

# SENATE BILL 121

J1, J2

3lr1636  
CF HB 67

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By: **Senator Klausmeier**

Introduced and read first time: January 16, 2013

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions Act – Incapacity to Make Informed Decision –**  
3 **Certification by Psychologist**

4 FOR the purpose of altering the certification requirement regarding a patient's  
5 incapacity to make an informed decision regarding treatment to allow the  
6 second individual making the certification to be a psychologist, rather than a  
7 second physician; making conforming and stylistic changes; and generally  
8 relating to the certification of a patient's incapacity to make an informed  
9 decision regarding treatment.

10 BY repealing and reenacting, with amendments,  
11 Article – Health – General  
12 Section 5–606  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume and 2012 Supplement)

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

17 **Article – Health – General**

18 5–606.

19 (a) (1) **(I)** Prior to providing, withholding, or withdrawing treatment  
20 for which authorization has been obtained or will be sought under this subtitle, the  
21 attending physician and a second physician **OR A PSYCHOLOGIST**, one of whom shall  
22 have examined the patient within 2 hours before making the certification, shall certify  
23 in writing that the patient is incapable of making an informed decision regarding the  
24 treatment.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   **(II)** The certification **UNDER SUBPARAGRAPH (I) OF THIS**  
2 **PARAGRAPH** shall be based on a personal examination of the patient.

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

6                   (3) When authorization is sought for treatment of a mental illness, the  
7 second physician **OR THE PSYCHOLOGIST** may not be otherwise currently involved in  
8 the treatment of the person assessed.

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

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

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

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

19                  **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect  
20 October 1, 2013.