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

Introduced and read first time: February 12, 2004
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health - In Vitro Services - Advance Directives for Cryopreserved Eggs,**
3 **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 20-1001 and 20-1002 to be under the new subtitle "Subtitle 10. Advance
24 Directives for Cryopreserved Eggs, Sperm, or Embryos"
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2003 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 10. ADVANCE DIRECTIVES FOR CRYOPRESERVED EGGS, SPERM, OR
3 EMBRYOS.

4 20-1001.

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 DONOR;

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

16 (III) FOR CRYOPRESERVED EMBRYOS, IF APPLICABLE:

17 1. THE DONOR OF THE CRYOPRESERVED SPERM; AND

18 2. THE DONOR OF THE CRYOPRESERVED EGG;

19 (2) INCLUDE A SELECTION OF THE OPTIONS AVAILABLE AND PROVIDED
20 BY THE HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING THE IN
21 VITRO OR ASSISTED REPRODUCTIVE SERVICES FOR THE DISPOSITION OF
22 CRYOPRESERVED EGGS, SPERM, OR EMBRYOS;

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

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

31 (C) A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY NOT BE HELD
32 LIABLE FOR CIVIL DAMAGES AND IS NOT SUBJECT TO ANY CRIMINAL OR
33 DISCIPLINARY ACTION FOR A DISPOSITION OF CRYOPRESERVED EGGS, SPERM, OR
34 EMBRYOS THAT IS CARRIED OUT IN ACCORDANCE WITH AN ADVANCE DIRECTIVE
35 THAT COMPLIES WITH THE PROVISIONS OF THIS SECTION.

1 20-1002.

2 (A) BEFORE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY USE
3 AN ADVANCE DIRECTIVE UNDER § 20-1001 OF THIS SUBTITLE, THE HEALTH CARE
4 PROVIDER OR HEALTH CARE FACILITY SHALL SUBMIT THE ADVANCE DIRECTIVE TO
5 THE DEPARTMENT.

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

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

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

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

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

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

18 (2) IS NOT EFFECTIVE.

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

22 (2) ANY DECISION DISAPPROVING ANY PROVISION OF AN ADVANCE
23 DIRECTIVE SHALL CLEARLY AND WITH PARTICULARITY STATE THE GROUNDS FOR
24 THE DISAPPROVAL.

25 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE
26 PROVISIONS OF THIS SECTION.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2004.