

House Economic Matters Committee
*HB 691: Health Occupations - Nurse Practitioners -
Certifications of Competency and Incapacity*
March 3, 2020

**Support with Additional Amendments to Strengthen Protections of People with
Intellectual and Developmental Disabilities**

The Arc Maryland is the largest statewide advocacy organization dedicated to the rights and quality of life of children and adults with intellectual and developmental disabilities and their families.

While we understand that it may be difficult to assign guardianship to a person due to the safeguards we have put in place, the difficulty is purposeful. The implications of guardianship cannot be overstated. It is the most restrictive and most difficult to reverse option in the guardianship-alternatives to guardianship toolbox that a person and their family have access to for medical and other important decision-making. It divorces a person from their legal capacity and places their decision-making authority in the hands of another.

Guardianship has been used (**and abused**) in Maryland to deny a person with disabilities the right to marry, form a family, use their money (including inheritances) in a way in which they desire, or to force medical procedures upon a person they do not desire and which are not medically necessary (such as hysterectomy without underlying medical condition). Guardianship is recognized as an overused mechanism in Maryland and this is one of the reasons our **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.** It should be more difficult to place someone under guardianship, not easier. This bill, as written and even with Senate amendments, would make guardianship TOO EASY to assign.

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 (LCSW-C).

Certified Social Worker-Clinical (LCSW-C) in Maryland shall have:

- Obtained at least two years, consisting of not less than 104 weeks, **of at least 3,000 hours of supervised clinical social work experience in direct service**

to clients. Half of the 3,000 hours, 1,500hours, shall consist of face-to-face client contact;

- 144 hours of periodic direct face-to-face supervision while obtaining clinical social work experience which is obtained under a *contractual agreement form for supervision;
- supervision in the assessment, formulation of a diagnostic impression, and treatment of mental disorders and other conditions and the provision of psychotherapy
- documentation of twelve academic credit hours in clinical course work from a social work program accredited by the Council on Social Work Education

Nurse Practitioners, by stark contrast, are only required to have the following:

	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

Only 5 states allow Nurse Practitioners to be the second signer in capacity determinations. Within those 5 states, most of them require that the person signing the certificate has the qualifications necessary to make the determination included specialization, hours of clinical work within the specialty, and minimum standards for face to face hours with patients within the area of specialty.

While nurse practitioners are highly skilled, they may 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.

While we hope this bill is held for at least a year to allow the Maryland Bar Association to finish its work on the guardianship statute, it is apparent that may not be the will of the General Assembly.

If this bill goes forward, we urge the adoptions of the Senate amendments with additional amendments to narrow the definition of the Nurse Practitioners who are allowed to make capacity determinations.

Senate bill amendments with highlighted suggestions for additional amendment:

AMENDMENT NO. 1 On page 1, in line 9, strike “an advanced practice registered” and substitute “a”; in line 10, before nurse insert “qualified”, after “nurse” insert “practitioner”; and in the same line, after “physician;” insert “altering the requirements for the certification of a patient’s terminal or end– stage condition for certain purposes to allow the second individual making the certification to be a qualified nurse practitioner, rather than a second physician;”.

On page 3, in line 24, strike the brackets; in the same line, strike “A PHYSICIAN WHO”; and in line 26, strike “AND A SECOND PHYSICIAN OR A qualified NURSE PRACTITIONER,”.

AMENDMENT NO. 2 On page 2, in line 22, strike the opening bracket; in the same line, strike the second closing bracket; strike in their entirety lines 23 and 24; in line 25, strike the first opening bracket; in the same line, strike the closing bracket; in the same line, strike “(III)”; in line 26, strike “OR NURSE PRACTITIONER”; in line 27, strike the first opening bracket; in the same line, strike the closing bracket; in line 28, strike “or” and substitute a semicolon; in line 29, strike the first opening bracket; in the same line, strike the closing bracket; and in line 30, after the bracket, insert “; OR

C. ONE QUALIFIED NURSE PRACTITIONER”.

ADD: Definition of Qualified Nurse Practitioner

A Geriatric Nurse Practitioner or a Psychiatric Nurse Practitioner with at least 3000 hours of clinical experience consisting of not less than 104 weeks over at least two years of professional work in his/her specialty.

For the protection of people with intellectual and developmental disabilities who, for years, have been denied sufficient consideration of capacity by qualified professionals, we strongly urge the committee’s reconsideration of this bill to either hold on the action until such time as the Maryland Bar Association releases its recommendations, or adoption of an amendment to further narrow the definition of which qualified nurse practitioners are allowed to make capacity/competency determinations.

While we appreciate the intention to create a task force to study how often capacity decisions are made by NPs after this change is made to the statute (perhaps to see if the statute change has resulted in abuse of the power), the information received would be AFTER people are presumably assigned guardianship; that would be too late- to only find out then the change in statute was doing more harm than good.

Respectfully submitted,

Ande Kolp
Executive Director