
By: **Delegates Rosenberg, Hubbard, Nathan-Pulliam, Oaks, and Pendergrass**

Introduced and read first time: February 5, 2003
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health - In Vitro Services - Advance Directives for Disposition of**
3 **Cryopreserved Eggs, Sperm, or Embryos**

4 FOR the purpose of requiring health care providers and health care facilities to
5 require a written advance directive for the disposition of cryopreserved eggs,
6 sperm, or embryos; requiring a certain format for an advance directive;
7 requiring the inclusion of certain options in an advance directive; authorizing
8 the inclusion in an advance directive of certain options under certain
9 circumstances; requiring an advance directive to include a section on compliance
10 with certain policies and procedures of the health care provider or health care
11 facility; providing immunity from civil, criminal, and disciplinary actions under
12 certain circumstances when an advance directive is followed; requiring a health
13 care provider or health care facility to submit a certain advance directive to the
14 Department of Health and Mental Hygiene; requiring the Department to
15 consult with certain individuals to review the advance directive to assure
16 certain requirements; prohibiting an advance directive from being adopted or
17 effective under certain circumstances; requiring the Department to provide
18 certain notice within a certain period of time; requiring a certain decision to
19 state certain things; requiring the Department to adopt certain regulations; and
20 generally relating to the disposition of cryopreserved eggs, sperm, or embryos.

21 BY adding to
22 Article - Health - General
23 Section 20-801 and 20-802 to be under the new subtitle "Subtitle 8. Advance
24 Directives for Disposition of Cryopreserved Eggs, Sperm, or Embryos"
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2002 Supplement)

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

1 **Article - Health - General**

2 SUBTITLE 8. ADVANCE DIRECTIVES FOR DISPOSITION OF CRYOPRESERVED EGGS,
3 SPERM, OR EMBRYOS.

4 20-801.

5 (A) A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING IN
6 VITRO OR ASSISTED REPRODUCTIVE SERVICES IN WHICH EGGS, SPERM, OR EMBRYOS
7 ARE TO BE CRYOPRESERVED FOR STORAGE SHALL REQUIRE COMPLETION OF A
8 STANDARD ADVANCE DIRECTIVE GOVERNING THE DISPOSITION OF THE
9 CRYOPRESERVED EGGS, SPERM, OR EMBRYOS THAT COMPLIES WITH THE
10 PROVISIONS OF THIS SECTION.

11 (B) AN ADVANCE DIRECTIVE GOVERNING THE DISPOSITION OF
12 CRYOPRESERVED EGGS, SPERM, OR EMBRYOS, AT A MINIMUM, SHALL:

13 (1) BE IN WRITING AND SIGNED BY:

14 (I) FOR CRYOPRESERVED EGGS, THE FEMALE DONEE;

15 (II) FOR CRYOPRESERVED SPERM, THE MALE DONEE; OR

16 (III) FOR CRYOPRESERVED EMBRYOS, BOTH THE MALE AND
17 FEMALE DONEES;

18 (2) INCLUDE A SELECTION OF ANY OF THE OPTIONS AVAILABLE AND
19 PROVIDED BY THE HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING
20 THE IN VITRO OR ASSISTED REPRODUCTIVE SERVICES FOR THE DISPOSITION OF
21 CRYOPRESERVED EGGS, SPERM, OR EMBRYOS, AS PROVIDED IN SUBSECTION (C) OF
22 THIS SECTION, IN THE EVENT OF:

23 (I) DEATH OF A PARTICIPATING PARTNER;

24 (II) DIVORCE OF THE PARTICIPATING PARTNERS; OR

25 (III) A DECISION BY EITHER OF THE PARTICIPATING PARTNERS TO
26 CEASE PARTICIPATING IN THE IN VITRO OR ASSISTED REPRODUCTIVE SERVICES
27 PROGRAM;

28 (3) INCLUDE A PROVISION REQUIRING COMPLIANCE WITH THE
29 POLICIES AND PROCEDURES REQUIRED TO NOTIFY THE HEALTH CARE PROVIDER OR
30 HEALTH CARE FACILITY RESPONSIBLE FOR THE CRYOPRESERVED EGGS, SPERM, OR
31 EMBRYOS OF A REQUEST TO CHANGE OR EXECUTE AN ADVANCE DIRECTIVE FOR THE
32 DISPOSITION OF THE CRYOPRESERVED EGGS, SPERM, OR EMBRYOS; AND

33 (4) IF APPLICABLE, INCLUDE AN AGREEMENT REQUIRING COMPLIANCE
34 WITH THE POLICIES AND PROCEDURES TO BE FOLLOWED IN THE EVENT OF
35 NONPAYMENT OF STORAGE FEES.

1 (C) THE OPTIONS AVAILABLE AND PROVIDED BY THE HEALTH CARE
2 PROVIDER OR HEALTH CARE FACILITY PROVIDING THE IN VITRO OR ASSISTED
3 REPRODUCTIVE SERVICES FOR THE DISPOSITION OF THE CRYOPRESERVED EGGS,
4 SPERM, OR EMBRYOS UNDER SUBSECTION (B)(2) OF THIS SECTION MAY INCLUDE:

5 (1) TRANSFER OF THE CYROPRESERVED EGGS OR EMBRYOS TO THE
6 MALE PARTNER IN THE EVENT OF THE DEATH OF THE FEMALE PARTNER;

7 (2) TRANSFER OF THE CYROPRESERVED SPERM OR EMBRYOS TO THE
8 FEMALE PARTNER IN THE EVENT OF THE DEATH OF THE MALE PARTNER;

9 (3) DONATION OF THE CRYOPRESERVED EGGS, SPERM, OR EMBRYOS TO
10 ANOTHER INDIVIDUAL OR COUPLE;

11 (4) DONATION OF THE CRYOPRESERVED EGGS, SPERM, OR EMBRYOS
12 FOR RESEARCH PURPOSES; OR

13 (5) THAWING OF THE CRYOPRESERVED EGGS, SPERM, OR EMBRYOS
14 WITH NO FURTHER ACTION.

15 (D) A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY NOT BE HELD
16 LIABLE FOR CIVIL DAMAGES AND IS NOT SUBJECT TO ANY CRIMINAL OR
17 DISCIPLINARY ACTION FOR A DISPOSITION OF CRYOPRESERVED EGGS, SPERM, OR
18 EMBRYOS THAT IS CARRIED OUT IN ACCORDANCE WITH AN ADVANCE DIRECTIVE
19 THAT COMPLIES WITH THE PROVISIONS OF THIS SECTION.

20 20-802.

21 (A) BEFORE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY USE
22 AN ADVANCE DIRECTIVE UNDER § 20-801 OF THIS SUBTITLE, THE HEALTH CARE
23 PROVIDER OR HEALTH CARE FACILITY SHALL SUBMIT THE ADVANCE DIRECTIVE TO
24 THE DEPARTMENT.

25 (B) THE DEPARTMENT SHALL CONSULT WITH ASSISTANT ATTORNEYS
26 GENERAL FOR THE DEPARTMENT TO REVIEW THE ADVANCE DIRECTIVE TO ASSURE:

27 (1) THAT THE RIGHTS, RESPONSIBILITIES, AND DUTIES OF THE PARTIES
28 ARE SET FORTH CLEARLY AND LEGIBLY;

29 (2) THAT THE ADVANCE DIRECTIVE COMPLIES WITH APPLICABLE
30 FEDERAL AND STATE LAWS; AND

31 (3) THAT THE ADVANCE DIRECTIVE DOES NOT CONTAIN PROVISIONS
32 WHICH ARE UNENFORCEABLE BECAUSE OF PUBLIC POLICY.

33 (C) UNLESS AN ADVANCE DIRECTIVE IS SUBMITTED TO THE DEPARTMENT
34 UNDER SUBSECTION (B) OF THIS SECTION FOR APPROVAL AS TO LEGALITY, THE
35 ADVANCE DIRECTIVE:

36 (1) MAY NOT BE ADOPTED UNDER ANY STATUTORY AUTHORITY; AND

1 (2) IS NOT EFFECTIVE.

2 (D) (1) THE DEPARTMENT SHALL NOTIFY THE HEALTH CARE PROVIDER OR
3 HEALTH CARE FACILITY OF ITS APPROVAL OR DISAPPROVAL OF THE ADVANCE
4 DIRECTIVE WITHIN 30 DAYS OF ITS SUBMISSION.

5 (2) ANY DECISION DISAPPROVING ANY PROVISION OF AN ADVANCE
6 DIRECTIVE SHALL CLEARLY AND WITH PARTICULARITY STATE THE GROUNDS FOR
7 THE DISAPPROVAL.

8 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE
9 PROVISIONS OF THIS SECTION.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2003.