
By: **Senator Harris**

Introduced and read first time: February 4, 2000

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Health - General - Advance Directives**

3 FOR the purpose of requiring documentation of the substance of oral advance
4 directives; requiring certain actions and documentation when accepting oral
5 revocations of advance directives; and generally relating to oral advance
6 directives.

7 BY repealing and reenacting, with amendments,
8 Article - Health - General
9 Section 5-602 and 5-604
10 Annotated Code of Maryland
11 (1994 Replacement Volume and 1999 Supplement)

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

14 **Article - Health - General**

15 5-602.

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

19 (b) (1) Any competent individual may, at any time, make a written advance
20 directive appointing an agent to make health care decisions for the individual under
21 the circumstances stated in the advance directive.

22 (2) An owner, operator, or employee of a health care facility from which
23 the declarant is receiving health care may not serve as a health care agent unless the
24 person would qualify as a surrogate decision maker under § 5-605(a) of this subtitle.

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

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

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

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

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

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

15 (2) An oral advance directive shall have the same effect as a written
16 advance directive if made in the presence of the attending physician and one witness
17 and IF THE SUBSTANCE OF THE ORAL ADVANCE DIRECTIVE IS documented as part of
18 the individual's medical record. The documentation shall be dated and signed by the
19 attending physician and the witness.

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

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

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

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

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

35 (ii) If the advance directive is oral, make the [fact] SUBSTANCE of
36 the advance directive, including the date the advance directive was made and the
37 name of the attending physician, a part of the declarant's medical records.

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

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

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

8 5-604.

9 (A) An advance directive may be revoked at any time by a declarant by a
10 signed and dated writing, by physical cancellation or destruction, by an oral
11 statement to a health care practitioner or by the execution of a subsequent directive.

12 (B) WHEN AN ADVANCE DIRECTIVE IS REVOKED ORALLY, THE CONTENTS OF
13 THE ORIGINAL WRITTEN ADVANCE DIRECTIVE OR THE SUBSTANCE OF AN ORAL
14 ADVANCE DIRECTIVE SHALL BE REVIEWED AND REVOKED IN THE PRESENCE OF THE
15 ATTENDING PHYSICIAN AND A WITNESS, BOTH OF WHOM SHALL SIGN AND DATE A
16 WRITTEN ACKNOWLEDGMENT OF THE ORAL REVOCATION AND ADD THE
17 ACKNOWLEDGMENT TO THE DECLARANT'S MEDICAL RECORD.

18 (C) It shall be the responsibility of the declarant, to the extent reasonably
19 possible, to notify any person to whom the declarant has provided a copy of the
20 directive.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2000.