

Chapter 412

(House Bill 293)

AN ACT concerning

**Guardianship, of Disabled Persons and Revocation of Advance Directives, and
Surrogates ~~Disabled Persons and Mental Health Services~~**

FOR the purpose of authorizing a court to appoint a guardian of the person of a disabled person for a limited period of time under certain circumstances; specifying that certain rights, duties, and powers that a court may order include the duty to file a certain report; ~~providing that a revocation of an advance directive for mental health services by a certain declarant is not effective until a certain period of time after the request for revocation is made by the declarant; repealing the prohibition against certain surrogate decision makers authorizing treatment for a mental disorder authorizing a certain individual declarant to waive certain rights when making an advance directive; making conforming changes;~~ and generally relating to guardianship, and advance directives, ~~and surrogate decision making.~~

BY repealing and reenacting, with amendments,
 Article – Estates and Trusts
 Section 13–708(a) and (b)
 Annotated Code of Maryland
 (2011 Replacement Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 5–604 ~~and 5–605(d)~~
 Annotated Code of Maryland
 (2009 Replacement Volume and 2014 Supplement)

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

Article – Estates and Trusts

13–708.

(a) (1) The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person.

(2) **(I)** The court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.

(II) THE COURT MAY APPOINT A GUARDIAN OF THE PERSON OF A DISABLED PERSON FOR A LIMITED PERIOD OF TIME IF IT APPEARS PROBABLE THAT THE DISABILITY WILL CEASE WITHIN 1 YEAR OF THE APPOINTMENT OF THE GUARDIAN.

(b) Subject to subsection (a) of this section, the rights, duties, and powers which the court may order include, but are not limited to:

(1) The same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;

(2) The right to custody of the disabled person and to establish his place of abode within and without the State, provided there is court authorization for any change in the classification of abode, except that no one may be committed to a mental facility without an involuntary commitment proceeding as provided by law;

(3) The duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person;

(4) The duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings;

(5) If a guardian of the estate of the disabled person has not been appointed, the right to commence proceedings to compel performance by any person of his duty to support the disabled person, and to apply the estate to the support, care, and education of the disabled person, except that the guardian of the person may not obtain funds from the estate for room and board that the guardian, his spouse, parent, or child provide without a court order approving the charge, and the duty to exercise care to conserve any excess estate for the needs of the disabled person;

(6) If a guardian of the estate has been appointed, the duty to control the custody and care of the disabled person, to receive reasonable sums for room and board provided to the disabled person, and to account to the guardian of the estate for funds expended, and the right to ask the guardian of the estate to expend the estate in payment of third persons for care and maintenance of the disabled person;

(7) The duty to file an annual **OR BIENNIAL** report with the court indicating the present place of residence and health status of the ward, the guardian's plan for preserving and maintaining the future well-being of the ward, and the need for continuance or cessation of the guardianship or for any alteration in the powers of the guardian. The court shall renew the appointment of the guardian if it is satisfied that the grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist. If the court believes such grounds may not exist, it shall hold a hearing, similar to that

provided for in § 13–705 of this subtitle, at which the guardian shall be required to prove that such grounds exist. If the court does not make these findings, it shall order the discontinuance of the guardianship of the person. If the guardian declines to participate in the hearing, the court may appoint another guardian to replace him pursuant to the priorities in § 13–707(a) of this subtitle; and

(8) The power to give necessary consent or approval for:

(i) Medical or other professional care, counsel, treatment, or service, including admission to a hospital or nursing home or transfer from one medical facility to another;

(ii) Withholding medical or other professional care, counsel, treatment, or service; and

(iii) Withdrawing medical or other professional care, counsel, treatment, or service.

Article – Health – General

5–604.

(a) **(1) [An] ~~SUBJECT TO~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN advance directive may be revoked at any time by a declarant ~~THE INDIVIDUAL WHO MADE THE ADVANCE DIRECTIVE~~ *a declarant* by a signed and dated written or electronic document, by physical cancellation or destruction, by an oral statement to a health care practitioner or by the execution of a subsequent directive.**

~~**(2) A REVOCATION OF AN ADVANCE DIRECTIVE FOR MENTAL HEALTH SERVICES BY A DECLARANT WHO HAS BEEN CERTIFIED INCAPABLE OF MAKING AN INFORMED DECISION UNDER § 5–602(E) OF THIS SUBTITLE IS NOT EFFECTIVE UNTIL 72 HOURS AFTER THE REQUEST FOR REVOCATION IS MADE BY THE DECLARANT.**~~

(2) A ~~COMPETENT INDIVIDUAL~~ DECLARANT, KNOWINGLY AND VOLUNTARILY, MAY ELECT IN AN ADVANCE DIRECTIVE TO WAIVE THE RIGHT UNDER PARAGRAPH (1) OF THIS SUBSECTION TO REVOKE ANY PART OR ALL OF THE ADVANCE DIRECTIVE, INCLUDING THE APPOINTMENT OF AN AGENT, DURING A PERIOD IN WHICH THE ~~INDIVIDUAL~~ DECLARANT HAS BEEN CERTIFIED INCAPABLE OF MAKING AN INFORMED DECISION UNDER § 5–602(E) OF THIS SUBTITLE.

(b) If a declarant ~~AN INDIVIDUAL~~ *a declarant* revokes an advance directive by an oral statement to a health care practitioner, the practitioner and a witness to the oral revocation shall document the substance of the oral revocation in the ~~declarant's~~ ~~INDIVIDUAL'S~~ *declarant's* medical record.

(c) It shall be the responsibility of the ~~declarant~~ INDIVIDUAL declarant, to the extent reasonably possible, to notify any person to whom the ~~declarant~~ INDIVIDUAL declarant has provided a copy of the directive.

~~5-605.~~

~~(d) A surrogate may not authorize:~~

~~(1) Sterilization; or~~

~~(2) Treatment for a mental disorder.] STERILIZATION.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, May 12, 2015.