

HOUSE BILL 1043

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HB 481/03 - HGO

2004 Regular Session  
4lr0248

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

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

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 27, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Health - In Vitro Services - Advance Directives for Cryopreserved Eggs,~~  
3 ~~Sperm, or Embryos~~  
4 Advance Directives - Immunity for Health Care Providers and Facilities

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

24 BY adding to  
25 Article - Health - General  
26 Section 20-1001 ~~and 20-1002~~ to be under the new subtitle "Subtitle 10. Advance

1 Directives for Cryopreserved Eggs, Sperm, or Embryos"  
 2 Annotated Code of Maryland  
 3 (2000 Replacement Volume and 2003 Supplement)

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

6 **Article - Health - General**

7 SUBTITLE 10. ADVANCE DIRECTIVES FOR CRYOPRESERVED EGGS, SPERM, OR  
 8 EMBRYOS.

9 20-1001.

10 A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY IS NOT SUBJECT TO  
 11 CRIMINAL PROSECUTION OR CIVIL LIABILITY AND MAY NOT BE DEEMED TO HAVE  
 12 ENGAGED IN UNPROFESSIONAL CONDUCT AS DETERMINED BY THE APPROPRIATE  
 13 LICENSING AUTHORITY FOR A DISPOSITION OF CRYOPRESERVED EGGS, SPERM, OR  
 14 EMBRYOS THAT IS CARRIED OUT IN ACCORDANCE WITH AN ADVANCE DIRECTIVE  
 15 THAT IS:

16 (1) AUTHORIZED FOR USE BY THE HEALTH CARE FACILITY WHERE THE  
 17 EGGS, SPERM, OR EMBRYOS HAVE BEEN STORED; AND

18 (2) CONSISTENT WITH GUIDELINES DEVELOPED BY THE AMERICAN  
 19 SOCIETY OF REPRODUCTIVE MEDICINE.

20 ~~(A) A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY PROVIDING IN~~  
 21 ~~VITRO OR ASSISTED REPRODUCTIVE SERVICES IN WHICH EGGS, SPERM, OR EMBRYOS~~  
 22 ~~ARE TO BE CRYOPRESERVED FOR STORAGE SHALL REQUIRE COMPLETION OF A~~  
 23 ~~STANDARD ADVANCE DIRECTIVE GOVERNING THE DISPOSITION OF THE~~  
 24 ~~CRYOPRESERVED EGGS, SPERM, OR EMBRYOS THAT COMPLIES WITH THE~~  
 25 ~~PROVISIONS OF THIS SECTION.~~

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

28 ~~(1) BE IN WRITING AND SIGNED BY:~~

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

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

31 ~~(III) FOR CRYOPRESERVED EMBRYOS, IF APPLICABLE:~~

32 ~~1. THE DONOR OF THE CRYOPRESERVED SPERM; AND~~

33 ~~2. THE DONOR OF THE CRYOPRESERVED EGG;~~

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

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

10          (4)     ~~IF APPLICABLE, INCLUDE AN AGREEMENT REQUIRING COMPLIANCE~~  
11 ~~WITH THE POLICIES AND PROCEDURES TO BE FOLLOWED IN THE EVENT OF~~  
12 ~~NONPAYMENT OF STORAGE FEES.~~

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

18 ~~20-1002.~~

19        (A)     ~~BEFORE A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY MAY USE~~  
20 ~~AN ADVANCE DIRECTIVE UNDER § 20-1001 OF THIS SUBTITLE, THE HEALTH CARE~~  
21 ~~PROVIDER OR HEALTH CARE FACILITY SHALL SUBMIT THE ADVANCE DIRECTIVE TO~~  
22 ~~THE DEPARTMENT.~~

23        (B)     ~~THE DEPARTMENT SHALL CONSULT WITH ASSISTANT ATTORNEYS~~  
24 ~~GENERAL FOR THE DEPARTMENT TO REVIEW THE ADVANCE DIRECTIVE TO ASSURE:~~

25           (1)     ~~THAT THE RIGHTS, RESPONSIBILITIES, AND DUTIES OF THE PARTIES~~  
26 ~~ARE SET FORTH CLEARLY AND LEGIBLY;~~

27           (2)     ~~THAT THE ADVANCE DIRECTIVE COMPLIES WITH APPLICABLE~~  
28 ~~FEDERAL AND STATE LAWS; AND~~

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

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

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

35           (2)     ~~IS NOT EFFECTIVE.~~

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

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

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

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