
By: **Senator Frosh**

Introduced and read first time: February 5, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care - Surrogate Decision Making - Prohibitions**

3 FOR the purpose of prohibiting certain surrogate decision makers from consenting to
4 the admission of certain individuals to a mental health facility or from
5 authorizing a certain behavior modification program for certain individuals; and
6 generally relating to certain prohibitions against surrogate decision making for
7 certain individuals.

8 BY repealing and reenacting, with amendments,
9 Article - Health - General
10 Section 5-605
11 Annotated Code of Maryland
12 (1994 Replacement Volume and 1998 Supplement)

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

15 **Article - Health - General**

16 5-605.

17 (a) (1) In this subsection, "unavailable" means:

18 (i) After reasonable inquiry, a health care provider is unaware of
19 the existence of a surrogate decision maker;

20 (ii) After reasonable inquiry, a health care provider cannot
21 ascertain the whereabouts of a surrogate decision maker;

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

25 (iv) A surrogate decision maker is incapacitated; or

1 (v) A surrogate decision maker is unwilling to make decisions
2 concerning health care for the individual.

3 (2) The following individuals or groups, in the specified order of priority,
4 may make decisions about health care for a person who has been certified to be
5 incapable of making an informed decision and who has not appointed a health care
6 agent in accordance with this subtitle. Individuals in a particular class may be
7 consulted to make a decision only if all individuals in the next higher class are
8 unavailable:

9 (i) A guardian for the patient, if one has been appointed;

10 (ii) The patient's spouse;

11 (iii) An adult child of the patient;

12 (iv) A parent of the patient;

13 (v) An adult brother or sister of the patient; or

14 (vi) A friend or other relative of the patient who meets the
15 requirements of paragraph (3) of this subsection.

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

18 (i) Is a competent individual; and

19 (ii) Presents an affidavit to the attending physician stating:

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

21 and

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

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

27 (b) (1) If persons with equal decision making priority under subsection (a) of
28 this section disagree about a health care decision, and a person who is incapable of
29 making an informed decision is receiving care in a hospital or related institution, the
30 attending physician or an individual specified in subsection (a) of this section shall
31 refer the case to the institution's patient care advisory committee, and may act in
32 accordance with the recommendation of the committee or transfer the patient in
33 accordance with the provisions of § 5-613 of this subtitle. A physician who acts in
34 accordance with the recommendation of the committee is not subject to liability for
35 any claim based on lack of consent or authorization for the action.

1 (2) If a person who is incapable of making an informed decision is not in
2 a hospital or related institution, a physician may not withhold or withdraw
3 life-sustaining procedures if there is not agreement among all the persons in the
4 same class.

5 (c) (1) Any person authorized to make health care decisions for another
6 under this section shall base those decisions on the wishes of the patient and, if the
7 wishes of the patient are unknown or unclear, on the patient's best interest.

8 (2) In determining the wishes of the patient, a surrogate shall consider
9 the patient's:

10 (i) Current diagnosis and prognosis with and without the
11 treatment at issue;

12 (ii) Expressed preferences regarding the provision of, or the
13 withholding or withdrawal of, the specific treatment at issue or of similar treatments;

14 (iii) Relevant religious and moral beliefs and personal values;

15 (iv) Behavior, attitudes, and past conduct with respect to the
16 treatment at issue and medical treatment generally;

17 (v) Reactions to the provision of, or the withholding or withdrawal
18 of, a similar treatment for another individual; and

19 (vi) Expressed concerns about the effect on the family or intimate
20 friends of the patient if a treatment were provided, withheld, or withdrawn.

21 (3) The decision of a surrogate regarding whether life-sustaining
22 procedures should be provided, withheld, or withdrawn shall not be based, in whole or
23 in part, on either a patient's preexisting, long-term mental or physical disability, or a
24 patient's economic disadvantage.

25 (4) A surrogate shall inform the patient, to the extent possible, of the
26 proposed procedure and the fact that someone else is authorized to make a decision
27 regarding that procedure.

28 (d) A surrogate may not [authorize]:

29 (1) AUTHORIZE [Sterilization] STERILIZATION FOR AN INDIVIDUAL;
30 [or]

31 (2) [Treatment for a mental disorder] CONSENT TO THE ADMISSION OF
32 AN INDIVIDUAL TO A MENTAL HEALTH FACILITY; OR

33 (3) AUTHORIZE A BEHAVIOR MODIFICATION PROGRAM FOR AN
34 INDIVIDUAL IF THE PROGRAM INVOLVES PAINFUL OR INVASIVE STIMULI.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 1999.

