

# HOUSE BILL 250

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By: **Delegates Kullen, Eckardt, Bromwell, Kipke, Montgomery, Pena-Melnyk, Reznik, Riley, V. Turner, and Weldon**

Introduced and read first time: January 29, 2009

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Authority to Certify Incapacity or Death – Nurse**  
3 **Practitioners**

4 FOR the purpose of authorizing certain nurse practitioners to make a certain  
5 determination of incapacity or debilitation under certain circumstances;  
6 authorizing certain nurse practitioners to fill out and sign a certain certificate of  
7 death under certain circumstances; authorizing certain nurse practitioners to  
8 certify that certain patients are incapable of making a certain decision under  
9 certain circumstances; authorizing certain nurse practitioners to certify that  
10 certain patients are in a certain health condition; and generally relating to  
11 nurse practitioners and authority to certify incapacity or death.

12 BY repealing and reenacting, with amendments,  
13 Article – Estates and Trusts  
14 Section 13–906  
15 Annotated Code of Maryland  
16 (2001 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Health – General  
19 Section 4–212, 5–602(e), 5–606, and 5–608(a)  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2008 Supplement)

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

24 **Article – Estates and Trusts**

25 13–906.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) A determination of incapacity or debilitation under this subtitle  
2 shall:

3 (i) Be made by the attending physician **OR NURSE**  
4 **PRACTITIONER** to a reasonable degree of medical certainty;

5 (ii) Be in writing; and

6 (iii) Contain the attending physician's **OR NURSE**  
7 **PRACTITIONER'S** opinion regarding the cause and nature of the parent's incapacity or  
8 debilitation, and the extent and probable duration of the incapacity or debilitation.

9 (2) If a standby guardian's identity is known to an attending physician  
10 **OR NURSE PRACTITIONER**, the attending physician **OR NURSE PRACTITIONER**  
11 shall provide a copy of a determination of incapacity or debilitation to the standby  
12 guardian.

13 (b) If requested by a standby guardian, an attending physician **OR NURSE**  
14 **PRACTITIONER** shall make a determination regarding the parent's incapacity or  
15 debilitation for purposes of this subtitle.

16 (c) If the parent is able to comprehend the information, a standby guardian  
17 shall inform the parent of:

18 (1) The beginning of the standby guardian's authority as a result of a  
19 determination of incapacity; and

20 (2) The parent's right to revoke the authority promptly after receipt of  
21 the determination of incapacity.

## 22 **Article - Health - General**

23 4-212.

24 (a) This section does not apply to a fetal death.

25 (b) (1) A certificate of death regardless of age of decedent shall be filled  
26 out and signed by:

27 (i) The medical examiner, if the medical examiner takes charge  
28 of the body; or

29 (ii) If the medical examiner does not take charge of the body, the  
30 physician or [physician's collaborating] nurse practitioner who last attended the  
31 deceased.

1           (2) The medical examiner, physician, or [physician's collaborating]  
2 nurse practitioner shall fill in only the following information on the certificate of  
3 death:

4           (i) The name of the deceased.

5           (ii) The cause of death and medical certification.

6           (iii) The date and hour of death.

7           (iv) The place where death occurred.

8           (3) Any other information that is required on the certificate of death  
9 regardless of age of decedent shall be filled in:

10           (i) By the person who has charge of the body; or

11           (ii) If the State Anatomy Board has charge of the body, by the  
12 person who last had charge of the body before it was sent to the State Anatomy Board.

13           (4) The medical certification shall be completed within 24 hours after  
14 receipt of the death certificate by the physician or [physician's collaborating] nurse  
15 practitioner in charge of the patient's care for the illness or condition which resulted in  
16 death, except when inquiry is required by the medical examiner.

17           (5) In the absence or inability of the attending physician or  
18 [physician's collaborating] nurse practitioner or with the attending physician's or  
19 [physician's collaborating] nurse practitioner's approval, the certificate may be  
20 completed by:

21           (i) The attending physician's associate;

22           (ii) The chief medical officer or designee of the institution in  
23 which death occurred; or

24           (iii) The physician who performed an autopsy upon the decedent,  
25 provided the individual has access to the medical history of the case and death is due  
26 to natural causes.

27           (6) The person completing the cause of death and medical certification  
28 shall attest to the accuracy by signature or by an approved electronic process.

29           (7) The funeral director or person acting as the funeral director shall  
30 in all cases obtain the medical certification from the person responsible for its  
31 completion or obtain assurance that the medical certification has been provided to the  
32 Secretary by an approved electronic process.

1 (c) Each individual concerned with carrying out this subtitle promptly shall  
2 notify the medical examiner if:

3 (1) The deceased was not under treatment by a physician **OR NURSE**  
4 **PRACTITIONER** during the terminal illness;

5 (2) The cause of death is unknown; or

6 (3) The individual considers any of the following conditions to be the  
7 cause of death or to have contributed to the death:

8 (i) An accident, including a fall with a fracture or other injury.

9 (ii) Homicide.

10 (iii) Suicide.

11 (iv) Other external manner of death.

12 (v) Alcoholism.

13 (vi) Criminal or suspected criminal abortion.

14 (d) (1) If, within 24 hours after taking charge of a body, the medical  
15 examiner has not determined the cause of death, the medical examiner shall enter  
16 "investigation pending" in the cause of death section of the death certificate.

17 (2) As soon as the medical examiner determines the cause of death,  
18 the medical examiner shall send to the Secretary a report of the cause of death, for  
19 entry on the certificate.

20 (e) (1) A physician or [physician's collaborating] nurse practitioner who  
21 fills out a certificate of death shall give it or transmit it by approved electronic media,  
22 including facsimile, to the mortician within 24 hours after the death occurred.

23 (2) A medical examiner who fills out a certificate of death shall give it  
24 or transmit it by approved electronic media, including facsimile, to the mortician  
25 within 24 hours after the medical examiner took charge of the body.

26 (f) (1) If a death occurs on a common carrier in the United States and the  
27 body is removed from the carrier in this State, the death shall be registered in this  
28 State, and the place where it is first removed shall be considered the place of death.  
29 When a death occurs on a common carrier while in international waters or air space or  
30 in a foreign country or its air space and the body is first removed from the carrier in  
31 this State, the death shall be registered in this State, but the certificate shall show the  
32 actual place of death insofar as can be determined.

1           (2)    The individual in charge or the owner of the common carrier or a  
2   designee shall file a certificate of death within 24 hours after the body is removed from  
3   the carrier.

4           (3)    If the death occurred under any of the conditions or circumstances  
5   set forth in subsection (c) of this section, the medical examiner shall be notified.

6           (g)    A mortician who obtains a certificate of death under this section shall file  
7   the certificate within 72 hours after the death.

8           (h)    (1)   Except as authorized under this subtitle, an individual who has a  
9   duty to fill out and sign a certificate of death may not execute more than one  
10  certificate for a death.

11           (2)    The attending physician, the [physician's collaborating] nurse  
12  practitioner, or a medical examiner who takes charge of a body may file a replacement  
13  death certificate if a correction that the physician, the [physician's collaborating]  
14  nurse practitioner, or medical examiner authorizes cannot be entered legibly on the  
15  original certificate.

16  5-602.

17           (e)    (1)   Unless otherwise provided in the document, an advance directive  
18  shall become effective when the declarant's attending physician and a second  
19  physician **OR A NURSE PRACTITIONER** certify in writing that the patient is incapable  
20  of making an informed decision.

21           (2)    If a patient is unconscious, or unable to communicate by any  
22  means, the certification of a second physician **OR A NURSE PRACTITIONER** is not  
23  required under paragraph (1) of this subsection.

24  5-606.

25           (a)    (1)   Prior to providing, withholding, or withdrawing treatment for  
26  which authorization has been obtained or will be sought under this subtitle, the  
27  attending physician and a second physician **OR A NURSE PRACTITIONER**, one of  
28  whom shall have examined the patient within 2 hours before making the certification,  
29  shall certify in writing that the patient is incapable of making an informed decision  
30  regarding the treatment. The certification shall be based on a personal examination of  
31  the patient.

32           (2)    If a patient is unconscious, or unable to communicate by any  
33  means, the certification of a second physician **OR NURSE PRACTITIONER** is not  
34  required under paragraph (1) of this subsection.

1 (3) When authorization is sought for treatment of a mental illness, the  
2 second physician **OR NURSE PRACTITIONER** may not be otherwise currently involved  
3 in the treatment of the person assessed.

4 (4) The cost of an assessment to certify incapacity under this  
5 subsection shall be considered for all purposes a cost of the patient's treatment.

6 (b) A health care provider may not withhold or withdraw life-sustaining  
7 procedures on the basis of an advance directive where no agent has been appointed or  
8 on the basis of the authorization of a surrogate, unless:

9 (1) The patient's attending physician and a second physician **OR A**  
10 **NURSE PRACTITIONER** have certified that the patient is in a terminal condition or  
11 has an end-stage condition; or

12 (2) Two physicians, one of whom is a neurologist, neurosurgeon, or  
13 other physician who has special expertise in the evaluation of cognitive functioning,  
14 certify that the patient is in a persistent vegetative state.

15 5-608.

16 (a) (1) Certified or licensed emergency medical services personnel shall be  
17 directed by protocol to follow emergency medical services "do not resuscitate orders"  
18 pertaining to adult patients in the outpatient setting in accordance with protocols  
19 established by the Maryland Institute for Emergency Medical Services Systems in  
20 conjunction with the State Board of Physicians.

21 (2) Emergency medical services "do not resuscitate orders" may not  
22 authorize the withholding of medical interventions, or therapies deemed necessary to  
23 provide comfort care or to alleviate pain.

24 (3) A health care provider, other than certified or licensed emergency  
25 medical services personnel, who sees, in a valid form, an emergency medical services  
26 "do not resuscitate order" described in paragraph (1) of this subsection that is not  
27 superseded by a subsequent physician's order **OR NURSE PRACTITIONER'S ORDER**:

28 (i) May, before a patient's cardiac or respiratory arrest, provide,  
29 withhold, or withdraw treatment in accordance with the emergency medical services  
30 "do not resuscitate order"; and

31 (ii) Shall, after a patient's cardiac or respiratory arrest,  
32 withhold or withdraw treatment in accordance with the emergency medical services  
33 "do not resuscitate order".

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
35 October 1, 2009.