



## Expanded Protection with Health Care Powers of Attorney

### Advance Directives and Surrogate Decision Making – Disqualified Individuals

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A new law out of Annapolis entitled Advance Directives and Surrogate Decision Making – Disqualified Individuals, modified Maryland's Health Care Decisions Act by disqualifying certain persons from serving as surrogate health care decision makers for a patient. People who are subject to a protective order, under the Family Law Article, due to abuse of the patient, will be disqualified from serving as surrogate decision makers. In addition, the new law disqualifies a spouse when the parties have executed a separation agreement or when a complaint for divorce has been filed by either the patient or the spouse.

Previously, our law offered a required hierarchical list of health care decision makers, or surrogates, when a patient is unable to make his or her own health care decisions (MD Code Health Care General § 5-601 et seq.). There was no ability for a social worker or other medical care provider to bypass someone on that list who may have adverse interests to the patient. This presented a terrible dilemma to the provider – either do what the abuser says, even if not in the best interests of the patient, or to run afoul of our laws.

The new law prohibits a person from being a health care surrogate if he or she was the subject of a protective order due to abuse of the patient. The provider can merely engage in the statutorily required “reasonable inquiry” to determine if a protective order exists or if the parties are separated or had filed for divorce that would require them to skip that person and move down the list of surrogates. Surrogates only come into the decision-making process when an advanced health care directive has not been effectuated and no guardian has been appointed. The original bill passed with an amendment that allowed an individual/patient to name a surrogate in certain circumstances.