

2021-03-30 (Crossover) HB 870 (Support).pdf

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March 30, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Office of the Attorney General

RE: (Crossover) HB 870 Maryland General and Limited Power of Attorney Act –
Assistance with Governmental Benefits and Programs – **Support**

House Bill 870 seek to enact recommendations of the Attorney General's COVID-19 Access to Justice Task Force.¹ One of the Task Force's primary objectives was to help Marylanders make health and life planning decisions in a manner that protects themselves, their families, and their resources.²

Consistent with the Task Force's recommendation 23, House Bill 870 repeals and reenacts with amendments the Maryland Statutory Form Limited Power of Attorney to add authority to assist the principal with the steps necessary to apply, and qualify for, public benefits. Experience with the COVID-19 pandemic teaches that authority will prove especially crucial when loved ones or family members are incapacitated due to illness.

For the foregoing reasons, the Office of Attorney General urges the Judicial Proceedings Committee to favorably report House Bill 870.

cc: Members of the Judicial Proceedings Committee

¹ See generally MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS (Jan. 2021), https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.

² *Id.* at 33.

HB870 Senate Sponsor Testimony.pdf

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SUPPORT

HB 870 - Maryland General and Limited Power of Attorney Act - Assistance With Governmental Benefits and Programs

March 30, 2021_____

Dear Chairman Smith, Vice-Chairman Waldstreicher, and Committee Members,

HB 870 alters Maryland's 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 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 COVID-19 Access to Justice Taskforce, a partnership between Attorney General, Brian Frosh's office, and the Maryland Access to Justice Commission which was tasked with, "developing strategies and solutions to address the significant civil legal challenges facing Marylanders in the wake of COVID-19."

We have 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, so as to mitigate risks of exploitation of vulnerable persons.

Under **HB870**, Maryland's POA would allow someone to direct an 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 does not, however, allow a person to elect to have their agent facilitate or otherwise assist in Medicaid Planning or the decisions around, and actions of, asset management that may be necessary for the person to qualify for public or government benefits. Without assistance individuals who would have been eligible for certain care or financial coverage of care, too frequently either go without the care, or receive it only if their families absorb the cost.

As well-explained by the American Council on Aging, the process of qualifying for, applying for, and maintaining Medicaid eligibility and other government benefits are important and often daunting tasks for many

senior and non-elderly disabled Marylanders, for which a POA can be a critical tool (<https://medicaidplanningassistance.org>). This has been especially true as the ramifications of COVID-19 have manifested.

HB870 the Maryland statutory Limited Power of Attorney long and short forms would allow designated agents the needed authority while limiting the agent's ability to transfer or gift principal's assets without additional expressed statements of authorization.

I ask for a favorable report on HB870 with amendments.

A handwritten signature in black ink, appearing to read "Terri L. Hill, M.D.", with a stylized flourish above the name.

Terri L. Hill, M.D.