AARP_Tammy Bresnahan_FAV_SB0576
Uploaded by: Bresnahan, Tammy
Position: FAV

AARP Real Possibilities Maryland

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SB 576 Nurse Practioner -- Certficate of Competency and Incapability
February 13, 2020
SUPPORT
Education, Health, and Environmental Affairs Committee

Good Afternoon Chairman Pinksy and Members of the Senate Education, Health, $ Environmental Affairs Committee. I am Tammy Bresnahan; I am the Director for Advocacy for AARP Maryland. AARP Maryland has over 900,000 members in Maryland and its members overwhelmingly support **SB 576 Nurse Practioners--Certificate of Competency and Incapability.** We thank Senator Eckardt for sponsoring this bill.

HB 576 authorizes a nurse practitioner who has examined a disabled person to be one of the two health care practitioners who may sign a certificate of competency for a petition for guardianship of a disabled person. The bill also authorizes a nurse practitioner to be one of the two health care practitioners permitted, under specified circumstances, to certify that a patient is incapable of making an informed decision regarding specified treatment; in a terminal condition or has an end-stage condition; or in a persistent vegetative state.

It is not unreasonable that our members want and expect reliable access to quality health care and they want to know it is a top priority for lawmakers. That is why we continue to support efforts to modernize state nursing laws so as to adopt full practice authority.

With the shortage of Mental Health Providers, the inability of Advanced Practice Registered Nurses (APRNs) and Psychiatric Mental Health (PMH)-APRNs to perform the same evaluations as other providers creates an unnecessary delay in services to those in need of mental health services and increases the total cost of these services.

Further improvements in access to care and a significant reduction in cost could be realized with the addition of APRNs to the list of providers who are eligible to perform:

- Capability/Capacity Evaluations
- Evaluations for a Certificate of Competency: Guardianship of a Disabled Person
- Involuntary Admission Assessments.

AARP Maryland advocates to break down the barriers that prevent nurse practitioners from using all their expertise in caring for patients. These barriers often delay care to consumers, especially in rural and urban undeserved areas where few physicians are available.

The status quo is failing too many Marylanders to be considered a viable option. In light of the evidence, national recommendations, expert health policy and health care endorsements, and the patient and health system benefits, the only question left is: why not take every opportunity to put patients first and remove red tape for Maryland.

AARP believes that high-quality; patient-centered health care for all will require remodeling many aspects of the health care system, especially nursing. Nurses should be able to practice to full extent of their education and training.

AARP members demand policy solutions and legislation that would fully realize nurses' potential contribution to a patient-centered, transformed health care system in the following areas:

- **Removing Barriers to Practice and Care**: Modernize outdated policies (public and private) and change state and federal laws and regulations to allow nurses to practice to the full extent of their education and training.

- **Patient-Centered Transformed Health Care System**: Advances and contributions to the research, advocacy and communications strategies through the national network of professional and health care related stakeholders.

For these reasons AARP Maryland respectfully request a favorable report on SB 576. For questions or additional information, please feel free to contact Tammy Bresnahan, Director of Advocacy at tbresnahan@aarp.org or by calling 410-302-8451.

Academy of Advanced Clinicians_FAV_SB0576
Uploaded by: Crain, Elaine
Position: FAV

Support
SB 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity

February 13, 2020

EHEA Committee members:

The Maryland Academy of Nurse Practitioners, working with our MedChi colleagues, have prepared 2 amendments

This amendment clarifies that a petition for guardianship must include a signed and verified certificate of competency from at least one licensed physician.

13-705 (2) - on page 2, lines 23-24 should be removed, and lines 25-28 should read:

(I) Two licensed physicians OR

(II) 1. One licensed physician and

2. [A] One NURSE PRACTITIONER or
[B] One licensed psychologist or
[C] One licensed certified social worker–clinical

We are all well aware that Nurse Practitioners have the ability to certify that a patient is incapable of making an informed decision regarding treatment and that a patient has a terminal or end stage condition. These 2 decision-making processes are already outlined in COMAR as Nurse Practitioners are authorized to sign Medical Orders for Life-Sustaining Treatment (MOLST) and the Health Care Practitioner Physical Assessment Form (HCPPA).

And it has previously been recognized by this Committee in 2015 that Nurse Practitioners are as well educated as physicians. Indeed, where a physician will spend 11 years in schools and residencies before practicing on their own, to qualify to work independently and Nurse Practitioners could have as many as 10 years of college and work experience.

This amendment acknowledges that discussions on end of life issues continue to be controversial throughout the nation and we have chosen not to update the following:

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PO Box 8 St. Mary's City MD 20686
www.MAAPConline.org
TheMAAPC@gmail.com
Tax ID 56-2521799

5-606 (b) (2) - on page 3, lines 24-26 will continue to read:
Two physicians, one of whom is a neurologist, neurosurgeon, or other physician who has special expertise in the evaluation of cognitive functioning, AND A SECOND PHYSICIAN certify that the patient is in a persistent vegetative state.

This legislation will modernize the existing statute to make it consistent with the role Nurse Practitioners already have under the MOLST statute, and as clarified by Attorney General Brian Frosh's Summary of Maryland Health Care Decisions Act as amended through 2019 (see following document).

Please contact me (410-703-0556, TheMAAPC@gmail.com) or Lorraine Diana, our Legislative Chair (301-980-8004), for any information you may need about Nurse Practitioners or SB 576. MAAPC is represented in Annapolis by John Favazza (jfavazza@maniscanning.com, 410-263-7882).

Thank you for your consideration of my testimony; please support SB 576 and thank you for your commitment to improving patient access to mental health care,

Dr. Elaine Crain, DNP, RN, FNP-BC
President, MAAPC

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MNA_Robyn Elliott_FAV_SB 0576
Uploaded by: Elliott, Robyn
Position: FAV

Committee:	**Education, Health, and Environmental Affairs**
Bill Number:	**SB 576**
Title:	**Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity**
Hearing Date:	**February 13, 2020**
Position:	**Support**

The Maryland Nurses Association (MNA) supports *Senate Bill 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacities.* This bill allows nurse practitioners to work collaboratively with a physician to certify the competency and/or incapacity of certain individuals.

Under current state law, there are numerous procedures that require at least one physician to examine and provide certification of an individual's competency or capacity to make health care decisions for themselves. Typically, these certifications are conducted in conjunction with a second physician or other licensed health care practitioner.

Since 2015, certified nurse practitioners have had the authority to practice independently in evaluating, diagnosing, and treating patients in Maryland. MNA supports this bill to expand the availability of nurse practitioners to provide certification for competency and treatment. We believe these changes will assist in expediting the process of obtaining required health care certifications.

Thank you for your consideration of our testimony, and we urge a favorable vote. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

GaryHicks_FAV_Board of Nursing_SB0576
Uploaded by: Hicks, Gary
Position: FAV

Maryland
DEPARTMENT OF HEALTH

Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 13, 2020

The Honorable Paul G. Pinsky
Chair, Senate Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB0576 - Health Occupations - Nurse Practitioners - Certifications of Competency and Incapacity - Letter of Support

Dear Chair Pinsky:

The Maryland Board of Nursing is submitting this letter of support for SB0576 - Health Occupations - Nurse Practitioners - Certifications of Competency and Incapacity. This bill alters a requirement that a 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. The bill also alters 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 a nurse practitioner, rather than a second physician.

Nurse practitioners are independent practitioners who by regulation (COMAR 10.27.07.03) may perform numerous acts including but not limited to: performing a comprehensive physical assessment on a patient; establishing a medical diagnosis for common short-term and chronic stable health problems; ordering, performing, and interpreting laboratory and diagnostic tests; ordering and performing diagnostic, therapeutic, and corrective measures; prescribing drugs and providing emergency care. In accordance with COMAR 20.31.03.01, a nurse practitioner may certify that a patient has a serious illness or needs life-support equipment. In addition, Health-General Article, §10-615 and §10-616 allows a psychiatric nurse practitioner; together with a physician (a psychologist is not necessary), to admit individuals involuntarily to facilities for treatment for mental disorders.

If passed, this bill will prevent substantial delays in treatment, particularly in long term care where nurse practitioners independently manage the care of patients daily. Nurse practitioners are often hired as staff in long term care facilities. Currently, in this setting, when a certification of incapacity to make an informed decision regarding treatment is needed, the nursing facility staff will contact the primary care physician to complete the certification of incapacity. However, a second physician will need to be contacted to come out to the facility to complete the certification of incapacity. This visit from a second physician could take up to 30 days. This is particularly concerning for patients (without an appointed healthcare decision maker such as

Health Care Agent, Surrogate or Medical Power of Attorney) who are unable to give informed consent for treatment.

Under 42 C.F.R. §483.30 (c)(1), a resident in a skilled nursing facility (SNF) such as long term care, must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. Non-physician practitioners may perform other medically necessary visits prior to and after the physician's initial comprehensive visit. Physician visits may occur at least monthly, while nurse practitioners are available in the facilities daily.

For the reasons discussed above, the Board of Nursing submits this letter of support for SB0576.

For more information, please contact Rhonda Scott, Deputy Director, at (410) – 585 – 1953 (rhonda.scott2@maryland.gov) or Karen E. B. Evans, Executive Director, at (410) – 585 – 1914 (karene.evans@maryland.gov).

Sincerely,

Gary N. Hicks
Board President

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

MAADS_LifeSpan_HPCNMD_Danna Kauffman_FAV_SB0576
Uploaded by: Kauffman, Danna
Position: FAV

TO: The Honorable Paul G. Pinsky, Chair
Members, Senate Education, Health, and Environmental Affairs Committee
The Honorable Adelaide C. Eckhardt

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
Richard A. Tabuteau

DATE: February 13, 2020

RE: **SUPPORT** – Senate Bill 576 – *Health Occupations – Nurse Practitioners – Certification of Competency and Incapacity*

On behalf of the LifeSpan Network, the Maryland Association of Adult Day Services, and the Hospice & Palliative Care Network of Maryland, we **support** Senate Bill 576.

This bill authorizes a nurse practitioner who has examined a disabled person to be one of the two health care practitioners who may sign a certificate of competency for a petition for guardianship of a disabled person. In addition, this bill also authorizes a nurse practitioner to be one of the two health care practitioners who can certify that a patient is: (1) incapable of making an informed decision regarding specified treatment; (2) in a terminal condition or has an end-stage condition; or (3) in a persistent vegetative state.

Currently, the law, in most cases, requires the certifications be made by two physicians. In long-term care and in hospice, it can be difficult to find two physicians who can examine and make the necessary certifications, which can result in care delays. This is especially true in the rural communities. Given that nurse practitioners are serving as primary care providers and in other roles, we believe that it would be appropriate to expand the current law to include them as an option for certification. Therefore, the above-referenced associations urge a favorable vote.

For more information call:
Danna L. Kauffman
Pamela Metz Kasemeyer
Richard A. Tabuteau
410-244-7000

Susan Kraus_FAV_SB0576
Uploaded by: Kraus, Susan
Position: FAV

Kraus
BEHAVIORAL HEALTH

Support
***SB* 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity**

February 11, 2020

EHEA Committee members:

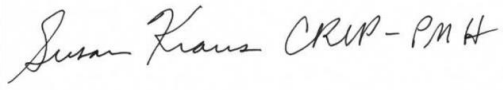
I am certified as an adult nurse practitioner and a psychiatric nurse practitioner. In my 30+ years as a nurse practitioner I have worked extensively with patients in long term care settings - nursing homes, assisted livings, group homes and other chronic care facilities.

Last month I had a patient who I had assessed as incapable to make his own medical decisions, but I was unable to sign the form due to the law requiring 2 physicians to sign the form for incapacity. I talked to the primary care physician, he saw the patient and signed the form, but the medical director was not going to be in the building for 2 more days to sign off. The delay in having the completed incapability/incapacity determination, which allowed a family member or other responsible party to make a decision on the patient's behalf, resulted in the patient being transferred to the hospital for acute treatment and hospitalization.

Currently I have a patient with Schizophrenia and a moderate Intellectual Disability; he is his own responsible party. He was diagnosed with Normal Pressure Hydrocephalus over a year ago. His caregiver took him to an appointment with a surgeon who asked the patient if he wanted to have a tube put in his head to drain the fluid from the brain. The patient said no because he was not sick (he could not literally see anything wrong with himself) – he was not capable of understanding the falls, the incontinence, the worsening cognition was because of NPH. The patient went back to his group home where his symptoms worsened – the PCP signed the incapacity form but I was unable to co-sign, so an appointment with a second physician would be needed to evaluate the patient and co-sign the form so that a responsible party or family member could help make a medical decision for this pt. To date, the patient has not been seen by the second physician; the patient is now in a wheelchair, completely incontinent and more cognitively impaired.

Please contact me, Dr. Elaine Crain, MAAPC's President, (410-703-0556, TheMAAPC@gmail.com) or Lorraine Diana, our Legislative Chair (301-980-8004), for any information you may need about Nurse Practitioners or SB 576. MAAPC is represented in Annapolis by John Favazza (jfavazza@maniscanning.com, 410-263-7882).

I respectfully ask that you support SB 576,



Susan Kraus, MSN, CRNP-A, CRNP-PMH

Senator Eckardt_FAV_SB0576
Uploaded by: Senator Eckardt, Senator Eckardt
Position: FAV

ADDIE C. ECKARDT
Legislative District 37
Caroline, Dorchester, Talbot,
and Wicomico Counties

Budget and Taxation Committee

Health and Human Services
Subcommittee

Joint Committees
Administrative, Executive,
and Legislative Review

Audit

Children, Youth, and Families

Fair Practices and
State Personnel Oversight

Pensions

THE SENATE OF MARYLAND
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Testimony for Senate Bill 576
Health Occupations - Nurse Practitioners - Certifications of Competency and Incapacity
Education, Health, and Environmental Affairs
February 13, 2020

Chairman Pinsky and Members of the Committee:

Thank you for the opportunity to present Senate Bill 576 - Health Occupations - Nurse Practitioners - Certifications of Competency and Incapacity. This proposed legislation alters requirements for petitions for guardianship and competency of disabled persons.

Current law requires two physicians, or a physician and either a psychologist or licensed certified social worker to certify the petition of guardianship. Two physicians are required for a certification of competency. This bill will allow nurse practitioners to perform both of these certifications, as well.

I respectfully ask for a favorable report of Senate Bill 576. Thank you.

Best Regards,

Addie Eckardt

Senator Addie Eckardt

Sabrina Sepulveda_FAV_SB0576
Uploaded by: Sepulveda, Sabrina
Position: FAV

Sabrina Sepulveda, CRNP-PMH
Harborside Behavioral Health, LLC
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Phone: (301) 494-1009
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Support
SB 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity

February 11, 2020

EHEA Committee members:

The Nurse practitioner is a well-positioned independently licensed health care professional who is trained to provide comprehensive biopsychosocial assessments for patients across the lifespan to evaluate decisional capacity and recommendation of guardianship of disabled persons. We seek to add Nurse Practitioners as authorized health care providers, along with our physician colleagues, for the evaluation of capacity and for guardianship of disabled persons.

Rural areas are disproportionately affected by health care providers shortages. In my area, Southern Maryland, there are both primary care and mental health care provider shortages. Nurse Practitioners are the health professionals who are increasing access to care. As a solo provider practice, I am relied on by my community to provide comprehensive psychiatric treatment and collaborative care with medical providers, community agencies, hospitals, laboratories, pharmacies and most importantly the patient's support system.

In Summer of 2019, a family of a patient whom I have provided care for the past 7 years came to me in desperation. The patient, a male in his early 30's who lives with Schizophrenia, had stopped taking his medications for several months. He traveled across the United States to California in a psychotic episode, was involuntarily committed in the mid-west for 6 weeks, stabilized and brought home to Maryland by his parents. Upon return, he was effectively homeless, living in hotels, being kicked out of 2 local hotels due to his symptomatic behaviors, including paranoia and delusional thinking.
His parents helped to manage his finances as his representative payee with social security, which I had helped the family apply for the year before. He had been unemployed for 2 years despite having 2 bachelor's degrees, one in Computer Science and an IQ of which we all would be envious - sheer brilliance touched by fire. He was too disorganized and paranoid to live at home. His parents visited every other day, begged him to take medication and return to my care. He was refusing treatment, lost in a psychotic fugue.
One day, the parents came to my office, fresh from a consult with an attorney, full of determination and gusto to get their son back on track. The patient's father, a former Navy officer, delivered the plan, as outlined by the attorney, they would like to proceed with guardianship for their son to get him treatment. The feared for his life, both by suicide and by victimization. In fact, they feared the latter, more than the former. The father declared, "the attorney said you can sign a paper for guardianship for the courts to review, and we want you to do that". I had to tell the parents that despite being the most consistent and trusted provider for their son, that the law dictates 2 physicians or a physician and psychologist or licensed professional social worker are authorized to sign for guardianship. The father was confused, "But you are his health care provider, you know him better than anyone else, what do you mean you can't sign for it. That doesn't make any sense." The family left frustrated and feeling more hopeless with having to find other providers in our community which is both a mental health and primary care shortage area, in addition, then to actual get a face to face with his son for the evaluation.
During this delay, the patient ended up committing a non-violent crime, was arrested, found incompetent to stand trial and is currently admitted to a state psychiatric hospital. Think of where he might be now had his parents been able to access guardianship in a timely fashion. Now think of how much of our taxpayer money is going to

spend to keep this person in institutional care, when the underlying problem is that of serious chronic mental illness, which can be managed in community.
Despite being the health care provider who has treated the patient for the past 7 years, each time returning to my outpatient care from multiple hospitalizations, involuntary commitments and jail time, who held the trust and respect of his family and the patient, I was not able to offer my professional opinion.

There is an assumption in the professional and lay communities that the independently licensed nurse practitioner is not only well qualified but authorized to make a professional judgement regarding capacity and guardianship. They believe this because of the comprehensive care we already routinely provide and as one of the most trusted professions in public opinion. This is because Nurse Practitioners can safely, effectively, and efficiently execute these evaluations, in collaboration with our physician colleagues to improve access to care and decrease costs for our Maryland residents.

Please contact me, Dr. Elaine Crain, MAAPC's President, (410-703-0556, TheMAAPC@gmail.com) or Lorraine Diana, our Legislative Chair (301-980-8004), for any information you may need about Nurse Practitioners or SB 576. MAAPC is represented in Annapolis by John Favazza (jfavazza@maniscanning.com, 410-263-7882).

I ask you to support SB 576, allowing nurse practitioners to be one of the health care providers authorized to sign, along with our physician colleagues, to evaluate decisional capacity and guardianship of disabled persons.

Respectfully,

Sabrina Sepulveda, CRNP-PMH
Adult Psychiatric Nurse Practitioner
Owner, Harborside Behavioral Health, LLC

Other information

- Nurse Practitioners routinely assess capacity with the informed consent process including the ability to appreciate, understand, reason and exercise choice. Nurse Practitioners are able to assess, diagnosis, order and interpret laboratory, and prescribe treatments. They can evaluate both medical and psychiatric conditions.

- The certificate of disability requires the health professional to evaluate the disabled person for both physical and mental health, cognitive functions, instrumental activities of daily living such as managing finances effectively, managing transportation needs, and managing medications. It requires the professional to opine regarding need for institutional care, the ability to manage property and person. These assessments are routine during the course of evaluation for a nurse practitioner.

SB0576_FAV_William Sutton
Uploaded by: Sutton, William
Position: FAV

Support

***SB* 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity**

February 11, 2020

EHEA Committee members:

My name is William Sutton and I am a psychiatric mental health nurse practitioner in the state of Maryland. Most of my clinical practice takes place, with older adult patients, in nursing homes and assisted living facilities.

At times, patients with cognitive deficits require capacity evaluations for continuance of care. I have had physicians ask me to complete such evaluations and I state that such a task is not allowed under Maryland law. I have been involved in countless situations whereby I am unable to complete this task and the given patient experiences a delay in treatment.

I was recently involved in an assisted living care setting where a patient was exhibiting an increase in exit-seeking behavior. This individual had been unwilling to make one of his children a durable power of attorney and medical decision maker. When the facility wished to place the resident on a more secure unit, he refused. An order was placed for me to complete a capacity evaluation. I did not complete this evaluation for the reason stated above. An outside psychologist was consulted and completed the evaluation later in the week.

This story highlights a delay in patient care that may have resulted in an elopement from the facility and possible physical harm. SB 576 will ensure that patients will receive timely, appropriate psychiatric care.

Please contact me, Dr. Elaine Crain, MAAPC's President, (410-703-0556, TheMAAPC@gmail.com) or Lorraine Diana, our Legislative Chair (301-980-8004), for any information you may need about Nurse Practitioners or SB 576. MAAPC is represented in Annapolis by John Favazza (jfavazza@maniscanning.com, 410-263-7882).

I ask you to support allowing psychiatric nurse practitioners to practice to the full extent of their training and education.

Thank you,

Dr. WSutton, DNP, CRNP-PMH

William Sutton, DNP, CRNP-PMH
Psychiatric Mental Health Nurse Practitioner
Kraus Behavioral Health
410-255-1500 Ext 118
wsutton@krausbehavioralhealth.com

MDAPA_D Bridge-Najera_FWA_SB0576
Uploaded by: Bridge Nanera, MOAS, MS, PA-C, Deanna
Position: FWA

The Maryland Academy of Physician Assistants

mdapa

Date: February 13, 2020

Committee: Education, Health and Environmental Affairs

Bill: SB 576 – Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity

Position: SUPPORT WITH AMENDMENT

This is a letter in Support with Amendments of Senate Bill 576, requesting inclusion of PHYSICIAN ASSISTANTS (PAs) as certifying providers.

There are three recognized providers of medical care in Maryland: physicians, physician assistants (PAs) and nurse practitioners (NPs). Senate Bill 576 addresses the determination of competency for assignment of guardianship as well as incapacity when dictating medical care. As proposed, by SB 576, a nurse practitioner will be viewed as a medical provider in the determination of competency or incapacity.

On behalf of the Maryland Academy of Physician Assistants, the only organization representing the over 3,000 PAs in the state, we wish to propose that SB 576 also include a PHYSICIAN ASSISTANT in addition to a NURSE PRACTITIONER under these circumstances. PAs are licensed by the Board of Physicians to provide medical care in Maryland in all medical specialties. We examine, diagnose, and treat all manner of illness and injury, including those that may result in cognitive impairment.

Given that a large portion of the residents of the state do not have ready access to medical care, the burden of allowing only physicians to determine competency or incapacity creates unnecessary hurdles. PAs and NPs are often the primary, and sometimes the only, medical provider a patient may be interacting with on a regular basis. There should be no reason to have an extraneous barrier in place that could impair safety by delaying guardianship or result in delay of patient care by blocking assessment of incapacity.

For these reasons we request that both NURSE PRACTITIONERS (NPs) and PHYSICIAN ASSISTANTS (PAs) are included as providers able to assist in the determination of competency and capacity as proposed by Senate Bill 576.

Respectfully,

Deanna Bridge Najera, MPAS, MS, PA-C
President, 2019-2020
Maryland Academy of PAs
President@mdapa.org

SB 576_The Arc Maryland_Oppose_ Ande Kolp
Uploaded by: KOLP, ANDE
Position: UNF

The Arc Maryland
8601 Robert Fulton Drive, Suite 140
Columbia, MD 21046
www.thearcmd.org

Senate Finance Committee
SB 576 Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity

Oppose

The Arc Maryland is a state-wide non-profit advocacy organization dedicated to the rights and quality of life of people with intellectual and developmental disabilities (I/DD) and their families. We have deep concerns about the way in which the bill in written which could have negative (albeit unintended) effects on the rights of people with intellectual and developmental disabilities.

Our current statue allows LCSW-Cs to sign incapacity certificates only if a physician signs the other certificate. As the current statute reads, **two physicians OR at least one physician AND one psychologist or one LCSW-C are required** to complete certificates of competency and incapacity.

At least one of the professionals MUST be a physician under current statute.

This bill would change our statute to allow Nurse practitioners to sign, instead of (at least one) physician. Nurse Practitioners are incredibly skilled and important to our health care system, but there is specialized knowledge MDs have they don't. For example, an individual with disabilities may be exhibiting behavior which might appear to be tied to their disability that may instead be due to a medication interaction, a non-verbal response to pain, or un undiagnosed urinary tract infection. Our law requires that incapacity be tied to a disability. If the temporary incapacity is instead caused by a medical issue, the person should not lose their autonomy through placement under guardianship. This is a skilled assessment that cannot be left to a professional who may not possess the required knowledge and perspective.

There is also conflicting information in the bill which makes the intentions of the bill and proposed changes to statute unclear.

On Page 2, Lines 21-30 state:

21 (i) Two licensed physicians [who have examined the disabled

22 person]; [or]

23 (II) ONE LICENSED PHYSICIAN AND ONE NURSE PRACTITIONER;

24 OR

25 [(ii)] (III) 1. One licensed physician [who has examined the

26 disabled person] OR NURSE PRACTITIONER; and

27 2. [A.] One licensed psychologist [who has evaluated the

28 disabled person;] or

29 [B. One] licensed certified social worker–clinical [who has

30 evaluated the disabled person].

The implication here is that there is no requirement for a physician's assessment and signature.

However, on Page 3, lines 4 through 6 it is clearly stated that ONE of the certifying professionals must be a physician:

4 (a) (1) Prior to providing, withholding, or withdrawing treatment for which

5 authorization has been obtained or will be sought under this subtitle, **the attending**

6 physician and a second physician OR **A NURSE PRACTITIONER.**

For all of these reasons, and our concerns for the rights of people with intellectual and developmental disabilities to receive fair treatment, and to preserve autonomy, we respectfully ask for an unfavorable report from the committee on SB 576.

Respectfully submitted,

Ande Kolp, Executive Director

OPD_OPP_SB 576
Uploaded by: McCabe, Carroll
Position: UNF

MARYLAND OFFICE OF THE PUBLIC DEFENDER

POSITION ON PROPOSED LEGISLATION

BILL: SB 576 – Nurse Practitioners - Certifications of Competency and Incapacity

POSITION: OPPOSE

DATE: February 13, 2020

Altering Maryland's current standards for involuntary psychiatric commitment to allow psychiatric nurse practitioners (PNPs) to perform initial inpatient examinations and to testify at hearings will lower quality and increase costs.

There is a significant difference in knowledge, training and experience between a psychiatrist and a psychiatric nurse practitioner.

Currently all inpatient psychiatric units must have a psychiatrist. A psychiatrist receives eight (8) years of post-graduate schooling and residency before he or she may practice. Even a newly minted psychiatrist will bring over 6,000 hours of clinical practice and 12,000 hours of residency experience with her.

A PNP will receive anywhere from one and one-half (1.5) to three (3) years of post-graduate schooling, which may be completed at an online university. A newly minted psychiatric nurse practitioner will bring between 500 to 1,500 hours of clinical practice. She will have no residency hours.

PNPs will receive about 13% of the training received by psychiatrists. There can be no comparison in knowledge, training and experience.[1] Marylanders with disabilities in acute psychiatric crisis are entitled to the highest standard of care.

Psychiatrists provide a "safety net" on triage diagnoses in the Emergency Department.

Marylanders who are unwillingly moved to an inpatient psychiatric unit often come in through local Emergency Departments (EDs).[2] After a basic evaluation, certificates for

[1] Combined lecture/clinical/residency hours. See attached table- *Degrees Required and Time to Completion*.

[2] The Office of the Public Defender's Mental Health Division monitors length of ED stays for individuals brought in on Emergency Petitions. To the extent that Marylanders are being held in EDs it is for lack of specialized beds (juvenile/geriatric/co-occurring autism or intellectual disability) not due to a lack of inpatient psychiatrists.

involuntary admission are completed by ED physicians.[3] The certificates, combined with an application for involuntary admission, provide the legal authority to move a person against his or her will to an inpatient psychiatric unit.

The current law mandates that a psychiatrist examine an individual within twenty-four (24) hours of admission to an inpatient unit.[4] Psychiatrists bring knowledge, training and experience that can catch undiagnosed physical conditions that present as psychiatric illness. From the elderly man diagnosed with schizophrenia when he in fact has dementia, to the individual with a brain tumor causing delusions and hallucinations, the complexity of these situations benefit from examination by a psychiatrist.

Involuntary inpatient confinement is a significant deprivation of individual liberty with serious collateral consequences. Marylanders are entitled to evaluation by a psychiatrist before their liberty and civil rights are taken away.

Maryland currently requires that an involuntary admission hearing shall include in-person testimony from a psychiatrist/physician in a supervised psychiatric residency/psychologist who has examined the individual within the past forty-eight (48) hours.[5] This is appropriate given the serious nature of confinement on an inpatient unit- where forcible injection of psychiatric medication, seclusion and restraint are possible. Psychiatric detainees have no choice as to whether and to what facility they are sent, or over the person providing treatment. Involuntary confinement has immigration, professional licensure and personal consequences (job loss, eviction, child custody). The existing law guarantees expert testimony at a level that can reach the clear and convincing burden of proof required in these cases.

Decisions about whether to confine or release a person alleged to be dangerous due to a mental illness should be made by the highest credentialed medical professionals.

Every day Marylanders present to EDs and are admitted to inpatient psychiatric units upon allegations of dangerous behavior- whether to themselves or others. This is where psychiatrists' years of clinical and residential experience prove most valuable. There is no more important decision than a person's right to freedom versus the safety of that individual and/or the community. The current law correctly places this weighty decision in the hands of medical professionals with tens of thousands of hours of training and experience.

Changing Maryland's current statutory scheme will be costly.

The trend across the United States is to require psychiatrist examination and testimony in the involuntary admission process. Only ten (10) states currently allow PNPs to perform initial

[3] Md. Code Ann., Health-Genl. Art. (HG) Sec. 10-616(a)(1)(i) also permits a psychologist or psychiatric nurse practitioner to complete certificates for involuntary admission.
[4] Code of Maryland Regulations (COMAR) 10.21.01.07C(1).
[5] HG Sec. 10-632(d)(1), COMAR 10.21.01.09E(1)

examinations and/or testify at confinement hearings. Of the states that permit PNP involvement, seven (7) give detainees the right to request and receive an independent examination by a psychiatrist at state expense. In light of the civil liberties involved in these proceeding, due process will demand that Marylanders receive a similar option. The Maryland Office of the Public Defender's Mental Health Division represents over 600 psychiatric detainees every month. The cost of providing access to independent psychiatrists will be prohibitive.

Conclusion

Maryland's current involuntary admission laws provide vigorous protection of individual liberty and community interests. There are many challenges in the provision of psychiatric care. It is vital that we focus our limited resources on real problems. HB317 does not improve access to care for the mentally ill in the community, nor does it increase the number of inpatient beds. It only serves to reduce the access to psychiatrists of those being involuntarily admitted. HB317 is a solution in search of a problem.

For the forgoing reasons, the Maryland Office of the Public Defender opposes HB317.

	Undergraduate Degree	Entrance Exam	Post Graduate Schooling	Residency and Duration	Total Time For Completion
Nurse Practitioner	Standard 4 year BA/BS degree*	GRE and National Council Licensure Exam for Registered Nurses required for MSN programs	1.5-3 years, Master's Program (MSN) Can be completed at Online University	None	5.5-7 years
Psychiatrist	Standard 4 year BA/BS degree	Medical College Admission Test (MCAT)	4 year Doctoral Program (M.D. or D.O)	4 years	12 Years

MEDICAL/PROFESSIONAL SCHOOL AND RESIDENCY/POST-GRADUATE HOURS FOR COMPLETION

	Lecture Hours (Pre-Clinical Years)	Combined Hours (Clinical Years)	Residency Hours	Total Hours
Psychiatrist	2,700	6,000	12,000-13,000	20,700-21,700
Doctorate of Nursing Practice**	800-1,600	500-1,500	None	2,800-5350
Difference Between Psychiatrists and Nurse Practitioner Hours of Professional Training	1,100-1,900 more for Psychiatrists	4,500-5,500 more for Psychiatrists	12,000-13,000 more for Psychiatrists	15,350-18,900 more for Psychiatrists

*Although a four year degree is preferred, a BSN degree is recommended, alternate pathways exist for an RN without a bachelor's degree to some master's programs.

**Psychiatric Nurse Practitioners are not required to obtain a doctorate degree (DNP). Nurses who obtain a master's degree can take the psychiatric-mental health nurse practitioner exam administered by the American Nurses Credentialing Center.

Source: American Council of Science and Health October 2017

Disability Rights Maryland_Rusciano_Oppose_SB 576
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Disability Rights Maryland

Empowerment. Integration. Equality.

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Disability Rights Maryland
Testimony in Opposition of Senate Bill 576
Maryland Senate Education, Health, and Environmental Affairs Committee
February 13, 2020

POSITION: OPPOSE

Disability Rights Maryland (DRM), formerly *Maryland Disability Law Center,* is Maryland's federally-designated protection and advocacy organization charged with defending and advancing the rights of people with disabilities. For over 40 years we have worked with people with disabilities to create a society that values their full participation and inclusion. Our legal services include community education and advice on state guardianship law and alternatives to guardianship, like powers of attorney and supported decision-making, which offer greater protection for individual rights. DRM regularly encounters people with disabilities who have been subject to unnecessary guardianships and experience profound deprivation of their civil rights and liberty as a result. Disability Rights Maryland opposes Senate Bill 576 as it would permit nurse practitioners to replace physicians in signing a certificate of incompetency for a guardianship petition.

The implications of guardianship cannot be overstated. Guardianship is a far-reaching intervention that some have equated to civil death.[1] It strips a person of their legal capacity and places their decision-making authority in the hands of another. Guardianship removes a person's ability to be the architect of their own life and make the decisions that form their identity, including whether they marry and form a family, where they live, what education, job or training opportunities they may have, and what services or health care they receive. Critically, once established, guardianship is often permanent. DRM has witnessed our clients be unnecessarily subject to guardianship because of negative stereotypes and biases about people with disabilities. Our clients have been certified incompetent and placed under guardianship merely because of their diagnoses or IQ scores, with little regard to their actual capabilities or the presence of less restrictive alternatives. Guardianship is an overused tool in Maryland. It should be more difficult to place someone under guardianship, not easier.

Currently, under Maryland law in order to file a petition for guardianship the petitioner needs to attach two certificates of incompetency finding that alleged disabled person lacks the legal capacity to make responsible decisions due to their disability. One of these certificates must be signed by a physician due to the significant liberty interest at stake. The other certificate may be signed by a physician, a licensed psychologist or a licensed certified social worker—clinical. SB 576 allows nurse practitioners to replace physicians on both the first and second certificates, meaning that no physicians are needed to sign a certificate of incapacity.

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[1] *See* National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination (March 22, 2018)* at 17 *available at* https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf

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While nurse practitioners are highly skilled, they are not a substitute for the training or skill of a physician, especially in a matter that can so drastically and permanently affect a person's civil rights. DRM is concerned that a nurse practitioner would not have the sufficient training to diagnose and distinguish between permanent disabilities and certain complex medical conditions, such as a urinary tract infection that causes hallucinations or medication reactions. Our current statute respects physicians' specialized skill and training as it requires that even when psychologists or licensed certified social workers-clinical sign one certificate, a physician must sign the other.

It is our understanding that this bill may have been proposed due to allegedly increasing numbers of people in hospitals who are unable to be discharged due to their inability to consent to this discharge. In contrast, DRM has seen cases where hospitals or other entities petition for guardianship in circumstances when there actually is a family member willing to serve as surrogate decision-maker or power of attorney, but the hospital disagrees with their position. Furthermore, guardianship is not a discharge plan. Placing someone under guardianship does not mean they can access the supports and services in the community, which will actually lead to their discharge. There are waitlists for many of these services. Thus, it is often the lack of available services, not a person's alleged incapacity, which leads to an inability to discharge them. Even when a guardian is appointed, there is no guarantee that the person will actually be expediently discharged.

In the wake of a handful of guardianship bills that were introduced in legislature last session, the Maryland State Bar Association created a Guardianship Task Force who will review and evaluate Maryland's guardianship laws. We believe this issue should be considered by that task force prior to amending our current statute.

Given the profound liberty interests at stake in guardianship proceedings, DRM recommends the Senate **oppose** Senate Bill 576. While nurse practitioners are highly skilled, their expertise and training should not be allowed to replace that of physicians in matters that can result in significant and often permanent deprivation of a person's civil rights.

For these reasons, DRM recommends that Senate Bill 576 be give an unfavorable report.

Respectfully submitted,

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MPS_OPP_SB 576
Uploaded by: Tompsett, Tommy
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February 13, 2020

RE: OPPOSE – SB 576: Nurse Practitioners - Certifications of Competency and Incapacity

The Maryland Psychiatric Society (MPS) is a state medical organization whose physician members specialize in the diagnosis, treatment, and prevention of mental illnesses including substance use disorders. Formed more than sixty years ago to support the needs of psychiatrists and their patients, MPS works to ensure available, accessible and comprehensive quality mental health resources for all Maryland citizens; and strives through public education to dispel the stigma and discrimination of those suffering from a mental illness. As the district branch of the American Psychiatric Association covering the state of Maryland excluding the D.C. suburbs, MPS represents over 700 psychiatrists as well as physicians currently in psychiatric training.

MPS opposes SB 576 for it would imprudently authorize a sole psychologist or psychiatric nurse practitioner (PNP) instead of a psychiatrist to conduct the psychiatric examination that is required within 24 hours of an individual's involuntary commitment to an inpatient psychiatric facility, conduct the psychiatric examination required within 48 hours of the same individual's involuntary commitment hearing, and then allow the psychologist or PNP to testify as an expert witness at the involuntary commitment hearing before an Administrative Law Judge who determines the individual's continued admission. As the following explains, the decision to curtail an individual's liberty through involuntary admission must be predicated on the soundest evaluations and observations, which from MPS's perspective can only be provided by a psychiatrist.

To begin, SB 576 ignores the purposefully rigorous application process that begins an involuntary admission in the first place. MD Code, Health - General § 10-615 requires among other things two accompanying certificates based on personal examination of the individual to be signed by 1 physician and 1 psychologist, 2 physicians, or 1 physician and 1 PNP. Notice that the common denominator for involuntary admission certification is the presence of at least one physician. The question becomes, why would we abandon this prudent approach once an individual is actually confined? Yet SB 576 does just that.

With an individual's liberty in the balance, current law requires that within 24 hours of an individual's involuntary confinement, a psychiatrist must examine that individual. This is the beginning of the "observation period," the time when the patient's diagnosis is clarified and the psychiatrist determines whether the patient is safe for discharge. During the observation period the psychiatrist clarifies the individual's diagnosis that led to a commitment by conducting a physical examination, by ordering and interpreting laboratory tests, by reviewing and summarizing medical records, and by interviewing collateral historians. All of this information is ultimately presented at a civil commitment

hearing before an Administrative Law Judge, but would have been unavailable to the individual who merely signed the civil certificates in the emergency department. This is why current law rightfully mandates that the person who testifies at a civil commitment hearing is the treating inpatient psychiatrist rather than the emergency room physician or psychiatric evaluator who signed the certificates.

Furthermore, the accuracies of the medical examinations post confinement are paramount and are rightfully imparted to a psychiatrist who is a physician first, and not a PNP or psychologist. While a PNPs and psychologists are both vital components of the care team, expanding their scope to evaluate patients for continued involuntary confinement without physician involvement and testifying as an expert the hearings that ultimately determine the individual's liberty is dangerous to patient safety and runs counter to our shared values.

Unfortunately, neither PNPs, with their comparatively limited medical training, nor psychologists, with no medical training, have the ability to perform differential diagnoses, which is the process of differentiating between two or more conditions, which share similar signs or symptoms. This is of the utmost importance in cases of involuntary admission as physical illnesses can sometimes present as mental illness and it cannot be the policy of this State to involuntary commit the physically ill due to an inadequate medical evaluation that labels the individual as mentally ill. Physicians spend years learning differential diagnoses, pharmacology, and honing their medical skills. This is a critical component of expertise for psychiatrists and other physicians, who under current Maryland law must be at least one part of the health care team credentialing an involuntary commitment.

In the end, procedures for involuntary admissions should always be designed to minimize adverse impacts on patients and expanding involuntary confinement evaluation authority to those with no or insufficient medical training would expose patients to safety risks through inadequate evaluations. SB 576 could theoretically remove all psychiatrist involvement in the involuntary admission process, leaving a psychologist or PNP to testify regarding the results of a physical examination he didn't conduct, the results of tests he was not legally authorized to order or interpret, or the need for pharmacologic treatment he was not legally allowed to prescribe.

For these reasons, MPS respectfully asks the committee to preserve current Maryland law requiring at least one physician to be involved with involuntary commitment, confinement, and hearing process and oppose SB 576. If you have any questions with regard to this testimony, please feel free to contact Thomas Tompsett, Jr. at tommy.tompsett@mdlobbyist.com.

Respectfully submitted,
The Legislative Action Committee for the Maryland Psychiatric Society