

From: National Academy of Elder Law Attorneys Maryland/DC Chapter

Date: March 26, 2024

Subject: HB 359 - Petition for Guardianship of the Property of Alleged Disabled Person - Stay of Civil Actions and Proceedings

Position: Favorable With Amendments

The Honorable William C. Smith, Jr., Chair

Judicial Proceedings Committee

2 East Miller Senate Office Building

11 Bladen Street

Annapolis, MD 21401

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Dear Senator Smith and members of the Judicial Proceedings Committee,

I am writing on behalf of the Maryland/DC Chapter of the National Academy of Elder Law Attorneys, a private bar association that represents senior citizens and those with disabilities across the state. Our members are engaged in guardianship cases on a daily basis, representing petitioners, interested persons and the alleged disabled. We are also often called upon by the judiciary to serve as guardians of property making us uniquely qualified to address the issues raised in the HB 359.

We urge a favorable report with amendments as follows:

As originally drafted, §13-223 (A) of HB 359 required an automatic stay of the commencement or continuation of specific civil actions or proceedings. We urge the Committee to retain the original language. The purpose of the original language is consistent with the purpose of guardianship of the property: to protect the property of an alleged disabled person who because of a disability is unable to protect and manage their own property. The revised language does not protect the alleged disabled person because it relies on the petitioner - the person who filed the guardianship petition, often a hospital or skilled nursing facility with no knowledge of the alleged disabled person's assets - to request the stay of the action which may defeat the petitioner's own financial interest. Even a family member acting as petitioner may not be aware of any of these six pending actions and the need to request to stay these actions.

Likewise, we urge the Committee to adopt language that would require the stay to remain in effect

for 60 days from the date the court appoints a temporary or permanent guardian of the property of the disabled person, whichever occurs first. This suggested language takes into consideration the practical workings of guardianship of the property. After the court appoints a guardian of the property, it may take up to two weeks for the appointed guardian to receive the certified court order in the mail. Many financial institutions still require the guardian to present a paper order with the raised seal, rather than an emailed court order. After the guardian presents the order, a financial institution's legal department may take another two weeks to "approve" the order. That all assumes the guardian knows where the disabled person's assets are located. Guardianship

petitions, especially when the petitioner is a hospital or skilled nursing facility, often are woefully inadequate in listing the alleged disabled person's assets because the petitioner does not know the assets. The Maryland Rules of Court give the guardian 60 days to locate assets and file an Inventory. This statute should be consistent with the Rules in appreciating the time it takes a guardian to locate and access all assets.

Sincerely,



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cc: Delegate Luke Clippinger
Chair, House Judiciary Committee