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Disability Rights Maryland

Testimony in Opposition of Senate Bill 576

Maryland Senate Education, Health, and Environmental Affairs Committee
February 13, 2020

POSITION: OPPOSE

Disability Rights Maryland (DRM), formerly *Maryland Disability Law Center*, is Maryland's federally-designated protection and advocacy organization charged with defending and advancing the rights of people with disabilities. For over 40 years we have worked with people with disabilities to create a society that values their full participation and inclusion. Our legal services include community education and advice on state guardianship law and alternatives to guardianship, like powers of attorney and supported decision-making, which offer greater protection for individual rights. DRM regularly encounters people with disabilities who have been subject to unnecessary guardianships and experience profound deprivation of their civil rights and liberty as a result. Disability Rights Maryland opposes Senate Bill 576 as it would permit nurse practitioners to replace physicians in signing a certificate of incompetency for a guardianship petition.

The implications of guardianship cannot be overstated. Guardianship is a far-reaching intervention that some have equated to civil death.¹ It strips a person of their legal capacity and places their decision-making authority in the hands of another. Guardianship removes a person's ability to be the architect of their own life and make the decisions that form their identity, including whether they marry and form a family, where they live, what education, job or training opportunities they may have, and what services or health care they receive. Critically, once established, guardianship is often permanent. DRM has witnessed our clients be unnecessarily subject to guardianship because of negative stereotypes and biases about people with disabilities. Our clients have been certified incompetent and placed under guardianship merely because of their diagnoses or IQ scores, with little regard to their actual capabilities or the presence of less restrictive alternatives. Guardianship is an overused tool in Maryland. It should be more difficult to place someone under guardianship, not easier.

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. SB 576 allows nurse practitioners to replace physicians on both the first and second certificates, meaning that no physicians are needed to sign a certificate of incapacity.

¹ See National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination* (March 22, 2018) at 17 available at https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf



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While nurse practitioners are highly skilled, they are not a substitute for the training or skill of a physician, especially in a matter that can so drastically and permanently affect a person's civil rights. DRM is concerned that a nurse practitioner would 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. Our current statute respects physicians' specialized skill and training as it requires that even when psychologists or licensed certified social workers-clinical sign one certificate, a physician must sign the other.

It is our understanding that this bill may have been proposed due to allegedly increasing numbers of people in hospitals who are unable to be discharged due to their inability to consent to this discharge. In contrast, DRM has seen cases where hospitals or other entities petition for guardianship in circumstances when there actually is a family member willing to serve as surrogate decision-maker or power of attorney, but the hospital disagrees with their position. Furthermore, guardianship is not a discharge plan. Placing someone under guardianship does not mean they can access the supports and services in the community, which will actually lead to their discharge. There are waitlists for many of these services. Thus, it is often the lack of available services, not a person's alleged incapacity, which leads to an inability to discharge them. Even when a guardian is appointed, there is no guarantee that the person will actually be expediently discharged.

In the wake of a handful of guardianship bills that were introduced in legislature last session, the 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.

Given the profound liberty interests at stake in guardianship proceedings, DRM recommends the Senate **oppose** Senate Bill 576. While nurse practitioners are highly skilled, their expertise and training should not be allowed to replace that of physicians in matters that can result in significant and often permanent deprivation of a person's civil rights.

For these reasons, DRM recommends that Senate Bill 576 be give an unfavorable report.

Respectfully submitted,

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