



Board of Nursing

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

March 7, 2023

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
Room 241 House Office Building
Annapolis, MD 21401-1991

RE: HB 953 – Public Health – Overdose and Infectious Disease Prevention Services Program – Letter of Opposition

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Board of Nursing (the Board) respectfully submits this letter of opposition for House Bill 953 – Public Health – Overdose and Infectious Disease Prevention Services Program. This bill authorizes a community-based organization, with the approval of the MD Department of Health, to establish an Overdose and Infectious Disease Prevention Services Program; authorizes a Program to bill the insurance carrier of an individual who uses the services of the Program for the cost of covered services, accept donations, grants, and other financial assistance, apply for certain grants, coordinate with programs or organizations, and use mobile facilities; prohibits the location of a Program in certain areas; and prohibits certain persons from being subject to arrest, prosecution, or certain penalties or from being denied any right or privilege for involvement in the operation or use of services of a Program.

The Board supports efforts to prevent the incidence and prevalence of drug overdoses and the spread of infectious diseases. Substance use disorder is non – discriminatory in that it can affect an individual of any age, of any gender, race or nationality, and of any occupation. However, HB 953 has the potential to endanger the public and patient population. Nurses may be one of the types of individuals who could utilize the services of the program. The bill, as written, would not prevent a nurse who participates in the program as a current substance user from reporting to their place of practice while still under the influence of controlled dangerous substances. In essence, the Board would be forced to wait until a complaint of “working impaired” is filed before taking any action to protect patients, overlooking the fact that harm may have already occurred.

This bill not only has the potential to encourage drug use, but it may also increase the diversion of medication from patients. Drug diversion occurs when a healthcare provider takes medication prescribed to patients (usually controlled dangerous substances) for their own use or for sale to others. Program participants would be allowed to bring pre – obtained drugs or medication without being questioned about how those substances were obtained.

This bill further jeopardizes Maryland nurses’ ability to stay enrolled in the Nurse Licensure Compact (NLC). The NLC permits a nurse to hold one multistate license and practice in all party states that have adopted the Compact’s legislative language. The NLC serves to increase access to health care, particularly for underserved and rural communities. To be eligible for multistate licensure, a nurse may only hold an unencumbered license, or a license that is not revoked, suspended, or made probationary or conditional. A nurse must be authorized to engage in the full and unrestricted practice of nursing. Nurses who may utilize the Overdose and Infectious Disease Prevention Services Program, and who may hold a multistate

license, will be in direct violation of the NLC rules¹. The nurse will lose their privilege to practice in multiple states, which could result in fewer nurses being able to practice outside of the state of Maryland over time.

The Board would not be fulfilling its mission of protecting the public if it obtained information about a nurse and did not act accordingly. HB 953 infringes on the Board's authority over nursing licensure and regulation by impeding its ability to monitor and discipline licensees appropriately. Additionally, the Board does not automatically resort to discipline for instances of substance abuse. The Board offers a safe practice (an alternative to discipline) program for licensees and certificate holders with substance use disorders who meet certain criteria. The mission of the safe practice program is to ensure patient safety by monitoring nursing professionals who are struggling with substance use disorders. Enrollment in this program is strictly confidential and has no bearing on a participant's license or certificate. An individual enrolled in this program may also keep an active license and work while following a certain number of stipulations.

The Board would also like to reference the decision rendered by the United States Court of Appeals for the Third Circuit in the case *United States v. Safe House* (January 12, 2021)². The Third Circuit found that owning or operating a "drug – involved facility" violated the Controlled Substances Act and its operators would be subject to criminal penalties should there be charges filed. With the establishment of the Overdose and Infectious Disease Prevention Services Program in Maryland, the Program itself may also be subject to the same challenges under the Controlled Substance Act.

For the reasons discussed above, the Maryland Board of Nursing respectfully submits this letter of opposition for HB 953.

I hope this information is useful. For more information, please contact Ms. Iman Farid, Health Planning and Development Administrator, at iman.farid@maryland.gov or Ms. Rhonda Scott, Deputy Director, at (410) 585 – 1953 (rhonda.scott2@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.

¹ The Interstate Commission of Nurse Licensure Compact Administrators. Final Rules Jan 2021. https://www.ncsbn.org/FinalRulesadopted81120clean_ed.pdf

² United States v. Safe House. Jan 2021. <https://www.safehousephilly.org/sites/default/files/attachments/2021-01/US%20v%20Safehouse%203d%20Circ%20Opinion.pdf>