MHA Michigan Health & Hospital Association | Leading Healthcare

Memo

To: Members, House Judiciary Committee
From: Adam Carlson, Vice President, Advocacy
Date: Sep. 21, 2021
Re: House Bills 4847-4850

The Michigan Health and Hospital Association (MHA) supports a strong guardianship program in which qualified individuals are available for patients in the rare instances where incapacitated individuals are admitted to a hospital without a clear decision maker already in place. House Bills 4947 through 4850 would establish new regulation and certifications for professional guardians in Michigan. MHA members would support efforts to certify guardians and increase responsibilities but have concerns that this current language could create a shortage of quality guardians in the short-term.

At the crux of our concern with this package as it is written is that the increased reporting and responsibilities for guardians and providers, without increased compensation or more flexible rules for urgent medical treatment, would lower the overall pool of guardians available for incapacitated individuals who are admitted to a hospital. Fewer guardians available could lead to longer wait times for urgent healthcare services and negatively impact patient outcomes.

More specifically to the issue of reimbursement, this legislation could create delays in care for Medicare and Medicaid patients and increase costs for those who do not have the ability to pay. For example, a guardian's management of Medicaid nursing home clients will continue to be reimbursed at $83 per month, despite increasing the requirements from quarterly visits to monthly visits and requiring additional new reporting on top of that. On the other hand, those who are personally wealthy will likely see significantly increased costs and become more desirable for the quality guardians who do decide to get certified. The MHA is concerned that this could create a situation where public paying patients will struggle to find a guardian who will take their case while costs increase for others.

Additionally, MHA is concerned with the requirements in the legislation relating to physician and patient testimony. As currently written, a hospital would be responsible for transporting the patient to the courtroom and the physician that believes a guardian is necessary would have to testify under oath as to why the determination was made. This is a burdensome requirement under normal circumstances that is made even more difficult by transportation and staffing issues during the ongoing pandemic. While we

expect this cost to be reimbursed by the state in some form, the MHA is unclear what funds are available for these requirements and worries about the potential burden on emergency physicians.

This package would also cap the use of attorneys working as uncertified guardians and limit the ability of guardians to delegate certain authority to members of their staff. We are concerned that these two provisions would also further limit the pool of available guardians, particularly in areas where probate attorneys who also provide other services are regularly used as guardians. Guardianship is generally not a highly profitable service, and this may further incentivize quality attorneys from providing guardianship services. It is our understanding that much of the reporting is currently done by staff, which would not be allowed under this current package.

Furthermore on that point, the MHA is concerned that removing the ability to delegate could lead to delays in situations when the hospital is waiting for the named guardian to contact their health provider before going forward with necessary care. If a patient's named guardian is on vacation or otherwise not able to be contacted, a ward may have to wait a significant time before being able to receive medical services, possibly even turning back to the probate court to appoint an emergency guardian.

Lastly, MHA would like to acknowledge that this bill does establish a process to appoint an emergency guardian in cases of medical emergency or to provide continuation of care. This is absolutely crucial, but could be strengthened even more. As currently written, the probate court has up to 7 days to hold a hearing on that request, which remains a long and costly wait for many urgent medical needs. We would suggest that this committee continue to explore further options for medical professionals to receive approval to provide care quickly after an incapacitated individual is admitted. Whether that be through some form of family consent or physician's order in situations where there is no clear representative available.

The MHA appreciates the committee taking our recommendations into consideration, and we would be happy to work with members on potential language changes to address our concerns.