

February 14, 2024

The Honorable Luke Clippinger
Chair, Judiciary Committee
House Office Building, Room 101
Annapolis, Maryland 21401

RE: TESTIMONY ON HB 698 - Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings - POSITION: UNFAVORABLE

Dear Chair Clippinger and Members of the Judiciary Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide unfavorable testimony for House Bill 698 (HB 698).

With offices in every one of Maryland's jurisdictions, we empower Marylanders to reach their full potential by providing preventative and supportive services, economic assistance, and meaningful connections to workforce development and career opportunities. The Social Services Administration within DHS implements the adult public guardianship program which is impacted by HB 698.

During the 2011 Legislative Session, Senate Bill 726, *Adult Disabled Persons – Appointment of Temporary Limited Guardian*, was introduced, but did not pass. A workgroup was formed to address hospitals' concerns about adults who no longer require hospitalization, yet for whom a safe discharge plan has not been established. We staffed the workgroup and authored a report with recommendations. The report includes an analysis of the guardianship process statewide and makes recommendations for ensuring the least restrictive options supporting the needs of the hospitalized adult. The report also notes that appointing a guardian does not impact the speed of hospital discharge because of the need for appropriate placements, resources, and funding.

In the years since the report, Maryland hospitals repeatedly sought to use guardianship as a mechanism for facilitating and expediting hospital discharge, often without sufficient attention to the hospitalized person's due process rights. Guardianship provides no financial entitlement or access to services and support; yet needed services and support are often the reason hospitals are unable to discharge individuals. Public agencies and the judiciary have attempted to work collaboratively with hospitals to ensure the best possible outcomes for adults following hospitalization.

In 2018, based on analysis provided by the Guardianship and Vulnerable Adult Workgroup of the Judicial Council's Domestic Law Committee, and working in cooperation with the Maryland Hospital Association, a Maryland Judicial Rule established the terms of an expedited hearing on a petition for guardianship. On October 1, 2022, Senate Bill 559 created a path for an adult to use supported decision-making for help making decisions about health care.



HB 698 is not in the best interest of hospitalized adults and may risk their safety and welfare. The legislation reverses a decade of collaborative work between hospitals, public agencies, the judiciary, and advocacy organizations in the protection of adults. Hastening the guardianship process to 10 calendar days to facilitate hospital discharge does not allow for sufficient due process protections. A person's right to an evidentiary hearing and their right to counsel cannot be satisfied within the extreme timeframe the legislation details; nor are a person's rights well-protected by virtual hearings the bill would authorize. The 2011 workgroup report outlines the responsibility of hospitals through the discharge planning process to conduct a comprehensive search for a surrogate decision maker.

HB 698 would authorize a misuse of guardianship, an extreme social service role of the state, to strip the rights of an adult to make their own decisions solely to expedite hospital discharge. It would infringe on the adult's rights to make financial and care decisions. HB 698 would enable and normalize the "hospital to guardianship pipeline" in which hospitals file for guardianship because they are caught between the need for discharge and an inability to arrange a suitable discharge plan. HB 698 is not a solution to the complicated problem of a lack of suitable resources and placements for the patients and could create additional challenges for the adult. Appointing a guardian will not provide appropriate resources for the hospitalized adult more quickly and may increase the instances in which an adult is discharged to homelessness or to unsafe facilities where they may be maltreated.

The Maryland Judiciary working in good faith with the Maryland Hospital Association applied for and received a federal grant to further examine the "healthcare to guardianship pipeline." The purpose of the grant is to reduce the number of unnecessary and overly broad guardianships. The work of the grant is on-going. Passage of HB 698 would undermine these efforts.

We appreciate the opportunity to provide information on HB 698 to the Committee for consideration during your deliberations. We request an unfavorable report. We look forward to the decision of the Committee and welcome continued collaboration on HB 698.

If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at rachel.sledge@maryland.gov.

In service,



Rafael López
Secretary