

HOUSE BILL 691

J2, N2, J1

0lr1227
CF 0lr2978

By: **Delegate Cullison**

Introduced and read first time: January 30, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

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 nurse, rather than a second physician; making conforming and stylistic changes; and
11 generally relating to the authority of nurse practitioners to certify as to certain
12 individuals' competency or incapacity.

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

18 BY repealing and reenacting, with amendments,
19 Article – Estates and Trusts
20 Section 13–705(c)
21 Annotated Code of Maryland
22 (2017 Replacement Volume and 2019 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Health – General
25 Section 5–606
26 Annotated Code of Maryland
27 (2019 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Estates and Trusts**

4 13–705.

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

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

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

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

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

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

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].**

31 (3) An examination or evaluation by at least one of the health care
32 professionals under paragraph (2) of this subsection shall occur within 21 days before filing

1 a petition for guardianship of a disabled person.

2 **Article – Health – General**

3 5–606.

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**, one of whom shall have
7 examined the patient within 2 hours before making the certification, shall certify in writing
8 that the patient is incapable of making an informed decision regarding the treatment. The
9 certification shall be based on a personal examination of the patient.

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

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

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

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

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

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

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