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**SARDA**

Shattering Stigma – Realizing Recovery  
Schizophrenia and Related Disorders Alliance of America

Evelyn Burton, Advocacy Chair  
Maryland State Chapter

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*Improving Lives Affected by Psychosis*

Testimony Concerning HB 317

TO: Delegate Shane Pendergrass,  
Chair of the House Health Government and Operations Committee  
FROM: Lisa Dailey, Director of Advocacy, Treatment Advocacy Center

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Dear Chairperson Pendergrass:

The Treatment Advocacy Center is a national nonprofit dedicated to eliminating barriers to treatment for individuals with severe mental illness. We analyze the laws of each state to identify legislative changes that remove obstacles to timely and effective treatment for individuals in the appropriate and least-restrictive setting.

We have engaged with many families in Maryland seeking help for loved ones in desperation because someone in obvious crisis was not admitted for treatment or was discharged too quickly. We have partnered with lawmakers and other advocates to introduce or support legislative change to address these issues.

I am writing regarding recent Committee discussion on the subject of the Supreme Court case of *Addington v. Texas*<sup>1</sup> and representations that have been made as to what it means for states, particularly which classes of individuals can be included as mental health professionals. My understanding is that it has been argued that the case holds that only a psychiatrist or psychologist should be included within that definition.

First, the case does not actually contain such a holding. The issue before the Court was whether the relevant burden of proof should be raised from “by clear and convincing evidence” to “beyond a reasonable doubt.” The Court ultimately concluded that the standard should remain “by clear and convincing evidence,” and in course of that deliberation discussed why medical opinion of psychiatrists as experts would be inappropriately suited to the higher, criminal justice standard of “beyond a reasonable doubt.”

There is no holding by the Court on the subject of what class or classes of individuals should be able to give such an opinion, perform an evaluation, or give testimony on the subject. In fact,

the discussion of medical professionals within the opinion is dicta, with no relevance to this proposed legislation. It would be a red herring to suggest that anything in the opinion bears on the legislature's authority to determine who it wishes to empower to perform these functions.

Second, as a matter of state practice, numerous states expressly authorize individuals other than psychiatrists or psychologists to perform a psychiatric evaluation and/or to give testimony during judicial review hearings. A table of such authority is provided below for your reference:

Delaware	DEL CODE ANN. tit. 16 § 5001(2)
Florida	FLA. STAT. § 394.463
Hawaii	HAW. REV. STAT. § 334-59
Kansas	KAN. STAT. ANN. § 59-2954
Maine	ME. REV. STAT. ANN. tit. 34B, § 3863
Montana	MONT. CODE ANN. § 53-21-129
Nebraska	NEB. REV. STAT. § 71-919
New Hampshire	N.H. REV. STAT. ANN. § 135-C:28
New York	N.Y. MENTAL HYG. LAW § 9.41
North Carolina	N.C. GEN. STAT. § 122C-262
North Dakota	N.D. CENT. CODE § 25-03.1-25
Oregon	OR. REV. STAT. § 426.228
South Dakota	S.D. CODIFIED LAWS § 27A-10-6
Washington	REV. CODE WASH. § 71.05.150

There may be additional states allowing professionals other than psychologists or psychiatrists to perform such functions, and this list is not intended to be exhaustive. I am aware of no successful constitutional challenge to any of these laws under *Addington v. Texas*<sup>ii</sup>.

I would be happy to provide any additional research or information that might be helpful in your consideration of this bill. We thank you again for providing a forum for public deliberation on these important issues for citizens of Maryland.

Sincerely,



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<sup>i</sup> 441 U.S. 418 (1979).

<sup>ii</sup> Id.