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March 7, 2022

The Honorable Luke H. Clippinger
Chair, House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

Re: Support for House Bill 529: Estates and Trusts – Supported Decision Making

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of HB 529. This Bill creates a process to establish Supported Decision-Making agreements (SDM) in Maryland. SDM creates a statutory tool that enables disabled persons to retain the right to make personal decisions. It is a less restrictive alternative to guardianship, which is a well-recognized statutory process but which completely strips a person of their decision-making rights. Alle Andresen, Esq. will testify in support of HB 529 at the request of Delegate Peña-Melnyk.

Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents, including abused and neglected children, nursing home residents, and veterans. Maryland Legal Aid frequently represents and advocates for older adults and people with disabilities in matters pertaining to accessing long-term care, Medicaid services in the community, and their rights concerning nursing homes and assisted living facilities.

HB 529 will provide assistance and support to adults with disabilities while they make, communicate and effectuate their decisions. It can prevent the need for a substitute decision-maker such as a guardian and give self-determination to adults with disabilities.

Individual decision-making is a human right.¹ Every adult has the right to make life choices and to have those choices respected.² The right to personal decision-making applies to older adults with declining cognition and persons with disabilities.³ Adults make choices about where they live, what they eat, what they do, and how they spend

¹ Convention on the Rights of Persons with Disabilities (CRPD): <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/guiding-principles-of-the-convention.html>
²<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#preamble>
³ Id.

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money. SDM provides a statutory tool for disabled people to retain their right to make personal decisions, yet have assistance with the decision-making process.

MLA represents persons with diminished capacity and those who may be otherwise disabled. MLA is an active member of the Cross-Disability Supported Decision Making Coalition, comprised of more than 27 partner organizations, including non-profit advocates and Maryland government agencies. One purpose of the Coalition is to promote the self-determination of older adults and people with intellectual and developmental disabilities.

For example, MLA was recently contacted by a county Ombudsman regarding an assisted living resident assigned a court-appointed Guardian. The Ombudsman wanted to know how they could help the resident if she had a guardian who would not talk to her ward because she no longer had the right to decide where she lived. The Guardian moved the resident from one assisted living home to another every few months. The Guardian would not communicate about decisions, did not explain options, or ask for the resident's preference about her residency. No court-appointed attorney was available. With the assistance of the Ombudsman, the resident was referred to the Guardianship Attorney for the Circuit Court to have her case reviewed by a Magistrate. This entire proceeding may have been avoided if the supported decision-making process had been considered or included in the original guardianship process.

Maryland Legal Aid supports HB 529 for several reasons. The Bill would codify the concept that adults have the right to make life choices but sometimes need support. It will formalize SDM agreements to ensure acceptance and provide clear guidelines and protections in creating these agreements.

Thank you for considering this written testimony. For the reasons stated above, **MLA urges a favorable report on HB 529.**

Sincerely,

/s/Alle Andresen

Alle Andresen

Long-Term Care Assistance Project Attorney

/s/Mary Aquino

Mary Aquino

Senior Attorney for Elder Law