



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Date: February 12, 2024

Bill Number: **HB698**

Bill Title: Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

Committee: House Judiciary

MDOA Position: UNFAVORABLE

The Department of Aging (MDOA) thanks the Chair and Committee members for the opportunity to testify on House Bill (HB) 698 - Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings.

The Maryland Department of Aging (MDOA) serves as Maryland's State Unit of Aging, administering federal funding for core programs, overseeing the Area Agency on Aging (AAA) network at the local level that provides services, and planning for Maryland's older adult population. Maryland's 19 AAA's serve as public guardians in last resort situations for adults 65 and older where no other family member or suitable alternative guardian is available.

MDOA prioritizes the older adult at the center of this heavily judicial process. Public guardianship petitions rarely, if ever, involve older adults with local family members in the picture with substantial incomes and assets. Typically, AAA's have no involvement with older adults prior to the public guardianship petitions being made by a hospital and once notified, spend nearly half of their time researching family members and pursuing guardianship avoidance options. Older adults in these guardianship petitions routinely are living alone, do not have organized finances, thus the marshaling of their assets depends on the guardians of the property, who are usually court-appointed attorneys that operate on their own timelines. Once the older adult's financial picture has been determined, the AAA guardianship staff works to determine what post-acute care setting the older adult can afford, which sometimes requires a move and judicial transfer of the case to another jurisdiction with more affordable assisted living options,



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like Baltimore City. A move to another jurisdiction often leads to the individual being away from the community they've known and any existing supports that may be present, like friends, faith communities, and neighbors.

MDOA has grave concerns about this proposed change on the basis of older adults and their families' basic human rights. Older adults in hospitals and acute care settings should be able to make decisions for themselves when they are able to and public guardianship used truly as a last resort. Hospitals should be applying the Maryland Health Care Decisions¹ and Supported Decision-Making² laws, the latter which only took effect in October, 2022. More education for hospitals and work implementing these two existing state laws would be prudent before jumping ahead to this extreme proposed change. Guardianship is a very difficult judicial decision to reverse or alter. The very short 10 window for public guardianship petitions to be ruled on would also come at the expense of family members and other suitable potential guardians who are identified by hardworking AAA staff more than 10 days later, as they are sometimes able to do.

Maryland's AAAs had 626 total guardianship of person cases in 2022 and 706 in 2023, a 13% increase. AAAs are supported primarily by state funds for this critical direct role. According to AAA data, hospitals are the most frequent source of public guardianship petitions (directing patients to the AAAs), followed by nursing facilities. Guardianship caseloads in many AAAs that are significantly higher than the recommended best practice, which is 20 cases per caseworker. AAAs typically have one to four staff members that work on guardianship cases who often have to travel to follow cases to outside counties before judicial transfers occur. The older adult population in Maryland is growing exponentially due to people living longer lives; and in some rural parts of the state with less hospitals, it is growing even faster. This growth coupled with this proposed change would undoubtedly increase the stream of public guardianship cases for AAAs. In Baltimore City and several other counties with higher numbers of public guardianship wards already, we predict the small, already stretched AAA teams will be swiftly overwhelmed by new petitions from area hospitals. These increased case loads will

¹ See MD Attorney General: Health Care Decisions Act: Text and Educational Materials, *available at*: <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx>

² See Maryland Judiciary: Alternatives to Guardianship Part 8: Supported Decision-Making, *available at*: <https://www.courts.state.md.us/video/courthelp/supported-decision-making>



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jeopardize the well-being of the older adults for whom a petition for public guardianship is intended to protect.

In addition to the significant impact this legislation would have on our AAA's, MDOA shares our AAA's grave concerns about this proposed change on the basis of older adults and their families' basic human rights: that older adults should be able to make decisions for themselves when they are able to and public guardianship used truly as a last resort. Generally, the least restrictive intervention must have already failed before public guardianship should be pursued. Hospitals should be applying the Maryland Health Care Decisions Act³ and Supported Decision-Making⁴, the latter which only took effect in October, 2022. More education and work implementing these two existing state requirements and focus on developing more community-based supports and affordable, post-acute care residential options for older adults would be prudent before jumping ahead to this extreme proposed change.

Pursuant to a recent Executive Order, in January 2024, MDOA launched the Longevity-Ready Maryland Initiative,⁵ which will build upon existing efforts across state agencies, private and philanthropic sectors and other stakeholders to tackle real-life challenges throughout the lifespan, taking a whole-of-life and whole-of-government approach. Key goals of Longevity-Ready Maryland are for all Marylanders to lead lives that are healthy, financially secure, socially connected, purposeful - and where dependency is delayed. MDOA supports efforts to reduce hospital emergency room wait times and other staffing and capacity pressures on Maryland's hospitals, which are indeed key aspects of longevity-readiness. However, this is an unacceptable route to getting there.

For these reasons, the Department of Aging respectfully urges an unfavorable report for HB698. If you have any questions, please contact Andrea Nunez, Legislative Director, at andrea.nunez@maryland.gov or (443) 414-8183.

³ See MD Attorney General: Health Care Decisions Act: Text and Educational Materials, *available at*: <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx>

⁴ See Maryland Judiciary: Alternatives to Guardianship Part 8: Supported Decision-Making, *available at*: <https://www.courts.state.md.us/video/courthelp/supported-decision-making>

⁵ See Maryland Department of Aging: Longevity-Ready Maryland Initiative *available at*: <https://aging.maryland.gov/Pages/LRM.aspx>



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Sincerely,

A handwritten signature in cursive script that reads "Carmel Roques".

Carmel Roques
Secretary
Maryland Department of Aging