

SB 759_Guardianship_Support.pdf

Uploaded by: Allison Taylor

Position: FAV



Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc
2101 East Jefferson Street
Rockville, Maryland 20852

February 20, 2024

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

RE: SB 759

Dear Chair Smith and Members of the Committee:

Kaiser Permanente is pleased to support SB 759, "Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings."

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.¹ Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for over 825,000 members. In Maryland, we deliver care to approximately 475,000 members.

Disabled individuals often remain in hospitals much longer than is necessary while they wait for a court to appoint a guardian, which is necessary for discharge. HB 698 requires a court to rule on petitions for guardianship in order to seek transfer or discharge from a hospital on an expedited basis. This legislation provides a tool to improve hospital throughput and make finite hospital resources available for those who need them. We look forward to working with stakeholders to address concerns and find a reasonable solution.

Thank you for the opportunity to comment. Please feel free to contact me at Allison.W.Taylor@kp.org or (202) 924-7496 with questions.

Sincerely,

A handwritten signature in cursive script that reads "Allison Taylor".

Allison Taylor
Director of Government Relations
Kaiser Permanente

¹ Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation's largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente's members.

Kaiser Permanente
Comments on [Bill Number]
[Date of Hearing]

SB0759_FAV_MDACEP_Est. & Trusts - Guardianship Per

Uploaded by: Danna Kauffman

Position: FAV



Maryland Chapter

AMERICAN COLLEGE OF
EMERGENCY PHYSICIANS

TO: The Honorable William C. Smith, Jr., Chair
Members, Senate Judicial Proceedings Committee
The Honorable Ariana B. Kelly

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise

DATE: February 20, 2024

RE: **SUPPORT** – Senate Bill 759 – *Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings*

The Maryland Chapter of the American College of Emergency Physicians (MDACEP), which represents the interests of emergency physicians and their patients throughout the State of Maryland, **supports** Senate Bill 759. This bill alters the time for the court to hear a petition for guardianship of the person from an “expedited manner” to within 10 calendar days if the purpose of the petition seeking appointment of a guardian is to obtain consent to discharge or transfer an alleged disabled person from a hospital.

It has been well-documented that wait times in Maryland emergency departments are among the longest in the nation, which is often the result of the lack of either inpatient beds and/or the availability of community services, such as behavioral health placements. Solutions to this problem need to be widespread. If a patient no longer needs medical services in a hospital, the patient needs to be discharged or transferred as quickly as possible to make room for patients needing medical services. The Judiciary must make process changes to ensure that these patients are discharged or transferred as expeditiously as possible. We would be remiss in not questioning whether “within 10 calendar days” may be too long given the urgent need for available beds and services in hospitals. Notwithstanding, we support Senate Bill 759 and request a favorable vote.

For more information call:

Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise
410-244-7000

SB759-Estates and Trusts-Guardianship of the Perso

Uploaded by: Jennifer Witten

Position: FAV



Date: February 20, 2024

To: Chair Smith, Vice Chair Waldstreicher and Judicial Proceedings Committee Members

Reference: SB759-Estates and Trusts-Guardianship of the Person of a Disabled Person Expedited Proceedings

Position: Favorable

Dear Chair Smith and Judiciary Committee Members,

On behalf of LifeBridge Health, we appreciate the opportunity to comment and provide our support for Senate Bill 759. LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, an independent academic medical center; Levindale Hebrew Geriatric Center and Hospital in Baltimore; Northwest Hospital, a community hospital in Baltimore County; Carroll Hospital, a sole community hospital in Carroll County; Grace Medical Center (formerly Bon Secours Hospital), a freestanding medical facility in West Baltimore.

As the committee is aware, Maryland hospitals are open 24/7/365 and care for every person who enters the emergency department. Due to several barriers and issues, hospitals are facing significant delays and wait times throughout the system. We face on a regular basis over capacity. This is a national issue. At Sinai hospital at any given day our clinical team is searching for around one hundred open beds for inpatient needs, while the emergency department is at full or almost at full capacity around the clock.

Delays in the system are created by several reasons, including patient volume, acuity of cases, discharge process and seasonal fluctuations. Hospital caregivers constantly work to balance the influx of patients, prioritizing those with life-threatening conditions while attending to less urgent cases as quickly as possible. One of the factors that we see often that exacerbated by existing laws is the inability to transfer patients to appropriate skilled nursing and therapeutic environments in a timely matter.

Within the LifeBridge Health system alone we see significant delays waiting on guardianship hearings and determinations that often leave our most fragile, vulnerable patients lingering in the hospital awaiting decisions. The data below shows on average how long a patient needing temporary guardianship waits for hearing within our hospitals.

- 78 days (2.5 months) in Carroll County,
- 122 days (4 months) in Baltimore County: 2 petitions for guardianship submitted in October and November 2023 with no assigned hearing dates are still in pending status.
- 119 days (months) in Baltimore City: Of the cases waiting we had four patients pass in the hospital within 10 days of the guardianship order being granted.

CARE BRAVELY

The Maryland Hospital Association with its members identified way to address this overall critical issue of hospital throughput to alleviate delays. A number of recommendations were identified that includes improving the guardianship process in Maryland. By legislative action we need to reform the expedited health care guardianship process. The bill before you seek to improve the process by the following:

- Expedited health care guardianships accelerate the guardianship hearing and approval process for patients in health care settings.
- Patients will have the same due process rights—notice and right to hearing—as with standard guardianship.
- On behalf of the patient, allow hospitals to petition the court for permanent guardianship at the end of the expedited health care guardianship.

For all the above stated reasons, we request a Favorable Report on SB759.

For more information, please contact:

Jennifer Witten, M.B.A.

Vice President, Government Relations & Community Development

jwitten2@lifebridgedhealth.org

2024 SB759 Guardianship of the Person SUPPORT.pdf

Uploaded by: Leslie Weber

Position: FAV

TO: The Honorable William Smith, Chair
Judicial Proceedings Committee

FROM: Leslie Ford Weber
Associate Director, Maryland Government Affairs

DATE: February 12, 2024

RE: SB759. Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings

Johns Hopkins supports **SB759 Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings**. This bill would set reasonable deadlines for Maryland courts to rule on petitions for guardianship of disabled persons when a hospital is recommending transfer to an appropriate facility after there is no longer a medical necessity to remain hospitalized. It would also improve efficiency by clarifying that virtually hearings are the default method unless the party seeking appointment as guardian requests an in-person hearing.

Johns Hopkins operates four hospitals in Maryland in three different jurisdictions: Baltimore City, Howard County and Montgomery County. All of our facilities care for individuals who have needs for medical treatment, but lack decisional capacity. In the best case, once the necessity for acute medical care has been resolved, the individuals either return to the setting where they came from prior to admission or are easily transferred to an appropriate facility for ongoing treatment and support of their conditions.

Too many patients in Maryland, however, experience delays in what should be a routine process, especially if there is no legally identified decision maker available, or willing, to support an individual who lacks capacity to make decisions about their next level of care. In these cases, Johns Hopkins health system employees work tirelessly to identify appropriate locations that will accept the patient and then must petition the courts for guardianship of the person in order to safely discharge the patient.

When the courts fail to act in a timely manner, the patients – who no longer need medical care – are stuck. They continue to occupy beds that are needed for patients who need medical treatment. This contributes to the backlog for care and long wait times in our emergency departments which is a matter of statewide concern.

Government and Community Affairs

On an individual level, these patients have a greater risk of decline. They are isolated from meaningful supportive social and emotional care available in other appropriate treatment settings. They risk acquiring additional infections.

Accordingly, Johns Hopkins respectfully requests a **FAVORABLE** committee report on **SB759**.

Senate Bill 759 - Estates and Trusts – Guardianshi

Uploaded by: Pegeen Townsend

Position: FAV



Maryland
Hospital Association

Senate Bill 759 - Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings

Position: *Support*

February 19, 2024

Senate Judicial Proceedings Committee

MHA Position

On behalf of the Maryland Hospital Association’s (MHA) member hospitals and health systems, we appreciate the opportunity to comment in support of Senate Bill 759.

Many of Maryland’s most vulnerable patients are often unable to be discharged by hospitals because they are incapacitated and cannot consent to the discharge. Guardianship is a legal relationship in which a guardian is appointed by the court to make decisions on behalf of another who is unable to make decisions. SB 759 assists the existing guardianship process by expediting these proceedings for the purpose of making a discharge decision. The goal of this legislation is to aid the adult disabled guardianship population of patients who are unable to effectively consent to discharge by requiring a guardianship hearing within 10 days of a filed petition for guardianship.

Patients with delayed discharges have worse health outcomes.

Maryland hospitals have expressed concerns with the declining health of patients who are unable to be discharged. Often patients’ conditions deteriorate due to isolation and inability to be placed in the appropriate treatment setting. The risk of infection, sepsis, and the like are more prevalent when overstaying in hospitals. A streamlined legal process to appoint a guardian to make discharge decisions enables medical professionals to expedite necessary treatments and procedures without delay—improving health outcomes for patients awaiting a guardian.

Delayed discharges contribute to emergency department wait times.

These guardianship proceedings will improve emergency department wait times by allowing surrogates to make critical decisions regarding a patient’s care more efficiently. To date, Maryland has the longest emergency department wait times in the United States.¹ Although the delays in discharges are multifactorial, hospitals are vested in exploring and developing solutions for patients to receive prompt, appropriate care. When a patient who no longer needs acute care cannot be discharged, it limits access to care for those who need to be admitted. At times, patients are unable to be discharged for weeks and months before a guardian is appointed. SB 759 not only appoints a guardian but expedites the process for a guardianship hearing, which, in

¹ [Beckers Hospital Review: ER Wait Times, By State](#)

turn, eases the discharge process and reduces emergency department overcrowding and subsequent wait times.

The current expedited adult guardianship process is ineffective.

Existing law does not provide necessary relief to properly discharge patients. MHA wants to ensure patients in all Maryland are afforded the same expeditious opportunity to have a guardian appointed to ensure the continuation of necessary care. For years, hospitals have taken preemptive steps like hiring private investigators and contacting potential relatives upon patient admission. At times, these patients arrive at hospitals without any information on or the identity of family members or potential surrogates or the means to contact family or potential surrogates. In surveying Maryland hospitals, MHA found patients wait an average of 60 days for a hearing to be scheduled by the court, and in some instances, more than 100 days. Additionally, these patients wait on average 126 days to be appointed a guardian following an initial guardianship hearing request. Hospital staff work diligently to identify patient representatives and supportive family members who can assist in determining patient care throughout the patient's stay. Despite these efforts, guardianship is often the only solution that allows patients to be discharged.

For these reasons, we urge a *favorable* report for SB 759.

For more information, please contact:
Pegeen Townsend, Consultant
Ptownsend@mhaonline.org

Sen Kelly SB759 FAV .pdf

Uploaded by: Senator Ariana Kelly

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 20th, 2024

SB759: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

Chair Smith, Vice-Chair Waldstreicher, Members of the Committee,

I am here to present SB759: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings.

SB 759 does two things:

1. It requires a court to rule on petitions to appoint a guardian of the person for the purpose of making decisions relating to discharge from a hospital within 10 days; and
2. Allows hearings to appoint a guardian of the person of a disabled person to be held virtually.

While guardianship should always be the last resort, it is imperative that our state address the growing crisis in our hospitals. Hospital emergency department wait times in Maryland are some of the worst in the country. Over the interim, a Workgroup was convened at the direction of the General Assembly to investigate the underlying causes contributing to the problem and to develop recommendations. The Workgroup concluded there are multiple factors contributing to this problem, including insufficient care options outside a hospital, throughput inefficiencies inside the hospital, and the ability for the hospital to discharge individuals who no longer need acute care in a timely manner.

With regard to timely discharge of disabled individuals, the Workgroup heard over and over there are significant delays in the appointment of a guardian and there are wide variations between jurisdictions on the time it takes for the court to appoint a guardian. Unfortunately, there are consequences associated with those delays. Most importantly, the patient is not in the right setting to meet their needs and often the patients' condition deteriorates due to isolation, a higher risk of infection, lack of rehabilitation services, etc.

Another consequence associated with these delays, is the inability to admit patients the need acute care services who are waiting for a bed in the emergency department. This leads to patients being "boarded" in the emergency department for long periods of time and limits their access to care.

Lastly, allowing for guardianship hearings to be held virtually will make the process more efficient. This was done during the pandemic and worked well.

Vice Chair Bartlett has met with several stakeholders, including some that you will hear from today. The Vice Chair, myself, and advocates have discussed the bill and determined what is agreed on and what is not. Vice Chair Bartlett is working to make amendments to the bill to address the concerns raised in stakeholder meetings.

Today you will hear from my panel including Pegeen Townsend of the Maryland Hospital Association, Allison Taylor of Kaiser Permanente, Peter Tallerico of Holy Cross Hospital, Kai Shea of Johns Hopkins, Hannah Kozaczek of Johns Hopkins Bayview Medical Center, and Helen Hash of the University of Maryland.

Thank you, and I ask for your support on Senate Bill 759.

HFAM Testimony SB 759.pdf

Uploaded by: Joseph DeMattos

Position: FWA



**TESTIMONY BEFORE THE
SENATE JUDICIAL PROCEEDINGS COMMITTEE
February 20, 2024**

Senate Bill 759: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings
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 759. HFAM represents skilled nursing centers and assisted living communities in Maryland, as well as associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state. HFAM is affiliated with the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), which is the largest association in the United States representing long-term and post-acute care providers.

Senate Bill 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; and 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.

It is not uncommon for a guardian of the person of a disabled person to be appointed for patients and residents in settings other than hospitals. **Therefore, regarding the reference to expedited rulings on appointments needed to consent to hospital discharges or transfers on page 3, lines 32 – 35, we request that “related institutions” be included along with hospitals.** This addition of related institutions will ensure an expedited process for people receiving care in settings beyond hospitals, such as nursing homes and assisted living centers. This is important for ensuring smooth transitions between healthcare settings, along with access to quality care.

We appreciate this legislation and believe its enactment will help speed up the process of appointing a guardian of the person of a disabled person. Marylanders in need of 24/7 care for multiple chronic conditions who live in skilled nursing and rehabilitation centers usually receive long-term care support by Medicaid and are often without engaged family. I have witnessed countless heartfelt moments when professionals take on the role of caring and I am aware of instances in which legal teams from the centers assist with guardianship.

For these reasons, and with the proposed amendment, we request a favorable report on Senate Bill 759.

Submitted by:
Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

SB0759_MHAMD_Unfav.pdf

Uploaded by: Ann Geddes

Position: UNF

**Senate Bill 759 Estates and Trusts – Guardianship of the Person of a Disabled Person –
Expedited Proceedings**

Senate Judicial Proceedings Committee

February 20, 2024

Position: OPPOSE

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in opposition to SB 759.

SB 759 expedites the guardianship process for disabled individuals, including those with mental illness, if the purpose is to discharge the individual from a hospital.

Older adults with serious mental illness will be disproportionately negatively impacted by SB 759, as they are less likely to have someone looking after them who would be able to provide support in needed areas. It can be especially difficult for these individuals to find a family member or friend willing to serve as a guardian of the person, especially in the confines of ten days, which is specified in the bill. When family or friends can't be identified, people are placed into public guardianship. This usually is not an ideal solution, especially when a court-appointed public guardian may be responsible for many clients.¹

People subject to guardianship are stripped of most of their rights: where to live, whether to take medication and other medical decisions, who they may associate with, what to eat, and what to wear. They may be coerced into making decisions that they do not agree with or fully understand.² There are an abundant number of examples of people in guardianship of the person who have been neglected or taken advantage of.³ And once a person is placed into guardianship of the person, it can be difficult for them to get out, even after they have improved and should be eligible for emancipation.

Additionally, the passage of SB 759 would be premature. In 2021, the Maryland Judiciary received a \$1.1 million grant from the U.S. Department of Health and Human Services for the project: "Diverting the Health Care to Guardianship Pipeline: A Person-Centered Approach."⁴ This

¹ Allesandra Salamati et al. Advocating for older adults: when guardianship is not the answer. The American Journal of Geriatric Psychiatry. Volume 27(3). 2019. Accessed February 10, 2024. [https://www.ajgponline.org/article/S1064-7481\(19\)30202-7/pdf](https://www.ajgponline.org/article/S1064-7481(19)30202-7/pdf)

² Ann Chodoy, Context, humility, and caution in guardianship determination. Journal of the American Geriatrics Society. 2022. Accessed February 10, 2024. <https://agsjournals.onlinelibrary.wiley.com/doi/full/10.1111/jgs.18067>

³ United States Department of Justice. Mistreatment and abuse by guardians and other fiduciaries. Accessed February 10, 2024. <https://www.justice.gov/elderjustice/mistreatment-and-abuse-guardians-and-other-fiduciaries>

⁴ Nisa Subasinghe. Elder Justice Innovations Profile: Maryland. Journal of the ABA Commission on Law and Aging. Volume 43 (5). 2022. Accessed February 12, 2024. https://www.americanbar.org/content/dam/aba/administrative/law_aging/bif-vol-43-issue5.pdf

“healthcare to guardianship pipeline” is precisely what SB 759 proposes to codify, even as Maryland was awarded a sizable grant to reduce the practice.

Per the grant, the Maryland Judiciary is currently:

- Conducting a comprehensive statewide assessment of Maryland’s guardianship system with a focus on cases that originate from health care settings
- Designing and implementing interventions to divert patients toward faster, less restrictive alternatives to guardianship
- Evaluating those interventions

The grant will end in August of this year, at which point the group working on implementation will issue a guidebook for healthcare organizations. We encourage the Maryland legislature to review this guidebook before taking steps such as the one proposed in SB 759.

For these reasons, MHAMD opposes SB 759 and urges an unfavorable report.

SB0759 response 021924 final.pdf

Uploaded by: Caroline Cerilli

Position: UNF

TO: Maryland Senate Judicial Proceedings Committee
FROM: Bonnielin Swenor, PhD, MPH and Caroline Cerilli
DATE: February 19, 2024

RE: Maryland Senate Bill 0759 Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings

POSITION: Oppose

We are writing as disability research scholars, disability data experts, and disability community members from the Johns Hopkins Disability Health Research Center. Our center uses data to develop evidence-based policies and create a more equitable society for people with disabilities. We are writing on our own behalf and not representing our institution.

We strongly oppose Maryland Senate Bill 0759.

All good policies must be supported by data. However, SB0759 aims to change the guardianship process without necessary evidence on the impact of guardianship on people with disabilities and our healthcare system. There is extremely limited data on the benefits of guardianship, including its efficacy in solving the problems it sets out to address and how it compares to other, less restrictive alternatives. In fact, the Fourth National Guardianship Summit calls for improved data collection on guardianship as a leading priority.¹

All action on this bill should be stopped until the impact of guardianship can be understood.

While there is not enough data on the implications of guardianship, the data we do have indicates that individuals under guardianship are more likely to face negative outcomes than those not under guardianship. Data from the National Core Indicators, a survey of adults with intellectual and developmental disabilities in the United States, shows people under guardianship are significantly less likely to receive preventative care such as mammograms and pap tests. These data also indicate that people under guardianship are less likely to work, especially independently, are less likely to be allowed private time with visitors and are more likely to have rules regarding visitors. People under guardianship are also less likely to be able to contact their friends² and are given less freedom to choose where to live and what to do during the day. Overall, these data indicate that guardianship is associated with less opportunity to make choices, which reduces an individual's quality of life.³

¹ Fourth National Guardianship Summit, "Maximizing Autonomy and Ensuring Accountability: Recommendations Adopted by Summit Delegates" (Syracuse, NY: 2021), available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2021-grd-smmt-recmndtns.pdf.

² Bradley, V. and Hiersteiner, D. "Data Brief."

³ Chambers, C.R., Wehmeyer, M.L., Saito, Y., Lida, K.M., Lee, Y., and Singh, V. "Self-determination: What do we know? Where do we go?" *Exceptionality*, 15, 3-15. (2007).

Despite the association with negative outcomes, guardianship is typically granted when petitioned for, yet rarely are rights restored. For example, from 2016 to 2021, Virginia courts appointed full guardianship or conservatorship in response to 82% of the 9,078 petitions filed and appointed limited or temporary guardianship or conservatorship to 2% of cases; fifteen percent of petitions were either withdrawn, dismissed, or judge denied.⁴ Over these six years, just ten individuals were restored to capacity.⁵ This is especially relevant for healthcare settings, where a person may only temporarily lack capacity; guardianship is an unsuitable solution during an individual’s recovery process. Guardianship has been on the rise over the past ten years, making the barriers to restoring rights an equally pressing concern.⁶

Loosening the guardianship process is not supported by the disability community or disability policy experts. The National Council on Disability (NCD), the federal agency that advises Congress and the President of the United States on disability policies, found that guardianship is “often imposed when not warranted by facts or circumstances because guardianship proceedings often operate under erroneous assumptions that people with disabilities lack the capacity to make autonomous decisions.”⁷ Several healthcare systems have updated their approach to guardianship, specifically to increase the rate at which guardianship petitions are processed. The healthcare system's financial need is not sufficient reason for this drastic measure.⁸ An individual’s experience beyond the hospital bed must be prioritized.

Instead of SB0759, alternatives, and supports for people most vulnerable to guardianship must be developed.

In 2021, the Administration for Community Living (ACL) awarded the Maryland Court of Appeals a grant to “conduct a comprehensive statewide assessment of the existing guardianship process and system to identify current strengths, weaknesses, concerns, and needs; develop a response to that assessment with interventions to address identified weaknesses, concerns, and needs; produce an evaluation aimed at measuring the quality of the assessment and the effectiveness and replicability of the interventions; and disseminate findings.”⁹ This is an excellent opportunity for our healthcare systems and courts to develop the evidence needed to improve the guardianship process in Maryland in partnership with the disability community. However, SB0759 has moved forward prior to the implementation and release of the results of this work.

⁴ “Improving Virginia’s Adult Guardian and Conservator System.” Joint Legislative Audit & Review Commission. (2021)

⁵ DiMatteo, Emily, Thompson, Vilissa, and Ahmed, Osub. “Rethinking Guardianship to Protect Disabled People’s Reproductive Rights.” Center for American Progress. (2022).

⁶ Bradley, V. and Hiersteiner, D. “National Core Indicators Data Brief” (2019), available at https://legacy.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf

⁷ “Turning Rights into Reality: How Guardianship and Alternatives Impact the Autonomy of Intellectual and Developmental Disabilities.” National Council on Disability. (2019). Available at <https://www.ncd.gov/report/turning-rights-into-reality-how-guardianship-and-alternatives-impact-the-autonomy-of-people-with-intellectual-and-developmental-disabilities-1/>.

⁸ Hirschel, Alison, and Lori Smetanka. "The Use and Misuse of Guardianship."

⁹ “New Elder Justice Grants Address APS Training, Guardianship, APS to Community Services Transitions.” Administration for Community Living. (2021). Available at <https://acl.gov/news-and-events/announcements/new-elder-justice-grants-address-aps-training-guardianship-aps>.

We urge that alternatives to guardianship be developed in partnership with people with disabilities. This should include leveraging ongoing research on supported decision-making, a tool to assist an individual without influencing their decision. Additionally, there is an urgent need to create and implement educational programs for healthcare providers and social workers on disability competent care, non-spoken forms of communication, and anti-ableism. New options for people being discharged should also be developed to bridge the gap between inpatient care and full independence, such as for individuals experiencing a mental health crisis.

We urge healthcare systems to collaborate with people with disabilities to find solutions to bed shortages that do not involve stripping away basic rights rather than pressing this bill. It is critical that the approach taken to address any healthcare resource shortages is based on evidence, leads with equity, is anti-ableist, and is not based on financial outcomes alone.

Sincerely,



Bonnielin K. Swenor, PhD, MPH

Director, [The Johns Hopkins Disability Health Research Center](#)

Endowed Professor of Disability Health and Justice

The Johns Hopkins School of Nursing

The Wilmer Eye Institute, Johns Hopkins School of Medicine

Departments of Epidemiology and Health Policy and Management, Johns Hopkins Bloomberg School of Public Health

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Caroline Cerilli

Research Coordinator, [The Johns Hopkins Disability Health Research Center](#)

ccerill1@jh.edu

Written Testimony MDOA SB759 - Guardianship of the

Uploaded by: Elouise Mayne

Position: UNF



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Date: February 16, 2024

Bill Number: **SB759**

Bill Title: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

Committee: Senate Judicial Proceedings

MDOA Position: UNFAVORABLE

The Department of Aging (MDOA) thanks the Chair and Committee members for the opportunity to testify on Senate Bill (SB) 759 - Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings.

The Maryland Department of Aging (MDOA) serves as Maryland's State Unit of Aging, administering federal funding for core programs, overseeing the Area Agency on Aging (AAA) network at the local level that provides services, and planning for Maryland's older adult population. Maryland's 19 AAA's serve as public guardians in last resort situations for adults 65 and older where no other family member or suitable alternative guardian is available.

MDOA prioritizes the older adult at the center of this heavily judicial process. Public guardianship petitions rarely, if ever, involve older adults with local family members in the picture with substantial incomes and assets. Typically, AAA's have no involvement with older adults prior to the public guardianship petitions being made by a hospital and once notified, spend nearly half of their time researching family members and pursuing guardianship avoidance options. Older adults in these guardianship petitions routinely are living alone, do not have organized finances, thus the marshaling of their assets depends on the guardians of the property, who are usually court-appointed attorneys that operate on their own timelines. Once the older adult's financial picture has been determined, the AAA guardianship staff works to determine what post-acute care setting the older adult can afford, which sometimes requires a move and judicial transfer of the case to another jurisdiction with more affordable assisted living options,



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

like Baltimore City. A move to another jurisdiction often leads to the individual being away from the community they've known and any existing supports that may be present, like friends, faith communities, and neighbors.

MDOA has grave concerns about this proposed change on the basis of older adults and their families' basic human rights. Older adults in hospitals and acute care settings should be able to make decisions for themselves when they are able to and public guardianship used truly as a last resort. Hospitals should be applying the Maryland Health Care Decisions¹ and Supported Decision-Making² laws, the latter which only took effect in October, 2022. More education for hospitals and work implementing these two existing state laws would be prudent before jumping ahead to this extreme proposed change. Guardianship is a very difficult judicial decision to reverse or alter. The very short 10 day window for public guardianship petitions to be ruled on would also come at the expense of family members and other suitable potential guardians who are identified by hardworking AAA staff more than 10 days later, as they are sometimes able to do.

Maryland's AAAs had 626 total guardianship of person cases in 2022 and 706 in 2023, a 13% increase. AAAs are supported primarily by state funds for this critical direct role. According to AAA data, hospitals are the most frequent source of public guardianship petitions (directing patients to the AAAs), followed by nursing facilities. Guardianship caseloads in many AAAs that are significantly higher than the recommended best practice, which is 20 cases per caseworker. AAAs typically have one to four staff members that work on guardianship cases who often have to travel to follow cases to outside counties before judicial transfers occur. The older adult population in Maryland is growing exponentially due to people living longer lives; and in some rural parts of the state with less hospitals, it is growing even faster. This growth coupled with this proposed change would undoubtedly increase the stream of public guardianship cases for AAAs. In Baltimore City and several other counties with higher numbers of public guardianship wards already, we predict the small, already stretched AAA teams will be swiftly overwhelmed by new petitions from area hospitals. These increased case loads will

¹ See MD Attorney General: Health Care Decisions Act: Text and Educational Materials, *available at*: <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx>

² See Maryland Judiciary: Alternatives to Guardianship Part 8: Supported Decision-Making, *available at*: <https://www.courts.state.md.us/video/courthelp/supported-decision-making>



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

jeopardize the well-being of the older adults for whom a petition for public guardianship is intended to protect.

In addition to the significant impact this legislation would have on our AAA's, MDOA shares our AAA's grave concerns about this proposed change on the basis of older adults and their families' basic human rights: that older adults should be able to make decisions for themselves when they are able to and public guardianship used truly as a last resort. Generally, the least restrictive intervention must have already failed before public guardianship should be pursued. Hospitals should be applying the Maryland Health Care Decisions Act³ and Supported Decision-Making⁴, the latter which only took effect in October, 2022. More education and work implementing these two existing state requirements and focus on developing more community-based supports and affordable, post-acute care residential options for older adults would be prudent before jumping ahead to this extreme proposed change.

Pursuant to a recent Executive Order, in January 2024, MDOA launched the Longevity-Ready Maryland Initiative,⁵ which will build upon existing efforts across state agencies, private and philanthropic sectors and other stakeholders to tackle real-life challenges throughout the lifespan, taking a whole-of-life and whole-of-government approach. Key goals of Longevity-Ready Maryland are for all Marylanders to lead lives that are healthy, financially secure, socially connected, purposeful - and where dependency is delayed. MDOA supports efforts to reduce hospital emergency room wait times and other staffing and capacity pressures on Maryland's hospitals, which are indeed key aspects of longevity-readiness. However, this is an unacceptable route to getting there.

For these reasons, the Department of Aging respectfully urges an unfavorable report for SB759. If you have any questions, please contact Andrea Nunez, Legislative Director, at andrea.nunez@maryland.gov or (443) 414-8183.

³ See MD Attorney General: Health Care Decisions Act: Text and Educational Materials, *available at*: <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx>

⁴ See Maryland Judiciary: Alternatives to Guardianship Part 8: Supported Decision-Making, *available at*: <https://www.courts.state.md.us/video/courthelp/supported-decision-making>

⁵ See Maryland Department of Aging: Longevity-Ready Maryland Initiative *available at*: <https://aging.maryland.gov/Pages/LRM.aspx>



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Sincerely,

A handwritten signature in blue ink that reads "Carmel Roques". The signature is fluid and cursive, with a long horizontal stroke at the end.

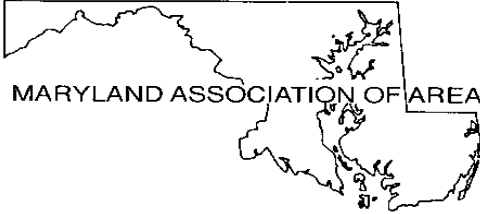
Carmel Roques
Secretary
Maryland Department of Aging

M4A - 2024 SB 759 UNF - Expedited Guardianship - S

Uploaded by: Gina Valentine

Position: UNF

M 4 A



Gina Valentine
President
Representing Carroll County
Bureau of Aging & Disabilities

Karen Winkowski, Vice President
Representing Harford County
Office on Aging

Laura Riley, Treasurer
Representing Baltimore County
Department of Aging

Karrisa Gouin, Secretary
Representing Anne Arundel County
Department of Aging and Disabilities

Judicial Proceedings Committee – Bill Hearing February 20, 2024

Legislation: SB 759 Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings

Position: Oppose

Who is M4A?

The nineteen member organizations of the Maryland Association of Area Agencies on Aging (M4A) serve Maryland's older and disabled citizens, providing a range of cost-effective state, federal and locally funded programs that help individuals remain secure in the community with dignity, independence, and choice as they age. M4A and its associated Area Agencies on Aging (AAAs) represent the "front line" in Maryland's challenge to meet the complex and varied needs of well over 1 million older adults statewide. M4A's goal is to ensure communication and collaboration with all partners to maximize the resources available to those we serve.

M4A respectfully opposes Senate Bill 759. Representing 19 AAAs across the state, significant concerns are apparent regarding the proposed provisions to expedite guardianship hearings for disabled individuals. As written the bill may adversely affect the AAAs existing Public Guardianship Program.

The AAA serves as the court-appointed "guardian of the person" for older residents ages 65 and older who have been legally adjudicated disabled when the individual has no family members or friends who can serve as their guardian. The Area Agency on Aging Director is appointed the responsibility of guardianship of the person by the courts.

Senate Bill 759 proposes two provisions: first, it suggests virtual hearings as the default for guardianship petitions, with an in-person hearing granted only upon request; second, it mandates a 10-calendar-day timeframe for the court to rule on guardianship petitions related to hospital discharges or transfers of disabled persons. While we appreciate efforts to streamline processes, we believe these provisions could adversely affect the rights and well-being of older adults and disabled individuals.

(over)

Virtual hearings, while convenient, may not adequately ensure due process or full participation, particularly for vulnerable individuals. Rushing through these hearings could undermine fundamental principles of self-determination and the least restrictive alternatives. Furthermore, the mandated 10-day timeframe for ruling on guardianship petitions related to hospital discharges may only allow for a thorough consideration of limited factors involved.

Moreover, there's a risk that hospitals may petition for guardianship unnecessarily rather than explore less restrictive options or diligently seek family members or friends who are capable and willing to serve as guardians. This could lead to increased public guardianship cases, overwhelming resources, and potentially depriving individuals of their right to decide about their own lives.

In conclusion, while we support joint efforts to improve efficiency, we urge the committee to reconsider the proposed provisions of Senate Bill 759. Any changes to the guardianship process should prioritize the protection and autonomy of those it affects.

NASW Maryland - 2024 SB 759 UNF - Expedited Guardi

Uploaded by: Karessa Proctor

Position: UNF

Testimony Before the Senate Judicial Proceedings Committee February 20, 2024

Senate Bill 759: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

**** Oppose ****

The National Association of Social Workers – Maryland Chapter is a professional organization representing over 3,000 social workers statewide. On behalf of NASW-MD’s Committee on Aging, we would like to express our opposition to SB 759 Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings.

As social workers serving older adults, we oppose this bill because it calls for expediting the establishment of a guardianship of the person, primarily for the benefit of hospital systems who are pressed to quickly discharge patients once their acute medical needs are met. This bill would harm vulnerable adults in several ways:

- The assignment of a Guardian of the Person results in stripping away an individual’s right to self-determination. An individual under Guardianship loses the right to decide where they will live, what medical care they receive and most other life decisions. Reducing the Guardianship determination to ten days does not allow time for the consideration of less restrictive alternatives, such as supportive decision-making or surrogate decision-making.
- An expedited guardianship process does not allow investigators an opportunity to contact all interested parties (including family members) who might understand the person’s needs and be able to help them find suitable care arrangements. Expedited guardianships are thus more likely to assign as Guardian a government officer who does not know the individual.
- Guardianships, once granted, are rarely terminated. Therefore, a person who might need someone to help for a short period in finding a place to live might be saddled with a lifetime of lost liberties.

We agree with the late Congressman Claude Pepper, who said, “The typical ward has fewer rights than the typical convicted felon - they no longer receive money or pay their bills. They cannot marry or divorce...someone else is given the power to choose where they live, what medical treatment they receive, and in rare cases, when they will die. It is, in short, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.”

(over)

We urge you not to expedite the guardianship process simply to facilitate hospital discharges. We ask that you give an unfavorable report on SB 759.

Respectfully,

Karessa Proctor, BSW, MSW
Executive Director, NASW-MD

sb759.pdf

Uploaded by: Linda Miller

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 759
Estates and Trusts – Guardianship of the Person of a Disabled
Person – Expedited Proceedings
DATE: February 7, 2024
(2/20)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 759.

Although well intentioned, this bill raises constitutional issues and would undermine rights and protections afforded to respondents in guardianship proceedings.

Guardianship generally. Guardianship is an intervention that may be necessary to protect a person’s safety, welfare, or property, but is an extreme measure that is designed to be a last resort. This is because guardianship curtails, and some cases removes, all of a person’s basic rights and liberties including the right to make decisions about their medical care, housing, clothing, property. It impacts whether they can vote, marry, get divorced, or visit with family and friends.

Estates & Trust Art., § 13-705 and the Title 10 of the Maryland Rules outline a series of rights afforded to *alleged* disabled persons (ADPs) in proceedings to establish guardianship that in many ways make Maryland law a model of due process. The term “alleged” is used because there is a presumption of capacity, and these are adversarial proceedings. Because ADPs face significant and usually permanent loss of their rights, they are entitled to notice about the proceeding, to an attorney, and if they do not have an attorney of their own choosing, the right to a court-appointed attorney who is paid for by the state if they are indigent. They have the right to a hearing and for that hearing to be held at a place the ADP can reasonably access, and a jury trial if guardianship of the person is sought. They also have the right to request discovery, to present evidence, to cross-examine witnesses against them, and to an expedited appeal. These protections are consistent with other proceedings that involve the deprivation of a person’s rights and required for due process.¹

¹ *In re Sonny Lee*, 132 Md. App. 696 (2000).

In guardianship of the person proceedings, the petitioner has the burden of proving by clear and convincing evidence that the ADP 1) lacks decision-making capacity **and** 2) that there are no less restrictive forms of intervention available. These interventions are referred to as “alternatives to guardianship,”² which alone or together allow a person to have their needs met without needing a guardian. Alternatives to guardianship can also help limit a guardian’s powers to address the demonstrated needs of an ADP and prevent guardianship from being used as a hammer when all that is needed is a scalpel.

Constitutional and practical issues. The mechanics of the bill are difficult to implement and would infringe upon the rights of ADPs and other interested persons.

The proposed amendments of §13-705(f) would require the court to hold a hearing on a petition for guardianship for the purposes of obtaining consent to discharge or transfer an alleged disabled person from a hospital within ten (10) calendar days. This timeline is unworkable as it would not allow for scheduling of contested cases or a jury trial if needed. The timeline does not recognize the demands of other pending cases or the trial calendars of the attorneys involved. The Judiciary is in the best position to schedule the matters before it in consideration of all relevant factors

This abbreviated timeline would also limit the abilities of attorneys for alleged disabled persons to effectively represent their clients, and for local Departments of Social Services and Area Agencies on Aging to conduct necessary investigations. It would also create barriers to identifying family, friends, and others who can provide relevant evidence or obviate the need for guardianship. The provision would also prioritize petitions filed by hospitals over petitions filed by agencies, including adult protective services, and families. It also conflicts with safeguards set forth in the statute.

This provision also makes it difficult for local Departments of Social Services and Area Agencies on Aging to conduct necessary investigations into alternatives to guardianship and the needs of the ADP. Attorneys for ADPs would have limited time to meet with their clients, identify and interview witnesses, request discovery, explore alternatives to guardianship, and prepare a defense as required by law. If agencies and defense attorneys do not have time to conduct investigations or prepare a defense, ADPs are at risk of being placed under the most restrictive form of guardianship of the person – public guardianship. This means that a stranger will make decisions for them, and they will more likely be discharged into a facility rather than back to their homes or communities.

Most petitions filed by hospitals include requests for the appointment of a guardian of the property. There is no public guardianship of property, so courts must rely on the group of attorneys who do this work and who are paid from the person under guardianship’s assets. The work is complicated and most guardianships that originate from healthcare settings involve patients with limited resources. Attorneys are often asked to do this work on a *low bono* or *pro bono* basis, which is a challenge.

² Information about alternatives to guardianship is available at www.mdcourts.gov/alternatives.

Proposed §13-705(e)(4) would have the rights afforded to ADPs satisfied if the respondent is given the opportunity to exercise these rights virtually. This provision is unnecessary as courts can hold virtual hearings generally. Read together with proposed subsection (f)(2), this language suggests that having giving the ADP the opportunity (e.g., by notifying him, her, or them of the proceeding) is sufficient even if they are not giving the ability to exercise those rights.

Proposed subsection (g) would require all guardianship of the person hearings to be held virtually unless the petitioner or alleged disabled person requests otherwise. This may interfere with the rights of interested persons who are parties to these actions who can, among other things, request discovery, present evidence, and cross-examine witnesses. It could also run afoul of the Americans with Disabilities Act and other similar laws. While virtual hearings are an important option for some, they can create barriers for others, including witnesses. Virtual platforms are not always conducive to meaningful participation in court proceedings, especially for parties and witnesses who do not have access to stable internet connections or devices with reliable audio and camera features. People with visual or auditory impairments may experience additional challenges.

The “healthcare-to-guardianship pipeline.” Courts have seen an increase in petitions for guardianship filed by hospitals, skilled nursing homes, and other facilities over the past several years. These cases represent what is referred to as the “hospital-to-guardianship” or, more precisely, the “healthcare-to-guardianship pipeline.” The pipeline refers to when a person enters a healthcare facility experiencing diminished capacity and without a clear legal representative in control and the facility seeks guardianship over that person. This allows the facility to discharge the person when they no longer need acute medical care, or, alternatively, to get them qualified for medical assistance (Medicaid), which may be necessary for them to be transferred to or to remain in a more appropriate care setting. In many cases, the guardianship is plenary and remains in place, even if the precipitating event is resolved. The pipeline can be detrimental to patients, as it curtails their rights, and to public guardianship agencies, as it increases the burden on the same.

This pipeline is not a new phenomenon.³ In 2011, Maryland Senate Bill 726 was introduced to provide for the appointment of a temporary limited guardian to consent to discharge of an adult with a disability from a hospital. Although the bill failed, a workgroup was convened to “develop a uniform statewide policy relating to the appointment of temporary limited guardians for hospitalized adult disabled persons.” The workgroup ultimately advised against such a policy, finding that “[t]he [] process of establishing guardianship, which relies on the courts to hear guardianship cases, substantially and often times permanently restricts the rights of individuals, and requires costly and lengthy processes when essentially what is needed is “consent for placement”

³ See Raymond, A., [The Hospital to Guardianship Pipeline](#), Bifocal Vol. 44, Issue 6, ABA Commission on Law and Aging (2023); and Hirschel, A., & Smetanka, L., [The Use And Misuse Of Guardianship and Conservatorship by Nursing Home And Health Care Providers](#), 72 Syracuse L. Rev. 255, 258 (2022).

in the least restrictive setting (also referred to as “appropriate setting”) upon discharge from a hospital.”⁴

In 2019, Supreme Court of Maryland amended its court rules to provide for an expedited guardianship process “in connection with medical treatment,” in an attempt to respond to complaints from hospitals about delays in addressing their petitions for guardianship.⁵ Since those rules went into effect, courts and public guardianship agencies have noted an increase in petitions from healthcare facilities and pressure to move on them faster, further burdening these already under-resourced public structures.

In 2021, the Judiciary received a grant from the Administration for Community Living, U.S. Department of Health and Human Services, to perform an assessment of Maryland’s guardianship system and to examine the pipeline. The project is ongoing but has helped identify drivers of the pipeline and ways to divert patients to less restrictive and more person-centered options than guardianship.

cc. Hon. Ariana Kelly
Judicial Council
Legislative Committee
Kelley O’Connor

⁴ Department of Human Services, “Report of the Workgroup on Hospitalized Adult Disabled Persons – Appointment of a Temporary Limited Guardian,” 2011 at 4 (available at https://mgaleg.maryland.gov/cmte_testimony/2021/hgo/livsqr_g5w197DmAWJ_EV9148rfYA6jch.pdf).

⁵ 198th Report to Ct. App., 2018 (available at <https://www.courts.state.md.us/sites/default/files/rules/order/ro198.pdf>).

SB0759 - UNF - DHS.pdf

Uploaded by: Rachel Sledge Government Affairs

Position: UNF

February 20, 2024

The Honorable Will Smith, Chair
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

RE: TESTIMONY ON SB0759 - Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings - POSITION: UNFAVORABLE

Dear Chair Smith and Members of the Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide unfavorable testimony for Senate Bill 698 (SB0759).

With offices in every one of Maryland's jurisdictions, we empower Marylanders to reach their full potential by providing preventative and supportive services, economic assistance, and meaningful connections to workforce development and career opportunities. The Social Services Administration within DHS implements the adult public guardianship program which is impacted by Senate Bill 759.

During the 2011 Legislative Session, Senate Bill 726, *Adult Disabled Persons – Appointment of Temporary Limited Guardian*, was introduced, but did not pass. A workgroup was formed to address hospitals' concerns about adults who no longer require hospitalization, yet for whom a safe discharge plan has not been established. We staffed the workgroup and authored a report with recommendations. The report includes an analysis of the guardianship process statewide and makes recommendations for ensuring the least restrictive options supporting the needs of the hospitalized adult. The report also notes that appointing a guardian does not impact the speed of hospital discharge because of the need for appropriate placements, resources, and funding.

In the years since the report, Maryland hospitals repeatedly sought to use guardianship as a mechanism for facilitating and expediting hospital discharge, often without sufficient attention to the hospitalized person's due process rights. Guardianship provides no financial entitlement or access to services and support; yet needed services and support are often the reason hospitals are unable to discharge individuals. Public



agencies and the judiciary have attempted to work collaboratively with hospitals to ensure the best possible outcomes for adults following hospitalization.

In 2018, based on analysis provided by the Guardianship and Vulnerable Adult Workgroup of the Judicial Council's Domestic Law Committee, and working in cooperation with the Maryland Hospital Association, a Maryland Judicial Rule established the terms of an expedited hearing on a petition for guardianship. On October 1, 2022, Senate Bill 559 created a path for an adult to use supported decision-making for help making decisions about health care.

Senate Bill 759 is not in the best interest of hospitalized adults and may risk their safety and welfare. The legislation reverses a decade of collaborative work between hospitals, public agencies, the judiciary, and advocacy organizations in the protection of adults. Hastening the guardianship process to 10 calendar days to facilitate hospital discharge does not allow for sufficient due process protections. A person's right to an evidentiary hearing and their right to counsel can not be satisfied within the extreme timeframe the legislation details; nor are a person's rights well-protected by virtual hearings the bill would authorize. The 2011 workgroup report outlines the responsibility of hospitals through the discharge planning process to conduct a comprehensive search for a surrogate decision maker.

Senate Bill 759 would authorize a misuse of guardianship, an extreme social service role of the state, to strip the rights of an adult to make their own decisions solely to expedite hospital discharge. It would infringe on the adult's rights to make financial and care decisions. Senate Bill 759 would enable and normalize the "hospital to guardianship pipeline" in which hospitals file for guardianship because they are caught between the need for discharge and an inability to arrange a suitable discharge plan. Senate Bill 759 is not a solution to the complicated problem of a lack of suitable resources and placements for the patients, and could create additional challenges for the adult. Appointing a guardian will not provide appropriate resources for the hospitalized adult more quickly and may increase the instances in which an adult is discharged to homelessness or to unsafe facilities where they may be maltreated.

The Maryland Judiciary working in good faith with the Maryland Hospital Association applied for and received a federal grant to further examine the "healthcare to guardianship pipeline." The purpose of the grant is to reduce the number of unnecessary and overly broad guardianships. The work of the grant is on-going. Passage of House Bill 698 would undermine these efforts.



We appreciate the opportunity to provide information on SB0759 to the Committee for consideration during your deliberations. We request an unfavorable report. We look forward to the decision of the Committee and welcome continued collaboration on SB0759. If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at rachel.sledge@maryland.gov.

In service,



Rafael López
Secretary



SB759_DD Coalition-DRM_Opposition.pdf

Uploaded by: Randi Ames

Position: UNF



8601 Robert Fulton Dr
Suite 140
Columbia, MD 21046



MARYLAND DEVELOPMENTAL DISABILITIES COALITION

Dedicated to the rights and quality of life for people with developmental disabilities in Maryland



1500 Union Avenue
Suite 2000
Baltimore, MD 21211

SB 759 - Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

Judicial Proceedings

February 20, 2024

Position: Oppose



8835 Columbia 100 Pky
Suite P
Columbia, MD 21044

The Maryland Developmental Disabilities Coalition is comprised of five statewide organizations that are committed to improving the opportunities and outcomes for Marylanders with intellectual and developmental disabilities (IDD).



**Maryland Developmental
Disabilities Council**

217 E Redwood Street
Suite 1300
Baltimore, MD 21202

In 2022, Senate Bill 559 passed during the legislative session and Maryland's Supported Decision Making (SDM) law went into effect October 01, 2022. The purpose of our SDM law is to assist adults in: (1) Obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and (2) Preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.¹



7000 Tudsbury Road
Windsor Mill, MD
21244

The adoption of SDM is in line with the recommendations of national experts and MD workgroups, which includes a 2011 report which found that "less restrictive alternatives" are a more efficient approach to facilitating moving an adult disabled person to a less restrictive and appropriate setting in an expedited time frame, not implementing a "temporary limited" guardianship policy.²

Additionally, Md. Code, Est. & Trusts § 13-705(f) already provides a mechanism for an expedited hearing process for decisions related to

¹ Md. Code, Est. & Trusts § 18-102

² See, [MD 2011 Report of the Workgroup on Hospitalized Adult Disabled Persons – Appointment of Temporary Limited Guardian](#); [May 2016 Guardianship Work Group Report and Recommendations](#); [ABA PRACTICAL Tool](#).

medical decisions, which includes the discharge and transfer process. Rather, the real barrier for many patients during the discharge and transfer process is not the lack of a guardian, but the lack of affordable, accessible and safe discharge locations. SB0759 does not address the question of where the patient will actually be discharged/transferred to and as drafted does not require petitioners to confirm that a discharge/transfer location has actually been identified.

However, even if a discharge/transfer location is identified these placements can be lost quickly, sometimes within the same day, and no guardianship process can solve this problem.³ Rather, it may have the unintended consequence of exasperating an already strained medical system and placing patients at risk of unsafe discharge/transfer placements by prioritizing the need to discharge/transfer over the patient's needs.

In recognition of these issues, the federal Administration on Community Living (ACL) funded a two-year initiative to disrupt the "Hospital to Guardianship Pipeline." Close to a million dollars has been invested in the work to thoroughly examine contributing factors, and to create a report and toolkit to be used by the Judiciary and Healthcare Providers. The work of this group is expected to be completed by August 2024.⁴

SB0759 is not aligned with the recommendations and findings of national and local experts and workgroups. Additionally, as drafted SB0759 is broader than its proposed purpose of ensuring timely discharges and transfers from hospitals. We are deeply concerned about the risks SB0759 creates for people with disabilities being placed under unnecessary, plenary guardianship orders.

Contact:

Randi A. Ames, Managing Attorney, Disability Rights Maryland

RandiA@DisabilityRightsmd.org

³ See, MHA [Executive Summary: Behavioral Health Discharge Delays in Maryland Hospitals](#); "Dealing with Disability: Physical Impairments & Homelessness." Healing Hands, vol. 6, no. 6, Nashville: Health Care for the Homeless Clinicians' Network, National Health Care for the Homeless Council, October, 2002.

⁴ [Elder Justice Innovations Profile: Maryland](#)

JUDICIAL PROCEEDINGS
SENATE BILL 0759: ESTATES AND TRUSTS - GUARDIANSHIP OF THE PERSON
OF A DISABLED PERSON - EXPEDITED PROCEEDINGS

February 20, 2024

Position: Oppose

Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to participate fully in all aspects of community life and champion their rights to self-determination, dignity, equality, opportunity, and freedom from discrimination and harm.

Adults with intellectual and developmental disabilities (I/DD) are at a higher risk of having a court-appointed guardian.¹ The risk people with disabilities face of being placed under a guardianship order is compounded by problems within the healthcare system, such as limited community-based services and supports programs, hospital overstays, and a patient’s inability or unwillingness to consent to discharge.² The over-reliance on and improper use of guardianship is a complex problem rooted in disability discrimination and ageism. SB0759 will only add to these risks and problems within the guardianship system.

The Maryland Judiciary received funding from the Administration on Community Living (ACL) in 2021 for a project to address the “healthcare-to-guardianship pipeline,” which includes examining the contributing factors that created and supports this pipeline, developing a toolkit to be used by the Judiciary and healthcare providers, and issuing a final report of the project’s findings.³ DRM is part of this project team and is dedicated to the project’s goal of reducing unnecessary and overly restrictive guardianships. Given the funds and work already invested into this project along with it having to be completed in August 2024, our team should be provided the opportunity to see through the outreach, education and implementation of our toolkit without the significant changes to Maryland’s guardianship laws as proposed under SB0759.

In 2022, Senate Bill 559 passed during the legislative session and Maryland’s Supported Decision Making (SDM) law went into effect October 01, 2022. The purpose of our SDM law is to assist adults in: (1) Obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and (2) Preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.⁴ Maryland’s adoption of SDM is in line with the recommendations of national and local experts, including the findings of a MD workgroup in 2011 that “less restrictive alternatives” are a more efficient approach to facilitating moving an adult disabled person to a less restrictive and

¹ Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities

² The Hospital to Guardianship Pipeline; The Use and Misuse of Guardianship by Hospitals and Nursing Homes

³ Elder Justice Innovations Profile: Maryland

⁴ Md. Code, Est. & Trusts § 18-102

appropriate setting in an expedited time frame, not implementing a “temporary limited” guardianship policy.⁵

SB0759’s changes to Md. Code, Est. & Trusts § 13-705 are unnecessary and excessive. Maryland law already provides a mechanism for an expedited hearing process for decisions related to medical treatment, which includes the discharge and transfer process, under Md. Code, Est. & Trusts § 13-705(f). It is not clear what, if any, benefit to the discharge or transfer process guardianship hearings within 10 calendar days of filing would provide. Any need for a carve out for the discharge or transfer process may be accomplished by allowing the court to authorize an agent to make a discharge or transfer decision without having to appoint a guardian, similar to what is available under Md. Code, Est. & Trusts § 13-204.

SB0759 requires a hearing and for the court to issue an order within 10 calendar days.⁶ DRM is concerned about the potential for due process violations caused by this expedited process. 10 calendar days from the date of filing may not be enough time for the respondent, their counsel and other interested parties to effectively prepare for and participate in the hearing process, especially given that the respondent has the right to a jury trial.⁷ To initiate this expedited process the purpose of the petition must be to seek the appointment of a guardian to obtain consent to discharge or transfer an alleged disabled person from a hospital, but the scope of what is requested in the petition and the order(s) to be issued within 10 calendar days are not limited to discharge or transfer from a hospital. Hence, a person may be stripped of their rights to make personal decisions, such as where they live or who is their primary care physician, and to manage their property within 10 calendar days from the date of filing as long as a petition for guardianship of person with the purpose of discharge or transfer from a hospital is included.⁸

Based on DRM’s work with clients, the most prevalent barrier for many patients during the discharge or transfer process is not the lack of a decision maker, but the lack of affordable, accessible and safe discharge locations and community services. SB0759 does not address the question of where the patient will actually be discharged or transferred to, and as drafted does not even require petitioners to confirm that a discharge or transfer location has actually been identified. However, even if a discharge or transfer location is identified such placements can be lost quickly, sometimes within the same day, and an expedited guardianship process will not solve this problem.⁹ Rather, it may have the unintended consequence of exasperating an already strained medical system and placing patients at risk of unsafe discharges or transfers by prioritizing the need to discharge or transfer over the patient’s particular medical needs.

⁵ See, MD 2011 Report of the Workgroup on Hospitalized Adult Disabled Persons – Appointment of Temporary Limited Guardian; May 2016 Guardianship Work Group Report and Recommendations; ABA PRACTICAL TOOL.

⁶ HB0698, pg. 1 lines 34-35: “The court *shall* hear and rule on the petition within 10 calendar days.” (Emphasis added)

⁷ Rule 10-205(b)

⁸ Rule 10-110; Rule 10-108

⁹ See, MHA Executive Summary: Behavioral Health Discharge Delays in Maryland Hospitals; “Dealing with Disability: Physical Impairments & Homelessness.” Healing Hands, vol. 6, no. 6, Nashville: Health Care for the Homeless Clinicians' Network, National Health Care for the Homeless Council, October, 2002.

SB0759 is not aligned with the recommendations and findings of national and local experts and workgroups. Additionally, as drafted SB0759 is broader than its proposed purpose of ensuring timely discharges and transfers from hospitals. We are deeply concerned about the risks SB0759 creates for people with disabilities being placed under unnecessary, plenary guardianship orders.

For these reasons, DRM strongly opposes Senate Bill 759 and urges this committee to issue an unfavorable report.

Respectfully,

Randi A. Ames, Esq.
Managing Attorney
Disability Rights Maryland
1500 Union Ave., Suite 2000
Baltimore, MD 21211
Direct: 443-692-2506
RandiA@DisabilityRightsmd.org

MSCAN SB759 - Expedited Guardianship Proceedings -

Uploaded by: Sarah Miicke

Position: UNF



Maryland Senior Citizens Action Network

MSCAN

AARP Maryland

*Alzheimer's
Association,
Maryland Chapters*

*Baltimore Jewish
Council*

Catholic Charities

*Central Maryland
Ecumenical Council*

Church of the Brethren

*Episcopal Diocese of
Maryland*

*Housing Opportunities
Commission of
Montgomery County*

*Jewish Community
Relations Council of
Greater Washington*

*Lutheran Office on
Public Policy in
Maryland*

*Maryland Association of
Area Agencies on Aging*

*Maryland Catholic
Conference*

*Mental Health
Association of Maryland*

Mid-Atlantic LifeSpan

*National Association of
Social Workers,
Maryland Chapter*

Presbytery of Baltimore

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Testimony in OPPOSITION to SB 759 – Estates and Trusts – Guardianship of a Disabled Person – Expedited Proceedings Senate Judicial Proceedings Committee February 20, 2024

The Maryland Senior Citizens Action Network (MSCAN) is a statewide coalition of advocacy groups, service providers, faith-based and mission-driven organizations that supports policies that meet the housing, health and quality of care needs of Maryland's low and moderate-income seniors.

MSCAN respectfully opposes SB 759. We are concerned about the negative consequences to the Area Agencies on Aging who administrate the Public Guardianship Program and serve as the court-appointed Guardian of Person for seniors who have been legally determined to be disabled without family or friends to serve as guardian.

SB 759 suggests that in-person hearings would only be required if requested, but that virtual hearings would be the first option. The bill also mandates a hearing within 10-calendar-days for the court to rule on guardianship petitions for hospital discharges or transfers of disabled persons to other facilities. This timeframe may not allow enough time for the Area Agencies to seek the safest and least restrictive choices for vulnerable persons who may be unable to advocate for themselves. There is special concern that if the Area Agencies do not have sufficient time to find family members who are willing to serve as guardians that the Area Agency resources could easily be overwhelmed, increasing the number of public guardianships.

MSCAN is aware of a \$1.1 million dollar Elder Justice Innovations grant from the U.S. Department of Health and Human Services. The grant will allow Maryland to assess the fairness, effectiveness, timeliness, and safety adult guardianship proceedings and to develop innovations to improve the experiences of individuals at risk of guardianship. This will enable Maryland to develop a plan for outreach and educational programs around alternatives to guardianship for healthcare decision-makers and stakeholders. It will determine if mediation can be an effective tool to resolve conflicts and to explore alternatives to guardianship. Interagency workgroups have been hard at work conducting assessments of Maryland's guardianship system, and designing a guidebook for interventions to divert patients to faster, less restrictive alternatives. The grant will wrap up in August. The results will provide important guidance on the issues reflected in this legislation.

In our opposition, MSCAN respectfully requests that the results of this grant guide the development of a more effective and sensitive approach to guardianship.

SB 0759 SLTOP testimony 2.20.24.pdf

Uploaded by: Stevanne Ellis

Position: UNF

Bill: SB 0759 Estates and Trusts – Guardianship of the Person of a Disabled Person – Expedited Proceedings

Position: Unfavorable

February 19, 2024

The Maryland Long-Term Care Ombudsman Program advocates for residents in nursing homes and assisted living facilities in Maryland. Ombudsmen work to resolve complaints that can have adverse effects on the quality of care, safety, health, and quality of life of the citizens that reside in these facilities. In Maryland, ombudsmen provide these services to the over 50,000 citizens that live and receive services in nursing homes and assisted living facilities. Many of these residents were discharged from hospitals and admitted to these settings.

It is critical that individuals have a right to make informed decisions about their care. Guardianship should only be explored as a last resort since it takes the decision-making rights away from the individual. The Long-Term Ombudsman Program has seen cases where guardianship was granted when an individual was delirious and was temporarily unable to make their own decisions. Once the individual recovered from their illness, they were able to make their own decisions. In one case, the court appointed guardian had placed them in a nursing home and worked with the guardian of property that also had been appointed during this time. This individual's family home was sold when the individual still had a Medicare benefit and a spend down process for Medicaid was not needed. If the individual had been given time to recover from delirium and the other alternatives to guardianship had been explored, the individual would have been able to keep their home. In other cases, court appointed guardians have arranged for placement in nursing homes and assisted living facilities without any input from the individual or those that know them. Expediting this process would not allow for informed decision making around placement to occur or provide the opportunity to explore other options including care at home or other alternatives.

This bill is also concerning because ten days may not be enough time for the individual, their attorney and other interested parties to prepare and to participate in the guardianship process. It may take more than ten days to find the family and friends of the individual and to give them notice of the situation including information about the court hearing and legal process. Additionally, time is needed to determine if there is any advance care planning documentation including a health care agent document, living will, or financial power of attorney documents.

It may take time for the court to appoint counsel for the alleged disabled person. Once appointed, the attorney needs time to prepare for this important work including looking at less restrictive alternatives such as surrogacy and supported decision making.

The default for hearings should be in person and virtual hearings should be requested only if needed. There are many issues for individuals with disabilities using virtual platforms including accessibility issues. For instance, it may be difficult for the individual to use this medium effectively and there can be issues with connectivity, access to a computer, and access to the internet. If there are communication barriers such as hearing, speech, vision, and cognitive deficits, these platforms are not an effective means of communication or assessment.

At times, there are barriers related to discharge from the hospital. These include a lack of community resources, lack of placement options, and training needed for caregivers. Often a short length of stay is required by insurance companies and by hospitals. Discharge planning takes time and expedited guardianship does not offer a solution to these issues.

What are some other considerations? In 2016 the American Bar Association (ABA) developed a guide that helps lawyers identify and implement decision-making options that are less restrictive than guardianship, including supported decision making. Additionally, the ABA has other resources that are useful in these cases:

https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/supported-decision-making/

In 2022, the Supported Decision Making Law was passed. Supported Decision Making is also a reasonable accommodation under the Americans with Disabilities Act (ADA). The ADA requires that people with disabilities have equal access to services and programs as those without disabilities. Equal access can include tools to ensure effective communication, which means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people without disabilities.

Once an individual is appointed a guardian, it is often difficult and sometimes impossible for the guardianship to be overturned. The Long-Term Care Ombudsman Program has assisted individuals with this process, but it often is very difficult for an individual to regain their rights for many reasons including the complexity of the assessment and legal processes involved.

If an individual is very ill, their mental status and communication abilities have changed or worsened because of delirium related to an illness or because of an illness or injury, then ten days often is not enough time for an individual to recover. An individual's right to make decisions should not be taken away hastily when they have had a serious medical issue, and a hospital wants to discharge them.

I respectfully submit my comments for consideration. Guardianship should not be expedited for placement purposes. There are alternatives.

Sincerely,

Stevanne Ellis, Maryland State Long-Term Care Ombudsman

SB 759 Guardianship of the Person of a Disabled Pe

Uploaded by: Tammy Bresnahan

Position: UNF



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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.

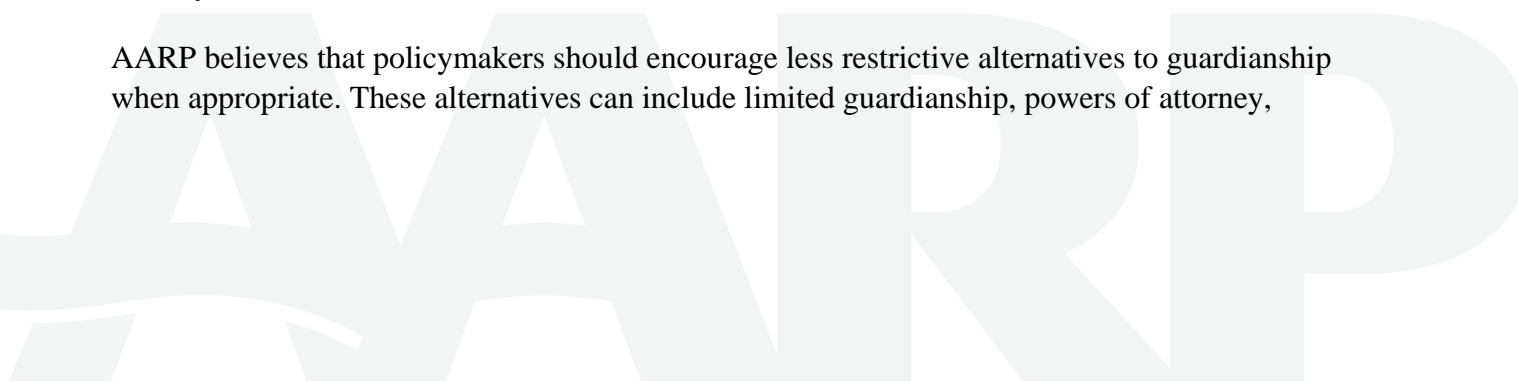
AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans aged 50 and older and their families. Key priorities of our organization include helping all Marylanders achieve financial and health security and supporting critical safety nets for seniors and low-income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