personal observation appears to be a
24 competent individual.

25 _____
26 (Witness) (Witness)

27 (Signature of Two Witnesses)

28 Part B
29 Advance Medical Directive
30 Health Care Instructions

31 (Optional Form)

32 (Cross through if you do not want to complete this portion of the form. If you do want
33 to complete this portion of the form, initial those statements you want to be included
34 in the document and cross through those statements that do not apply.)

35 If I am incapable of making an informed decision regarding my health care, I direct

1 my health care providers to follow my instructions as set forth below. (Initial all those
2 that apply.)

3 (1) If my death from a terminal condition is imminent and even if
4 life-sustaining procedures are used there is no reasonable expectation of my
5 recovery -

6 _____ I direct that my life not be extended by life-sustaining procedures,
7 including the administration of nutrition and hydration artificially.

8 _____ I direct that my life not be extended by life-sustaining procedures, except
9 that if I am unable to take food by mouth, I wish to receive nutrition and hydration
10 artificially.

11 [_____ I direct that if I am brain dead, an anatomical gift be offered on my behalf
12 to a patient in need of an organ or tissue transplant. If a transplant occurs, I want
13 artificial heart/lung support devices to be continued on my behalf only until organ or
14 tissue suitability of the patient is confirmed and organ or tissue recovery has taken
15 place.]

16 (2) If I am in a persistent vegetative state, that is, if I am not conscious and
17 am not aware of my environment or able to interact with others, and there is no
18 reasonable expectation of my recovery -

19 _____ I direct that my life not be extended by life-sustaining procedures,
20 including the administration of nutrition and hydration artificially.

21 _____ I direct that my life not be extended by life-sustaining procedures, except
22 that if I am unable to take food by mouth, I wish to receive nutrition and hydration
23 artificially.

24 [_____ I direct that if I am brain dead, an anatomical gift be offered on my behalf
25 to a patient in need of an organ or tissue transplant. If a transplant occurs, I want
26 artificial heart/lung support devices to be continued on my behalf only until organ or
27 tissue suitability of the patient is confirmed and organ or tissue recovery has taken
28 place.]

29 (3) If I have an end-stage condition, that is a condition caused by injury,
30 disease, or illness, as a result of which I have suffered severe and permanent
31 deterioration indicated by incompetency and complete physical dependency and for
32 which, to a reasonable degree of medical certainty, treatment of the irreversible
33 condition would be medically ineffective -

34 _____ I direct that my life not be extended by life-sustaining procedures,
35 including the administration of nutrition and hydration artificially.

36 _____ I direct that my life not be extended by life-sustaining procedures, except
37 that if I am unable to take food by mouth, I wish to receive nutrition and hydration
38 artificially.

1 [____ I direct that if I am brain dead, an anatomical gift be offered on my behalf
2 to a patient in need of an organ or tissue transplant. If a transplant occurs, I want
3 artificial heart/lung support devices to be continued on my behalf only until organ or
4 tissue suitability of the patient is confirmed and organ or tissue recovery has taken
5 place.]

6 (4) I direct that no matter what my condition, medication not be given to me to
7 relieve pain and suffering, if it would shorten my remaining life.

8 (5) I direct that no matter what my condition, I be given all available medical
9 treatment in accordance with accepted health care standards.

10 (6) If I am pregnant, my decision concerning life-sustaining procedures shall
11 be modified as follows:

12 _____
13 _____
14 _____

15 (7) UPON MY DEATH, I WISH TO DONATE:

16 ____ ANY NEEDED ORGANS, TISSUES, OR EYES.

17 ____ ONLY THE FOLLOWING ORGANS, TISSUES, OR EYES:

18 _____
19 _____

20 I AUTHORIZE THE USE OF MY ORGANS, TISSUES, OR EYES:

21 ____ FOR TRANSPLANTATION

22 ____ FOR THERAPY

23 ____ FOR RESEARCH

24 ____ FOR MEDICAL EDUCATION

25 ____ FOR ANY PURPOSE AUTHORIZED BY LAW.

26 I UNDERSTAND THAT BEFORE ANY VITAL ORGAN, TISSUE, OR EYE MAY BE
27 REMOVED FOR TRANSPLANTATION, I MUST BE PRONOUNCED DEAD. AFTER DEATH, I
28 DIRECT THAT ALL SUPPORT MEASURES BE CONTINUED TO MAINTAIN THE VIABILITY
29 FOR TRANSPLANTATION OF MY ORGANS, TISSUES, AND EYES UNTIL ORGAN, TISSUE,
30 AND EYE RECOVERY HAS BEEN COMPLETED.

31 I UNDERSTAND THAT MY ESTATE WILL NOT BE CHARGED FOR ANY COSTS
32 ASSOCIATED WITH MY DECISION TO DONATE MY ORGANS, TISSUES, OR EYES OR THE
33 ACTUAL DISPOSITION OF MY ORGANS, TISSUES, OR EYES.

1 [(7)] (8) I direct (in the following space, indicate any other instructions
2 regarding receipt or nonreceipt of any health care)

3 _____
4 _____
5 _____

6 By signing below, I indicate that I am emotionally and mentally competent to
7 make this advance directive and that I understand the purpose and effect of this
8 document.

9 _____
10 (Date) (Signature of Declarant)

11 The declarant signed or acknowledged signing the foregoing advance directive in
12 my presence and based upon personal observation appears to be a competent
13 individual.

14 _____
15 (Witness) (Witness)

16 (Signature of Two Witnesses)

17 SUBTITLE 9. ORGAN AND TISSUE DONATION AWARENESS.

18 13-901.

19 THERE IS A STATE ADVISORY COUNCIL ON ORGAN AND TISSUE DONATION
20 AWARENESS.

21 13-902.

22 (A) (1) THE ADVISORY COUNCIL CONSISTS OF 16 MEMBERS.

23 (2) THE ADVISORY COUNCIL SHALL CONSIST OF:

24 (I) THE SECRETARY OR THE SECRETARY'S DESIGNEE, AS AN EX
25 OFFICIO MEMBER; AND

26 (II) 15 VOTING MEMBERS APPOINTED BY THE GOVERNOR.

27 (3) OF THE 15 VOTING MEMBERS:

28 (I) TWO SHALL BE REPRESENTATIVES OF ORGAN PROCUREMENT
29 ORGANIZATIONS;

30 (II) TWO SHALL BE REPRESENTATIVES OF EYE BANKS;

31 (III) ONE SHALL BE A REPRESENTATIVE OF A TISSUE BANK;

1 (IV) ONE SHALL BE A REPRESENTATIVE OF THE STATE
2 DEPARTMENT OF EDUCATION;

3 (V) ONE SHALL BE A REPRESENTATIVE OF THE MOTOR VEHICLE
4 ADMINISTRATION;

5 (VI) TWO SHALL BE INDIVIDUALS WHO ARE LAYPERSONS TO THE
6 FIELD OF MEDICINE, ONE OF WHOM SHALL BE AN ORGAN OR TISSUE TRANSPLANT
7 RECIPIENT;

8 (VII) ONE SHALL BE A REPRESENTATIVE OF THE MARYLAND
9 HOSPITAL ASSOCIATION;

10 (VIII) ONE SHALL BE A REPRESENTATIVE OF THE MEDICAL AND
11 CHIRURGICAL FACULTY OF MARYLAND;

12 (IX) ONE SHALL BE A REPRESENTATIVE OF THE MARYLAND NURSES
13 ASSOCIATION;

14 (X) ONE SHALL BE A FAMILY MEMBER OF AN ORGAN OR TISSUE
15 DONOR;

16 (XI) ONE SHALL BE A MEMBER OF THE SENATE OF MARYLAND; AND

17 (XII) ONE SHALL BE A MEMBER OF THE HOUSE OF DELEGATES.

18 (B) (1) THE TERM OF A VOTING MEMBER IS 4 YEARS.

19 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE
20 TERMS PROVIDED FOR MEMBERS OF THE ADVISORY COUNCIL ON JULY 1, 1998.

21 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A
22 SUCCESSOR IS APPOINTED AND QUALIFIES.

23 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
24 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
25 QUALIFIES.

26 (C) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR
27 MISCONDUCT.

28 13-903.

29 FROM AMONG THE MEMBERS OF THE ADVISORY COUNCIL, THE GOVERNOR
30 SHALL APPOINT A CHAIRMAN FOR A 2-YEAR TERM.

31 13-904.

32 (A) A MAJORITY OF THE MEMBERS THEN SERVING ON THE ADVISORY
33 COUNCIL IS A QUORUM.

1 (B) THE ADVISORY COUNCIL SHALL DETERMINE THE TIMES AND PLACES OF
2 ITS MEETINGS.

3 (C) A MEMBER OF THE ADVISORY COUNCIL:

4 (1) MAY NOT RECEIVE COMPENSATION;

5 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
6 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

7 (D) THE SECRETARY SHALL DESIGNATE THE STAFF NECESSARY TO CARRY
8 OUT THIS SUBTITLE.

9 13-905.

10 THE ADVISORY COUNCIL SHALL ADVISE THE SECRETARY ON THE
11 ADMINISTRATION OF THE ORGAN AND TISSUE DONATION AWARENESS FUND
12 ESTABLISHED UNDER § 13-906 OF THIS SUBTITLE.

13 13-906.

14 (A) (1) THERE IS AN ORGAN AND TISSUE DONATION AWARENESS FUND.

15 (2) THE FUND CONSISTS OF MONEYS COLLECTED UNDER § 16-111.1(F) OF
16 THE TRANSPORTATION ARTICLE.

17 (3) THE FUND IS A SPECIAL, CONTINUING, NONLAPSING FUND THAT IS
18 NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

19 (4) THE TREASURER SHALL SEPARATELY HOLD AND THE COMPTROLLER
20 SHALL ACCOUNT FOR THE FUND.

21 (5) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME
22 MANNER AS OTHER STATE FUNDS.

23 (6) ANY INVESTMENT EARNINGS SHALL BE RETAINED TO THE CREDIT
24 OF THE FUND.

25 (B) (1) THE FUND SHALL BE MANAGED AND SUPERVISED BY THE
26 SECRETARY OR THE SECRETARY'S DESIGNEE, WITH ADVICE FROM THE ADVISORY
27 COUNCIL.

28 (2) THE FUND SHALL BE USED TO PROMOTE PUBLIC EDUCATION AND
29 AWARENESS ABOUT ORGAN, TISSUE, AND EYE DONATIONS.

30 (3) THE FUND SHALL BE SUBJECT TO AUDIT BY THE OFFICE OF
31 LEGISLATIVE AUDITS UNDER TITLE 2, SUBTITLE 12 OF THE STATE GOVERNMENT
32 ARTICLE.

1 19-310.

2 (A) IN THIS SECTION, "DESIGNATED REQUESTOR" MEANS A HOSPITAL
3 EMPLOYEE WHO HAS COMPLETED A COURSE OFFERED BY AN ORGAN, TISSUE, OR
4 EYE RECOVERY AGENCY ON HOW TO APPROACH POTENTIAL DONOR FAMILIES AND
5 REQUEST ORGAN OR TISSUE DONATION.

6 (B) (1) ON OR BEFORE THE OCCURRENCE OF EACH DEATH IN A HOSPITAL,
7 THE HOSPITAL SHALL CONTACT AN APPROPRIATE ORGAN, TISSUE, OR EYE
8 RECOVERY AGENCY IN ORDER TO DETERMINE THE PATIENT'S SUITABILITY FOR
9 ORGAN, TISSUE, OR EYE DONATION.

10 (2) THE CONTACT AND ITS DISPOSITION SHALL BE NOTED IN THE
11 PATIENT'S MEDICAL RECORD.

12 (C) (1) THE APPROPRIATE ORGAN, TISSUE, OR EYE RECOVERY AGENCY, IN
13 CONSULTATION WITH THE PATIENT'S ATTENDING PHYSICIAN OR THE PHYSICIAN'S
14 DESIGNEE, SHALL DETERMINE THE PATIENT'S SUITABILITY FOR ORGAN, TISSUE, OR
15 EYE DONATION.

16 (2) IF THE ORGAN, TISSUE, OR EYE RECOVERY AGENCY, IN
17 CONSULTATION WITH THE PATIENT'S ATTENDING PHYSICIAN OR THE PHYSICIAN'S
18 DESIGNEE, DETERMINES THAT DONATION IS NOT APPROPRIATE BASED ON
19 ESTABLISHED MEDICAL CRITERIA, THIS DETERMINATION SHALL BE NOTED BY
20 HOSPITAL PERSONNEL IN THE PATIENT'S MEDICAL RECORD AND NO FURTHER
21 ACTION IS NECESSARY.

22 (3) IF THE ORGAN, TISSUE, OR EYE RECOVERY AGENCY, IN
23 CONSULTATION WITH THE PATIENT'S ATTENDING PHYSICIAN OR THE PHYSICIAN'S
24 DESIGNEE, DETERMINES THAT THE PATIENT IS A SUITABLE CANDIDATE FOR ORGAN,
25 TISSUE, OR EYE DONATION, A REPRESENTATIVE OF THE APPROPRIATE ORGAN,
26 TISSUE, OR EYE RECOVERY AGENCY OR A DESIGNATED REQUESTOR SHALL INITIATE
27 A REQUEST UNDER SUBSECTION (D) OF THIS SECTION, IF APPLICABLE.

28 [(a)] (D) (1) [In accordance with § 5-202 of this article] EXCEPT AS
29 PROVIDED IN SUBSECTION (J) OF THIS SECTION, when an individual dies in a hospital
30 IN ACCORDANCE WITH § 5-202 OF THIS ARTICLE, [the hospital administrator or a
31 designee of the hospital administrator] A REPRESENTATIVE OF THE APPROPRIATE
32 ORGAN, TISSUE, OR EYE RECOVERY AGENCY OR A DESIGNATED REQUESTOR shall
33 request, with sensitivity, in the order of stated priority, that the individual's
34 representative consent to the donation of all or any of the decedent's organs or tissues
35 as an anatomical donation if suitable.

36 (2) For the purposes of paragraph (1) of this subsection, the
37 representative of the deceased individual is 1 of the following individuals listed in the
38 following order of priority:

39 (i) A spouse, but, if not alive or not competent, then;

1 (ii) A son or daughter who is at least 18 years old, but, if not alive
2 [or not], competent, OR IMMEDIATELY AVAILABLE, then;

3 (iii) A parent, but, if not alive [or not], competent, OR
4 IMMEDIATELY AVAILABLE, then;

5 (iv) A brother or sister who is at least 18 years old, but, if not alive
6 or not competent, then;

7 (v) A guardian;

8 (VI) A FRIEND OR OTHER RELATIVE OF THE DECEDENT, IF THE
9 INDIVIDUAL:

10 1. IS A COMPETENT INDIVIDUAL; AND

11 2. PRESENTS AN AFFIDAVIT TO THE ATTENDING PHYSICIAN
12 STATING:

13 A. THAT THE INDIVIDUAL IS A RELATIVE OR CLOSE FRIEND
14 OF THE DECEDENT; AND

15 B. SPECIFIC FACTS AND CIRCUMSTANCES DEMONSTRATING
16 THAT THE INDIVIDUAL MAINTAINED REGULAR CONTACT WITH THE DECEDENT
17 SUFFICIENT TO BE FAMILIAR WITH THE DECEDENT'S ACTIVITIES, HEALTH, AND
18 PERSONAL BELIEFS; OR

19 (VII) ANY OTHER PERSON AUTHORIZED OR REQUIRED TO DISPOSE
20 OF THE BODY.

21 (3) (I) This subsection does not apply if the decedent has given [actual
22 notice of any objection] CONTRARY DIRECTIONS.

23 (II) THE FAILURE OF THE DECEDENT TO MAKE A GIFT IS NOT A
24 CONTRARY DIRECTION FOR PURPOSES OF THIS SUBSECTION.

25 (4) [Notice of an objection] CONTRARY DIRECTIONS GIVEN BY THE
26 DECEDENT under this subsection shall be recorded in the decedent's medical record.

27 (5) The [hospital administrator or a designee of the hospital
28 administrator] REPRESENTATIVE OF THE APPROPRIATE ORGAN, TISSUE, OR EYE
29 RECOVERY AGENCY OR THE DESIGNATED REQUESTOR and the representative of the
30 deceased patient are entitled to protection from civil and criminal liability as
31 provided in § 4-508(b) of the Estates and Trusts Article.

32 [(b)] (E) In all discussions concerning donations of organs and tissues, the
33 [hospital administrator or a designee of the administrator] REPRESENTATIVE OF
34 THE APPROPRIATE ORGAN, TISSUE, OR EYE RECOVERY AGENCY OR THE DESIGNATED
35 REQUESTOR shall show reasonable discretion and sensitivity:

36 (1) To the circumstances of the family of the decedent;

- 1 (2) To the religious beliefs of the decedent; and
- 2 (3) To the nonsuitability for organ or tissue donation of the decedent.

3 [(c)] (F) (1) When a [hospital administrator or a designee of the
4 administrator] REPRESENTATIVE OF THE APPROPRIATE ORGAN, TISSUE, OR EYE
5 RECOVERY AGENCY OR A DESIGNATED REQUESTOR makes a request under
6 subsection [(a)(1)] (D)(1) of this section, the [administrator or] representative OR
7 DESIGNATED REQUESTOR shall[:

8 (1) Document] DOCUMENT the request and its disposition by having the
9 [individuals] APPROPRIATE INDIVIDUAL described in subsection [(a)(1)] (D)(2) of this
10 section sign a consent form or give a witnessed telegraphic, witnessed telephonic, or
11 recorded consent to the donation.

12 (2) [Note] HOSPITAL PERSONNEL SHALL NOTE the request and its
13 disposition in the decedent's medical record or death certificate.

14 [(d)] (G) A hospital may not bill the estate of the decedent, a surviving spouse
15 of the decedent, any heirs of the decedent, or an insurer of the decedent for the costs
16 associated with the removal of all or any of the decedent's organs or tissues for the
17 purpose of an anatomical donation.

18 [(e)] (H) After consultation with the Maryland Hospital Association, Inc., the
19 Medical and Chirurgical Faculty of the State of Maryland, the Transplant Resource
20 Center of Maryland, Inc., the Washington Regional Transplant Consortium, the
21 Medical Eye Bank of Maryland, the Lions of District 22-C Eye Bank and Research
22 Foundation, Incorporated, the Health Facilities Association of Maryland, and Tissue
23 Banks International, the Secretary shall publish guidelines designed to [facilitate
24 implementation of] IMPLEMENT this section, including guidelines:

25 [(1) For recording objections under subsection (a) of this section; and

26 (2) Subject to the provisions of § 5-202 of this article, requiring timely
27 notification of any death occurring in a hospital to:

28 (i) The Transplant Resource Center of Maryland, Inc.; or

29 (ii) The Washington Regional Transplant Consortium.]

30 (1) REQUIRING THAT, AT OR NEAR THE TIME OF EACH INDIVIDUAL
31 DEATH IN A HOSPITAL, THE HOSPITAL CONTACT BY TELEPHONE AN APPROPRIATE
32 ORGAN, TISSUE, OR EYE RECOVERY AGENCY TO DETERMINE THE SUITABILITY OF
33 THE INDIVIDUAL FOR ORGAN, TISSUE, AND EYE DONATION;

34 (2) REQUIRING THAT EACH HOSPITAL DESIGNATE A PERSON TO MAKE
35 THE CONTACT; AND

36 (3) IDENTIFYING THE INFORMATION THAT THE PERSON DESIGNATED
37 BY THE HOSPITAL SHALL HAVE AVAILABLE BEFORE MAKING THE CONTACT.

1 [(f)] (I) The provisions of this section shall in no way interfere with the duties
 2 of the office of the Chief Medical Examiner. In sudden deaths under the jurisdiction of
 3 the office of the Chief Medical Examiner as provided in § 5-309 of this article,
 4 notification will be made to the office of the Chief Medical Examiner prior to organ
 5 removal.

6 [(g)] (J) The CONSENT OF THE DECEDENT'S REPRESENTATIVE IS NOT
 7 NECESSARY AND THE provisions of subsection [(a)] (D) of this section do not apply if:

8 (1) [the] THE decedent's driver's license or identification card contains a
 9 notation that the decedent is an organ donor; OR

10 (2) THE DECEDENT HAS CONSENTED TO THE GIFT OF ALL OR ANY PART
 11 OF THE DECEDENT'S BODY IN ACCORDANCE WITH THE PROVISIONS OF:

12 (I) § 5-604.1 OF THIS ARTICLE; OR

13 (II) TITLE 4, SUBTITLE 5 OF THE ESTATES AND TRUSTS ARTICLE.

14 [(h)] (K) A [health care practitioner or a health care facility, including any
 15 designated employee or agent of a health care facility, acting] PERSON WHO ACTS in
 16 good faith to recover organs or tissues [pursuant to] IN ACCORDANCE WITH a
 17 notation on the decedent's driver's license or identification card that the decedent is
 18 an organ donor, [may not be held liable] A GIFT MADE IN ACCORDANCE WITH §
 19 5-604.1 OF THIS ARTICLE OR TITLE 4, SUBTITLE 5 OF THE ESTATES AND TRUSTS
 20 ARTICLE, OR A GIFT MADE IN ACCORDANCE WITH THE ANATOMICAL GIFT LAWS OF
 21 ANOTHER STATE OR COUNTRY IS IMMUNE FROM CRIMINAL PROSECUTION AND
 22 LIABILITY FOR DAMAGES in any cause of action related to the recovery and donation
 23 of the decedent's organs or tissues.

24 [(i)] The provisions of this section do not apply if the decedent has consented to
 25 the gift of all or any part of the decedent's body in accordance with the provisions of:

26 (1) § 5-604.1 of this article; or

27 (2) Title 4, Subtitle 5 of the Estates and Trusts Article.]

28 (L) THE DEPARTMENT SHALL CONDUCT ANNUAL DEATH RECORD REVIEWS
 29 AT EACH HOSPITAL TO DETERMINE THE HOSPITAL'S COMPLIANCE WITH THE
 30 PROVISIONS OF THIS SECTION. THE DEPARTMENT MAY DELEGATE ITS DUTY TO
 31 CONDUCT ANNUAL DEATH RECORD REVIEWS TO THE APPROPRIATE ORGAN, TISSUE,
 32 OR EYE RECOVERY AGENCY SERVING THE REGION IN WHICH A PARTICULAR
 33 HOSPITAL IS LOCATED.

34 **Article - Transportation**

35 12-303.

36 (a) [In this section, "driver's license" does not include any temporary license
 37 or learner's permit.

1 (b) The Administration shall provide for a method by which an applicant for a
2 driver's license or identification card can designate that the applicant consents to the
3 gift of all body organs or parts for the purposes of transplantation, therapy, or medical
4 research and education.

5 [(c)] (B) If an applicant designates that he is such a donor, the Administration
6 may make a notation of this fact on the driver's license or identification card issued to
7 the applicant.

8 [(d)] (C) The donor designation noted on the driver's license or identification
9 card:

10 (1) Is sufficient legal authority for the removal of a body organ or part on
11 the death of the donor; and

12 (2) May be removed only on written notice to the Administration by the
13 donor.

14 [(e)] (D) Notwithstanding any other provision of law, the donor designation
15 noted on the driver's license or identification card is valid and effective for all
16 purposes under Title 4, Subtitle 5 of the Estates and Trusts Article, including the
17 immunity from civil or criminal liability set forth in § 4-508(b) of the Estates and
18 Trusts Article.

19 [(f)] (E) At the time the donor authorizes the donor designation to appear on
20 his driver's license or identification card, the Administration shall notify the donor
21 that the designation can be removed only on written notice to the Administration.

22 [(g)] (F) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
23 SUBSECTION, A donor designation under this section may not be made by or noted on
24 the driver's license or special identification card of any minor.

25 (2) A DONOR DESIGNATION UNDER THIS SECTION MAY BE MADE BY OR
26 NOTED ON THE DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD OF A MINOR
27 WHO IS AT LEAST 16 YEARS OLD, IF A PARENT OR GUARDIAN OF THE MINOR
28 CONSENTS IN WRITING.

29 16-111.1.

30 (a) (1) When an applicant applies for an initial driver's license or for a class
31 of driver's license other than that which the applicant currently holds, the applicant
32 shall pay the Administration a license fee established by the Administration. This fee
33 covers issuance of a learner's instructional permit and, if the applicant qualifies
34 before the learner's instructional permit expires, issuance of a driver's license.

35 (2) If a learner's instructional permit is not required, the applicant shall
36 pay the Administration, when the driver's license is issued, a license fee established
37 by the Administration.

1 (b) For the renewal of a noncommercial Class A, B, C, D, E, or M driver's
2 license, a licensee shall pay the Administration a renewal fee established by the
3 Administration.

4 (c) For issuance of a duplicate or corrected noncommercial Class A, B, C, D, E,
5 or M driver's license, a licensee shall pay the Administration a duplicate or corrected
6 driver's license fee established by the Administration.

7 (d) For conversion of a provisional license to a driver's license issued under §
8 16-111 of this subtitle, a licensee shall pay the Administration a fee established by
9 the Administration.

10 (e) A licensee shall pay a fee established by the Administration if:

11 (1) The license is issued or renewed under § 16-104.1 of this subtitle;
12 and

13 (2) The licensee presents proof to the Administration that immediately
14 before the conversion of the license under § 16-104 of this subtitle, the licensee was
15 qualified to operate vehicles of the same class.

16 (F) (1) WHENEVER AN APPLICANT OR LICENSEE PAYS A FEE REQUIRED
17 UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE ADMINISTRATION SHALL
18 OFFER THE INDIVIDUAL THE OPTION TO MAKE A VOLUNTARY CONTRIBUTION OF \$1
19 TO THE ORGAN AND TISSUE DONATION AWARENESS FUND ESTABLISHED UNDER
20 TITLE 13, SUBTITLE 9 OF THE HEALTH - GENERAL ARTICLE.

21 (2) ALL MONEYS COLLECTED UNDER THIS SUBSECTION SHALL BE PAID
22 TO THE COMPTROLLER OF THE STATE AND DEPOSITED INTO THE ORGAN AND TISSUE
23 DONATION AWARENESS FUND ESTABLISHED UNDER TITLE 13, SUBTITLE 9 OF THE
24 HEALTH - GENERAL ARTICLE.

25 SECTION 2. AND BE IT FURTHER ENACTED, That the Secretary of Health
26 and Mental Hygiene shall report to the General Assembly on or before January 1 of
27 each year, in accordance with § 2-1246 of the State Government Article, on the
28 results of hospital death record reviews conducted under § 19-310(l) of the Health -
29 General Article.

30 SECTION 3. AND BE IT FURTHER ENACTED, That the Motor Vehicle
31 Administrator shall report to the General Assembly on or before December 31 of each
32 year, in accordance with § 2-1246 of the State Government Article, on the total
33 number of driver's licenses and identification cards issued by the Motor Vehicle
34 Administration, the number of driver's licenses and identification cards on which a
35 donor designation is noted under § 12-303 of the Transportation Article, and the
36 number of 16 and 17 year old minors who are designated as donors.

37 SECTION 4. AND BE IT FURTHER ENACTED, That the Secretary of Health
38 and Mental Hygiene shall publish the guidelines required under § 19-310(h) of the
39 Health - General Article on or before January 1, 1999 and shall report to the General

1 Assembly, in accordance with § 2-1246 of the State Government Article, on the
2 implementation of the guidelines on or before July 1, 1999.

3 SECTION 5. AND BE IT FURTHER ENACTED, That the terms of the initial
4 members of the State Advisory Council on Organ and Tissue Donation Awareness
5 shall expire as follows:

- 6 (1) five members in 2000;
- 7 (2) five members in 2001; and
- 8 (3) five members in 2002.

9 SECTION 6. AND BE IT FURTHER ENACTED, That it is the intent of the
10 General Assembly that a hospital may comply with § 19-310(b) of the Health -
11 General Article by using a one-number system established by the federally
12 designated organ procurement organization and the tissue and eye banks serving the
13 area in which the hospital is located.

14 SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an
15 emergency measure, is necessary for the immediate preservation of the public health
16 and safety, has been passed by a yea and nay vote supported by three-fifths of all the
17 members elected to each of the two Houses of the General Assembly, and shall take
18 effect from the date it is enacted.