

**Senate Bill 759 Estates and Trusts – Guardianship of the Person of a Disabled Person –  
Expedited Proceedings**

Senate Judicial Proceedings Committee

February 20, 2024

**Position: OPPOSE**

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in opposition to SB 759.

SB 759 expedites the guardianship process for disabled individuals, including those with mental illness, if the purpose is to discharge the individual from a hospital.

Older adults with serious mental illness will be disproportionately negatively impacted by SB 759, as they are less likely to have someone looking after them who would be able to provide support in needed areas. It can be especially difficult for these individuals to find a family member or friend willing to serve as a guardian of the person, especially in the confines of ten days, which is specified in the bill. When family or friends can't be identified, people are placed into public guardianship. This usually is not an ideal solution, especially when a court-appointed public guardian may be responsible for many clients.<sup>1</sup>

People subject to guardianship are stripped of most of their rights: where to live, whether to take medication and other medical decisions, who they may associate with, what to eat, and what to wear. They may be coerced into making decisions that they do not agree with or fully understand.<sup>2</sup> There are an abundant number of examples of people in guardianship of the person who have been neglected or taken advantage of.<sup>3</sup> And once a person is placed into guardianship of the person, it can be difficult for them to get out, even after they have improved and should be eligible for emancipation.

Additionally, the passage of SB 759 would be premature. In 2021, the Maryland Judiciary received a \$1.1 million grant from the U.S. Department of Health and Human Services for the project: "Diverting the Health Care to Guardianship Pipeline: A Person-Centered Approach."<sup>4</sup> This

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<sup>1</sup> Allesandra Salamati et al. Advocating for older adults: when guardianship is not the answer. The American Journal of Geriatric Psychiatry. Volume 27(3). 2019. Accessed February 10, 2024. [https://www.ajgponline.org/article/S1064-7481\(19\)30202-7/pdf](https://www.ajgponline.org/article/S1064-7481(19)30202-7/pdf)

<sup>2</sup> Ann Chodoy, Context, humility, and caution in guardianship determination. Journal of the American Geriatrics Society. 2022. Accessed February 10, 2024. <https://agsjournals.onlinelibrary.wiley.com/doi/full/10.1111/jgs.18067>

<sup>3</sup> United States Department of Justice. Mistreatment and abuse by guardians and other fiduciaries. Accessed February 10, 2024. <https://www.justice.gov/elderjustice/mistreatment-and-abuse-guardians-and-other-fiduciaries>

<sup>4</sup> Nisa Subasinghe. Elder Justice Innovations Profile: Maryland. Journal of the ABA Commission on Law and Aging. Volume 43 (5). 2022. Accessed February 12, 2024. [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/bif-vol-43-issue5.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/bif-vol-43-issue5.pdf)

“healthcare to guardianship pipeline” is precisely what SB 759 proposes to codify, even as Maryland was awarded a sizable grant to reduce the practice.

Per the grant, the Maryland Judiciary is currently:

- Conducting a comprehensive statewide assessment of Maryland’s guardianship system with a focus on cases that originate from health care settings
- Designing and implementing interventions to divert patients toward faster, less restrictive alternatives to guardianship
- Evaluating those interventions

The grant will end in August of this year, at which point the group working on implementation will issue a guidebook for healthcare organizations. We encourage the Maryland legislature to review this guidebook before taking steps such as the one proposed in SB 759.

For these reasons, MHAMD opposes SB 759 and urges an unfavorable report.

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