

Article - Health - General

§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.

(2) Notwithstanding any other provision of law, in the absence of a validly executed or witnessed advance directive, any authentic expression made by an individual while competent of the individual's wishes regarding health care for the individual shall be considered.

(b) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Disqualified person" means:

1. An owner, operator, or employee of a health care facility from which the declarant is receiving health care; or

2. A spouse, parent, child, or sibling of an owner, operator, or employee of a health care facility from which the declarant is receiving health care.

(iii) "Person eligible for relief" has the meaning stated in § 4-501 of the Family Law Article.

(2) Any competent individual may, at any time, make a written or electronic advance directive appointing an agent to make health care decisions for the individual under the circumstances stated in the advance directive.

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

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

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

(ii) An individual may not serve as a health care agent if:

1. The individual is the subject of an interim, temporary, or final protective order and the declarant is a person eligible for relief under the order; or

2. Except as provided in subparagraph (iii) of this paragraph, the individual is the spouse of the declarant and:

A. The individual and declarant have executed a separation agreement; or

B. The individual or declarant has filed an application for divorce.

(iii) An individual may serve as a health care agent for a declarant after the date of the execution of a separation agreement or the filing of an application for divorce if the declarant:

1. Is able to make a decision about the individual's appointment as the declarant's health care agent; or

2. Has otherwise indicated an intent to have the individual serve as the declarant's health care agent.

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

(5) A person who obtains new information that would prohibit an individual from serving as a declarant's health care agent under paragraph (3)(ii) of this subsection shall provide the information to any health care provider or health care facility providing services to the declarant.

(c) (1) Except as provided in paragraph (3) of this subsection, a written or electronic advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses.

(2) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, any competent individual may serve as a witness to an advance directive, including an employee of a health care facility, nurse practitioner, physician assistant, or physician caring for the declarant if acting in good faith.

(ii) The health care agent of the declarant may not serve as a witness.

(iii) At least one of the witnesses must be an individual who is not knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any financial benefit by reason of the death of the declarant.

(3) A witness is not required for an electronic advance directive if the declarant's identity has been authenticated in accordance with the National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline or, if replaced, the replacement guideline.

(4) The State-designated health information exchange may accept as valid an unwitnessed electronic advance directive in the form of a video record or file to state the declarant's wishes regarding health care for the declarant or to appoint an agent if the video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives service recognized by the Maryland Health Care Commission.

(d) (1) Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make health care decisions for the individual.

(2) An oral advance directive shall have the same effect as a written or electronic advance directive if made in the presence of the attending physician, physician assistant, or nurse practitioner and one witness and if the substance of the oral advance directive is documented as part of the individual's medical record. The documentation shall be dated and signed by the attending physician, physician assistant, or nurse practitioner and the witness.

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

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

(f) (1) It shall be the responsibility of the declarant to notify the attending physician that an advance directive has been made. In the event the declarant becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the existence of an advance directive.

(2) An attending physician who is notified of the existence of the advance directive shall promptly:

(i) If the advance directive is written or electronic, make the advance directive or a copy of the advance directive a part of the declarant's medical records; or

(ii) If the advance directive is oral, make the substance of the advance directive, including the date the advance directive was made and the name of the attending physician, a part of the declarant's medical records.

(g) It shall be the responsibility of the declarant to notify a health care agent that the agent has been named in an advance directive to act on the declarant's behalf.

(h) Unless otherwise provided in the patient's advance directive, a patient's agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

(i) The absence of an advance directive creates no presumption as to the patient's intent to consent to or refuse life-sustaining procedures.