

## **Senator West SB 694 - Guardianship of Disabled Per**

Uploaded by: Christopher West

Position: FAV

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Judicial Proceedings Committee

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February 24, 2022

The Senate Judicial Proceedings Committee  
2 East Miller Senate Office Building  
11 Blanden Street  
Annapolis, Maryland 21401  
The Honorable William C. Smith, Jr.

**Re: SB – 694 – Estates and Trusts - Guardianship of the Property of Disabled Persons - Court-Appointed Attorneys**

Dear Chairman Smith and members of the Committee,

In Title 13 of the Estates and Trusts Article, there are two types of guardianships set forth for the protection of disabled persons. One is a guardianship of the *person* of the disabled person, and the other is a guardianship of the *property* of the disabled person. In Subtitle 7, dealing with guardianships of the *person* of the disabled person, the law provides that unless the disabled person has counsel of the person's choosing, the court shall appoint an attorney to represent the person in the proceeding. Further, the law provides that if the disabled person is indigent, the State shall pay a reasonable attorney's fee. The bill goes on to provide that in any action in which the payment of such an attorney's fee is currently the responsibility of a local social services department, the court will appoint an attorney contracted with the Department of Human Services and shall strike the appearance of a previously appointed attorney and instead appoint an attorney contracted with the Department of Human Services.

Senate Bill 694 merely replicates these rules in the context of a guardianship of the *property* of a disabled person. Unless the disabled person has counsel of the person's choosing, the court shall appoint an attorney to represent the person in the proceeding. If the disabled person is indigent, the State shall pay a reasonable attorney's fee. In any action in which the payment of such an attorney's fee is currently the responsibility of a local social services department, unless the court finds that it would not be in the best interests of the disabled person, the court will appoint an attorney contracted with the Department of Human Services and shall strike the appearance of a previously appointed attorney and instead appoint an attorney contracted with the Department of Human Services, unless the previously appointed attorney is willing to accept the same fee, and the court does not find a conflict of interest..

Under the Maryland Rules, § 10-106, the court is required to promptly appoint an attorney for an alleged disabled person – upon the filing of a petition for guardianship of the person, property, or both – if the individual is not represented by an attorney of the alleged disabled person's own

choice. The rules further require the court to order payment of reasonable and necessary fees of an appointed attorney. Fees may be paid from the estate of the alleged disabled person or as the court otherwise directs. To the extent that the estate is insufficient, the fee of an attorney for an alleged disabled person must be paid by the State.

Thus, Senate Bill 694 provides for the payment of attorney's fees for guardians of the *property* for indigent disabled persons in the same manner already in the law for the guardians of the *person* of the disabled person.

I am pleased to report that this bill is endorsed by the Maryland Judiciary, by the Estates and Trusts Law Section of the Maryland State Bar Association and by the Maryland Department of Human Services.

Therefore, I request a favorable report from the Committee. I will also be happy to answer any follow-up questions the Committee may have.

# **HFAM Testimony SB 694.pdf**

Uploaded by: Joseph DeMattos

Position: FWA



**TESTIMONY BEFORE THE  
SENATE JUDICIAL PROCEEDINGS COMMITTEE**

February 24, 2022

Senate Bill 694: Estates and Trusts - Guardianship of the Property of  
Disabled Persons - Court-Appointed Attorneys  
*Written Testimony Only*

**POSITION: FAVORABLE WITH AMENDMENT**

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support with amendment for Senate Bill 694. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction in the state.

Senate Bill 694 requires the State to pay a reasonable attorney's fee for an alleged disabled person that is indigent, in a protective proceeding (to protect the property of the alleged disabled person). In any action in which payment for the services of a court-appointed attorney for the alleged disabled person is the responsibility of the local department of social services, the bill requires the court to appoint an attorney who is under contract with the Department of Human Services (DHS) to provide legal representation for the alleged disabled person, unless the court finds that the appointment would not be in the best interests of the alleged disabled person. In such an action, if an attorney has previously been appointed, the court must strike and replace the previously appointed attorney with an attorney who is under contract with DHS, unless the previously appointed attorney is willing to accept the same fee and the court does not find a conflict of interest.

Financial Indigency, specifically regarding assisting Marylanders in need to become qualified for Medicaid services for which they are eligible, is often an extremely complicated process. This is often made more complicated through the necessary and important process of court-appointed attorneys and guardianship. The issue of guardianship is unfortunately a major issue for older Marylanders who have limited financial means and sometimes lack decision making capacity, and who seek eligibility for care underwritten by Medicaid. Just as important are situations where an individual lacks a health care agent or surrogate and is in need of a guardian of the person.

**HFAM supports this legislation with this technical amendment:** Amending this bill and the resulting Act to include a definition of Indigency, to conform with existing language under the Medical Assistance Program term used for nursing facilities under Health-General Article, Section 15-116 whether or not the Petitioner would otherwise be eligible for Medical Assistance.

**For these reasons and with this amendment, we request a favorable report on Senate Bill 694.**

*Submitted by:*

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