

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 576

(Senator Eckardt)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - Nurse Practitioners - Certifications of Competency and Incapacity

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. 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 (1) incapable of making an informed decision regarding specified treatment or (2) in a terminal condition or has an end-stage condition.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Guardian of a Disabled Person

Section 13-705 of the Estates and Trusts Article establishes the process for the appointment of a guardian of the person for a disabled person. On petition and after any notice or hearing, a court may appoint a guardian of the person of a disabled person. A guardian of the person must be appointed if the court determines from clear and convincing evidence

that 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 no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

A petition for guardianship of a disabled person must include signed and verified certificates of competency from the following health care professionals: (1) two licensed physicians who have examined the disabled person; or (2) one licensed physician who has examined the disabled person and either one licensed psychologist who has evaluated the disabled person or one licensed certified social worker-clinical (LCSW-C) who has evaluated the disabled person. An examination or evaluation by at least one of these health care professionals must occur within 21 days before filing a petition for guardianship of a disabled person.

The bill specifies that the two health care professionals that may sign a certificate of competency may include one licensed physician *and* one licensed psychologist, LCSW-C, or nurse practitioner.

Health Care Decisions

The Health Care Decisions Act (Title 5, Subtitle 6 of the Health-General Article) specifies the procedures for making an advance directive and living will, as well as the revocation of such documents and surrogate decision making.

Prior to providing, withholding, or withdrawing treatment for which authorization has been obtained or will be sought, the attending physician and a second physician, one of whom must have examined the patient within two hours before making the certification, must certify in writing that the patient is incapable of making an informed decision regarding the treatment. The certification must be based on a personal examination of the patient. If a patient is unconscious, or unable to communicate by any means, the certification of a second physician is not required. When authorization is sought for treatment of a mental illness, the second physician may not be otherwise currently involved in the treatment of the person assessed.

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 have certified that the patient is in a terminal condition or has an end-stage condition or (2) two physicians, one of whom is a neurologist, neurosurgeon, or other physician who has special expertise in the evaluation of cognitive functioning, certify that the patient is in a persistent vegetative state.

The bill specifies that a nurse practitioner may be the second health care provider to certify that an individual is incapable of making an informed decision regarding treatment. If authorization is sought for treatment of a mental illness, the nurse practitioner may not be otherwise currently involved in the treatment of the person assessed. A nurse practitioner may also be one of two health care practitioners who may certify that a patient is in a terminal condition or has an end-stage condition; however, a nurse practitioner may not certify that a patient is in a persistent vegetative state.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 691 (Delegate Cullison, *et al.*) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Disabilities; Maryland Department of Health; Department of Legislative Services

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