

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 726

(Senator Robey)

Judicial Proceedings

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**Hospitalized Adult Disabled Persons - Appointment of Temporary Limited Guardian**

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This bill authorizes a circuit court, on petition by an interested person, to appoint a “temporary limited guardian” of a disabled person to consent to the discharge of a disabled person receiving acute medical care in a hospital to a long-term or less restrictive rehabilitative care facility. The bill specifies findings the court must make on the record, based on clear and convincing evidence; limitations on the court’s authority to appoint a temporary limited guardian; and procedures for the filing and hearing of a petition. The bill allows for the findings of the court to be appealed on an expedited basis and for an order for the appointment of a temporary limited guardian to be set aside or modified at any time. In addition, the bill establishes immunity from civil liability or criminal penalty for persons that file a petition for, or have other specified involvement with respect to, a temporary limited guardianship.

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**Fiscal Summary**

**State Effect:** General/federal fund expenditures may increase significantly for additional staff in public guardianship programs administered by local departments of social services and area agencies on aging. These costs are projected to total at least \$552,800 in FY 2012, with future year expenditures remaining relatively constant.

**Local Effect:** Local government expenditures may increase to cover costs of additional staff in public guardianship programs administered by local areas agencies on aging.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** “Temporary limited guardian” is defined as a guardian of the person authorized for the limited purpose of consenting to discharge of a disabled person receiving acute medical care in a hospital to a long-term or less restrictive rehabilitative care facility.

The bill authorizes the appointment of a temporary limited guardian of a disabled person after the court finds on the record, based on clear and convincing evidence, that (1) the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person in a manner that is grounds for appointment of a guardian of the person; (2) the person is medically stable and ready for discharge from a hospital to a long-term or less restrictive rehabilitative care facility; and no person authorized by law or court order to give consent for the person is available to consent to authorize the discharge.

The court is subject to the following limitations in appointing a temporary limited guardian:

- the court may authorize a temporary limited guardian to only make decisions relating to medical treatment necessary to effectuate the discharge;
- the court must appoint an interested person, the director of the local department of social services, the Secretary of Aging, or the director of a local agency on aging as a temporary limited guardian;
- unless otherwise ordered by the court, the temporary limited guardianship must expire within 60 days after the appointment or whenever a guardian of the person is appointed, whichever occurs first; and
- the appointment of a temporary limited guardian may not deprive the disabled person of any rights except to the extent provided for in the order of appointment.

The bill specifies procedures for the filing and hearing of a petition for appointment of a temporary limited guardian, including that (1) a hearing may not be held earlier than 72 hours before adequate notice; (2) that the court must hear and rule on a petition within 14 days after it is filed; and (3) that a petition must include signed and verified certificates of competency from specified health care professionals, as is required for a petition for a guardian of the person.

The bill specifies that in either the case of a petition for a temporary limited guardianship or a petition for emergency protective services, the court must hear and rule on the petition on an expedited basis. This provision replaces an existing provision requiring the

court to hear and rule on a petition for guardianship of the person of a disabled person in connection with medical treatment on an expedited basis.

The disabled person, the temporary limited guardian, or any interested person may petition the court to have the order set aside or modified at any time, notwithstanding any prior findings that the person is in need of a temporary limited guardian. The disabled person or temporary limited guardian may appeal the findings of the court, which also must be handled on an expedited basis by the appellate court.

As accorded to specified reporters, investigators and petitioners in adult guardianship, emergency protective services and elder abuse cases, the bill establishes immunity from civil liability or criminal penalty for any person who, in relation to a temporary limited guardianship, files a petition, participates in the making of a good faith report, or participates in an investigation or in a judicial proceeding resulting from the filing of a petition or the making of a good faith report.

**Current Law:** The circuit courts have exclusive jurisdiction over proceedings to appoint a guardian of the person of a disabled person. The court may superintend and direct the care of a disabled person, appoint a guardian of the person, and pass specified orders and decrees with respect to the disabled person.

A guardian of the person is appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which 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 either (1) two licensed physicians who 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 who has evaluated the disabled person.

The alleged disabled person is entitled to representation by an attorney in the proceeding and to be present at the hearing unless he or she has knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity.

Under the Estates and Trusts Article, §13-707, an order of priority for persons entitled to appointment as guardian of the person is specified, beginning with a person, agency, or corporation nominated by the disabled person under specified circumstances, and ending with the director of the local department of social services (for adults younger than

65 years old) and the Secretary of Aging or the director of the area agency on aging (for adults 65 years old or older, except where the local department of social services has been appointed guardian of the person prior to age 65).

The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person and the court may appoint a guardian for the limited purpose of making one or more decisions related to the health care of the person. Further, among the powers a court may grant a guardian is the power to give necessary consent or approval for medical or other professional care, counsel, treatment, or service, including admission to a hospital or nursing home or transfer from one medical facility to another.

The court must hear and rule on a petition seeking appointment of a guardian of the person of a disabled person in connection with medical treatment on an expedited basis.

**State Fiscal and Local Effect:** General/federal fund expenditures may increase significantly as a result of a need for additional staff in local departments of social services and local area agencies on aging, to handle an increased public guardianship caseload expected to result from the availability of the temporary limited guardianship authorized under the bill.

#### *Local Departments of Social Services*

Except in Montgomery county, local departments of social services are units within the Department of Human Resources (DHR). DHR also provides grant funding to the Montgomery County Department of Health and Human Services for the county's public guardianship program. DHR estimates that personnel costs may increase by \$552,800 in fiscal 2012 for 10 additional staff positions. DHR advises that these additional costs would be covered with a combination of general and federal funds. This estimate focuses only on the four largest jurisdictions (Baltimore City and Baltimore, Montgomery, and Prince George's counties) where the largest number of cases addressed by the bill that cannot be managed with existing resources is likely to occur.

According to DHR, the adult public guardianship caseload for local departments of social services has steadily increased each year from 2002 to 2010, from 494 cases to 868 cases statewide, a 76% increase. Staffing and funding, however, have not correspondingly increased. The option of a temporary limited guardianship is expected to add to the workload of local departments of social services both as a result of work associated with temporary limited guardianships and the likelihood that a portion of those temporary limited guardianships will lead to permanent public guardianships where the temporary limited guardianship ends but the disabled person is still in need of a guardian.

Legislative Services advises that while there is an expectation of an increase in workload for at least the four large jurisdictions focused on in DHR's estimate, the extent of the increase in workload and need for additional resources appears uncertain and may vary from DHR's estimate. In Montgomery County, for example, DHR indicates that the courts will allow temporary guardianships, which appear to serve a similar purpose as the temporary limited guardianship being authorized by the bill, making it unclear how this bill will prompt a significant increase in the county's public guardianship caseload.

#### *Local Area Agencies on Aging*

The Maryland Department of Aging also indicates that local area agencies on aging that operate the public guardianship program for adults 65 years and older may require additional staff to accommodate temporary, and any permanent, public guardianships that may result from the bill, including those in Baltimore City and Baltimore, Montgomery, and Prince George's counties. The public guardianship program for adults 65 years and older is funded by both State general funds and local funds. Local government expenditures may increase to the extent local funding would be required to at least partially cover costs of any additional staff needed for local area agencies on aging.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Maryland Department of Aging, Register of Wills, Department of Legislative Services

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