DRM Disability Rights Maryland

**Empowering People to Lead Systemic Change**
The Protection and Advocacy System for the State of Maryland

1500 Union Ave., Suite 2000, Baltimore, MD 21211
Phone: 410-727-6352 | Fax: 410-727-6389
DisabilityRightsMD.org

# SB 549: MENTAL HEALTH – TREATMENT PLANS FOR INDIVIDUALS IN FACILITIES – PARTICIPATION OF FAMILY MEMBERS OR OTHER INDIVIUALS

**BEFORE THE SENATE FINANCE COMMITTEE**
**March 10, 2026 at 1:00 P.M.**
**POSITION: Letter of Information**

Dear Members of the Senate Finance Committee:

Disability Rights Maryland (DRM), the State's designated Protection and Advocacy organization for Marylanders with disabilities, hereby submits this letter of information to provide some clarifying information and raise some concerns about the proposed language in SB 549. DRM advocates for the rights of patients in Maryland's five state hospitals, and fully supports patients' right to have a family member or advocate of their choosing participate in their treatment planning while they are in the hospital receiving mental health treatment. We have some concerns that SB 549 may actually pose barriers to that right, in some circumstances. We assume that was not the intention of the bill.

Health-General § 10-701(c)(8), Rights of Individuals in Facilities, already guarantees patients in hospitals the right to have an advocate of their choosing participate in their treatment planning meetings. A verbal consent by the individual for family members or other advocate to participate should be sufficient, as currently provided by Health-General § 10-706(f). Requesting the individual to sign a form could pose an unnecessary barrier, particularly for patients who are experiencing significant symptoms of their mental health disability or who otherwise disagree with some provision on the form. For example, an individual may welcome the participation of the family member or advocate at their treatment planning meetings but object to disclosure of their medical records to the family member or advocate.

The proposed bill language on p. 3, lines 13-17 of the bill appears to be legally unsound. While DRM always supports the right of individuals with mental health disabilities to execute an advance directive, it is not legally possible for a patient who currently lacks capacity to execute an advance directive. An advance directive must be executed while the individual is capable of making informed decisions about their treatment and care, and springs into effect once the individual no longer has capacity. In this case, if the individual currently lacks capacity, any advance directive would not be legally enforceable. Conversely, if the individual **currently has** capacity to make decisions, an advance directive is not needed – the person can make the decisions themselves, without need to resort to an advance directive. We have no concerns about providing individuals with information on supported-decision making agreements, but whether or not the individual chooses to create such an agreement should have **no bearing** on whether a family member or advocate of their choosing is permitted to participate in their treatment planning meetings – the hospital should not condition approval of the family member or advocate's participation on the individual's execution of a Supported Decision-Making Agreement.

The proposed bill language on p. 4, lines 11-19, (f)(5) appears to equate the individual's execution of an advance directive, durable Power of Attorney, or a Supported Decision-Making Agreement with **conclusive proof** of the individual's formal request for a family member or other authorized individual to participate in the development, review, and reassessment of the individual's plan of treatment. This is not legally supportable. The facility must actually **read** the advance directive (assuming it was legally executed while the person had capacity to do so), POA, or Supported Decision Making-Agreement to ensure that it actually says that the individual wants the family member or other authorized individual to participate in all parts of the individual's plan of treatment. In our experience, there are times that a patient may choose not to share every part of their history or treatment with their chosen family member or advocate – and that request should be honored. Similarly, the proposed bill language on page 4-5, lines 20-33 and 1-3 on page 5 does not take into consideration what the patient has **actually included** in their advance directive or POA. If that agreement or document provides that some information should be withheld from their family member or advocate, the provisions of those documents must be adhered to. An individual does not need to have capacity to execute a Supported Decision-Making Agreement, and if can be withdrawn at any time.

DRM would be happy to propose amendments to address the concerns we have raised, or otherwise participate in a workgroup to address the issues raised in this letter. Thank you for the opportunity to present these concerns to the Committee.

Should you have further questions or need additional information, please contact Luciene Parsley at 443-692-2494 or lucienep@disabilityrightsmd.org.