

**§ 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.

**§ 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 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 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 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 items (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 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 advance directive if made in the presence of the attending physician 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 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, 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 a "Patient's Plan of Care" form in accordance with § 5-608.1 of this subtitle.

(4) If the transferring health care provider prepares a "Patient's Plan of Care" form in accordance with § 5-608.1 of this subtitle, the transferring health care provider shall:

(i) Take reasonable steps to ensure that the "Patient's Plan of Care" form is consistent with any applicable decision stated in the advance directive of a declarant; and

(ii) Transmit the "Patient's Plan of Care" 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.]

**§ 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 writing, 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.]