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By: **Senator Harris**  
Introduced and read first time: February 4, 2000  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 22, 2000

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CHAPTER \_\_\_\_\_

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 5-604.

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

17 ~~(B) WHEN AN ADVANCE DIRECTIVE IS REVOKED ORALLY, THE CONTENTS OF~~  
18 ~~THE ORIGINAL WRITTEN ADVANCE DIRECTIVE OR THE SUBSTANCE OF AN ORAL~~  
19 ~~ADVANCE DIRECTIVE SHALL BE REVIEWED AND REVOKED IN THE PRESENCE OF THE~~  
20 ~~ATTENDING PHYSICIAN AND A WITNESS, BOTH OF WHOM SHALL SIGN AND DATE A~~  
21 ~~WRITTEN ACKNOWLEDGMENT OF THE ORAL REVOCATION AND ADD THE~~  
22 ~~ACKNOWLEDGMENT TO THE DECLARANT'S MEDICAL RECORD IF A DECLARANT~~  
23 ~~REVOKES AN ADVANCE DIRECTIVE BY AN ORAL STATEMENT TO A HEALTH CARE~~  
24 ~~PRACTITIONER, THE PRACTITIONER AND A WITNESS TO THE ORAL REVOCATION~~  
25 ~~SHALL DOCUMENT THE SUBSTANCE OF THE ORAL REVOCATION IN THE~~  
26 ~~DECLARANT'S MEDICAL RECORD.~~

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

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

