

SENATE BILL 759

J2, N2

9lr3030
CF HB 250

By: **Senator Dyson**

Introduced and read first time: February 6, 2009

Assigned to: Finance and Judicial Proceedings

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.

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.