Written Testimony — Support of HB 1062

Committee: House Judiciary
Hearing Date: March 4, 2026
Bill: HB 1062 — Estates & Trusts – Specific Transactions – Unrepresented Hospital Patients (Alternatives to Guardianship for Treatment and Discharge Decisions)
Position: FAVORABLE
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Executive Summary

HB 1062 was put forth after 16 months of meetings by a working group consisting of representatives of Maryland hospitals, physicians, social workers, advocates for the aging and disability communities, representatives of the judiciary and state agencies providing public guardians, and lawyers who represent individuals in guardianship hearings. (The submitted Report from the Alternatives to Guardianship Working Group provides a complete list of members of the WG and the process for its recommendation.) HB 1062 provides a targeted, less-restrictive alternative to guardianship of the property for unrepresented hospital patients who need timely discharge decisions. The bill clarifies courts' authority to authorize certain specific transactions, specifically access to a patient's financial records needed to complete a Medicaid application or to gain admission to a long-term care facility, without appointing a guardian of the property. This approach directly addresses well-documented delays in guardianship that leave patients in acute care beds for weeks or months, increasing risk of harm while consuming scarce hospital capacity. It upholds appropriate placement, and for some patients avoids the "hospital-to-guardianship pipeline," while preserving judicial oversight and patient protections.

Background and Problem

Maryland hospitals regularly care for unrepresented patients—individuals certified by two physicians as lacking decision-making capacity and who have no legally authorized surrogate. Outside of emergencies involving imminent risk of death or serious bodily harm, hospitals must seek court-appointed guardians in order for a patient to be discharged and gain admission to a long-term care facility. In practice, guardianship can take many weeks—and in some jurisdictions, months—to secure, during which:

- Patients remain in the wrong level of care, face heightened infection risk, experience functional decline and isolation, and lose opportunities for rehabilitation and community integration.
- Hospitals lose critical bed capacity, exacerbating emergency department crowding and throughput challenges.

Recent experience shared by Maryland hospitals and data gathered through the Working Group reflect routine delays exceeding 50–70 days, with outliers surpassing 100 days, and isolated cases even longer. These delays compromise patient well-being while the system waits for a global legal remedy (guardianship) to address narrow needs (e.g., accessing bank statements to support a Medicaid application or support a standard post-acute placement).

What HB 1062 Does

HB 1062 amends **Estates & Trusts § 13-204** to explicitly authorize courts to appoint an individual to perform specific transactions without appointing a guardian of the property, including:

1. **Accessing financial or other records** necessary to complete benefits applications or verify coverage; and
2. **Establishing eligibility for benefits**, such as **Medical Assistance (Medicaid)**, to support timely discharge to appropriate post-acute settings.

Key features:

- **Narrow scope**: The authority is strictly limited to transactions described in the court order and tailored to the patient's demonstrated need.
- **Judicial oversight**: Courts retain discretion to determine necessity, select the individual, define scope and duration, and require interim or final reporting.
- **Least-restrictive alternative**: By meeting discrete needs (e.g., paperwork and payment verification), the bill avoids defaulting to plenary guardianship where it is not needed.
- **Complementary to existing law**: It works alongside Maryland's surrogate decision-making framework, supported decision-making law, and emergency treatment exceptions.

Why This Approach Is Necessary

1) Patients are harmed by delay. Unnecessary hospital days increase risks of complications, deconditioning, and loss of autonomy. Timely discharge to a setting that matches clinical needs is a patient-safety imperative.

2) Guardianship is often overbroad for the task at hand. In many cases, the barrier to discharge is financial documentation or benefit eligibility—tasks that do not require a full guardian of the property. A narrowly authorized person can perform these tasks promptly, with less intrusion on rights.

3) Hospitals and community facilities need a predictable, lawful path. Long-term care facilities require confirmation of payment source. Without access to bank records or authority to apply for Medicaid, placement stalls. HB 1062 provides exactly the tool courts need to break this logjam.

Safeguards and Patient Protections

HB 1062 incorporates and encourages safeguards consistent with best practices:

- **Court tailoring**: The court defines the exact actions, time limits, and any reporting requirements. (This is described in the Court's new Rule 10-304.2, pp. 191-200 at this link: https://www.courts.state.md.us/sites/default/files/rules/reports/227threport.pdf)
- **Qualified designees**: Courts can ensure the appointed individual is free from disqualifying conflicts, has appropriate qualifications, and acts solely in the patient's best interests.
- **Preservation of rights**: The order does not diminish rights outside the specific transaction; it is not a back-door guardianship.
- **Compatibility with Supported Decision-Making (SDM)**: Where SDM is feasible, it should be pursued; the specific-transaction tool is used when no surrogate exists and SDM cannot be implemented in time to meet urgent, concrete needs.
- **Transparency**: Orders can require record-keeping and filing of proof (e.g., benefits application submission, responses from financial institutions), enabling oversight and accountability.

Addressing Concerns Raised by Stakeholders

Concern: "This expands guardianship by another name."
Response: The bill does the opposite. It prevents unnecessary guardianships by providing a less-restrictive, limited mechanism. Authority ends when the defined tasks are completed or the court's time limit expires. Also, **guardianship of the person may still be required to consent to discharge and placement.**

Concern: "Patients with disabilities could be routed quickly to institutions."
Response: HB 1062 does not determine placement; it ensures that lawful prerequisites (e.g., payment verification) can be completed so that clinicians and discharge planners can carry out patient-centered, least-restrictive discharge consistent with federal conditions of participation and Maryland standards.

Concern: "Financial records are sensitive; access could be abused."
Response: Access is narrowly defined, time-limited, and subject to court oversight. Courts can require confidentiality, limit the specific records to be obtained, and demand proof of use only for the stated purpose (e.g., Medicaid application).

Benefits to Marylanders

- **For many patients**: Faster transition to appropriate care; reduced risk of harm; preservation of rights by avoiding unnecessary guardianship.
- **For families and advocates**: A rights-respecting mechanism that focuses on the least-restrictive means necessary.
- **For hospitals and post-acute providers**: Clear authority to complete benefits and financial prerequisites, freeing scarce acute beds and easing ED crowding.
- **For the courts**: Reduced need to open full guardianships when a discrete order will suffice.

Conclusion and Request

HB 1062 is a carefully calibrated, patient-protective reform. It equips Maryland courts with a practical tool to address real-world discharge and treatment bottlenecks for unrepresented patients—without expanding guardianship. It is narrowly tailored, time-limited, and supervised by the court. **The attached Appendix describes specific cases in which the amendments would be beneficial.**

For these reasons, I respectfully request a FAVORABLE report on HB 1062.

Appendix

Cases Illustrating when the Specific Transaction Amendments would be useful

Case 1 — Medicaid Eligibility Stalled for Lack of Financial Records (No Surrogate)

Patient profile.
Mr. J., 78, advanced dementia, medically stable, needs Skilled Nursing Facility (SNF) care. He lacks capacity and has no surrogate. The SNF will accept him once Medicaid eligibility is established or another payer source is verified. Hospital staff have identified likely banks but cannot obtain statements needed for the Medicaid application.

Barrier.
Because **only a guardian of the person can consent to discharge and SNF admission**, hospitals often must pursue *two* separate guardianships:

- a **guardian of the person** to authorize discharge/placement, and
- a **guardian of the property** solely to obtain bank statements and submit Medicaid paperwork.

This dual-track process can take weeks to months, prolonging hospitalization.

HB 1062 solution.
The court issues a **time-limited specific-transaction order** authorizing a designated individual (e.g., hospital benefits specialist or pro bono attorney) to:

- Request and receive defined financial records from named institutions for the last 60–90 days;
- Complete and submit the Medicaid application and respond to DSS follow-up;
- Provide proof of submission and determinations to the court and discharge planner;
- Automatically terminate authority upon benefits determination or after 60 days.

Importantly: The hospital would still need to petition for a guardian of the property , along with the motion for a specific transaction, however, the authorization for the specific transaction may mean a guardian of the property is unnecessary. Also, this order does not substitute for discharge consent. If no surrogate exists, the hospital still petitions for a **guardian of the person**, but if no property guardianship is needed, the process should eliminate some of the delay in discharging the patient. To expedite the process, hospitals may want to apply for a guardianship of the person first. While waiting for a hearing, they

can apply for authorization for specific financial transactions and have the Medicaid application process complete when the guardian of the person is in place.

Safeguards.
Use limited to Medicaid eligibility; minimal necessary disclosure; secure storage/destruction; automatic sunset if a surrogate emerges.

Outcome.
With Medicaid eligibility resolved quickly and a guardian of the person appointed solely for discharge/placement consent, Mr. J. transfers to the SNF more quickly, avoiding unnecessary hospital days.

Case 2 — Health Surrogate Exists, but No Financial Authority

Patient profile.

Ms. R., 72, post-stroke, lacks capacity. Her adult daughter is an appropriate **health-care surrogate**, so discharge and SNF admission can be consented to without guardianship of the person. But the daughter cannot access financial records needed for Medicaid-pending documentation.

Barrier.
Because a health surrogate cannot access financial records and a guardian of the property cannot consent to discharge, hospitals often pursue a property guardianship solely to obtain documents—despite discharge authority already being settled. This mismatch delays placement.

HB 1062 solution.
The court authorizes a designee (which may be the daughter or another individual) solely to:

- Obtain defined categories of financial records;
- Communicate with financial institutions and the Medicaid agency;
- Submit the Medicaid application and verifications.

Discharge consent remains with the daughter as health surrogate. No guardian of the person or property is required.

Safeguards.
Conflict screening; short duration (e.g., 45 days); simple affidavit reporting actions taken.

Outcome.
Ms. R. transitions to the SNF as planned. No guardianship—of either person or property—is created.

Case 3 — Private-Pay Bridge for Immediate Placement (No Surrogate)

Patient profile.
Mr. L., 83, lacks capacity, clinically ready for discharge to assisted living with memory care. He has modest assets sufficient for a 30-day private-pay deposit, but no surrogate to sign admissions or payer documents.

Barrier.
Because only a guardian of the person can consent to discharge and placement, and a guardian of the property cannot, hospitals often pursue *both* guardianships:

- guardian of the person for discharge/placement, and
- guardian of the property to execute short-term financial documents.

This is disproportionate to the narrow financial task.

HB 1062 solution
The court authorizes a designee to:

- Execute a 30-day private-pay agreement up to a capped amount;
- Initiate the Medicaid waiver application;
- Access only the specific account(s) and transfer up to the capped amount;
- Report receipts and agreements to the court within 10 days; authority ends 30 days post-placement.

Discharge consent still requires a guardian of the person, but no property guardianship is needed.

Safeguards.
Explicit expenditure cap; no asset sales or credit; direct payment from patient account; receipts filed.

Outcome.
Mr. L. leaves the hospital once a guardian of the person authorizes discharge, while the specific-transaction order eliminates the need for a property guardian.