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Delegate Luke Clippinger, Chair  
Delegate David Moon, Vice Chair  
House Judiciary Committee  
Room 101  
House Office Building  
Annapolis, Maryland 21401

Re: Favorable-SB 559 Estates and Trust-Supported Decision Making

Dear Delegate Clippinger, Delegate Moon and Members of the Judiciary Committee,

I am writing on behalf of the Brain Injury Association of Maryland (BIAMD) in support of HB 529. Through advocacy, education, and research partnerships, BIAMD has sought to improve the lives of Marylanders affected by brain injury. We are part of the no wrong door system for access to long-term care services and regularly responds to over 300 phone calls a month from individuals living with brain injury, family members, and professionals seeking information and assistance on how best to help. Our organization regularly provides information on supported decision making and other alternatives to guardianship when individuals and family members navigating the changes after a brain injury that impact decision making.

A brain injury can cause physical, cognitive, and emotional changes that may last a few days or weeks but can be life-long. The ongoing symptoms of brain injury can impact all domains of a person's life, resulting changes in roles and relationships, employment, and finances in addition to physical and mental health. The ripple effects can alter a person's sense of self as they navigate changes in their roles and routines. Maintaining self-determination, control, and autonomy through supported decision-making allows the individual to define how they want to move forward after a life altering injury.

During the acute phase of recovery from a moderate to severe brain injury, rehabilitation providers utilize the surrogate decision maker law because the person may be in a coma or have limited ability to participate in decision making but family and health providers cannot project the person's needs in the coming days, weeks, or months as they are trying to navigate a very traumatic situation for all involved. The expectation, according to the Attorney General's office, is that while a surrogate decision maker is in place, decisions should be consistent with the person's wishes<sup>1</sup>. Currently there is no clear, gradual process for shifting decision making back to the person as they regain capacity during recovery. Implementing supported decision making can allow the process of shifting decision making back to the individual gradually with updates to supported decision-making agreements as the individual regains capacity to make increasing complex decisions with supports. Using this process allows them to avoid guardianship, which in our organization's experience, is difficult to terminate. We are aware of several situations where there was evidence that person wanted to make decisions using the same values and process as they did prior to their injury, yet they were still under guardianship, without support from their guardian in terminating the guardianship.

A person's frontal lobe that controls executive functions that critical to decision making. Due to its position in the front of the skull and anatomy of the skull itself it makes it the lobe that is most likely to be injured. Injury to the frontal lobe can impact attention, memory, understanding and processing information and self-awareness. A person may need the assistance of supporters to gather information, understand or interpret information, understand the consequences of making their decision and implement their decisions.

Putting a person centered, structured framework for considering important decisions may lead to better clinical outcomes for individuals. This can include compensatory strategies that address long-term symptoms of brain injury and help the individuals "practice" using the strategies and supports in the same way which can lead to increasing independence. Using supported decision making can improve self-awareness, which is associated with better rehabilitation outcomes<sup>ii</sup>. One of the tenants of supported decision making is for supporter to give feedback about concerns or potential negative consequence of a decision.

We request that the Committee give a favorable report to SB559 and give Marylanders living with brain injury and other disabilities a legally recognized tool to maintain control over their choices.

Thank you for your consideration of our position.

Sincerely,  
Catherine Rinehart Mello  
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443-364-9856

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<sup>i</sup> <https://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/HCDASummary.pdf>

<sup>ii</sup> Robertson K, Schmitter-Edgecombe M. Self-awareness and traumatic brain injury outcome. *Brain Inj.* 2015;29(7-8):848-58. doi: 10.3109/02699052.2015.1005135. Epub 2015 Apr 27. PMID: 25915097; PMCID: PMC4769700.