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**Testimony of Faith Behum**  
**To the Joint Committee on the Judiciary**  
**June 24, 2015**

**HB 1459 An Act Further Regulating the appointment of certain guardians**

Good Afternoon Senator Brownsberger, Representative Fernandes and Members of the Joint Committee on the Judiciary,

Thank you for giving me the opportunity to address you on HB 1459 An Act Further Regulating the appointment of certain guardians. My name is Faith Behum and I am a Disability Policy Specialist at the Massachusetts Developmental Disabilities Council. The Council is federally mandated to educate policy makers on both the state and federal level about the intent of legislation and its' impact on people with Developmental Disabilities. In addition, the Council works to improve the system of supports for individuals with developmental disabilities and their families by bringing together lawmakers with advocates to make sure people with developmental disabilities are included in decisions about public policy.

If passed, HB 1459 would amend Massachusetts General Law Chapter 190B, Section 5-305 by inserting that the person for appointment as guardian of an incapacitated person by the court shall be in the following order unless rebutted by the introduction of evidence: the spouse, the parent or any person the court seems appropriate. To summarize, an incapacitated individual's spouse or parent will be named the guardian of the individual unless evidence exists that this would not be an appropriate designation. If signed into law, HB 1459 would acknowledge that spouses or parents are the appropriate choice to be an individual's guardian.

Guardianship is a pressing issue for many individuals with developmental disabilities. Before an individual with a developmental disability turns 18, the individual and his or her family or current guardians must discuss if the individual with the developmental disability will be able to make effective decisions on their own that will promote their safety and well-being. If it is decided that the individual with a developmental disability is unable to take on the decision-making responsibility for himself or herself, upon turning 18, the individual will be appointed a guardian.

Families and loved ones of individuals with developmental disabilities carefully consider and choose who will be the best person to act on behalf of the individual. An individual who is a guardian wields tremendous decision-making authority over the individual he or she is responsible for. A guardian makes decisions on behalf of the individual with a developmental disability that will impact the individual in a number of ways. The guardian has the final say on

where the individual will live, medical concerns and procedures an individual can undergo and even basic day to day needs such as deciding what types of recreational activities an individual can engage in. Because the decisions the guardian will make impact the individual in every part of their lives, the person who is chosen to be guardian must be someone who knows the individual well, can truthfully speak to the individual's desires and has the time to devote to crucial decisions. In many cases, the natural choice for an individual's guardian is one of the parents.

Unfortunately, the current law states parents can be passed over for guardianship of his or her own son or daughter.<sup>i</sup> Consequently, who is appointed by the court is not always the person who will be acting in the best interest of the incapacitated individual or is even who the individual, family members, or current guardian would want to be guardian. The current law also states, "Neither special skill or expertise in mental health issues nor a particular relationship to the alleged incapacitated person is required"<sup>ii</sup> to be chosen as someone's guardian. This means that someone who may know little about the individual such as an attorney or agency could potentially be named the guardian. Once an individual is named as a guardian, it is very difficult to reverse the decision. HB 1459 would increase the likelihood of a parent being named the guardian and decrease the likelihood of someone being named who has no connection to the individual.

In summary, the Massachusetts Developmental Disabilities Council believes that HB 1459 will have a positive impact on people with disabilities because of its potential to protect individuals with disabilities from being named guardians who have little or no connection to them. We appreciate the opportunity to educate Committee members about the bill and welcome the opportunity to schedule a follow up meeting with members if additional questions arise.

Sincerely,

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<sup>i</sup> MA General Law. Ch. 190B, §5-305(d).

<sup>ii</sup> Massachusetts Continuing Legal Education(2009 with supplements from 2011 and 2013) Guardianship and Conservatorship Practice Under the Massachusetts Uniform Probate Code, 3<sup>rd</sup> Edition §5.3.2.