
By: **Delegate Dembrow**

Introduced and read first time: January 17, 2001

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 6, 2001

CHAPTER _____

1 AN ACT concerning

2 **Estates and Trusts - Guardian - Medical Procedures**

3 FOR the purpose of allowing the court to authorize a guardian to make decisions
4 regarding medical procedures that involve a substantial risk to the life of a
5 disabled person without further court authorization when the guardian is
6 within one of certain classes of individuals and the court determines the
7 guardian is familiar with the certain circumstances of the disabled person; and
8 generally relating to allowing the court to authorize a guardian to make
9 decisions regarding medical procedures that involve a substantial risk to life.

10 BY repealing and reenacting, with amendments,
11 Article - Estates and Trusts
12 Section 13-708
13 Annotated Code of Maryland
14 (1991 Replacement Volume and 2000 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Health - General
17 Section 5-605(a)(2) and (3)
18 Annotated Code of Maryland
19 (2000 Replacement Volume)

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

1

Article - Estates and Trusts

2 13-708.

3 (a) (1) The court may grant to a guardian of a person only those powers
4 necessary to provide for the demonstrated need of the disabled person.

5 (2) The court may appoint a guardian of the person of a disabled person
6 for the limited purpose of making one or more decisions related to the health care of
7 that person.

8 (b) Subject to subsection (a) of this section, the rights, duties, and powers
9 which the court may order include, but are not limited to:

10 (1) The same rights, powers, and duties that a parent has with respect to
11 an unemancipated minor child, except that the guardian is not liable solely by reason
12 of the guardianship to third persons for any act of the disabled person;

13 (2) The right to custody of the disabled person and to establish his place
14 of abode within and without the State, provided there is court authorization for any
15 change in the classification of abode, except that no one may be committed to a
16 mental facility without an involuntary commitment proceeding as provided by law;

17 (3) The duty to provide for care, comfort, and maintenance, including
18 social, recreational, and friendship requirements, and, if appropriate, for training and
19 education of the disabled person;

20 (4) The duty to take reasonable care of the clothing, furniture, vehicles,
21 and other personal effects of the disabled person, and, if other property requires
22 protection, the power to commence protective proceedings;

23 (5) If a guardian of the estate of the disabled person has not been
24 appointed, the right to commence proceedings to compel performance by any person of
25 his duty to support the disabled person, and to apply the estate to the support, care,
26 and education of the disabled person, except that the guardian of the person may not
27 obtain funds from the estate for room and board that the guardian, his spouse,
28 parent, or child provide without a court order approving the charge, and the duty to
29 exercise care to conserve any excess estate for the needs of the disabled person;

30 (6) If a guardian of the estate has been appointed, the duty to control the
31 custody and care of the disabled person, to receive reasonable sums for room and
32 board provided to the disabled person, and to account to the guardian of the estate for
33 funds expended, and the right to ask the guardian of the estate to expend the estate
34 in payment of third persons for care and maintenance of the disabled person;

35 (7) The duty to file an annual report with the court indicating the
36 present place of residence and health status of the ward, the guardian's plan for
37 preserving and maintaining the future well-being of the ward, and the need for
38 continuance or cessation of the guardianship or for any alteration in the powers of the
39 guardian. The court shall renew the appointment of the guardian if it is satisfied that

1 the grounds for the original appointment stated in § 13-705(b) above continue to
2 exist. If the court believes such grounds may not exist, it shall hold a hearing, similar
3 to that provided for in § 13-705 above, at which the guardian shall be required to
4 prove that such grounds exist. If the court does not make these findings, it shall order
5 the discontinuance of the guardianship of the person. If the guardian declines to
6 participate in the hearing, the court may appoint another guardian to replace him
7 pursuant to the priorities in § 13-707(a); and

8 (8) The power to give necessary consent or approval for:

9 (i) Medical or other professional care, counsel, treatment, or
10 service, including admission to a hospital or nursing home or transfer from one
11 medical facility to another;

12 (ii) Withholding medical or other professional care, counsel,
13 treatment, or service; and

14 (iii) Withdrawing medical or other professional care, counsel,
15 treatment, or service.

16 (c) (1) Notwithstanding the powers conferred to a guardian under
17 subsection (b)(8) of this section, and except as provided in paragraph (2) of this
18 subsection, where a medical procedure involves, or would involve, a substantial risk
19 to the life of a disabled person, the court must authorize a guardian's consent or
20 approval for:

21 (i) The medical procedure;

22 (ii) Withholding the medical procedure; or

23 (iii) Withdrawing the medical procedure that involves, or would
24 involve, a substantial risk to the life of the disabled person.

25 (2) The court may, upon such conditions as the court considers
26 appropriate, authorize a guardian to make a decision regarding medical procedures
27 that involve a substantial risk to life without further court authorization, if:

28 (i) The disabled person has executed an advance directive in
29 accordance with Title 5, Subtitle 6 of the Health - General Article that authorizes the
30 guardian to consent to the provision, withholding or withdrawal of a medical
31 procedure that involves a substantial risk to life but does not appoint a health care
32 agent; or

33 (ii) The guardian is: [also the disabled person's spouse, adult child,
34 parent, adult brother or sister, or adult grandchild.]

35 1. WITHIN A CLASS OF INDIVIDUALS SPECIFIED IN §
36 5-605(A)(2) OF THE HEALTH - GENERAL ARTICLE AS AUTHORIZED TO MAKE HEALTH
37 CARE DECISIONS FOR THE DISABLED PERSON; AND

- 1 (iv) A parent of the patient;
- 2 (v) An adult brother or sister of the patient; or
- 3 (vi) A friend or other relative of the patient who meets the
4 requirements of paragraph (3) of this subsection.
- 5 (3) A friend or other relative may make decisions about health care for a
6 patient under paragraph (2) of this subsection if the person:
- 7 (i) Is a competent individual; and
- 8 (ii) Presents an affidavit to the attending physician stating:
- 9 1. That the person is a relative or close friend of the patient;
10 and
- 11 2. Specific facts and circumstances demonstrating that the
12 person has maintained regular contact with the patient sufficient to be familiar with
13 the patient's activities, health, and personal beliefs.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2001.