



# Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

March 11, 2021

The Honorable Shane E. Pendergrass  
Chair, Health and Government Operations Committee  
Room 241 House Office Building  
Annapolis, MD 21401-1991

**RE: HB 396 – Public Health – Overdose and Infectious Disease Prevention Services Program – Letter of Opposition**

Dear Chair Pendergrass and Committee Members:

The Maryland Board of Nursing (“the Board”) respectfully submits this letter of opposition for House Bill (HB) 396 – Public Health – Overdose and Infectious Disease Prevention Services Program. This bill authorizes the establishment of an Overdose and Infectious Disease Prevention Services Program by a community-based organization. The bill requires a program to provide a location supervised by health care professionals or other trained staff where drug users can consume pre-obtained drugs. The program will also provide for distribution of sterile injection supplies and collection of used needles and syringes. Health care providers will need to educate program participants about safe injection practices, monitor participants for potential overdose and administer rescue medication as needed. The bill prohibits Board disciplinary action against a licensee or certificate holder for involvement in the operation or use of the program services.

The Board agrees that the prevention of drug overdose and disease is critical. Substance use disorder is non-discriminatory in that it can affect an individual at any age, of any gender, race or nationality, and of any occupation. However, the Board believes that this bill increases the risk to public safety. Health care professionals may be just one of the types of individuals who utilize the services of this program. The bill, as written, would not prevent health care professionals who participate in the program, as current substance users, 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 instances of diversion of medication from patients by health care providers. Drug diversion occurs when a health care 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 without being questioned about how the drugs were obtained.

This bill further jeopardizes Maryland nurse’s ability to stay enrolled in the Nurse Licensure Compact (NLC). The NLC allows for nurses to have one multistate license with the ability to practice in all states that have adopted the Compact’s legislative language. The NLC serves to increase access to health care,

[1] The Interstate Commission of Nurse Licensure Compact Administrators. Final Rules Jan 2021. [https://www.ncsbn.org/FinalRulesadopted81120clean\\_ed.pdf](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>

particularly for underserved communities. To be eligible for multi-state practice, 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's rules<sup>1</sup>. The nurse will lose their privilege to practice in multiple states. Which could result over time in fewer nurses being able to practice outside of Maryland.

The Board would not be meeting its mission of protecting the public if it has information about drug use by a licensee or certificate holder, and does not act upon this information. This bill encroaches upon the Board's jurisdiction over nursing licensure and regulation, by hindering the Board's ability to monitor and discipline licensees appropriately. Additionally, the Board does not automatically resort to discipline for instances of drug use. The Board offers a safe practice (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 confidential, and does not pose any infraction on a participant's license or certification. 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)<sup>2</sup>. The Third Circuit found that owning or operating a "drug-involved facility" (a place for using, sharing, or producing drugs) violated the Controlled Substances Act and its operators would be subject to criminal penalties should there be charges. 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 Substances Act.

For the reasons discussed above, the Board of Nursing respectfully submits this letter of opposition for HB 396.

I hope this information is useful. For more information, please contact Iman Farid, Health Policy Analyst, at (410) 585 – 1536 ([iman.farid@maryland.gov](mailto:iman.farid@maryland.gov)) or Rhonda Scott, Deputy Director, at (410) 585 – 1953 ([rhonda.scott2@maryland.gov](mailto: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.***