

HOUSE BILL 1323

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By: **Delegate Rosenberg**

Introduced and read first time: February 12, 2026

Assigned to: Health

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions Act – Surrogate Decision Making – Hospital Surrogate**
3 **Committee**

4 FOR the purpose of requiring hospitals to establish a surrogate committee to provide
5 surrogate decision making for an unrepresented patient; authorizing the surrogate
6 committee to make treatment decisions for unrepresented patients under certain
7 circumstances; establishing requirements for the composition, training, and
8 procedures of a surrogate committee; and generally relating to health care decision
9 making by surrogate committees.

10 BY repealing and reenacting, without amendments,
11 Article – Health – General
12 Section 5–601(a) and 5–606
13 Annotated Code of Maryland
14 (2023 Replacement Volume and 2025 Supplement)

15 BY adding to
16 Article – Health – General
17 Section 5–601(x) and (z) and 5–604.2
18 Annotated Code of Maryland
19 (2023 Replacement Volume and 2025 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Health – General
22 Section 5–601(x) and 5–605
23 Annotated Code of Maryland
24 (2023 Replacement Volume and 2025 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 5–601.

3 (a) In this subtitle the following words have the meanings indicated.

4 **(X) “SURROGATE COMMITTEE” MEANS A COMMITTEE ESTABLISHED BY A**
5 **HOSPITAL UNDER § 5–604.2 OF THIS SUBTITLE.**6 **[(x)] (Y) “Terminal condition” means an incurable condition caused by injury,**
7 **disease, or illness which, to a reasonable degree of medical certainty, makes death**
8 **imminent and from which, despite the application of life–sustaining procedures, there can**
9 **be no recovery.**10 **(Z) “UNREPRESENTED PATIENT” MEANS A PATIENT:**11 **(1) WHO HAS BEEN CERTIFIED TO BE INCAPABLE OF MAKING AN**
12 **INFORMED DECISION UNDER § 5–606(A) OF THIS SUBTITLE;**13 **(2) WHO IS RECEIVING CARE IN A HOSPITAL;**14 **(3) WHO DOES NOT HAVE AN ADVANCE DIRECTIVE;**15 **(4) FOR WHOM AN IDENTIFIABLE SURROGATE LISTED IN §**
16 **5–605(A)(2)(I), (II), (III), (IV), (V), OR (VI) OF THIS SUBTITLE IS UNAVAILABLE; AND**17 **(5) FOR WHOM THERE IS NO OTHER EVIDENCE FROM THE PATIENT’S**
18 **HISTORY OR FROM OTHER PARTIES THAT IS SUFFICIENT TO SUPPORT A**
19 **REASONABLY CONCLUSIVE JUDGMENT ABOUT WHAT THE PATIENT WOULD LIKELY**
20 **CHOOSE REGARDING MEDICAL TREATMENT.**21 **5–604.2.**22 **(A) EACH HOSPITAL SHALL ESTABLISH A SURROGATE COMMITTEE TO**
23 **PROVIDE SURROGATE DECISION MAKING FOR AN UNREPRESENTED PATIENT.**24 **(B) A SURROGATE COMMITTEE SHALL CONSIST OF:**25 **(1) A PHYSICIAN WHO:**26 **(I) WORKS OR HAS WORKED IN THE HOSPITAL; AND**27 **(II) IS NOT INVOLVED IN THE TREATMENT OF THE**
28 **UNREPRESENTED PATIENT;**

1 **(2) A NURSE WHO:**

2 **(I) WORKS OR HAS WORKED IN THE HOSPITAL; AND**

3 **(II) IS NOT INVOLVED IN THE TREATMENT OF THE**
4 **UNREPRESENTED PATIENT;**

5 **(3) A SOCIAL WORKER OR A MEMBER OF THE CLERGY WHO WORKS OR**
6 **HAS WORKED IN THE HOSPITAL;**

7 **(4) A MEMBER OF THE HOSPITAL'S PATIENT CARE ADVISORY**
8 **COMMITTEE;**

9 **(5) A PATIENT ADVOCATE WHO IS NOT AFFILIATED WITH THE**
10 **HOSPITAL AND WHO MAY BE:**

11 **(I) AN ATTORNEY WHO REPRESENTS OR SERVES INDIVIDUALS**
12 **WITH HEALTH CARE ISSUES;**

13 **(II) A SOCIAL WORKER WHO REPRESENTS OR SERVES**
14 **INDIVIDUALS WITH HEALTH CARE ISSUES; OR**

15 **(III) AN INDIVIDUAL WHO WORKS FOR AN ENTITY THAT**
16 **PROVIDES PATIENT ADVOCACY SERVICES;**

17 **(6) AN INDIVIDUAL WHO IS NOT EMPLOYED BY THE HOSPITAL AND**
18 **WHO IS OR HAS BEEN:**

19 **(I) A PATIENT IN THE HOSPITAL OR THE HEALTH CARE SYSTEM**
20 **WITH WHICH THE HOSPITAL IS AFFILIATED; OR**

21 **(II) A CARETAKER OF A PATIENT WHO LACKS**
22 **DECISION-MAKING CAPACITY; AND**

23 **(7) (I) AN EMPLOYEE OR A VOLUNTEER AFFILIATED WITH A**
24 **DISABILITY OR AGING PERSONS ADVOCACY ORGANIZATION; OR**

25 **(II) AN INDIVIDUAL WITH A DISABILITY.**

26 **(C) BEFORE SERVING ON A SURROGATE COMMITTEE, AN INDIVIDUAL SHALL**
27 **COMPLETE A TRAINING COURSE DEVELOPED OR ENDORSED BY THE OFFICE OF**
28 **HEALTH CARE QUALITY WITHIN THE DEPARTMENT AND THE DEPARTMENT OF**

1 **HUMAN SERVICES, WITH INPUT FROM THE DEPARTMENT OF DISABILITIES, THAT**
2 **INCLUDES CONTENT ADDRESSING:**

3 **(1) CORE BIOETHICAL PRINCIPLES AND THE RELEVANT PROVISIONS**
4 **OF THE HEALTH CARE DECISIONS ACT INCLUDING:**

5 **(I) SURROGATE DECISION MAKING;**

6 **(II) INFORMED CONSENT AND EMERGENCY EXCEPTIONS TO**
7 **INFORMED CONSENT REQUIREMENTS;**

8 **(III) CAPACITY ASSESSMENT;**

9 **(IV) SUBSTITUTED JUDGMENT; AND**

10 **(V) THE BEST INTEREST STANDARD;**

11 **(2) DUE PROCESS PROTECTIONS;**

12 **(3) PATIENT RIGHTS;**

13 **(4) INFORMATION ON WHEN CONSULTATION WITH THE PATIENT**
14 **CARE ADVISORY COMMITTEE IS APPROPRIATE;**

15 **(5) PATIENT CONFIDENTIALITY;**

16 **(6) DOCUMENTATION REQUIREMENTS;**

17 **(7) CONFLICTS OF INTEREST; AND**

18 **(8) IMPLICIT BIAS, WITH A FOCUS ON BIAS RELATED TO RACE,**
19 **ETHNICITY, SEX, GENDER, DISABILITY, SOCIOECONOMIC STATUS, AND**
20 **IMMIGRATION STATUS.**

21 **(D) (1) THE PROCEEDINGS AND DELIBERATIONS OF A SURROGATE**
22 **COMMITTEE SHALL BE CONFIDENTIAL.**

23 **(2) THE SURROGATE COMMITTEE SHALL BE ABLE TO RECEIVE AND**
24 **REVIEW ALL RELEVANT MEDICAL RECORDS SUBJECT TO APPLICABLE FEDERAL AND**
25 **STATE LAW AND REGULATION.**

26 **(3) THE SURROGATE COMMITTEE MAY NOT DISCLOSE DOCUMENTS**
27 **OR MATERIAL THAT ARE CONFIDENTIAL UNDER LAW OR REGULATION.**

1 **(E) ON OR BEFORE JANUARY 31 EACH YEAR, A HOSPITAL THAT HAS USED A**
2 **SURROGATE COMMITTEE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR**
3 **SHALL REPORT TO THE OFFICE OF HEALTH CARE QUALITY WITHIN THE**
4 **DEPARTMENT:**

5 **(1) THE NUMBER OF TIMES THE SURROGATE COMMITTEE WAS**
6 **CONVENED TO MAKE A TREATMENT DECISION FOR AN UNREPRESENTED PATIENT;**
7 **AND**

8 **(2) FOR EACH UNREPRESENTED PATIENT:**

9 **(I) THE NAMES OF THE MEMBERS OF THE SURROGATE**
10 **COMMITTEE PRESENT AT THE MEETING AT WHICH THE TREATMENT DECISION WAS**
11 **MADE;**

12 **(II) A DESCRIPTION OF THE UNREPRESENTED PATIENT'S**
13 **CONDITION;**

14 **(III) DEMOGRAPHIC INFORMATION REGARDING THE**
15 **UNREPRESENTED PATIENT, INCLUDING RACE, SEX, GENDER, AND DISABILITY;**

16 **(IV) THE EFFORTS MADE BY THE HOSPITAL TO LOCATE A**
17 **SURROGATE;**

18 **(V) THE TREATMENT DECISIONS CONSIDERED BY THE**
19 **SURROGATE COMMITTEE;**

20 **(VI) THE DECISION OF THE SURROGATE COMMITTEE;**

21 **(VII) THE BASIS FOR THE SURROGATE COMMITTEE'S DECISION;**

22 **(VIII) WHETHER THE UNREPRESENTED PATIENT WAS ABLE TO**
23 **LEAVE THE HOSPITAL; AND**

24 **(IX) WHETHER THE HOSPITAL WAS REQUIRED TO FILE FOR**
25 **GUARDIANSHIP OF THE UNREPRESENTED PATIENT BEFORE DISCHARGE.**

26 **(F) (1) A HOSPITAL SHALL MAKE THE REPORT REQUIRED UNDER**
27 **SUBSECTION (E) OF THIS SECTION AVAILABLE TO THE PUBLIC ON REQUEST, WITH**
28 **APPROPRIATE REDACTIONS TO PROTECT PATIENT CONFIDENTIALITY.**

1 **(2) A HOSPITAL SHALL INCLUDE INFORMATION ON THE HOSPITAL'S**
2 **WEBSITE ALERTING THE PUBLIC OF HOW TO OBTAIN A COPY OF THE REPORT.**

3 5–605.

4 (a) (1) (i) In this subsection the following words have the meanings
5 indicated.

6 (ii) “Person eligible for relief” has the meaning stated in § 4–501 of
7 the Family Law Article.

8 (iii) “Unavailable” means:

9 1. After reasonable inquiry, a health care provider is
10 unaware of the existence of a health care agent or surrogate decision maker;

11 2. After reasonable inquiry, a health care provider cannot
12 ascertain the whereabouts of a health care agent or surrogate decision maker;

13 3. A health care agent or surrogate decision maker has not
14 responded in a timely manner, taking into account the health care needs of the individual,
15 to a written or oral message from a health care provider;

16 4. A health care agent or surrogate decision maker is
17 incapacitated; or

18 5. A health care agent or surrogate decision maker is
19 unwilling to make decisions concerning health care for the individual.

20 (2) Subject to paragraph (4) of this subsection, the following individuals or
21 groups, in the specified order of priority, may make decisions about health care for a person
22 who has been certified to be incapable of making an informed decision and who has not
23 appointed a health care agent in accordance with this subtitle or whose health care agent
24 is unavailable. Individuals in a particular class may be consulted to make a decision only
25 if all individuals in the next higher class are unavailable:

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

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

28 (iii) An adult child of the patient;

29 (iv) A parent of the patient;

30 (v) An adult brother or sister of the patient; [or]

1 (vi) A friend or other relative of the patient who meets the
2 requirements of paragraph (3) of this subsection; **OR**

3 **(VII) A SURROGATE COMMITTEE.**

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

6 (i) Is a competent individual; and

7 (ii) Presents an affidavit to the attending physician stating:

8 1. That the person is a relative or close friend of the patient;
9 and

10 2. Specific facts and circumstances demonstrating that the
11 person has maintained regular contact with the patient sufficient to be familiar with the
12 patient's activities, health, and personal beliefs.

13 (4) An individual may not make decisions about health care for a patient
14 under paragraph (2) of this subsection if:

15 (i) The individual is the subject of an interim, temporary, or final
16 protective order and the patient is a person eligible for relief under the order; or

17 (ii) The individual is the spouse of the patient and:

18 1. The individual and patient have executed a separation
19 agreement; or

20 2. The individual or patient has filed an application for
21 divorce.

22 (5) The attending physician shall include the affidavit presented under
23 paragraph (3) of this subsection in the patient's medical record.

24 (6) A person who obtains new information that would prohibit an
25 individual from making health care decisions for a patient under paragraph (4) of this
26 subsection shall provide the information to any health care provider or health care facility
27 providing services to the patient.

28 **(7) (I) IF AN UNREPRESENTED PATIENT'S ATTENDING PHYSICIAN**
29 **DETERMINES THAT THERE IS A NEED TO MAKE HEALTH CARE DECISIONS FOR THE**
30 **UNREPRESENTED PATIENT, THE ATTENDING PHYSICIAN SHALL CONVENE THE**
31 **SURROGATE COMMITTEE.**

1 **(II) THE SURROGATE COMMITTEE SHALL MEET PROMPTLY.**

2 **(III) IF PRACTICABLE, ALL SURROGATE COMMITTEE MEMBERS**
3 **SHALL PERSONALLY OBSERVE THE UNREPRESENTED PATIENT BEFORE MAKING A**
4 **TREATMENT DECISION.**

5 **(IV) THE FINAL DECISION OF THE SURROGATE COMMITTEE**
6 **MUST BE SUPPORTED BY A MAJORITY OF THE MEMBERS, INCLUDING:**

7 **1. AT LEAST TWO OF THE MEMBERS LISTED IN §**
8 **5-604.2(B)(1) THROUGH (4) OF THIS SUBTITLE; AND**

9 **2. AT LEAST TWO OF THE MEMBERS LISTED IN §**
10 **5-604.2(B)(5) THROUGH (7) OF THIS SUBTITLE.**

11 (b) (1) If persons with equal decision making priority under subsection (a) of
12 this section disagree about a health care decision, and a person who is incapable of making
13 an informed decision is receiving care in a hospital or related institution, the attending
14 physician or an individual specified in subsection (a) of this section shall refer the case to
15 the institution's patient care advisory committee, and may act in accordance with the
16 recommendation of the committee or transfer the patient in accordance with the provisions
17 of § 5-613 of this subtitle. A physician who acts in accordance with the recommendation of
18 the committee is not subject to liability for any claim based on lack of consent or
19 authorization for the action.

20 (2) If a person who is incapable of making an informed decision is not in a
21 hospital or related institution, a physician may not withhold or withdraw life-sustaining
22 procedures if there is not agreement among all the persons in the same class.

23 (c) (1) Any person authorized to make health care decisions for another under
24 this section shall base those decisions on the wishes of the patient and, if the wishes of the
25 patient are unknown or unclear, on the patient's best interest.

26 (2) In determining the wishes of the patient, a surrogate shall consider the
27 patient's:

28 (i) Current diagnosis and prognosis with and without the treatment
29 at issue;

30 (ii) Expressed preferences regarding the provision of, or the
31 withholding or withdrawal of, the specific treatment at issue or of similar treatments;

32 (iii) Relevant religious and moral beliefs and personal values;

33 (iv) Behavior, attitudes, and past conduct with respect to the
34 treatment at issue and medical treatment generally;

1 (v) Reactions to the provision of, or the withholding or withdrawal
2 of, a similar treatment for another individual; and

3 (vi) Expressed concerns about the effect on the family or intimate
4 friends of the patient if a treatment were provided, withheld, or withdrawn.

5 (3) The decision of a surrogate regarding whether life-sustaining
6 procedures should be provided, withheld, or withdrawn shall not be based, in whole or in
7 part, on either a patient's preexisting, long-term mental or physical disability, or a
8 patient's economic disadvantage.

9 (4) (I) [A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
10 A surrogate shall inform the patient, to the extent possible, of the proposed procedure and
11 the fact that someone else is authorized to make a decision regarding that procedure.

12 (II) IF A SURROGATE COMMITTEE HAS BEEN CONVENED, A
13 MEMBER OF THE SURROGATE COMMITTEE SHALL INFORM THE UNREPRESENTED
14 PATIENT, BOTH ORALLY AND IN WRITING, TO THE EXTENT POSSIBLE, THAT:

15 1. THE SURROGATE COMMITTEE HAS BEEN CONVENED
16 TO MAKE A TREATMENT DECISION FOR THE UNREPRESENTED PATIENT; AND

17 2. THE DECISION OF THE SURROGATE COMMITTEE MAY
18 INCLUDE THE PROVISION, WITHHOLDING, OR WITHDRAWING OF TREATMENT.

19 (III) THE WRITTEN NOTICE REQUIRED UNDER SUBPARAGRAPH
20 (II) OF THIS PARAGRAPH SHALL INCLUDE THE NAMES OF THE MEMBERS OF THE
21 SURROGATE COMMITTEE.

22 (5) (I) THE SURROGATE COMMITTEE SHALL PROVIDE A WRITTEN
23 EXPLANATION OF, AND THE BASIS FOR, ITS DECISION.

24 (II) THE ATTENDING PHYSICIAN SHALL INCLUDE THE WRITTEN
25 EXPLANATION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE
26 UNREPRESENTED PATIENT'S MEDICAL RECORD.

27 (d) (1) A surrogate may not authorize:

28 [(1)] (I) Sterilization; or

29 [(2)] (II) Treatment for a mental disorder.

30 (2) (I) 1. A SURROGATE COMMITTEE MAY NOT AUTHORIZE THE
31 DISCHARGE OF AN UNREPRESENTED PATIENT.

1 **2. FOR THE PURPOSE OF SUBSUBPARAGRAPH 1 OF THIS**
2 **SUBPARAGRAPH, A REQUEST BY A HOSPITAL TO MOVE THE UNREPRESENTED**
3 **PATIENT TO A HIGHER LEVEL OF CARE AT ANOTHER FACILITY MAY NOT BE**
4 **CONSIDERED A DISCHARGE.**

5 **(II) A SURROGATE COMMITTEE’S DECISION-MAKING**
6 **AUTHORITY SHALL BE LIMITED TO THE TIME DURING WHICH THE UNREPRESENTED**
7 **PATIENT IS IN THE HOSPITAL.**

8 5-606.

9 (a) (1) Prior to providing, withholding, or withdrawing treatment for which
10 authorization has been obtained or will be sought under this subtitle, the attending
11 physician and a second physician or a nurse practitioner, one of whom shall have examined
12 the patient within 2 hours before making the certification, shall certify in writing that the
13 patient is incapable of making an informed decision regarding the treatment. The
14 certification shall be based on a personal examination of the patient.

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

18 (3) When authorization is sought for treatment of a mental illness, the
19 second physician or the nurse practitioner may not be otherwise currently involved in the
20 treatment of the person assessed.

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

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

26 (1) The patient’s attending physician and a second physician or a nurse
27 practitioner have certified that the patient is in a terminal condition or has an end-stage
28 condition; or

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2026.