

SENATE BILL 562

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7lr2315
CF HB 498

By: **Senators Kelley and Lee**

Introduced and read first time: February 1, 2017

Assigned to: Judicial Proceedings

Reassigned: Finance, February 2, 2017

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2017

CHAPTER _____

1 AN ACT concerning

2 **Health Care Decisions Act – Advance Directives and Surrogate Decision Making**
3 **– Disqualified Individuals**

4 FOR the purpose of prohibiting certain individuals from serving as a health care agent
5 under certain circumstances; establishing a certain exception; prohibiting certain
6 individuals from making decisions about health care for certain individuals ~~who have~~
7 ~~been certified to be incapable of making an informed decision~~; under certain
8 circumstances; providing that a health care provider may only be required to make
9 a certain inquiry under certain circumstances; requiring a person who obtains
10 certain information that would prohibit an individual from serving as a health care
11 agent or making health care decisions for a certain individual to provide that
12 information to a certain health care provider or a certain health care facility; defining
13 a certain term; and generally relating to the Health Care Decisions Act and decision
14 making by health care agents and surrogates.

15 BY repealing and reenacting, without amendments,
16 Article – Health – General
17 Section 5–602(a)
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2016 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Health – General
22 Section 5–602(b) and 5–605(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Annotated Code of Maryland (2015 Replacement Volume and 2016 Supplement)

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

Article – Health – General

6 5-602.

(a) (1) Any competent individual may, at any time, make a written or electronic advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual.

(III) "DISQUALIFIED PERSON" MEANS:

21 (III) "PERSON ELIGIBLE FOR RELIEF" HAS THE MEANING
22 STATED IN § 4-501 OF THE FAMILY LAW ARTICLE.

26 (3) (I) A disqualified person may not serve as a health care agent unless
27 the person:

28 [i] 1. Would qualify as a surrogate decision maker under
29 § 5-605(a) of this subtitle; or

30 [ii] 2. Was appointed by the declarant before the date on which
31 the declarant received, or contracted to receive, health care from the facility.

(II) AN INDIVIDUAL MAY NOT SERVE AS A HEALTH CARE AGENT

2 IF:

1. THE INDIVIDUAL IS THE SUBJECT OF AN INTERIM, PROTECTIVE ORDER AND THE DECLARANT IS A PERSON UNDER THE ORDER; OR

2. THE EXCEPT AS PROVIDED IN SUBPARAGRAPH (III)
THE INDIVIDUAL IS THE SPOUSE OF THE DECLARANT AND:

**B. THE INDIVIDUAL OR DECLARANT HAS FILED AN
ORCE.**

**2. HAS OTHERWISE INDICATED AN INTENT TO HAVE THE
THE DECLARANT'S HEALTH CARE AGENT.**

19 (4) An agent appointed under this subtitle has decision making priority
20 over any individuals otherwise authorized under this subtitle to make health care decisions
21 for a declarant.

1 (a) (1) **(I)** In this subsection[, “unavailable” means:] **THE FOLLOWING**
2 **WORDS HAVE THE MEANINGS INDICATED.**

(II) "PERSON ELIGIBLE FOR RELIEF" HAS THE MEANING
STATED IN § 4-501 OF THE FAMILY LAW ARTICLE.

5 (III) "UNAVAILABLE" MEANS:

23 (i) A guardian for the patient, if one has been appointed;

24 (ii) The patient's spouse or domestic partner;

25 (iii) An adult child of the patient;

26 (iv) A parent of the patient;

27 (v) An adult brother or sister of the patient; or

28 (vi) A friend or other relative of the patient who meets the
29 requirements of paragraph (3) of this subsection.

30 (3) A friend or other relative may make decisions about health care for a
31 patient under paragraph (2) of this subsection if the person:

- (i) Is a competent individual; and
- (ii) Presents an affidavit to the attending physician stating:
 - 1. That the person is a relative or close friend of the patient;
 - 2. Specific facts and circumstances demonstrating that the named regular contact with the patient sufficient to be familiar with the health, and personal beliefs.

10 (I) THE INDIVIDUAL IS THE SUBJECT OF AN INTERIM,
11 TEMPORARY, OR FINAL PROTECTIVE ORDER AND THE PATIENT IS A PERSON
12 ELIGIBLE FOR RELIEF UNDER THE ORDER; OR

(II) THE INDIVIDUAL IS THE SPOUSE OF THE PATIENT AND:

18 **[(4)] (5)** The attending physician shall include the affidavit presented
19 under paragraph (3) of this subsection in the patient's medical record.

20 **(6) (I) A HEALTH CARE PROVIDER MAY ONLY BE REQUIRED TO**
21 **MAKE A REASONABLE INQUIRY AT THE TIME OF ADMISSION OF A PATIENT TO A**
22 **HEALTH CARE FACILITY OR AT THE TIME A NEW HEALTH CARE AGENT IS IDENTIFIED**
23 **TO DETERMINE WHETHER AN INDIVIDUAL WOULD BE PROHIBITED FROM MAKING**
24 **HEALTH CARE DECISIONS FOR THE PATIENT UNDER PARAGRAPH (4) OF THIS**
25 **SUBSECTION.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2017.