



# EXPEDITING DISCHARGE FOR UNREPRESENTED HOSPITAL PATIENTS

## Who are unrepresented hospital patients?

Unrepresented hospital patients are those who have been certified as lacking decision-making capacity and have no legally authorized relatives or friends who can make medical treatment or discharge decisions for them. National estimates suggest between 70,000 and 300,000 patients in the U.S. may be unrepresented. The numbers are expected to rise due to demographic shifts including aging and increasing rates of dementia.

## WHY IS THIS A PROBLEM?

- For discharge decisions, current Maryland law requires hospitals to apply to the courts for a **guardian**. A **guardian of the person** is necessary to consent to discharge from the hospital and admission to a long-term care facility.
- Long-term care facilities require a guarantee of payment. This requires access to the patient's financial records, which generally means the appointment of a **guardian of the property**.
- The process of appointment of a guardian can take weeks or months.
- Prolonged hospital stays can lead to hospital acquired infections as well as muscle loss, reduced mobility, increased falls, and slower recovery after discharge.
- Health care providers experience moral distress as they witness patients continuing to be inappropriately housed in the hospital.
- Extended hospital stays reduce hospital efficiency and bed availability, including ICU access.
- Hospitals are a more restrictive alternative than long-term care facilities.

## GUIDING PRINCIPLES

- Discharge decisions for unrepresented patients must be grounded in **dignity, timeliness, and fairness**.
- Care should **prioritize patient well-being** and **support a timely transition** to the most appropriate setting.
- Decision-makers should use the **least restrictive legal mechanisms** necessary to address financial and care needs.
- Guardianship should be considered only after all **other alternatives are exhausted**, given its removal of **fundamental rights and risk of unnecessary institutionalization**.
- **Preventing a "hospital-to-guardianship pipeline"** is essential, as prolonged hospitalization can undermine patient autonomy.
- Access to financial records must be **tightly safeguarded** and limited to individuals who can be trusted to act solely in the patient's best interests.

## RECOMMENDATIONS

- Amend the "specific transaction" provision in Estates & Trusts Article Sec. 13-204 to allow a court appointed individual (who is not a guardian) to take specific actions, described in a court order, that meet a demonstrated need of a disabled person and that serve as a less restrictive alternative to the appointment of a guardian of the property.
- Specific actions would include:
  - Granting access to financial or other records related to a minor or disabled person
  - Establishing a minor or disabled person's eligibility for benefits, such as Medical Assistance.

## Legal Framework: Amendment to Estates and Trusts Art. Sec. 13-204

Current Maryland law provides: a court may appoint an individual to carry out a specific transaction on behalf of an individual lacking decision-making capacity, **without appointing a guardian of the property**. The court can authorize:

- Handling money or property — paying bills, depositing funds, or holding onto assets.
- Selling or transferring property — including selling a house, taking out a mortgage, or leasing property.
- Buying certain long-term contracts — such as annuities, life-care plans, or education/training programs.
- Taking a legal share of someone's estate when the law gives the person that option.
- Other specific financial transactions allowed under related Maryland laws.

Our proposal adds to this list, **granting access to financial records and establishing eligibility for benefits, such as Medicaid**.

This proposal was developed by a working group including representatives of the Maryland Healthcare Ethics Committee Network, Maryland hospitals and nursing homes, government agencies, as well as aging and disability rights advocates and experts. For more information contact: Diane Hoffmann, Director, Maryland Healthcare Ethics Committee Network, at [diane.e.hoffmann@gmail.com](mailto:diane.e.hoffmann@gmail.com) or for a more detailed version of the proposal go to [our website](#).