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POSITION ON PROPOSED LEGISLATION

BILL: SENATE BILL 549 Mental Health - Treatment Plans for Individuals in Facilities Participation of Family Members or Other Individuals

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: March 6, 2026

The Maryland Office of the Public Defender opposes Senate Bill 549 for the following reasons:

Senate Bill 549 will require written selection of authorized agents for individuals experiencing mental health crises. This will place an added burden on individuals who wish to have an authorized agent involved in their treatment planning process. Individuals currently possess the right to select an authorized agent, and this choice is valid even if it is not documented in writing. Currently, an individual does not need to have an advance directive in order to designate an authorized agent. This bill would require the selection of an authorized agent to be either in writing or in an advance directive – an unnecessary and cumbersome burden on someone whose liberty is already being restricted and who is in a compromised mental state.

Currently, an advance directive alone does not automatically grant an authorized agent the right to be involved in all aspects of the treatment planning process. In fact, advance directives can restrict the agent's participation or the sharing of information to only certain areas of treatment planning. But, Senate Bill 549 seems to grant unlimited access to any authorized agent in the treatment planning process.

Section 4 of Senate Bill 549 permits a treating healthcare provider to bar an authorized agent from treatment planning sessions. The bill allows for this exclusion if the agent's involvement “demonstrably causes the individual emotional or physical harm.” That standard is unworkably vague, and will be problematic in application. For instance, a physician could use this "harmful" criterion to exclude an authorized agent simply because the agent's disagreement with a proposed treatment is perceived by the physician as emotionally harmful to the patient. Further compounding this issue, the provider is required only to document this finding in the patient's record and not provide any additional document or opportunities for review.

Especially concerning, Senate Bill 549 will permit physicians to bar all social workers and investigators from the Office of the Public Defender (OPD) from attending treatment team meetings under this vague

standard. Again, this exclusion could be based on the premise that the presence of OPD staff, even those designated as authorized agents, inherently causes emotional harm to patients.

Moreover, the exclusion is permanent; no provision exists for reinstatement, even if the circumstances that initially caused the exclusion are resolved. The bill lacks an appeal process for the patient or authorized agent regarding the exclusion. Furthermore, the hospital grievance procedure is not a meaningful remedy because the final decision rests with the Maryland Department of Health. Unlike complaints filed with the Incarcerated Individual Grievance Office, there is no right to an administrative hearing in hospital cases.

Senate Bill 549 appears to allow an individual who lacks capacity to complete an advance directive. This is in direct conflict with Maryland's Advance Directive law. The bill grants excessive authority to the patient's physician and lacks necessary safeguards and removes the opportunity for appeal.

For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on Senate Bill 549.