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

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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 2003

CHAPTER _____

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

1 (2000 Replacement Volume and 2002 Supplement)

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

4 **Article - Health - General**

5 SUBTITLE 8. ADVANCE DIRECTIVES FOR DISPOSITION OF CRYOPRESERVED EGGS,
6 SPERM, OR EMBRYOS.

7 20-801.

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

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

16 (1) BE IN WRITING AND SIGNED BY:

17 (I) FOR CRYOPRESERVED EGGS, THE FEMALE ~~DONEE~~ DONOR;

18 (II) FOR CRYOPRESERVED SPERM, THE MALE ~~DONEE~~ DONOR; OR

19 (III) FOR CRYOPRESERVED EMBRYOS, ~~BOTH THE MALE AND~~
20 ~~FEMALE DONEES~~ IF APPLICABLE:

21 1. THE DONOR OF THE CRYOPRESERVED SPERM; AND

22 2. THE DONOR OF THE CRYOPRESERVED EGG;

23 (2) INCLUDE A SELECTION OF ANY OF THE OPTIONS AVAILABLE AND
24 PROVIDED BY THE HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING
25 THE IN VITRO OR ASSISTED REPRODUCTIVE SERVICES FOR THE DISPOSITION OF
26 CRYOPRESERVED EGGS, SPERM, OR EMBRYOS, AS PROVIDED IN SUBSECTION (C) OF
27 THIS SECTION, IN THE EVENT OF:

28 (I) DEATH OF A PARTICIPATING PARTNER;

29 (II) DIVORCE OF THE PARTICIPATING PARTNERS; OR

30 (III) A DECISION BY EITHER OF THE PARTICIPATING PARTNERS TO
31 CEASE PARTICIPATING IN THE IN VITRO OR ASSISTED REPRODUCTIVE SERVICES
32 PROGRAM;

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

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

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

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

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

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

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

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

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

28 20-802.

29 (A) BEFORE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY USE
30 AN ADVANCE DIRECTIVE UNDER § 20-801 OF THIS SUBTITLE, THE HEALTH CARE
31 PROVIDER OR HEALTH CARE FACILITY SHALL SUBMIT THE ADVANCE DIRECTIVE TO
32 THE DEPARTMENT.

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

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

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

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

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

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

9 (2) IS NOT EFFECTIVE.

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

13 (2) ANY DECISION DISAPPROVING ANY PROVISION OF AN ADVANCE
14 DIRECTIVE SHALL CLEARLY AND WITH PARTICULARITY STATE THE GROUNDS FOR
15 THE DISAPPROVAL.

16 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE
17 PROVISIONS OF THIS SECTION.

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