

**ARTICLE – HEALTH-GENERAL
PART I. ADVANCE DIRECTIVES**

§ 5-601. Definitions.

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

(b) Advance directive.- “Advance directive” means:

(1) A witnessed written or electronic document, voluntarily executed by the declarant in accordance with the requirements of this subtitle; or

(2) A witnessed oral statement, made by the declarant in accordance with the provisions of this subtitle.

(c) Agent.- “Agent” means an adult appointed by the declarant under an advance directive made in accordance with the provisions of this subtitle to make health care decisions for the declarant.

(d) Attending physician.- “Attending physician” means the physician who has primary responsibility for the treatment and care of the patient.

(e) Best interest.- “Best interest” means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment, taking into account:

(1) The effect of the treatment on the physical, emotional, and cognitive functions of the individual;

(2) The degree of physical pain or discomfort caused to the individual by the treatment, or the withholding or withdrawal of the treatment;

(3) The degree to which the individual’s medical condition, the treatment, or the withholding or withdrawal of treatment result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to a condition of extreme humiliation and dependency;

(4) The effect of the treatment on the life expectancy of the individual;

(5) The prognosis of the individual for recovery, with and without the treatment;

(6) The risks, side effects, and benefits of the treatment or the withholding or withdrawal of the treatment; and

(7) The religious beliefs and basic values of the individual receiving treatment, to the extent these may assist the decision maker in determining best interest.

(f) Competent individual.- “Competent individual” means a person who is at least 18 years of age or who under § 20-102(a) of this article has the same capacity as an adult to consent to medical treatment and who has not been determined to be incapable of making an informed decision.

(g) Declarant.- “Declarant” means a competent individual who makes an advance directive while capable of making and communicating an informed decision.

(h) Electronic signature.- “Electronic signature” has the meaning stated in § 21-101 of the Commercial Law Article.

(i) Emergency medical services “do not resuscitate order”.- “Emergency medical services ‘do not resuscitate order’” means a physician’s or nurse practitioner’s written order in a form established by protocol issued by the Maryland Institute for Emergency Medical Services in conjunction with the State Board of Physicians which, in the event of a cardiac or respiratory arrest of a particular patient, authorizes certified or licensed emergency medical services personnel to withhold or withdraw cardiopulmonary resuscitation including cardiac compression, endotracheal intubation, other advanced airway management techniques, artificial ventilation, defibrillation, and other related life-sustaining procedures.

(j) End-stage condition.- “End-stage condition” means an advanced, progressive, irreversible condition caused by injury, disease, or illness:

(1) That has caused severe and permanent deterioration indicated by incompetency and complete physical dependency; and

(2) For which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.

(k) Health care practitioner.- “Health care practitioner” means:

(1) An individual licensed or certified under the Health Occupations Article or § 13-516 of the Education Article to provide health care; or

(2) The administrator of a hospital or a person designated by the administrator in accordance with hospital policy.

(l) Health care provider.-

(1) “Health care provider” means a health care practitioner or a facility that provides health care to individuals.

(2) “Health care provider” includes agents or employees of a health care practitioner or a facility that provides health care to individuals.

(m) Incapable of making an informed decision.-

(1) “Incapable of making an informed decision” means the inability of an adult patient to make an informed decision about the provision, withholding, or withdrawal of a specific medical treatment or course of treatment because the patient is unable to understand the nature, extent, or probable consequences of the proposed treatment or course of treatment, is unable to make a rational evaluation of the burdens, risks, and benefits of the treatment or course of treatment, or is unable to communicate a decision.

(2) For the purposes of this subtitle, a competent individual who is able to communicate by means other than speech may not be considered incapable of making an informed decision.

(n) Life-sustaining procedure.-

(1) “Life-sustaining procedure” means any medical procedure, treatment, or intervention that:

(i) Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and

(ii) Is of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition, persistent vegetative state, or end-stage condition.

(2) “Life-sustaining procedure” includes artificially administered hydration and nutrition, and cardiopulmonary resuscitation.

(o) Medically ineffective treatment.- “Medically ineffective treatment” means that, to a reasonable degree of medical certainty, a medical procedure will not:

(1) Prevent or reduce the deterioration of the health of an individual; or

(2) Prevent the impending death of an individual.

(p) Nurse practitioner.- “Nurse practitioner” means an individual licensed to practice registered nursing in the State and who is certified as a nurse practitioner by the State Board of Nursing under Title 8 of the Health Occupations Article.

(q) Persistent vegetative state.- “Persistent vegetative state” means a condition caused by injury, disease, or illness:

(1) In which a patient has suffered a loss of consciousness, exhibiting no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflex activity of muscles and nerves for low level conditioned response; and

(2) From which, after the passage of a medically appropriate period of time, it can be determined, to a reasonable degree of medical certainty, that there can be no recovery.

(r) Physician.- “Physician” means a person licensed to practice medicine in the State or in the jurisdiction where the treatment is to be rendered or withheld.

(s) Signed.- “Signed” means bearing a manual or electronic signature.

(t) Terminal condition.- “Terminal condition” means an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery.

[1993, ch. 372, § 2; 1998, ch. 46; 1999, ch. 34, § 1; 2003, ch. 252, § 10; 2004, ch. 356; 2006, ch. 223; 2008, ch. 79, §§ 1, 2; chs. 232, 233.]

§ 5-601.1. Electronic signatures.

For purposes of this Part I of this subtitle, an electronic signature shall have the same effect as a manual signature if the electronic signature:

- (1) Uses an algorithm approved by the National Institute of Standards and Technology;
- (2) Is unique to the individual using it;
- (3) Is capable of verification;
- (4) Is under the sole control of the individual using it;
- (5) Is linked to data in such a manner that if the data are changed, the electronic signature is invalidated;
- (6) Persists with the document and not by association in separate files; and
- (7) Is bound to a digital certificate.

[2008, ch. 79, § 2.]

§ 5-602. Procedure for making advance directive; notice to physician - Living wills.

(a) Written advance directive.- 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.

(b) Disqualified person, defined; appointment of agent.-

(1) In this subsection, “disqualified person” means:

- (i) An owner, operator, or employee of a health care facility from which the declarant is receiving health care; or
- (ii) 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.

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

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

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

(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.

(c) Signature and witness requirements.-

(1) 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, 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.

(d) Oral directive.-

(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 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 or nurse practitioner and the witness.

(e) Effectiveness of advance directive.-

(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) Notice to physician.-

(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.

(3) If the care of a declarant is transferred from one health care provider to another, the transferring health care provider may prepare an "Instructions on Current Life-Sustaining Treatment Options" form in accordance with § 5-608.1 of this subtitle.

(4) If the transferring health care provider prepares an "Instructions on Current Life-Sustaining Treatment Options" form in accordance with § 5-608.1 of this subtitle, the transferring health care provider shall:

(i) Take reasonable steps to ensure that the "Instructions on Current Life-Sustaining Treatment Options" form is consistent with any applicable decision stated in the advance directive of a declarant; and

(ii) Transmit the "Instructions on Current Life-Sustaining Treatment Options" form to the receiving health care provider simultaneously with the transfer of the declarant.

(g) Notice to agent.- 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) Standards for agent.- 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) No presumption of intent.- The absence of an advance directive creates no presumption as to the patient's intent to consent to or refuse life-sustaining procedures.

[1993, ch. 372, § 2; 1994, ch. 3, § 1; 2000, ch. 553; 2004, chs. 327, 506; 2007, ch. 70; 2008, ch. 79, § 2; chs. 232, 233.]

§ 5-602.1. Advance directive for mental health services.

(a) Definition.- In this section, "mental health services" has the meaning stated in § 4-301 (i) (1) of this article.

(b) In general.- An individual who is competent may make an advance directive to outline the mental health services which may be provided to the individual if the individual becomes incompetent and has a need for mental health services either during, or as a result of, the incompetency.

(c) Procedure.-

(1) An individual making an advance directive for mental health services shall follow the procedures for making an advance directive provided under § 5-602 of this subtitle.

(2) The procedures provided under § 5-604 of this subtitle for the revocation of an advance directive shall apply to the revocation of an advance directive for mental health services.

(d) Contents of advance directive.- An advance directive for mental health services may include:

(1) The designation of an agent to make mental health services decisions for the declarant;

(2) The identification of mental health professionals, programs, and facilities that the declarant would prefer to provide mental health services;

(3) A statement of medications preferred by the declarant for psychiatric treatment; and

(4) Instruction regarding the notification of third parties and the release of information to third parties about mental health services provided to the declarant.

[2001, ch. 267; 2002, ch. 19, § 1.]

§ 5-603. Suggested forms - Living wills.

Maryland Advance Directive:
Planning for Future Health Care Decisions

By: _____ Date of Birth: _____

(Print Name) (Month/Day/Year)

Using this advance directive form to do health care planning is completely optional. Other forms are also valid in Maryland. No matter what form you use, talk to your family and others close to you about your wishes.

This form has two parts to state your wishes, and a third part for needed signatures. Part I of this form lets you answer this question: If you cannot (or do not want to) make your own health care decisions, who do you want to make them for you? The person you pick is called your health care agent. Make sure you talk to your health care agent (and any back-up agents) about this important role. Part II lets you write your preferences about efforts to extend your life in three situations: terminal condition, persistent vegetative state, and end-stage condition. In addition to your health care planning decisions, you can choose to become an organ donor after your death by filling out the form for that too.

You can fill out Parts I and II of this form, or only Part I, or only Part II. Use the form to reflect your wishes, then sign in front of two witnesses (Part III). If your wishes change, make a new advance directive.

Make sure you give a copy of the completed form to your health care agent, your doctor, and others who might need it. Keep a copy at home in a place where someone can get it if needed. Review what you have written periodically.

PART I: SELECTION OF HEALTH CARE AGENT

A. Selection of Primary Agent

I select the following individual as my agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers: _____

(home and cell)

B. Selection of Back-up Agents

(Optional; form valid if left blank)

1. If my primary agent cannot be contacted in time or for any reason is unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: _____

Address: _____

Telephone Numbers: _____

(home and cell)

2. If my primary agent and my first back-up agent cannot be contacted in time or for any reason are unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: _____

Address: _____

Telephone Numbers: _____

(home and cell)

C. Powers and Rights of Health Care Agent

I want my agent to have full power to make health care decisions for me, including the power to:

1. Consent or not consent to medical procedures and treatments which my doctors offer, including things that are intended to keep me alive, like ventilators and feeding tubes;
2. Decide who my doctor and other health care providers should be; and
3. Decide where I should be treated, including whether I should be in a hospital, nursing home, other medical care facility, or hospice program.

I also want my agent to:

1. Ride with me in an ambulance if ever I need to be rushed to the hospital; and
2. Be able to visit me if I am in a hospital or any other health care facility.

This advance directive does not make my agent responsible for any of the costs of my care.

This power is subject to the following conditions or limitations:
(Optional; form valid if left blank)

D. How My Agent Is To Decide Specific Issues

I trust my agent's judgment. My agent should look first to see if there is anything in Part II of this advance directive that helps decide the issue. Then, my agent should think about the conversations we have had, my religious or other beliefs and values, my personality, and how I handled medical and other important issues in the past. If what I would decide is still unclear, then my agent is to make decisions for me that my agent believes are in my best interest. In doing so, my agent should consider the benefits, burdens, and risks of the choices presented by my doctors.

E. People My Agent Should Consult
(Optional; form valid if left blank)

In making important decisions on my behalf, I encourage my agent to consult with the following people. By filling this in, I do not intend to limit the number of people with whom my agent might want to consult or my agent's power to make these decisions.

Name(s)	Telephone Number(s)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

F. In Case of Pregnancy

(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my agent shall follow these specific instructions:

G. Access to My Health Information - Federal Privacy Law (HIPAA) Authorization

1. If, prior to the time the person selected as my agent has power to act under this document, my doctor wants to discuss with that person my capacity to make my own health care decisions, I authorize my doctor to disclose protected health information which relates to that issue.

2. Once my agent has full power to act under this document, my agent may request, receive, and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and other protected health information, and consent to disclosure of this information.

3. For all purposes related to this document, my agent is my personal representative under the Health Insurance Portability and Accountability Act (HIPAA). My agent may sign, as my personal representative, any release forms or other HIPAA-related materials.

H. Effectiveness of This Part

(Read both of these statements carefully. Then, initial one only.)

My agent's power is in effect:

1. Immediately after I sign this document, subject to my right to make any decision about my health care if I want and am able to.

((or))

2. Whenever I am not able to make informed decisions about my health care, either because the doctor in charge of my care (attending physician) decides that I have lost this ability temporarily, or my attending physician and a consulting doctor agree that I have lost this ability permanently.

If the only thing you want to do is select a health care agent, skip Part II. Go to Part III to sign and have the advance directive witnessed. If you also want to write your treatment preferences, use Part II. Also consider becoming an organ donor, using the separate form for that.

PART II: TREATMENT PREFERENCES ("LIVING WILL")

A. Statement of Goals and Values

(Optional; form valid if left blank)

I want to say something about my goals and values, and especially what's most important to me during the last part of my life:

B. Preference in Case of Terminal Condition

(If you want to state your preference, initial one only. If you do not want to state a preference here, cross through the whole section.)

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

((or))

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

((or))

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

C. Preference in Case of Persistent Vegetative State

(If you want to state your preference, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in a persistent vegetative state, that is, if I am not conscious and am not aware of myself or my environment or able to interact with others, and there is no reasonable expectation that I will ever regain consciousness:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

((or))

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

((or))

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

D. Preference in Case of End-Stage Condition

(If you want to state your preference, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in an end-stage condition, that is, an incurable condition that will continue in its course until death and that has already resulted in loss of capacity and complete physical dependency:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

((or))

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

((or))

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

E. Pain Relief

No matter what my condition, give me the medicine or other treatment I need to relieve pain.

F. In Case of Pregnancy

(Optional, for women of child-bearing years only; form valid if left blank)

If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

G. Effect of Stated Preferences

(Read both of these statements carefully. Then, initial one only.)

1. I realize I cannot foresee everything that might happen after I can no longer decide for myself. My stated preferences are meant to guide whoever is making decisions on my behalf and my health care providers, but I authorize them to be flexible in applying these statements if they feel that doing so would be in my best interest.

((or))

2. I realize I cannot foresee everything that might happen after I can no longer decide for myself. Still, I want whoever is making decisions on my behalf and my health care providers to follow my stated preferences exactly as written, even if they think that some alternative is better.

PART III: SIGNATURE AND WITNESSES

By signing below as the Declarant, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand its purpose and effect. I also understand that this document replaces any similar advance directive I may have completed before this date.

(Signature of Declarant)

(Date)

The declarant signed or acknowledged signing this document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this advance directive.

(Signature of Declarant)

(Date)

Telephone Number(s)

(Signature of Declarant)

(Date)

Telephone Number(s)

(Note: Anyone selected as a health care agent in Part I may not be a witness. Also, at least one of the witnesses must be someone who will not knowingly inherit anything from the declarant or otherwise knowingly gain a financial benefit from the declarant's death. Maryland law does not require this document to be notarized.)

AFTER MY DEATH

(This form is optional. Fill out only what reflects your wishes.)

By: _____

Date of Birth: _____

(Print Name) (Month/Day/Year)

PART I: ORGAN DONATION

(Initial the ones that you want.)

Upon my death I wish to donate:

Any needed organs, tissues, or eyes. _____

Only the following organs, tissues, or eyes:

I authorize the use of my organs, tissues, or eyes:

For transplantation _____

For therapy _____

For research _____

For medical education _____

For any purpose authorized by law _____

I understand that no vital organ, tissue, or eye may be removed for transplantation until after I have been pronounced dead under legal standards. This document is not intended to change anything about my health care while I am still alive. After death, I authorize any appropriate support measures to maintain the viability for transplantation of my organs, tissues, and eyes until organ, tissue, and eye recovery has been completed. I understand that my estate will not be charged for any costs related to this donation.

PART II: DONATION OF BODY

After any organ donation indicated in Part I, I wish my body to be donated for use in a medical study program.

PART III: DISPOSITION OF BODY AND FUNERAL ARRANGEMENTS

I want the following person to make decisions about the disposition of my body and my funeral arrangements:

(Either initial the first or fill in the second.)

The health care agent who I named in my advance directive.

((or))

This person:

Name: _____

Address: _____

Telephone Numbers: _____

(home and cell)

If I have written my wishes below, they should be followed. If not, the person I have named should decide based on conversations we have had, my religious or other beliefs and values, my personality, and how I reacted to other peoples' funeral arrangements. My wishes about the disposition of my body and my funeral arrangements are:

PART IV: SIGNATURE AND WITNESSES

By signing below, I indicate that I am emotionally and mentally competent to make this donation and that I understand the purpose and effect of this document.

(Signature of Donor)

(Date)

The Donor signed or acknowledged signing this donation document in my presence and, based upon personal observation, appears to be emotionally and mentally competent to make this donation.

(Signature of Witness)

(Date)

Telephone Number(s)

(Signature of Witness)

(Date)

Telephone Number(s)

[2006, ch. 522, § 2; 2007, ch. 5.]

§ 5-604. Revocation of an advance directive.

(a) Signed and dated writing.- An advance directive may be revoked at any time by 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.

(b) Oral statement.- If 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 medical record.

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

[1993, ch. 372, § 2; 2000, ch. 553; 2008, ch. 79, § 2.]

§ 5-604.1. Anatomical gifts in advance directives.

(a) In general.- An advance directive may contain a statement by a declarant that the declarant consents to the gift of all or any part of the declarant's body for any one or more of the purposes specified in Title 4, Subtitle 5 of the Estates and Trusts Article.

(b) Validity.- Notwithstanding any other provision of law, an anatomical gift in an advance directive is valid and effective for all purposes under Title 4, Subtitle 5 of the Estates and Trusts Article, including the immunity from civil or criminal liability set forth in § 4-508 (b) of the Estates and Trusts Article.

[1994, ch. 671.]

§ 5-605. Surrogate decision making.

(a) Surrogate authorization.-

(1) In this subsection, "unavailable" means:

(i) After reasonable inquiry, a health care provider is unaware of the existence of a health care agent or surrogate decision maker;

(ii) After reasonable inquiry, a health care provider cannot ascertain the whereabouts of a health care agent or surrogate decision maker;

(iii) A health care agent or surrogate decision maker has not responded in a timely manner, taking into

account the health care needs of the individual, to a written or oral message from a health care provider;

(iv) A health care agent or surrogate decision maker is incapacitated; or

(v) A health care agent or surrogate decision maker is unwilling to make decisions concerning health care for the individual.

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

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

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

(iii) An adult child of the patient;

(iv) A parent of the patient;

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

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

(3) A friend or other relative may make decisions about health care for a 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; and

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

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

(b) Dispute among surrogates.-

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

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

(c) Standards for surrogates.-

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

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

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

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

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

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

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

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

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

(4) A surrogate shall inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding that procedure.

(d) Exclusions.- A surrogate may not authorize:

(1) Sterilization; or

(2) Treatment for a mental disorder.

[1993, ch. 372, § 2; 2001, ch. 189; 2006, ch. 522, § 2; 2008, ch. 590.]

§ 5-606. Certifications by physicians.

(a) Certification of incapacity.-

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

(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.

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

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

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

(1) The patient's attending physician and a second physician have certified that the patient is in a terminal condition or has an end-stage condition; or

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

[1993, ch. 372, § 2.]

§ 5-607. Treatment without consent.

A health care provider may treat a patient who is incapable of making an informed decision, without consent, if:

(1) The treatment is of an emergency medical nature;

(2) A person who is authorized to give the consent is not available immediately; and

(3) The attending physician determines that:

(i) There is a substantial risk of death or immediate and serious harm to the patient; and

(ii) With a reasonable degree of medical certainty, the life or health of the patient would be affected adversely by delaying treatment to obtain consent.

[1993, ch. 372, § 2.]

§ 5-608. Authorization to follow emergency medical services "do not resuscitate order" in the outpatient setting.

(a) Directed by protocol to follow order.-

(1) Certified or licensed emergency medical services personnel shall be directed by protocol to follow emergency medical services "do not resuscitate orders" pertaining to adult patients in the outpatient setting in accordance with protocols established by the Maryland Institute for Emergency Medical Services Systems in conjunction with the State Board of Physicians.

(2) Emergency medical services "do not resuscitate orders" may not authorize the withholding of medical interventions, or therapies deemed necessary to provide comfort care or to alleviate pain.

(3) A health care provider, other than certified or licensed emergency medical services personnel, who sees, in a valid form, an emergency medical services "do not resuscitate order" described in paragraph (1) of this subsection that is not superseded by a subsequent physician's order:

(i) May, before a patient's cardiac or respiratory arrest, provide, withhold, or withdraw treatment in accordance with the emergency medical services "do not resuscitate order"; and

(ii) Shall, after a patient's cardiac or respiratory arrest, withhold or withdraw treatment in accordance with the emergency medical services "do not resuscitate order".

(b) Patient's expression of desire to be resuscitated.- This section does not authorize emergency medical services personnel to follow an emergency medical services "do not resuscitate order" for any patient who, prior to cardiac or respiratory arrest, is able to, and does, express to those personnel the desire to be resuscitated.

(c) Form of order.- This section does not authorize emergency medical services personnel in the outpatient setting to follow an emergency medical services "do not resuscitate order" that is in any form other than:

(1) An emergency medical services "do not resuscitate order" described in subsection (a) of this section;

(2) An oral emergency medical services "do not resuscitate order" provided by an on-line, emergency medical services medical command and control physician; or

(3) An oral emergency medical services "do not resuscitate order" provided by a physician, as defined in § 5-601 of this subtitle, or a nurse practitioner, as defined in § 5-601 of this subtitle, who is physically present on the scene with the patient and the emergency medical services personnel in the outpatient setting.

(d) Immunity.-

(1) Except as provided in paragraph (2) of this subsection, in addition to the immunity provided in § 5-609 of this subtitle and any other immunity provided by law, an emergency medical services provider is not subject to criminal or civil liability, or deemed to have engaged in unprofessional conduct as

determined by the appropriate licensing or certifying authority, arising out of a claim concerning the provision of health care if:

(i) The claim is based on lack of consent or authorization for the health care;

(ii) Subsection (a) of this section would ordinarily apply; and

(iii) The emergency medical services provider:

1. Acts in good faith in providing the health care; and

2. Believes reasonably that subsection (a)(1) of this section does not apply.

(2) This subsection does not apply if the patient is wearing a valid, legible, and patient-identifying emergency medical services “do not resuscitate order” in bracelet form.

[1993, ch. 372, § 2; 1997, ch. 195; 1998, ch. 46; 2000, ch. 152; 2003, ch. 252, § 10; 2004, ch. 506; 2007, ch. 251; 2008, chs. 232, 233.]

§ 5-608.1. “Instructions on Current Life-Sustaining Treatment Options” form.

(a) Development.- The Office of the Attorney General shall develop an “Instructions on Current Life-Sustaining Treatment Options” form suitable for summarizing the plan of care for an individual, including the aspects of the plan of care related to:

(1) The use of life-sustaining procedures; and

(2) Transfer to a hospital from a nonhospital setting.

(b) Characteristics.- The “Instructions on Current Life-Sustaining Treatment Options” form is voluntary and shall be consistent with:

(1) The decisions of:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle; and

(2) Any advance directive of the patient if the patient is incapable of making an informed decision.

(c) Signing requirements.- The “Instructions on Current Life-Sustaining Treatment Options” form:

(1) May be completed by a health care provider under the direction of an attending physician;

(2) If the attending physician has a reasonable basis to believe that the “Instructions on Current Life-Sustaining Treatment Options” form satisfies the requirements of subsection (b) of this section, shall be signed by the attending physician;

(3) Shall be signed by:

(i) The patient if the patient is a competent individual; or

(ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle;

(4) If signed by the patient in accordance with item (3)(i) of this subsection, shall include contact information for the patient’s health care agent;

(5) If signed by a health care agent or surrogate decision maker in accordance with item (3)(ii) of this subsection, shall include contact information for the health care agent or surrogate decision maker;

(6) Shall be dated;

(7) Shall include a statement that the form may be reviewed, modified, or rescinded at any time;

(8) Shall designate under which conditions the form must be reviewed or modified, including promptly after the patient becomes incapable of making an informed decision; and

(9) Shall contain a conspicuous statement that the original form shall accompany the individual when the individual is transferred to another health care provider or discharged.

(d) Review by health care provider.- A health care provider shall review any “Instructions on Current Life-Sustaining Treatment Options” form received from another health care provider as part of the process of establishing a plan of care for an individual.

(e) Consultation on development of form.- The Office of the Attorney General, in developing the “Instructions on Current Life-Sustaining Treatment

Options” form in accordance with subsection (a) of this section, shall consult with:

- (1) The Department;
- (2) Religious groups and institutions with an interest in end-of-life care;
- (3) One or more representatives from the community of individuals with disabilities; and
- (4) Any other group the Office of the Attorney General identifies as appropriate for consultation.

[2004, ch. 506; 2007, ch. 70.]

§ 5-609. Immunity from liability; burden of proof; presumption.

(a) Health provider immunity.-

(1) A health care provider is not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing authority as a result of withholding or withdrawing any health care under authorization obtained in accordance with this subtitle.

(2) A health care provider providing, withholding, or withdrawing treatment under authorization obtained under this subtitle does not incur liability arising out of any claim to the extent the claim is based on lack of consent or authorization for the action.

(b) Health agent or surrogate immunity.- A person who authorizes the provision, withholding, or withdrawal of life-sustaining procedures in accordance with a patient’s advance directive or as otherwise provided in this subtitle is not subject to:

- (1) Criminal prosecution or civil liability for that action; or
- (2) Liability for the cost of treatment solely on the basis of that authorization.

(c) Good faith.-

(1) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the provision, withholding, or withdrawal of life-sustaining procedures in accordance with this subtitle did not, in good faith, comply with the provisions of this subtitle.

(2) The distribution to patients of written advance directives in a form provided in this subtitle and assistance to patients in the completion and execution of such forms does not constitute the unauthorized practice of law.

(d) Presumptions.- An advance directive made in accordance with this subtitle shall be presumed to have been made voluntarily by a competent individual. Authorization for the provision, withholding or withdrawal of life-sustaining procedures in accordance with this subtitle shall be presumed to have been made in good faith.

[1993, ch. 372, § 2; 1997, ch. 195; 2004, ch. 506.]

§ 5-610. Willful destruction, concealment, damage, etc., of declaration or revocation; penalties.

(a) Willful destruction, concealment, damage, etc., of declaration or revocation.- Any person who willfully conceals, cancels, defaces, obliterates, or damages the advance directive of another without the declarant’s or patient’s consent or who falsifies or forges a revocation of the advance directive of another, thereby causing life-sustaining procedures to be utilized in contravention of the previously expressed intent of the patient, shall be guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both.

(b) Penalties.- Any person who falsifies or forges the advance directive of another, or falsifies or forges an affidavit under § 5-605 of this subtitle, or willfully conceals or withholds personal knowledge of the revocation of an advance directive with the intent to cause a withholding or withdrawal of life-sustaining procedures, contrary to the wishes of the declarant and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both.

(c) Penalties additional.- The penalties provided in this section shall be in addition to any other penalties provided by law.

[1993, ch. 372, § 2.]

§ 5-611. Medically ineffective treatment not required; mercy killing or euthanasia prohibited; construction of subtitle.

(a) Ethically inappropriate treatment not required.- Except as provided in § 5-613 (a) (3) of this subtitle, nothing in this subtitle may be construed to require a physician to prescribe or render medical treatment to a patient that the physician determines to be ethically inappropriate.

(b) Medically ineffective treatment not required.-

(1) Except as provided in § 5-613 (a) (3) of this subtitle, nothing in this subtitle may be construed to require a physician to prescribe or render medically ineffective treatment.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a patient's attending physician may withhold or withdraw as medically ineffective a treatment that under generally accepted medical practices is life-sustaining in nature only if the patient's attending physician and a second physician certify in writing that the treatment is medically ineffective and the attending physician informs the patient or the patient's agent or surrogate of the physician's decision.

(ii) If the patient is being treated in the emergency department of a hospital and only one physician is available, the certification of a second physician is not required.

(c) Mercy killing or euthanasia prohibited.- Nothing in this subtitle may be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(d) Assistance in eating and drinking.- A health care provider shall make reasonable efforts to provide an individual with food and water by mouth and to assist the individual as needed to eat and drink voluntarily.

(e) Construction of subtitle.-

(1) Nothing in this subtitle is intended to preclude a separate decision by a health care agent or surrogate regarding the provision of or the withholding or withdrawal of nutrients and fluids administered by artificial means.

(2) Nothing in this subtitle authorizes any action with respect to medical treatment, if the health care provider is aware that the patient for whom the health care is provided has expressed disagreement with the action.

[1993, ch. 372, § 2.]

§ 5-612. Petition by health care provider; court action.

(a) Petition by health care provider.-

(1) A health care provider for an individual incapable of making an informed decision who believes that an instruction to withhold or withdraw a life-sustaining procedure from the patient is inconsistent with generally accepted standards of patient care shall:

(i) Petition a patient care advisory committee for advice concerning the withholding or withdrawal of the life-sustaining procedure from the patient if the patient is in a hospital or related institution; or

(ii) File a petition in a court of competent jurisdiction seeking injunctive or other relief relating to the withholding or withdrawal of the life-sustaining procedure from the patient.

(2) In reviewing a petition filed under paragraph (1) of this subsection, the court shall follow the standards set forth in §§ 13-711 through 13-713 of the Estates and Trusts Article.

(b) Enjoining action.- On petition of the patient's spouse, domestic partner, a parent, adult child, grandchild, brother, or sister of the patient, or a friend or other relative who has qualified as a surrogate under § 5-605 of this subtitle to a circuit court of the county or city in which the patient for whom treatment will be or is currently being provided, withheld, or withdrawn under this subtitle resides or is located, the court may enjoin that action upon finding by a preponderance of the evidence that the action is not lawfully authorized by this subtitle or by other State or federal law.

(c) Court action.- Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

(1) Take precedence on the docket;

(2) Be heard at the earliest practicable date; and

(3) Be expedited in every way.

[1993, ch. 372, § 2; 1994, ch. 3, § 1; 2008, ch. 590.]

§ 5-613. Transfer of patient by health care provider who refuses to comply with advance directive or treatment decision.

(a) Declination of instruction; transfer.- A health care provider that intends not to comply with an instruction of a health care agent or a surrogate shall:

(1) Inform the person giving the instruction that:

(i) The health care provider declines to carry out the instruction;

(ii) The person may request a transfer to another health care provider; and

(iii) The health care provider will make every reasonable effort to transfer the patient to another health care provider;

(2) Assist in the transfer; and

(3) Pending the transfer, comply with an instruction of a competent individual, or of a health care agent or surrogate for an individual who is incapable of making an informed decision, if a failure to comply with the instruction would likely result in the death of the individual.

(b) Objection to health care.- Nothing in this section authorizes a health care provider to provide health care to:

(1) A competent individual over the objection of that individual; or

(2) An individual incapable of making an informed decision over the objection of another person authorized by law to consent to the provision of health care for the individual.

[1993, ch. 372, § 2.]

§ 5-614. Effect of declaration; suicide; insurance; declarations executed prior to effective date.

(a) Withholding or withdrawing life-sustaining procedures not suicide.- The withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this subtitle shall not, for any purpose, constitute a suicide.

(b) Life insurance - Effect of declaration.-

(1) The making of an advance directive under this subtitle does not affect the sale, procurement, or

issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance.

(2) A policy of life insurance shall not be legally impaired or invalidated by the withholding or withdrawal of life-sustaining procedures from an insured patient in accordance with this subtitle, notwithstanding any term of the policy to the contrary.

(c) Same - Condition prohibited.- A person may not be required to make an advance directive as a condition for being insured for, or receiving, health care services.

(d) Declaration prior to effective date.- Any declaration of a patient or any designation of an agent made prior to October 1, 1993 shall be given full force and effect as provided in this subtitle.

[1993, ch. 372, § 2.]

§ 5-615. Provision of information.

(a) "Health care facility" defined.- In this section, "health care facility" has the meaning stated in § 19-114 of this article.

(b) Provision of information.- Each health care facility shall provide each individual on admittance to the facility information concerning the rights of the individual to make decisions concerning health care, including the right to accept or refuse treatment, and the right to make an advance directive, including a living will.

(c) Development of information sheet.-

(1) The Department, in consultation with the Office of the Attorney General, shall develop an information sheet that provides information relating to advance directives, which shall include:

(i) Written statements informing an individual that an advance directive:

1. Is a useful, legal, and well established way for an individual to direct medical care;

2. Allows an individual to specify the medical care that the individual will receive and can alleviate conflict among family members and health care providers;

3. Can ensure that an individual's religious beliefs are considered when directing medical care;

4. Is most effective if completed in consultation with family members, or legal and religious advisors, if an individual desires;

5. Can be revoked or changed at any time;

6. Is available in many forms, including model forms developed by religious organizations, estate planners, and lawyers;

7. Does not have to be on any specific form and can be personalized; and

8. If completed, should be copied for an individual's family members, physicians, and legal advisors; and

(ii) The following written statements:

1. That an individual should discuss the appointment of a health care agent with the potential appointee;

2. That advance directives are for individuals of all ages;

3. That in the absence of an appointed health care agent, the next of kin make an individual's health care decisions when the individual is incapable of making those decisions; and

4. That an individual is not required to complete an advance directive.

(2) The information sheet developed by the Department under this subsection shall be provided by:

(i) The Department, in accordance with § 15-109.1 of this article;

(ii) The Motor Vehicle Administration, in accordance with § 12-303.1 of the Transportation Article; and

(iii) A carrier, in accordance with § 15-122.1 of the Insurance Article.

(3) The information sheet developed by the Department under this subsection may not contain or promote a specific advance directive form.

[1993, ch. 372, § 2; 1999, ch. 702, § 5; 2004, ch. 356; 2005, ch. 25, § 1; 2006, ch. 223.]

§ 5-616. Preservation of existing right; advance directives executed before effective date.

(a) Provisions cumulative with existing law.- The provisions of this subtitle are cumulative with existing law regarding an individual's right to consent or refuse to consent to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incompetent patient, or a patient's family may have in regard to the provision, withholding, or withdrawal of life-sustaining procedures under the common law or statutes of the State.

(b) Living will or durable power of attorney made prior to effective date.- A valid living will or durable power of attorney for health care made prior to October 1, 1993 shall be given effect as provided in this article, even if not executed in accordance with the terms of this article.

[1993, ch. 372, § 2.]

§ 5-617. Reciprocity.

An advance directive or emergency medical services "do not resuscitate order" executed in another state shall be deemed to be validly executed for the purposes of this subtitle if executed in compliance with the laws of Maryland or the laws of the state where executed. Advance directives or emergency medical services "do not resuscitate orders" executed in another state shall be construed to give effect to the patient's wishes to the extent permitted by the laws of Maryland.

[1993, ch. 372, § 2.]

§ 5-618. Short title.

The provisions of this Part I of this subtitle shall be known and may be cited as the "Health Care Decisions Act".

[1993, ch. 372, § 2; 2006, ch. 223.]