

HB 18 Power of Attorney Act.pdf

Uploaded by: Tammy Bresnahan

Position: FAV



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**HB 18 Maryland General and Limited Power of Attorney Act – Assistance With
Governmental Benefits and Programs
House Judiciary
January 19, 2023
Support**

Good afternoon Chairman Clippinger and members of the House Judiciary Committee. I am Tammy Bresnahan. I am the Senior Director of Advocacy for AARP MD. AARP MD supports HB 18 Maryland General and Limited Power of Attorney Act – Assistance With Governmental Benefits and Programs. We thank Delegate Hill for introducing HB 18.

HB 18 amends the “Maryland Statutory Form Personal Financial Power of Attorney” and the “Maryland Statutory Form Limited Power of Attorney” to include an authorization on each statutory form for the agent to perform the acts necessary to enable the principal to qualify for a benefit or program, including obtaining personal and financial records and, to the extent specifically authorized, to transfer or gift the principal’s property. The authorization is included under provisions regarding benefits from governmental programs or civil or military service, “including any benefit, program, or assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.”

AARP believes policymakers should help expand the use of qualified non-attorney advocates. Policymakers should encourage less restrictive alternatives to guardianship when appropriate. These alternatives can include limited guardianship, powers of attorney, supported decision-making (Maryland passed last session), the Social Security Administration’s representative payee program, powers of attorney, trusts, or a combination of these. Like others we hope that the person appointed is trustworthy and does not abuse his/her authority.

For these reasons, AARP MD supports HB 18 and ask the Committee to issue a favorable report. If you have further questions, please contact me at tbresnahan@aarp.org or by calling 410-302-8451.



Amendment Request Form POA.pdf

Uploaded by: Andrea Moreno

Position: FWA

AMENDMENT REQUEST FORM

Date Submitted

REQUESTER INFORMATION

Name

Phone

E-mail

REQUEST INFORMATION

Bill No.

Bill Title

Amendment Sponsor

Hearing Date

Date Needed

Name(s) and contact information of individual(s) the drafter is authorized to contact

To Be Offered

Description and Comments

****PLEASE ATTACH ANY ADDITIONAL COMMENTS AND SUPPORTING DOCUMENTS TO THE EMAIL WITH THIS FORM.****

Please click the SUBMIT button to create an email to send this form.

Updated: 1/31/2022

HB0018 Sponsor Testimony FINAL V.2.pdf

Uploaded by: Andrea Moreno

Position: FWA

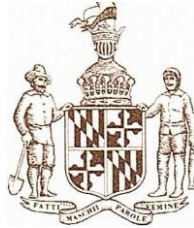
TERRI L. HILL, M.D.

*Legislative District 12A
Howard County*

Health and Government
Operations Committee

Subcommittees
Government Operations and
Health Facilities

Public Health and Minority
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THE MARYLAND HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

SUPPORT

HB0018 - Maryland General and Limited Power of Attorney Act - Assistance With Governmental Benefits and Programs

January 19, 2023

Dear Chair Clippinger, Vice Chair Moon, and Committee Members,

HB0018 alters Maryland limited and general power of attorney (POA) short forms to provide the option for a principal to permit their agent to apply on their behalf for governmental benefits and programs, such as Medicaid, and to otherwise assist in the process of securing such benefits. This legislative proposal is a work product of the Life and Health Planning Committee of the Attorney General's 2020 COVID-19 Access to Justice Taskforce, a partnership between then Attorney General Brian Frosh's office and the Maryland Access to Justice Commission tasked with "developing strategies and solutions to address the significant civil legal challenges facing Marylanders in the wake of COVID-19."

To mitigate risks of exploitation of vulnerable persons, I worked with the Elder Law and Estates and Trust sections of the Maryland Bar Association to ensure the legislation provides a principal the flexibility to assign needed authority without being overly broad with respect to the authority to transfer or gift assets. There is a friendly clarifying amendment offered by the Maryland Bankers Association that I ask the committee to consider and take, but otherwise the bill is in the same posture as the bill that passed this committee and the House, 132-0, last session.

HB0018, modifies Maryland's POA long and short forms to permit someone to direct their agent to:

- access the financial, medical and other supporting documentation required in applying for Medicaid on behalf of the principal.
- hire a Medicaid planner and pay for Medicaid planning services using the principal's income or assets to further help them gain Medicaid eligibility; and
- avoid the potentially expensive and lengthy process of pursuing guardianship, should the principle, usually a loved one, become incapacitated.

Currently, a person can use Maryland's Financial POA statutory form to name an agent and choose amongst a menu of services to allow their agent to assist with, including assistance with the management of personal property and finances. The form menu, however, does not include an option to grant their agent the authority to facilitate or otherwise assist in Medicaid Planning or in the decisions around, and actions of, asset management that may be necessary for the person to qualify for public or government benefits. Without such assistance, individuals miss eligibility opportunities to certain care benefits. As a result, they either go without the care or receive it with their families covering the cost.

As well-explained by the American Council on Aging ([Powers of Attorney & Medicaid: What You Need to Know](https://www.aging.org/medicaidplanningassistance.org) [medicaidplanningassistance.org](https://www.aging.org/medicaidplanningassistance.org)) for many senior and non-elderly disabled Marylanders the process of qualifying for, applying for, and maintaining Medicaid eligibility and other government benefits are important and often daunting tasks for which a POA can be of critical assistance. I therefore ask for a favorable report on **HB0018**.

Written Testimony HB 18 2023 Session.pdf

Uploaded by: Danielle Cruttenden

Position: FWA

To: Members of House Judiciary Committee

From: Joint Task Force of the Estate and Trust and Elder and Disability Rights Law Sections of the Maryland State Bar Association

Date: January 17, 2022

Subject: **HB 18** – Estates & Trusts – Maryland General and Limited Power of Attorney Act – Assistance With Governmental Benefits and Programs

Position: **Support with Amendment**

The Joint Task Force of the Estate and Trust and Elder and Disability Rights Law Sections of the Maryland State Bar Association **supports with amendment** House Bill 18 – Estates and Trusts – Maryland General and Limited Power of Attorney Act – Assistance With Governmental Benefits and Programs.

In 2010 The Maryland General and Limited Power of Attorney Act (the “Act”) was enacted. As a result Maryland has two statutory forms available for use, a general power of attorney form, often referred to as the “short form,” and a longer, limited power of attorney, in which the principal selects the specific subject matters over which the principal wishes to authorize the agent to act. Since its enactment the forms have been revised on occasion to address, for example, changes in the law such as the use of digital assets and Maryland’s elective share law.

In 2020 and 2021 members of the Estate and Trust and Elder and Disability Law Sections of the Maryland State Bar Association participated as a member of the Life & Health Planning Committee to the Maryland Attorney General’s COVID-19 Recovery Task Force (“Covid-19 Task Force”). Recognizing the importance for individuals and family members to be able to gain access to governmental benefits during a pandemic or other crisis, the COVID-19 Recovery Task Force, acting on the recommendations of the Life & Health Planning Committee, proposed that Maryland’s statutory form powers of attorney be amended to improve the accessibility to governmental benefits.

Recognizing that other parts of the statutory forms should also be reviewed, the Joint Task Force of the Estate and Trust and Elder and Disability Rights Law Sections circulated a survey among members of the Maryland Bar to elicit their feedback about the usefulness of the Maryland statutory form powers of attorney and whether there were areas in which the forms could be improved. Including a power to make gifts and to create and fund trusts were cited by estate planning and elder law attorneys as two areas of need. Powers of Attorney often play a significant role in one’s estate plan, when a person’s cognitive or physical challenges prevent them from being able to gift or create trusts that would otherwise help to reduce tax, allow for the continuity of a family business, take care of loved ones, or preserve their assets.

Most practitioners use the “Special Instructions” area of the statutory forms to include custom written powers to address perceived areas of deficiencies in the current forms, for example, the lack of gifting power in the general form, the appointment of successor agents when all prior agents are no longer able to serve, compensation for the agent, disclaimers, etc. The concern, however, is that the addition of the custom language will cause the document to no longer be considered as “substantially

similar in form” which is a requirement under Section 17-201 of the Act for the document to have the force of law behind the Act.

While HB 18 clarifies the authority of the agent to act in assisting the principal with applying for and obtaining governmental benefits, the language in the statutory forms should be revised to address the power to gift and transfer assets of the principal not only in the context of access to governmental benefits, but in the context of estate planning in general. Now would also be the time to improve the form to address other areas of need and concern. The Joint Task Force of the Estate and Trust and Elder and Disability Rights Law Sections has drafted a revised statutory form General Power of Attorney, the language of which may be used to amend HB 18, to accomplish improvement of that statutory form not only with assistance with governmental benefits and programs, but estate planning in general. Review and study of the statutory form limited power of attorney, however, is still needed.

For the reasons stated above, the MSBA **supports with amendment HB 18 and urges a favorable committee report.**

For Further Information, Please Contact:

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