

Chapter 568

(Senate Bill 576)

AN ACT concerning

Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity

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

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

BY repealing and reenacting, with amendments,
 Article – Estates and Trusts
 Section 13–705(c)
 Annotated Code of Maryland
 (2017 Replacement Volume and 2019 Supplement)

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

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

Article – Estates and Trusts

13–705.

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

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

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

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

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

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

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

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

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

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

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

C. ONE NURSE PRACTITIONER.

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

Article – Health – General

5-606.

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

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

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

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

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

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

(2) ~~{Two physicians, one of whom} A PHYSICIAN WHO~~ is a neurologist, neurosurgeon, or other physician who has special expertise in the evaluation of cognitive functioning, ~~AND A SECOND PHYSICIAN OR A NURSE PRACTITIONER,~~ certify that the patient is in a persistent vegetative state.

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.