

Draft Legislation. Appendix A, May 5, 1997, Part II

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/jhclp>



Part of the [Health Law Commons](#)

Recommended Citation

Draft Legislation. Appendix A, May 5, 1997, Part II, 1 J. Health Care L. & Pol'y 279 (1998).

Available at: <http://digitalcommons.law.umaryland.edu/jhclp/vol1/iss1/16>

This End Matter is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Journal of Health Care Law and Policy by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

APPENDIX A
DRAFT
MAY 5, 1997
Part II

AN ACT concerning

HEALTH CARE DECISIONS — SURROGATE DECISION MAKERS

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

ARTICLE — HEALTH GENERAL

Title 5. Death.

Subtitle 6. Health Care Decisions Act

5-605. SURROGATE DECISION MAKING

(a)(1) In this subsection “unavailable” means:

- (i) After reasonable inquiry, a health care provider is unaware of the existence of a surrogate decision maker;
- (ii) After reasonable inquiry, a health care provider cannot ascertain the whereabouts of a surrogate decision maker;
- (iii) A 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 surrogate decision maker is incapacitated; or
- (v) A 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. 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;
- (iii) An adult child of the patient;
- (iv) A parent of the patient;
- (v) An adult brother or sister of the patient; or
- (iv) 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)(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 provision 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)(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) A surrogate may not [authorize]:

(1) AUTHORIZE sterilization; [or]

(2) [Treatment for a mental disorder] CONSENT TO A PATIENT'S ADMISSION TO A MENTAL HEALTH FACILITY; OR

(3) AUTHORIZE A BEHAVIOR MODIFICATION PROGRAM INVOLVING AVERSIVE STIMULI.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect on October 1, 1998.