Maryland's Health Care Decisions Act (HCDA)
- Effective October 1, 1993. Applies in all health care settings and in the community throughout Maryland.

Advance Directives
A written or electronic document or oral directive that:
1. Appoints a health care agent, and/or
2. States the patient's wishes about medical treatments when the patient no longer has capacity to make decisions (living will).

Only a patient – not an authorized decision maker – can make or revoke an advance directive.

Presumption of Capacity
- A patient is presumed to have capacity to make his or her own treatment decisions unless the attending physician and a second physician or nurse practitioner have certified that the individual lacks capacity or a court has appointed a guardian of the person.

Physicians' and NP's Certifications of Incapacity
- The attending physician and a second physician or nurse practitioner certify in writing that a patient lacks the capacity to make a treatment decision.
- One of the physicians or the nurse practitioner must examine the patient within two hours of making the certification.
- If patient is unconscious or unable to communicate by any means, only the attending physician's certification is needed.

Who is the decision maker if a patient lacks capacity? Authorized Decision Makers:
1. Designated health care agent(s)
2. Surrogate:
   a. guardian of the person
   b. spouse or domestic partner (two individuals in a relationship of mutual interdependence in which each contributes to the maintenance and support of the other, gender is irrelevant)
   c. adult child
   d. parent
   e. adult brother or sister
   f. friend or other relative: Must have a written affidavit in the medical record.

Facts About Surrogates
- All surrogates in a category have the same authority.
- A physician may not withhold or withdraw a life-sustaining procedure if there is disagreement among persons in the same class.

Facts About Surrogates
- All surrogates of equal authority must agree on a decision regarding life-sustaining interventions.
- If surrogates do not agree, refer the issue to the Patient Care Advisory Committee (PCAC). There is immunity for following the PCAC's recommendations.

Withdrawing Life-Sustaining Treatments: If no health care agent is appointed, then a life-sustaining treatment may only be withheld or withdrawn when:
1. Certification of incapacity by attending physician and second physician or nurse practitioner, and certification of a terminal or end-stage condition by the attending physician and a second physician or a nurse practitioner or certification of a persistent vegetative state by the attending physician and a neurologist, neurosurgeon, or other physician who is an expert in cognitive functioning.
   - or -
2. Determination of medical ineffectiveness by two physicians.

Qualifying Conditions
1. Terminal condition: incurable. Despite life-sustaining procedures, death is imminent as determined by a physician.
2. End-stage condition: An advanced, progressive, and irreversible condition caused by injury, disease, or illness. Severe and permanent deterioration indicated by incompetency and complete physical dependency. Treatment of the irreversible condition would be medically ineffective.
3. Persistent vegetative state: No awareness of self or surroundings. Only reflex activity and low level conditioned responses. Wait medically appropriate time for diagnosis.

Medical Ineffectiveness
- A medically ineffective treatment is a medical procedure that will not prevent or reduce the deterioration of the patient's health or prevent impending death.
- The patient or authorized decision maker must be informed of the decision.
- The physician must make a reasonable effort to transfer the patient to another physician if the patient or authorized decision maker requests it.
- Pending transfer, the physician must provide the requested treatment if the failure to do so would likely result in the patient's death.
- In an Emergency Room, if only one physician is available, a second physician's certification is not required.