

SENATE BILL 759

D3, N2

4lr2348
CF HB 698

By: **Senators Kelly and Beidle**

Introduced and read first time: February 1, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Guardianship of the Person of a Disabled Person –**
3 **Expedited Proceedings**

4 FOR the purpose of requiring a court to rule on certain petitions to appoint a guardian of
5 the person of a disabled person within a certain amount of time; requiring courts to
6 hold hearings to appoint a guardian of the person of a disabled person virtually under
7 certain circumstances; and generally relating to petitions to appoint a guardian of
8 the person of a disabled person.

9 BY repealing and reenacting, with amendments,
10 Article – Estates and Trusts
11 Section 13–705
12 Annotated Code of Maryland
13 (2022 Replacement Volume and 2023 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – Estates and Trusts**

17 13–705.

18 (a) On petition and after any notice or hearing prescribed by law or the Maryland
19 Rules, a court may appoint a guardian of the person of a disabled person.

20 (b) A guardian of the person shall be appointed if the court determines from clear
21 and convincing evidence that:

22 (1) A person lacks sufficient understanding or capacity to make or
23 communicate responsible personal decisions, including provisions for health care, food,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or
2 addiction to drugs; and

3 (2) No less restrictive form of intervention is available that is consistent
4 with the person's welfare and safety.

5 (c) (1) Procedures and venue in these cases shall be as described by Title 10,
6 Chapters 100 and 200 of the Maryland Rules.

7 (2) Notwithstanding the provisions of paragraph (1) of this subsection, a
8 petition for guardianship of a disabled person shall include signed and verified certificates
9 of competency from the following health care professionals who have examined or evaluated
10 the disabled person:

11 (i) Two licensed physicians; or

12 (ii) 1. One licensed physician; and

13 2. A. One licensed psychologist;

14 B. One licensed certified social worker—clinical; or

15 C. One nurse practitioner.

16 (3) An examination or evaluation by at least one of the health care
17 professionals under paragraph (2) of this subsection shall occur within 21 days before filing
18 a petition for guardianship of a disabled person.

19 (d) (1) (i) Subject to paragraph (2) of this subsection, unless the alleged
20 disabled person has counsel of the person's own choice, the court shall appoint an attorney
21 to represent the person in the proceeding and may require the deposit of an appropriate
22 sum into the court registry or the appointed attorney's escrow account within 30 days after
23 the order of appointment has been entered, subject to further order of the court.

24 (ii) If the person is indigent, the State shall pay a reasonable
25 attorney's fee.

26 (iii) The court may not require the deposit of an appropriate sum into
27 the court registry or the appointed attorney's escrow account under subparagraph (i) of this
28 paragraph if payment for the services of the court-appointed attorney for the alleged
29 disabled person is the responsibility of:

30 1. A government agency paying benefits to the disabled
31 person;

32 2. A local department of social services; or

3. An agency eligible to serve as the guardian of the disabled person under § 13–707 of this subtitle.

(2) In any action in which payment for the services of a court-appointed attorney for the alleged disabled person is the responsibility of the local department of social services, unless the court finds that it would not be in the best interests of the alleged disabled person, the court shall:

(i) Appoint an attorney who has contracted with the Department of Human Services to provide those services, in accordance with the terms of the contract; and

(ii) In an action in which an attorney has previously been appointed, strike the appearance of the attorney previously appointed and appoint the attorney who is currently under contract with the Department of Human Services, in accordance with the terms of the contract.

(e) (1) (i) The person alleged to be disabled is entitled to be present at the hearing unless the person has knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity.

(ii) Waiver or incapacity may not be presumed from nonappearance but shall be determined on the basis of factual information supplied to the court by counsel or a representative appointed by the court.

(2) The person alleged to be disabled is also entitled to present evidence and to cross-examine witnesses.

(3) The issue may be determined at a closed hearing without a jury if the person alleged to be disabled or the person's counsel so requests and all hearings herein shall be confidential and sealed unless otherwise ordered by a court of competent jurisdiction for good cause shown.

(4) THE RIGHTS GRANTED TO AN ALLEGED DISABLED PERSON UNDER THIS SUBSECTION ARE SATISFIED IF THE ALLEGED DISABLED PERSON IS GIVEN THE OPPORTUNITY TO BE PRESENT, PRESENT EVIDENCE, AND CROSS-EXAMINE WITNESSES VIRTUALLY.

(f) (1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE court shall hear and rule on a petition seeking appointment of a guardian of the person of a disabled person in connection with medical treatment on an expedited basis.

(2) IF THE PURPOSE OF THE PETITION SEEKING APPOINTMENT OF A GUARDIAN IS TO OBTAIN CONSENT TO DISCHARGE OR TRANSFER AN ALLEGED DISABLED PERSON FROM A HOSPITAL, THE COURT SHALL HEAR AND RULE ON THE PETITION WITHIN 10 CALENDAR DAYS.

1 **(G) A HEARING ON A PETITION UNDER THIS SECTION SHALL BE HELD**
2 **VIRTUALLY UNLESS THE PARTY SEEKING THE APPOINTMENT OF A GUARDIAN OR**
3 **THE ALLEGED DISABLED PERSON REQUESTS THAT THE HEARING BE HELD IN**
4 **PERSON.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2024.