

SENATE BILL 576

J2, N2, J1

0lr2978
CF HB 691

By: **Senator Eckardt**

Introduced and read first time: January 31, 2020

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 26, 2020

CHAPTER _____

1 AN ACT concerning

2 **Health Occupations – Nurse Practitioners – Certifications of Competency and**
3 **Incapacity**

4 FOR the purpose of altering a requirement that a certain petition for guardianship of a
5 disabled person include certain signed and verified certificates of competency by
6 providing that the certificates may be signed and verified by a nurse practitioner and
7 certain other health care practitioners; altering the requirements for the certification
8 of a patient's incapacity to make an informed decision regarding treatment to allow
9 the second individual making the certification to be ~~an advanced practice registered~~
10 a nurse practitioner, rather than a second physician; altering the requirements for
11 the certification of a patient's terminal or end-stage condition for certain purposes
12 to allow the second individual making the certification to be a nurse practitioner,
13 rather than a second physician; making conforming and stylistic changes; and
14 generally relating to the authority of nurse practitioners to certify as to certain
15 individuals' competency or incapacity.

16 BY repealing and reenacting, without amendments,
17 Article – Estates and Trusts
18 Section 13–705(a) and (b)
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2019 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Estates and Trusts
23 Section 13–705(c)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2017 Replacement Volume and 2019 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Health – General
5 Section 5–606
6 Annotated Code of Maryland
7 (2019 Replacement Volume)

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

10 **Article – Estates and Trusts**

11 13–705.

12 (a) On petition and after any notice or hearing prescribed by law or the Maryland
13 Rules, a court may appoint a guardian of the person of a disabled person.

14 (b) A guardian of the person shall be appointed if the court determines from clear
15 and convincing evidence that:

16 (1) A person lacks sufficient understanding or capacity to make or
17 communicate responsible personal decisions, including provisions for health care, food,
18 clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or
19 addiction to drugs; and

20 (2) No less restrictive form of intervention is available that is consistent
21 with the person's welfare and safety.

22 (c) (1) Procedures and venue in these cases shall be as described by Title 10,
23 Chapters 100 and 200 of the Maryland Rules.

24 (2) Notwithstanding the provisions of paragraph (1) of this subsection, a
25 petition for guardianship of a disabled person shall include signed and verified certificates
26 of competency from the following health care professionals **WHO HAVE EXAMINED OR**
27 **EVALUATED THE DISABLED PERSON:**

28 (i) Two licensed physicians [who have examined the disabled
29 person]; ~~for~~

30 ~~(ii) ONE LICENSED PHYSICIAN AND ONE NURSE PRACTITIONER;~~
31 ~~OR~~

32 ~~[(ii)] ~~(iii)~~~~ 1. One licensed physician [who has examined the
33 disabled person] ~~OR NURSE PRACTITIONER;~~ and

1 2. ~~¶A.¶~~ One licensed psychologist [who has evaluated the
2 disabled person;] ~~or;~~

3 ~~¶B.~~ One~~¶~~ licensed certified social worker–clinical [who has
4 evaluated the disabled person]; **OR**

5 **C. ONE NURSE PRACTITIONER.**

6 (3) An examination or evaluation by at least one of the health care
7 professionals under paragraph (2) of this subsection shall occur within 21 days before filing
8 a petition for guardianship of a disabled person.

9 **Article – Health – General**

10 5–606.

11 (a) (1) Prior to providing, withholding, or withdrawing treatment for which
12 authorization has been obtained or will be sought under this subtitle, the attending
13 physician and a second physician **OR A NURSE PRACTITIONER**, one of whom shall have
14 examined the patient within 2 hours before making the certification, shall certify in writing
15 that the patient is incapable of making an informed decision regarding the treatment. The
16 certification shall be based on a personal examination of the patient.

17 (2) If a patient is unconscious, or unable to communicate by any means, the
18 certification of a second physician **OR A NURSE PRACTITIONER** is not required under
19 paragraph (1) of this subsection.

20 (3) When authorization is sought for treatment of a mental illness, the
21 second physician **OR THE NURSE PRACTITIONER** may not be otherwise currently involved
22 in the treatment of the person assessed.

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

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

28 (1) The patient’s attending physician and a second physician **OR A NURSE**
29 **PRACTITIONER** have certified that the patient is in a terminal condition or has an
30 end–stage condition; or

31 (2) ~~¶Two physicians, one of whom¶~~ ~~**A PHYSICIAN WHO**~~ is a neurologist,
32 neurosurgeon, or other physician who has special expertise in the evaluation of cognitive

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1 functioning, ~~AND A SECOND PHYSICIAN OR A NURSE PRACTITIONER,~~ certify that the
2 patient is in a persistent vegetative state.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.