

(PRE-FILED)

By: **Delegate Smigiel**
Requested: September 12, 2005
Introduced and read first time: January 11, 2006
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Power of Attorney - Health Care Decisions**

3 FOR the purpose of requiring the Office of the Attorney General, in consultation with
4 the Department of Health and Mental Hygiene, to develop certain power of
5 attorney forms; requiring the Office of the Attorney General to make the forms
6 available on the Office's website; requiring the Secretary of Health and Mental
7 Hygiene to make the forms available on the Department's website; requiring the
8 forms to be mailed to the Secretary of Health and Mental Hygiene in a certain
9 manner; providing that a certain power of attorney form shall authorize an
10 individual to make certain health care decisions, visit a certain individual in a
11 health care facility, and make certain decisions regarding the death of a certain
12 individual; requiring a certain power of attorney form to contain certain
13 information and be notarized; requiring the Secretary of Health and Mental
14 Hygiene to register certain forms in a certain manner and to return the forms to
15 certain individuals; requiring the Secretary of Health and Mental Hygiene to
16 keep a certain registry; providing that a certain power of attorney form is no
17 longer valid when a certain notice of termination is accepted by the Secretary of
18 Health and Mental Hygiene; requiring certain individuals and entities to
19 comply with a certain power of attorney form; providing that this Act does not
20 prohibit a health care facility from establishing reasonable restrictions on
21 visitation; requiring the Office of the Attorney General, in collaboration with the
22 Department of Health and Mental Hygiene, to adopt certain regulations; and
23 generally relating to a public power of attorney and health care decisions.

24 BY adding to
25 Article - Health - General
26 Section 20-1101 through 20-1109, inclusive, to be under the new subtitle
27 "Subtitle 11. Public Power of Attorney for Health Care Decisions"
28 Annotated Code of Maryland
29 (2005 Replacement Volume and 2005 Supplement)

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

1 **Article - Health - General**

2 SUBTITLE 11. PUBLIC POWER OF ATTORNEY FOR HEALTH CARE DECISIONS.

3 20-1101.

4 (A) THE OFFICE OF THE ATTORNEY GENERAL, IN CONSULTATION WITH THE
5 DEPARTMENT, SHALL DEVELOP THE FOLLOWING FORMS:6 (1) A CONTINUOUS AND DURABLE POWER OF ATTORNEY FOR HEALTH
7 CARE DECISIONS FORM; AND8 (2) A NOTICE OF TERMINATION OF POWER OF ATTORNEY FOR HEALTH
9 CARE DECISIONS FORM.10 (B) (1) THE OFFICE OF THE ATTORNEY GENERAL SHALL MAKE THE FORMS
11 AVAILABLE ON THE OFFICE'S WEBSITE.12 (2) THE SECRETARY SHALL MAKE THE FORMS AVAILABLE ON THE
13 DEPARTMENT'S WEBSITE.14 (C) THE FORMS SHALL BE MAILED TO THE SECRETARY BY CERTIFIED MAIL
15 ACCORDING TO INSTRUCTIONS PROVIDED ON THE FORMS.

16 20-1102.

17 THE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM SHALL
18 AUTHORIZE AN INDIVIDUAL TO DESIGNATE ANOTHER INDIVIDUAL TO:19 (1) MAKE MEDICAL DECISIONS ON BEHALF OF THE DESIGNATING
20 INDIVIDUAL;21 (2) VISIT THE DESIGNATING INDIVIDUAL IN A HEALTH CARE FACILITY
22 IF THE DESIGNATING INDIVIDUAL IS RECEIVING HEALTH CARE SERVICES FROM THE
23 HEALTH CARE FACILITY; AND24 (3) MAKE DECISIONS REGARDING THE DEATH OF THE DESIGNATING
25 INDIVIDUAL, INCLUDING DECISIONS REGARDING DISPOSITION OF THE BODY AND
26 FUNERAL ARRANGEMENTS.

27 20-1103.

28 (A) THE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM SHALL
29 REQUIRE THE DESIGNATING INDIVIDUAL AND THE DESIGNEE TO:

30 (1) VERIFY THAT EACH INDIVIDUAL IS AT LEAST 18 YEARS OLD;

31 (2) SIGN THE FORM; AND

32 (3) PROVIDE A MAILING ADDRESS.

1 (B) THE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM SHALL
2 REQUIRE THE SIGNATURE AND SEAL OF ACKNOWLEDGMENT OF A NOTARY PUBLIC
3 TO BE VALID.

4 (C) THE SECRETARY SHALL REGISTER THE POWER OF ATTORNEY FOR
5 HEALTH CARE DECISIONS FORM AS PROVIDED IN § 20-1105 OF THIS SUBTITLE, AND
6 SHALL RETURN A COPY OF THE REGISTERED FORM TO THE DESIGNATING
7 INDIVIDUAL AND DESIGNEE.

8 20-1104.

9 (A) THE NOTICE OF TERMINATION OF POWER OF ATTORNEY FOR HEALTH
10 CARE DECISIONS FORM SHALL REQUIRE THE DESIGNATING INDIVIDUAL TO SIGN
11 THE FORM.

12 (B) THE SECRETARY SHALL REGISTER THE NOTICE OF TERMINATION OF
13 POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM AS PROVIDED IN § 20-1105
14 OF THIS SUBTITLE, AND SHALL RETURN A COPY OF THE FORM TO THE FORMER
15 DESIGNATING INDIVIDUAL AND DESIGNEE.

16 20-1105.

17 THE SECRETARY SHALL KEEP A POWER OF ATTORNEY FOR HEALTH CARE
18 DECISIONS REGISTRY, WHICH SHALL CONTAIN:

19 (1) A COMPLETE RECORD OF EACH POWER OF ATTORNEY FOR HEALTH
20 CARE DECISIONS FORM AND NOTICE OF TERMINATION OF POWER OF ATTORNEY FOR
21 HEALTH CARE DECISIONS FORM RECEIVED;

22 (2) PROPERLY INDEXED, THE NAME OF EACH DESIGNATING INDIVIDUAL
23 WHO HAS A POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM ON FILE; AND

24 (3) THE DATE EACH FORM WAS RECORDED AND THE NAME OF THE
25 NOTARY PUBLIC WHO WITNESSED THE SIGNATURES.

26 20-1106.

27 AN INDIVIDUAL'S POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM IS
28 NO LONGER VALID WHEN A NOTICE OF TERMINATION OF POWER OF ATTORNEY FOR
29 HEALTH CARE DECISIONS FORM HAS BEEN RECEIVED FROM THE INDIVIDUAL AND
30 REGISTERED BY THE SECRETARY.

31 20-1107.

32 A HEALTH CARE FACILITY, CEMETERY, FUNERAL DIRECTOR, OR OTHER PERSON
33 SUBJECT TO THE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM:

34 (1) SHALL COMPLY WITH THE POWER OF ATTORNEY FOR HEALTH CARE
35 DECISIONS FORM; AND

1 (2) IS NOT LIABLE FOR VIOLATING THIS SUBTITLE FOR GOOD FAITH
2 COMPLIANCE WITH THE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS FORM.

3 20-1108.

4 THIS SUBTITLE DOES NOT PROHIBIT A HEALTH CARE FACILITY FROM
5 ESTABLISHING REASONABLE RESTRICTIONS ON VISITATION, INCLUDING
6 RESTRICTIONS ON THE HOURS OF VISITATION AND NUMBER OF VISITORS.

7 20-1109.

8 THE OFFICE OF THE ATTORNEY GENERAL, IN COLLABORATION WITH THE
9 DEPARTMENT, SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF
10 THIS SUBTITLE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2006.