

JUDICIARY COMMITTEE**HOUSE BILL 0698: ESTATES AND TRUSTS - GUARDIANSHIP OF THE PERSON OF
A DISABLED PERSON - EXPEDITED PROCEEDINGS****February 14, 2024****Position: Oppose**

Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to participate fully in all aspects of community life and champion their rights to self-determination, dignity, equality, opportunity, and freedom from discrimination and harm.

Adults with intellectual and developmental disabilities (I/DD) are at a higher risk of having a court-appointed guardian.¹ The risk people with disabilities face of being placed under a guardianship order is compounded by problems within the healthcare system, such as the limited community-based services and supports programs, hospital overstays, and a patient's inability or unwillingness to consent to discharge.² The over-reliance on and improper use of guardianship is a complex problem rooted in disability discrimination and ageism. HB0698 will only add to these risks and problems within the guardianship system.

The Maryland Judiciary received funding from the Administration on Community Living (ACL) in 2021 for a project to address the “healthcare-to-guardianship pipeline,” which includes examining the contributing factors that created and supports this pipeline, developing a toolkit to be used by the Judiciary and healthcare providers, and issuing a final report of the project's findings.³ DRM is part of this project team and is dedicated to the project's goal of reducing unnecessary and overly restrictive guardianships. Given the funds and work already invested into this project along with it having to be completed in August 2024, our team should be provided the opportunity to see through the outreach, education and implementation of our toolkit without the significant changes to Maryland's guardianship laws as proposed under HB0698.

In 2022, Senate Bill 559 passed during the legislative session and Maryland's Supported Decision Making (SDM) law went into effect October 01, 2022. The purpose of our SDM law is to assist adults in: (1) Obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and (2) Preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.⁴ Maryland's adoption of SDM is in line with the recommendations of national and local experts, including the findings of a MD workgroup in 2011 that “less restrictive alternatives” are a more efficient approach to facilitating moving an adult disabled person to a less restrictive and

¹ Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities

² The Hospital to Guardianship Pipeline; The Use and Misuse of Guardianship by Hospitals and Nursing Homes

³ Elder Justice Innovations Profile: Maryland

⁴ Md. Code, Est. & Trusts § 18-102

appropriate setting in an expedited time frame, not implementing a “temporary limited” guardianship policy.⁵

HB0698s' changes to Md. Code, Est. & Trusts § 13-705 are unnecessary and excessive. Maryland law already provides a mechanism for an expedited hearing process for decisions related to medical treatment, which includes the discharge and transfer process, under Md. Code, Est. & Trusts § 13-705(f). It is not clear what, if any, benefit to the discharge or transfer process guardianship hearings within 10 calendar days of filing would provide. Any need for a carve out for the discharge or transfer process may be accomplished by allowing the court to authorize an agent to make a discharge or transfer decision without having to appoint a guardian, similar to what is available under Md. Code, Est. & Trusts § 13-204.

HB0698 requires a hearing and for the court to issue an order within 10 calendar days.⁶ DRM is concerned about the potential for due process violations caused by this expedited process. 10 calendar days from the date of filing may not be enough time for the respondent, their counsel and other interested parties to effectively prepare for and participate in the hearing. To initiate this expedited process the purpose of the petition must be to seek the appointment of a guardian to obtain consent to discharge or transfer an alleged disabled person from a hospital, but the scope of what is requested in the petition and the order(s) to be issued within 10 calendar days are not limited to discharge or transfer from a hospital. Hence, a person may be stripped of their rights to make personal decisions, such as where they live or who is their primary care physician, and to manage their property within 10 calendar days from the date of filing as long as a petition for guardianship of person with the purpose of discharge or transfer from a hospital is included.⁷

Based on DRM's work with clients, the most prevalent barrier for many patients during the discharge or transfer process is not the lack of a decision maker, but the lack of affordable, accessible and safe discharge locations and community services. HB0698 does not address the question of where the patient will actually be discharged or transferred to, and as drafted does not even require petitioners to confirm that a discharge or transfer location has actually been identified. However, even if a discharge or transfer location is identified such placements can be lost quickly, sometimes within the same day, and an expedited guardianship process will not solve this problem.⁸ Rather, it may have the unintended consequence of exasperating an already strained medical system and placing patients at risk of unsafe discharges or transfers by prioritizing the need to discharge or transfer over the patient's particular medical needs.

HB0698 is not aligned with the recommendations and findings of national and local experts and workgroups. Additionally, as drafted HB 698 is broader than its proposed purpose of ensuring

⁵ See, MD 2011 Report of the Workgroup on Hospitalized Adult Disabled Persons – Appointment of Temporary Limited Guardian; May 2016 Guardianship Work Group Report and Recommendations; ABA PRACTICAL TOOL.

⁶ HB0698, pg. 1 lines 34-35: “The court *shall* hear and rule on the petition within 10 calendar days.” (Emphasis added)

⁷ Rule 10-110; Rule 10-108

⁸ See, MHA Executive Summary: Behavioral Health Discharge Delays in Maryland Hospitals; “Dealing with Disability: Physical Impairments & Homelessness.” Healing Hands, vol. 6, no. 6, Nashville: Health Care for the Homeless Clinicians' Network, National Health Care for the Homeless Council, October, 2002.

timely discharges and transfers from hospitals. We are deeply concerned about the risks HB0698 creates for people with disabilities being placed under unnecessary, plenary guardianship orders.

For these reasons, DRM strongly opposes House Bill 698 and urges an unfavorable report.

Respectfully,

Randi A. Ames, Esq.
Managing Attorney
Disability Rights Maryland
1500 Union Ave., Suite 2000
Baltimore, MD 21211
Direct: 443-692-2506
RandiA@DisabilityRightsmd.org