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Baltimore and Howard Counties

Health and Government Operations
Committee

Subcommittees

Estates and Trusts
Insurance



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 22, 2021

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

Dear Chair Clippinger, Vice Chair Atterbeary, and Members of the Committee,

HB 870, with its added language on pages 6 and 23 and the amendments offered by the sponsor and by the Elder Law Section that I ask the committee to take up, would change the existing Maryland limited power of attorney (POA) general and short forms to allow agents to apply for governmental benefits and programs, such as Medicaid, on behalf of a principal 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 COVID-19 Access to Justice Taskforce, a partnership between 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."

We have worked with the Elder Law and Estates and Trust sections of the Maryland Bar Association to try and ensure the legislation provides a principal with the flexibility to assign an agent the authority to assist with the financial decisions and actions required in Medicaid Planning and applying for Medicaid and other public benefits, without being overly-broad with respect to the authority to transfer or gift assets.

Maryland's Financial POA statutory form allows a person to name an agent to act on their behalf in various financial and legal matters. The person can choose which powers they do and do not want their agent to assist them 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 the decisions around, and actions of, asset management that may be necessary for the person to qualify for public or governmental benefits like Medicaid.

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 shown to be all the more so as the ramifications of Covid-19 have become manifest.

The changes to Maryland's POA under **HB870** may allow 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;
- avoid the potentially expensive and lengthy process of pursuing guardianship, should the principle, usually a loved one, become incapacitated.

Without such assistance, an individual may be forced to go without certain care because of cost, or family may have to absorb the cost of the care for an extended period, even though the person would otherwise have been eligible for, and the care covered by, Medicaid.

With the amendments, the changes prescribed by **HB870** to the Maryland statutory Limited Power of Attorney long and short forms, would allow a person to authorize an agent to apply for public benefits on their behalf, while limiting the agent's ability to transfer or gift principal's assets without additional expressed statements of authorization.

For these reasons, I ask for a favorable report on HB870 with amendments.

A handwritten signature in black ink, appearing to be "T. J. ...", written in a cursive style.