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SB 759 Estates and Trust-Guardianship of the Person of a Disabled Person- Expedited Proceedings Unfavorable
Senate Judicial Proceedings Committee
February 20, 2024

Good Afternoon, Chair Smith and members of the Senate Judicial Proceedings Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP, which advocates for the more than two million Marylanders age 50 and older has concerns about SB 759 Estates and Trust – Guardianship of the Person of a Disabled Persons – Expedited.

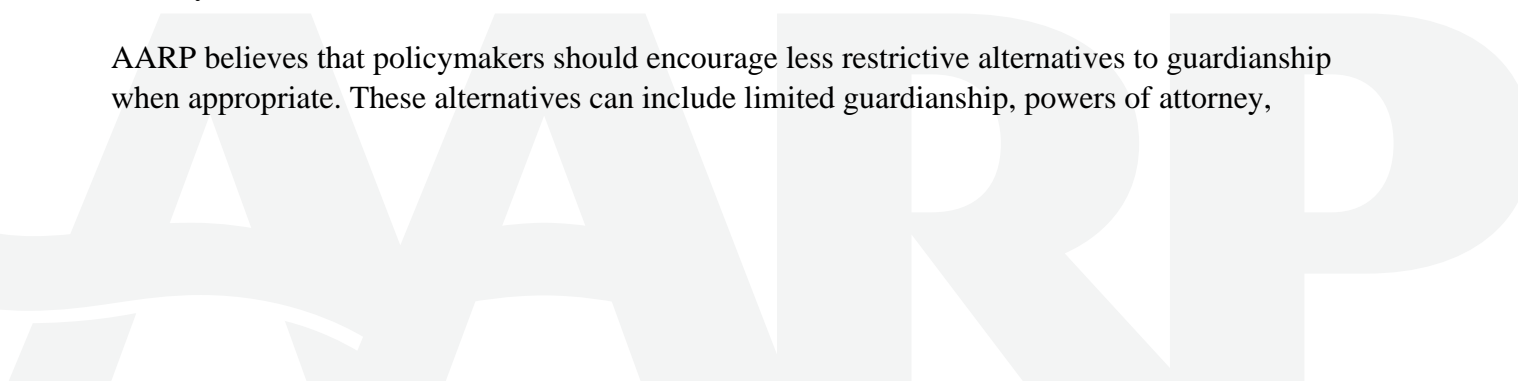
AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans aged 50 and older and their families. Key priorities of our organization include helping all Marylanders achieve financial and health security and supporting critical safety nets for seniors and low-income households in the state.

SB 759 requires a court to rule on petitions to appoint a guardian of the person of a disabled person to seek transfer or discharge of a disabled person from a hospital within 10 days. The bill also requires that hearings to appoint a guardian of the person of a disabled person be held virtually unless the party seeking appointment requests that the hearing be held in person.

Public guardianship allows someone to be appointed to make legal decisions for another person in certain situations. A court appoints a guardian upon finding that an individual cannot manage their own affairs. Adults placed under guardianship may lose their basic civil liberties. These can include making decisions about where to live, how to spend money, and what medical treatment to receive. It may also affect the right to vote or marry. Thus, guardianship should be an option of last resort.

Usually, state courts appoint family members as guardians. Courts have sometimes found it difficult to find family members or friends able and willing to serve as guardians. As a result, states have a significant need for public guardians and other surrogate decision-making services. Public guardianship is usually available to adults with limited resources. These programs are frequently understaffed and underfunded. Some public guardians have multiple people in their custody.

AARP believes that policymakers should encourage less restrictive alternatives to guardianship when appropriate. These alternatives can include limited guardianship, powers of attorney,



supported decision-making, the Social Security Administration's representative payee program, advance directives, trusts, or a combination of these.

State policymakers should also create clear guardianship procedures. This includes providing all guardians with educational support and training. Other procedures include:

- safeguarding the privacy of people under guardianship,
- requiring guardians who serve multiple unrelated individuals to be certified through programs that include training, testing, and accountability requirements,
- creating clear guidelines for how guardians should make decisions, and
- adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to create procedures for when people under guardianship have ties to more than one jurisdiction or state.

States should protect the due process rights of people under guardianship. These safeguards should include each of the following minimum standards:

- the right to a court-appointed attorney who is present at all proceedings,
- timely notification of proceedings in understandable language,
- a process for emergency proceedings that includes notice to the respondent, mandatory appointment of counsel, proof of investigation, appropriate limitations on emergency powers, termination upon showing that the emergency no longer exists, and review of prospective guardians and conservators, including criminal background checks,
- clear and convincing evidence that guardianship is necessary,
- conflict-of-interest protections,
- court oversight of guardianship, with appropriate civil or criminal penalties for guardian malfeasance, and
- preservation of all rights and authority not expressly delegated to the guardian.

States should establish and adequately fund public guardianship programs. They should put in place standards to protect people under guardianship from abuse. These include limits on the number of individuals served by any single public guardian. States should also adopt conflict-of-interest standards for guardians. Other standards should consist of:

- adequate liability insurance for the protection of clients and their property, and
- oversight by the guardianship court tailored to the individual needs of those served by public guardianship programs.

States should convene stakeholders to assess the state's guardianship systems, address issues of policy and practice, and serve as an ongoing problem-solving network.

AARP Maryland has concerns about SB 759. We believe, that expedited guardianship of a person is not good public policy and would have an adverse effect on older Marylanders. AARP encourages the state to make guardianships a last resort and to explore, when appropriate, less restrictive alternatives. AARP Maryland has supported limited guardianships, power of attorney agreements, advance directives, and supported decision-making agreements.

AARP Maryland respectfully asks the Committee for an unfavorable report on SB 759. Thank you and if you need to follow up with me, please contact me at tbresnahan@aarp.org or by calling 410-302-8451.