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## Statement of Ron M. Landsman on HB 870

### House Judiciary Committee

February 23, 2021

#### ***Position: Support with amendments***

Chairman Clippinger, Delegate Hill and members of the Committee:

My name is Ron M. Landsman. I have been practicing elder law in this area since 1983, have served as board member of both the National Academy of Elder Law Attorneys and its State Chapter, as president or chairman for the state elder law chapter and bar section, and co-founded, with Jason Frank, and served as president of the First Maryland Disability Trust, the leading Maryland pooled special needs trust. I was also a member of the Life & Health Planning Committee to the Attorney General's COVID-19 Task Force. I mention this history to emphasize that my testimony today, although in my individual capacity only, is based on very extensive experience in this area of the law.

I appreciate the opportunity to testify before you today on this significant legislation.

The fundamental importance of this legislation is to make Medicaid benefits more available *as a practical matter* to the people who are most in need of them – those of modest means, the poor and near-poor, who do not have regular access to lawyers and the legal system. This is reflected in the origin of the proposal, which was the Life & Health Planning

Committee of the COVID-19 Task Force, whose primary purpose was to make the legal and health care system most available to those most in need.

Medicaid has become over the past few decades the most important source of funding for long term care, both in Maryland and in the Nation. Its importance in the lives of Maryland citizens can hardly be overstated. But it is a complicated system. It is means tested, to be sure, but it is – and is intended to be – widely available. Congress has provided many ways for the spouses and disabled children and other relatives of a Medicaid beneficiary to be protected against utter impoverishment before their relative is able to use Medicaid.

The problem is that many of these protections require that someone have legal authority to access, or make changes in the ownership of, property of the Medicaid beneficiary. If the beneficiary is no longer competent, but at least executed a power of attorney, the agent under the power may take the necessary action, but only if it is authorized.

That is where the importance of these statutory forms comes in. This body wisely authorized the use of statutory form powers of attorney in 2010, making POAs more widely available and indeed at almost no cost for people who choose to rely on the statutory forms you provided. But many who use the forms do not appreciate what is *not* there.

Adding specific provisions addressing Medicaid eligibility in the Limited Personal power of attorney serves the useful purpose of putting the citizen on notice that this is one of the things he or she should *think about* in using this document. This is especially important for people who cannot really afford to spend money on a lawyer to do a power of attorney.

This is their last chance to put a plan in place that will avoid the need for a far more expensive guardianship if the power of attorney comes into play due to loss of ability to manage their affairs.

The amendment we propose adds the specific authority to obtain financial records – often the most serious impediment to eligibility – and allows spending down by gifting, but only to the extent specified by the person in hsi or her power of attorney document.

Thank you for your time and attention.

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