
To: Members of House Health and Government Operations Committee

From: MSBA Estate & Trust Law Section

Date: March 9, 2022

Subject: **HB529** – Estates and Trusts - Supported Decision Making

Position: **Support With Amendments**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports with amendments House Bill 529 – Estates and Trusts - Supported Decision Making.**

House Bill 529 seeks to implement a process by which any adult (an “Adult”) may enter into a Supported Decision-Making Agreement (a “SDM Agreement”) with another adult (a “Supporter”) who may assist the Adult with any life decisions specified by the Adult in the SDM Agreement. For example, these decisions may relate to healthcare issues, medical insurance, personal finances, personal relationships, cell phone plans, changing beneficiaries under the Adult’s will or IRAs, arranging for transportation to doctor’s appointments, or other similar life experiences.

One of the purposes of a SDM Agreement is to help prevent the need for the appointment of a guardian when a person may be compromised but still capable of making their own decisions. We recognize and deeply respect the importance of personal dignity and self-pride that comes with appropriate self-determination. We had a number of concerns with the original language of HB529; however, the amendments to the bill that are now being proposed by the sponsors fully address these concerns. With these amendments, the purposes of HB529 are being met but without unnecessary opportunities for abuse and potential conflicts with an Adult’s power of attorney, advance healthcare directive or revocable trust. For example, the amendments require greater accountability of the Supporter to certain interested parties, not just the Adult, and that the SDM Agreement be in writing and signed by the Adult and Supporter in front of two credible witnesses.

More specifically, the most notable amendments to HB529 include the following:

1. Neither the existence of a SDM Agreement, nor any provision contained therein, shall (i) authorize the Supporter to act on behalf of the Adult, (ii) supplant the authority of an agent under a validly executed power of attorney or valid advance directive, or (iii) supplant or grant authority or agency powers contemplated to be

provided by a power of attorney under the Maryland Power of Attorney Act or a valid advance directive;

2. If the Adult has a fully executed power of attorney, advance directive, or revocable trust agreement, and the Adult does not expressly object, the Supporter shall deliver a copy of the fully executed SDM Agreement to any agent designated under a power of attorney or advance directive, or trustee under a revocable trust. if one is found to exist;
3. The SDM Agreement shall state that the Supporter may not (i) make decisions for the Adult, (ii) effectuate transactions on behalf of the Adult, or (iii) enforce the Adult's decisions;
4. The SDM Agreement is to be signed by the Adult and the Supporter or Supporters with each signature to be witnessed by two adults who are not a Supporter or the Adult, or an employee or agent of the Supporter; and
5. A third party may decline to honor a SDM Agreement if they have a reasonable good faith belief that the SDM Agreement was invalid, revoked or abrogated, or the Supporter was coercing or unduly influencing the Adult or otherwise acting outside the scope of the SDM Agreement.

We believe that HB 529, with these amendments, will allow for meaningful and effective SDM Agreements that help adults maintain their independence while still protecting their interests.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **urges a committee report on HB529 that is favorable with amendments. For Further Information, Please Contact:**

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