

# Guardianship and Its Alternatives:

A Handbook on Maryland Law

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1

Mary Jones has been an active person all of her life. She was a third grade teacher for many years and frequently directed school plays. Since her retirement many years ago, she has been an active volunteer in local government and civic organizations.

Now Mary Jones is 83 years old, and her friends have grown concerned about her. Her telephone and electricity were turned off because she failed to pay her bills. Unopened mail continues to pile up on her kitchen table. Her usually neat appearance is now disheveled and her friends doubt that she is eating properly.

2

Jane Smith's son Justin was born with Down syndrome. Justin had a wonderful childhood. He attended school, played games on the computer and loved to play basketball with his friends. With the help and support of his mother and special education services, Justin developed good communication and social skills. Now Justin is about to turn 18 years old. He is doing more things on his own, but still needs the help of his mother in certain situations. Mrs. Smith loves that Justin has become more independent, but is concerned about the well-being of her son now that he is becoming an adult. Mrs. Smith would like to do some proactive planning for the future.

3

Lisa Adams is a 21 year-old senior at a local university. She does well academically and has been a member of the school's dance team since her freshman year. Lisa was diagnosed with bipolar disorder during her senior year in high school. She has generally been stable with the help of medications but has occasional setbacks with her mental illness that make it hard for her to study and work consistently. Lisa and her parents would like to plan for the future so that Lisa will have the support she needs going forward, especially after her parents have passed away.

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**What can or should these individuals do? Who can they call? Must a guardian be appointed to take care of Mary, Justin or Lisa? If so, who would that person be? Must it be a family member or can it be a best friend? Are there any alternatives to guardianship that could help these three individuals?**

**(See responses to scenarios on the last page of the Handbook.)**

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## **Tribute to Joan O'Sullivan**

The author of the original version of this Handbook (then called The Guardianship Handbook: A Guide to Adult Guardianship and Guardianship Alternatives in Maryland) was Professor Joan O'Sullivan who passed away in 2007. Joan was a beloved member of the University of Maryland Francis King Carey School of Law faculty and a great friend to the elderly clients she served throughout her career.

Prior to coming to the law school in 1993, Joan worked for the Maryland Legal Aid Bureau's Senior Citizen Law Project in Annapolis as Managing Attorney from 1977 to 1993. She represented thousands of low-income seniors, conducted hundreds of community and professional education programs, promoted collaborations with the local bar, and served as a mentor to less experienced legal services advocates around the state. She was the recipient of the Maryland Legal Services Corporation Distinguished Service Award, the Maryland Bar Foundation Award for Legal Excellence and, in 2004, the National Aging and Law Award. In addition to the first Handbook, Joan authored a number of books, including The Maryland Guardianship Bench Book; Nursing Homes: What You Need to Know; and Assisted Living in Maryland: What You Need to Know.

We dedicate this revision of the Handbook to Joan and her tireless work aimed at preserving the individual rights and dignity of the elderly.

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**All or portions of the Handbook can be duplicated and distributed without charge with proper attribution to the University of Maryland Francis King Carey School of Law's Law & Health Care Program and the Maryland State Bar Association. All website and other contact information was verified in July 2011 but may change after this date.**

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# Introduction

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Many questions come to mind when we realize that a loved one or someone we know cannot care for herself or make necessary decisions. This Handbook is designed to help you find the answers to these difficult questions. It discusses the law of adult guardianship in Maryland and explains when a guardian can be appointed to act for a person who lacks the capacity to make decisions for herself or himself. But maybe more importantly, the Handbook lists many alternatives to a formal guardianship proceeding that may be more appropriate and less expensive than a formal guardianship.

## **Note about retaining an attorney:**

Many of the actions recommended in this Handbook require completion of a form or a petition (a document used in a court proceeding). While you may be able to complete many of these documents on your own – in fact some forms are available on state agency websites so that you can complete them on your own – we recommend that you consult with an attorney when planning for the future of a loved one. Attorneys who work with clients who are elderly or have a disability - as well as estate planning attorneys - are experienced in preparing legally binding documents that reflect the specific needs of their clients. We attempted to set forth the law clearly in this Handbook but, nonetheless, planning for the future requires an understanding of both the law on the books and the law in practice – which may vary from county to county in Maryland. In addition, while the Handbook reflects the law as of the date of publication, the law is constantly changing. The Handbook will not be automatically updated to reflect those changes. We understand that hiring a lawyer is both time-consuming and expensive. For that reason, we have included a section in the appendix that will help you identify attorneys in your area who can provide planning services for low or sliding scale fees.



## **Chapter 1**

# Introduction To Guardianship

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## **What is adult guardianship?**

Guardianship is a legal proceeding in which a petitioner (usually a family member or friend) asks the court to find that a person is unable to manage her own affairs effectively because of a disability.<sup>1</sup> The court then appoints someone to act for that person and make decisions affecting her person, her property, or both.

## **Why would a person need a guardian?**

A person may need a guardian if she is unable to make everyday decisions because of the effects of a disease or other disabling condition.

For example, a person may become too mentally confused or forgetful to care for herself or to make arrangements to meet her physical needs, such as shopping and preparing proper meals. In this case, a guardian of the person may have to be appointed.

## **What are the different kinds of guardianship?**

The court may either appoint a guardian of the person, a guardian of the property, or both. One person can serve as both guardian of the person and guardian of the property, or different people can take each role. Additionally, in emergency cases, or in cases where an individual has no family member or friend to serve as guardian, a court may appoint a public guardian. In this situation, the court will appoint a public official or a publicly funded organization, such as a local Area Agency on Aging or the Maryland Department of Social Services, to serve as legal guardian in the absence of a willing and responsible family member or in the absence of resources to employ a private guardian.

<sup>1</sup> The feminine pronouns “she” and “her” are used to simplify the information provided in the Handbook.



In general, a guardian of the person makes decisions about a person's medical care, housing, food, clothing, and other subjects that affect the person. In contrast, a guardian of the property typically makes decisions about a person's money, income, property of any kind, stocks and bonds, and other financial matters.

### **About the Maryland Department of Aging and Area Agencies on Aging**

The Maryland Department of Aging administers programs throughout the State, primarily through a network of nineteen "Area Agencies on Aging." Area agencies administer State and federal funds for local senior citizen programs. These programs provide advocacy services, health education, housing, referrals, in-home services, and nutrition information. Area Agencies also receive local funds, private donations, and contributions from program participants.

### **About the Maryland Department of Human Resources, Office of Adult Services**

The Office of Adult Services focuses on the needs of elderly, disabled and vulnerable adults. The office works with local Departments of Social Services and community based organizations to coordinate services for the vulnerable adult population throughout Maryland to promote their safety, stability and independence. Local Departments of Social Services are listed at the bottom of this webpage and in the Appendix of this Handbook by county: <http://www.dhr.maryland.gov/oas/social.php>.

### **What is the effect of a guardianship?**

The appointment of a guardian has a substantial effect on an individual's life. The adult may no longer have any authority to make decisions about her personal life or property because that authority has been delegated to a guardian. This loss of personal freedom may have great significance, particularly when the



person retains some decision-making ability, as with a person with an intellectual disability or mental illness. However, under Maryland law, the appointment of a guardian “does not modify any civil right of the disabled person unless the court orders, including any civil service ranking, appointment, and rights relating to licensure, permit, privilege, or benefit under any law.”<sup>2</sup>

### **Why avoid guardianship?**

In general, the laws regarding guardianship of the person state that a guardian should be appointed only if there is no less restrictive alternative. In many cases, guardianship is absolutely necessary to protect the person from harm and to administer property that is in the person’s name. However, it should be done only after other solutions have been considered.

<sup>2</sup> MD. CODE ANN., Estates and Trusts § 13-706(b)(2)



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## **Chapter 2**

# **Determining Competency or Capacity**

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## Introduction

Individuals who are 18 years of age and older have the right to make informed decisions about how they live their lives and to control their own medical treatment. In order to make these decisions, a person must be “competent” or have the “capacity” to understand the consequences of these decisions. These two terms are used interchangeably in the law and in this Handbook. Unfortunately, some individuals may have mental illnesses or cognitive impairments that, at times, impair their ability to make informed choices about important issues such as how to manage money or choose a home.<sup>3</sup> Determining competency is important because the degree to which an individual is capable of making an informed decision relates to which decisions she can make. Outside the context of health care decision-making and court-ordered guardianship, a formal determination of competency is not necessary. However, if a person is showing signs of confusion or forgetfulness, she should be evaluated by a health care provider for appropriate treatment. This chapter will provide information on competency and help explain how a determination of competency is made.

### 1. What is capacity?

Mental capacity is a fluid concept that changes according to the circumstances of the individual and the decision to be made. One’s capacity to make a decision may depend on the complexity of that decision; the decision-making strengths of the person (which may fluctuate over time); surrounding events; and the person’s ability to communicate with those determining capacity.

There is no bright line rule dividing those who have capacity to make decisions and those who do not. A person can be competent to make some decisions, but not others.

**For example, a person may be able to express her opinion about whom she trusts to handle money, but not be able to fill out an income tax form. She may be able to decide to get a flu shot, but not decide which treatment is best for her breast cancer.**

<sup>3</sup> ELLEN A. CALLEGARY, JD, CONSENT AND COMPETENCY 7 (Patricia Brierley-Bowers, ed. (2005))



A diagnosis of mental illness or mental disorder does not automatically mean that the person lacks the capacity to make all decisions. Because each person is different and each illness is different, capacity will differ in each case and must be determined individually by looking at evidence (or lack thereof) of the person's decision-making abilities.

## **2. How does the law define competency?**

There is no single definition of competency or capacity in Maryland. Sometimes it is easy to establish that a person is incompetent to make decisions – as when a person is in a coma. At other times, it is not as easy to evaluate and will require that the person in question meet the legal definition of incompetency. In guardianship law, capacity is defined differently for each type of guardianship.

Regarding appointment of a guardian of the person, the law states:

“A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.”<sup>4</sup>

Regarding appointment of a guardian of the property, the law states:

“A guardian shall be appointed if the court determines that (1) the person is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance, and (2) the person has or may be entitled to property or benefits which require proper management.”<sup>5</sup>

In another section of the law relating to medical decision-making, a competent person is defined as: “a person who is at least 18 years of age or who . . . has the same capacity as an adult to consent to medical treatment and who has not been determined to be incapable of making an informed decision.”<sup>6</sup> Additionally, this section defines the phrase “incapable of making an informed decision” as

4 MD. CODE ANN., Estates and Trusts § 13-705(b)

6 MD. CODE ANN., Health General § 5-601(f)

5 MD. CODE ANN., Estates and Trusts § 13-201(c)





“the inability of an individual to make an informed decision about the provision, withholding or withdrawal of a certain medical treatment because the individual is unable to comprehend the nature or probable consequences of that treatment.”<sup>7</sup>

### **3. What proof of incompetency does guardianship law require?**

Maryland guardianship law requires that two “certificates of competency” be filed with the petition for guardianship of an alleged disabled person.

These certificates must be completed by the following health care providers:

- Two licensed physicians who have examined the disabled person;<sup>8</sup> or
- One licensed physician who has examined the disabled person and one licensed psychologist or licensed certified social worker-clinical who has evaluated the disabled person.<sup>9</sup>

The certificates must verify that the person is unable to make or communicate responsible decisions about her person or property. They must also list the person’s physical and mental diagnosis, the prognosis for recovery from these conditions and other details of the person’s condition. Additionally, at least one of the certifying health care professionals must have examined the person within 21 days before the petition is filed in court.<sup>10</sup>

### **4. How do health care providers evaluate competency?**

Health care providers have many ways of evaluating competency. They test for both mental and physical functioning when deciding if someone is able to make competent decisions. Different procedures may be used depending on the source of the disability.

If a person begins to appear confused or to show signs of memory loss, she should have a complete physical and mental evaluation. For older persons, this is called a geriatric evaluation. During a geriatric evaluation, one or more health care providers examine the individual and assesses her abilities and disabilities. They will try to diagnose as accurately as possible the causes of the individual’s confusion. They will recommend treatment options and future care.

7 MD. CODE ANN., Health General § 5-601(m)(1)

9 MD. CODE ANN., Estates and Trusts § 13-705(c)(2)(ii)

8 MD. CODE ANN., Estates and Trusts § 13-705(c)(2)(i)

10 Maryland Rule 10-202

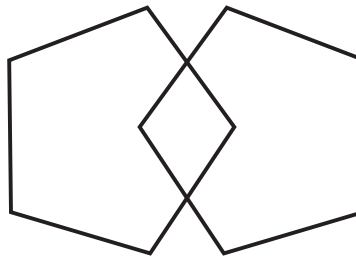


## A. Tests for Mental Capacity

One way physicians test for mental capacity is through the use of a mental status examination. A commonly used screening test is the Mini-Mental Status Examination. The test giver asks the person a series of questions that test the person's awareness, level of consciousness, attention span, ability to think in abstract terms, memory, use of language, mathematical ability and ability to follow directions. The person may be asked to name the day of the week, name the place where they are, spell a word backwards, copy a complicated geometric design, remember three words for a few minutes, or repeat a common saying. The person's score is recorded on a 30 point scale. However, no score precisely determines mental capacity.

### Example of Question from Mini-Mental Status Examination:

The individual is given a piece of paper and asked to copy a design of two intersecting shapes. One point is awarded for correctly copying the shapes. All angles on both figures must be present, and the figures must have one overlapping angle.



The physician may perform other tests, including a more in-depth neuropsychological examination, tests for depression, and tests of the person's functional ability to perform activities of daily living, such as dressing, eating and bathing.

## B. Tests for Physical Causes of Incapacity

In addition to a mental status examination, a thorough assessment will include a physical examination. Before a person is diagnosed as having a chronic, irreversible disease such as Alzheimer's disease, it is important to eliminate other possible physical causes of mental confusion, such as vitamin deficiency or poor nutrition, depression, infections that can cause delirium, and drug interactions.



The physician will look for signs of disease, such as weight loss, problems with walking and falling, incontinence and bizarre behavior. Laboratory tests may also be done to help analyze the causes of the person's confusion. These may include general blood tests, urine analysis, electrocardiogram, a CT scan or MRI of the brain, thyroid function tests, and vitamin level tests.

Once the testing is complete, the physician makes a medical judgment about the person's mental capacity. The doctor can use the results of the examination and tests to fill out the certificates that are required in a guardianship proceeding.

### **5. Can a person who is questionably competent still make decisions?**

Yes. A person who is in the early stages of a progressive disease like Alzheimer's disease, or someone who has an intellectual disability, mental illness or head injury, may well be competent enough to express her opinions about certain matters. Especially with Alzheimer's disease, which progresses differently in each patient, a person may retain some mental functions while losing others.

In deciding whether a person is competent to make a particular decision, one should ask:

- How complicated the decision is;
- Whether the course of action the person wants to take is consistent with the way the person has lived her earlier life; and
- How dangerous the consequences are of a specific course of action.

For example, a person in the early stages of Alzheimer's disease, or a person with an intellectual disability or a head injury, may still be able to tell a lawyer that she wants her sister to handle her financial matters and to execute a power of attorney. Her wishes in this case should be followed.

However, when working with questionably competent individuals, professionals should be aware of certain safeguards:

#### **A. Advice for Lawyers**

When speaking to a person of questionable competence, a lawyer drafting legal documents should see the individual alone to ensure she is not being influenced



by anyone else. The lawyer should ask the person to explain what legal help she wants and to explain her reasons for her actions. If possible, the lawyer should ask the same questions over several visits to determine if the person is consistent in her answers. Some attorneys may want to have a physician examine an individual before asking her to sign legal documents or videotape the interview to show that the person understands the potential consequences of her actions.

### **B. Advice for Physicians**

A person who is questionably competent may still be able to consent to, or refuse, medical treatment. When it is unclear whether an individual is making a rational decision, the physician should ask whether the decision is in line with decisions the person has made in the past. The physician may want to ask about the person's known beliefs, values, and patterns of behavior. For instance, if the person is refusing to have an operation for cancer, the physician should ask whether that person has a long standing dislike of medical treatment and whether she has refused treatment in the past. If refusal of treatment is inconsistent with the prior behavior of the person, it may be the result of dementia and not an informed decision.

In deciding whether to follow the directions of someone who is questionably competent, one can also look at the seriousness of the decision at hand. If the result of the decision is not clearly and directly linked to an immediate danger, then the person's decision may be followed.

For example, a decision about whether to have a flu shot may be left up to a questionably competent person, while a decision about whether to have hip surgery may not be. If the decision is relatively simple and inconsequential, it should be made by the individual herself. If the decision at hand involves a possible health risk, someone else may have to make that decision for the patient in question.

### **6. Does a person who has trouble making certain decisions always need a guardian?**

No. As we will discuss in the next chapter and throughout this Handbook, there are many ways to meet the needs of these individuals without filing for guardianship.



## **7. What if an individual has never been able to make informed decisions?**

If an individual has never been capable of making informed decisions, such as an individual born with severe intellectual disabilities, creating a special needs trust and/or filing a guardianship petition may be the only two options available.

### **A. Special Needs Trust**

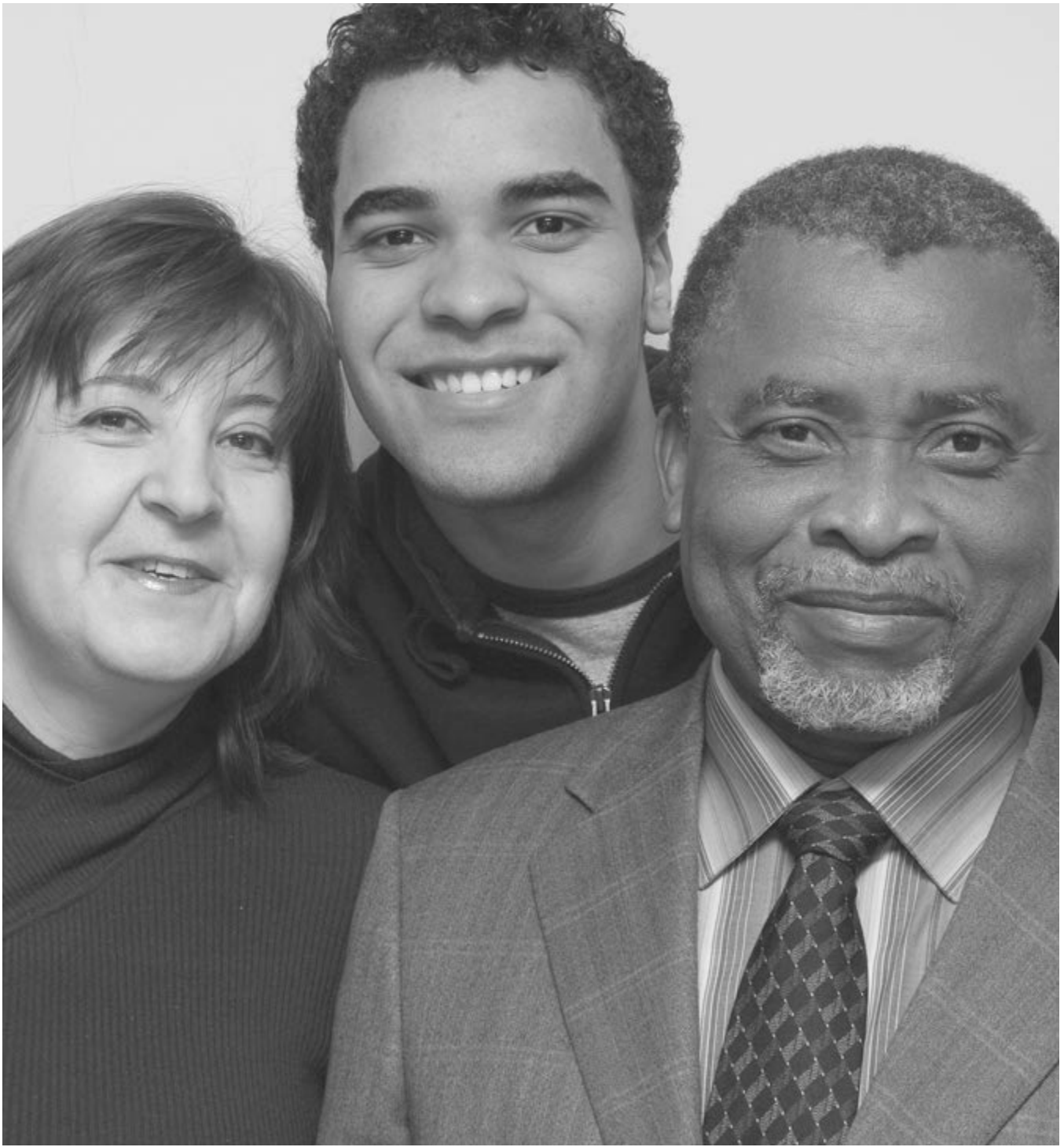
A special needs trust is a legal document designed to benefit an individual with a disability. It is an arrangement by which one person, called the grantor, gives property or assets to another, called the trustee, for the benefit of a person with a disability. In general, a special needs trust enables a person with a physical or mental disability, or an individual with a chronic or acquired illness, to have assets held in trust for his or her benefit. The Code of Maryland Regulations (COMAR) sets forth the requirements of a Special Needs Trust in COMAR 10.09.24.08-2C. The Maryland Office of the Attorney General will review a Supplemental or Special Needs Trust for compliance with this COMAR provision and to ensure that the special needs trust does not prevent the disabled individual from maintaining Medicaid benefits. Information about the review process can be found at the following link:

[http://www.oag.state.md.us/Forms/Attorney\\_Review\\_checklist.pdf](http://www.oag.state.md.us/Forms/Attorney_Review_checklist.pdf).

More information is available about special needs trusts on page 36.

### **B. Guardianship**

As mentioned in Chapter 1, guardianship is a proceeding in which a petitioner asks the court to find that a person is unable to manage her own affairs effectively because of a disability. The court then appoints someone else to act for that person and make certain decisions for her.



## Chapter 3

# Alternatives to Guardianship



Sometimes it is absolutely necessary to seek a guardian for a person who has a disability. In those cases, it is a welcome solution to a very difficult problem.

In other cases, however, there may be alternative ways to solve the problem. These alternatives may not be the easiest course, or the least expensive, but there are several reasons (noted below) why alternatives to guardianship are preferable if they are possible. This chapter discusses the reasons to search for alternatives and describes some solutions to common problems that prompt guardianship filings.

### **What are reasons to seek alternatives to guardianship?**

- First, the appointment of a guardian is a serious measure. Guardianship has the potential to deprive a person of the right to make virtually all personal and financial decisions.
- Second, the law requires that a guardian of the person be appointed only when no less restrictive form of intervention is available which is consistent with the person's welfare and safety.<sup>11</sup> Furthermore, the petition requesting guardianship must contain information about what other alternatives have been tried and failed.<sup>12</sup>
- Third, filing for guardianship is costly and time consuming. Two attorneys (one representing the petitioner and one representing the alleged disabled person) must be paid. There may also be expert witness fees for the testimony of physicians, psychologists, or social workers. In some parts of Maryland, it will take several months for a guardian to be appointed, unless it is an emergency. Moreover, once appointed, the guardian will have an obligation to file annual reports with the court. At the end of the guardianship, a guardian must return to court and petition to terminate the guardianship.

(continued)

<sup>11</sup> MD. CODE ANN., Estates and Trusts § 13-705(b)

<sup>12</sup> Maryland Rule 10-201(c)(4)



- Fourth, a guardian of the person may have less authority to make decisions about life-threatening medical treatment than does a close relative who is not a guardian. A guardian may have to return to court for approval to withhold medical treatment if appropriate. A close relative or friend could make the same decision without court involvement, after consulting with the person's physicians.<sup>13</sup>

For these reasons, you should consider ways to take care of the needs of a person with a disability before filing for guardianship.

## **1. What alternatives and resources are available to help with day-to-day tasks?**

### **A. Family Guidance**

If a family member or friend can convince the individual to make a change voluntarily, there is no need to file for guardianship. This is perhaps the easiest of the alternatives to guardianship.

For example, if the person living alone is in danger of starting a fire while cooking and does not seem responsive to advice, she may be willing, if asked and presented with alternatives, to voluntarily leave her home and live with relatives or in an assisted living facility. In this case, there may be no need to file for guardianship.

It is also possible to admit a person to a nursing home and to apply for Medical Assistance and other benefits on her behalf without being a guardian or an agent under a power of attorney.

### **B. Adult Assistive Services**

There are many public and private services that help a person with a disability stay in her home and community. It is not necessary for someone to have a guardian in order to take advantage of these services. Someone else can apply for these services on behalf of an individual. Not all services are available in

<sup>13</sup> MD. CODE ANN., Health General § 5-605; MD. CODE ANN., Estates and Trusts § 13-708(c), § 13-711-§ 13-713





all communities and some may have long waiting lists. Some charge a full fee, others have a sliding fee scale, some have no charge, and some are covered by Medicare or Medical Assistance (Medicaid). Some are geared toward one group or another, such as the elderly, or those with physical disabilities.

Local Departments of Social Services and Area Agencies on Aging as well as the state-level Maryland Department of Aging and Maryland Department of Health and Mental Hygiene can provide information about what services are available. The Eldercare Locator, at (800) 677-1116, will identify services elsewhere in the state.

### 1. Case Management

State and local agencies as well as private organizations provide case management services to the elderly and those with disabilities. A case manager assesses an individual's needs and coordinates services for the individual so that she can remain at her highest possible level of self-sufficiency. This service may be provided free for those unable to pay, on a sliding scale, or for a set fee. **To find out about case management services, call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

#### Finding a Geriatric Care Manager

To find a private geriatric care manager in Maryland, the National Association of Professional Geriatric Care Managers maintains a national website with local information at [www.caremanager.org](http://www.caremanager.org). The organization's Mid-Atlantic Chapter also provides suggestions for local care managers at [www.midatlanticgcm.org](http://www.midatlanticgcm.org) or by phone at (410) 661-1988.

### 2. In-Home Aide Services

This program offers aide services in a person's home to provide assistance with dressing, bathing, transferring, grooming, eating, cooking, laundry, light cleaning and shopping. In general, it allows a person with a disability to remain living at home and to avoid unnecessary or premature moves to a nursing home or other out-of-home placement.



Adults aged 18 and older residing in Maryland, who have functional disabilities and need assistance with personal care, chores, and/or activities of daily living in order to remain in their own homes, are eligible for this service. Vulnerable adults with no willing or capable caregiver available, individuals at risk of institutional placement, and those at risk of abuse or neglect are given preference for this service using a ranking scale. The local department representative will arrange a home visit to conduct an interview with the applicant to determine an applicant's specific needs. The availability of funding for the program determines the number of individuals who can be served statewide. Therefore, a ranking scale is used to ensure that those with the greatest need are served first. Depending on the income and family size of the applicant, the applicant may need to contribute toward the hourly cost of the aide service. This is determined by a sliding-scale and the fee is paid to the Department of Social Services. **For more information on this service, you can call your local Department of Social Services.**

### **3. Senior Care**

Senior Care is a statewide long-term care service delivery system that coordinates community-based services for low-income individuals according to their needs. The program is designed for individuals 65 years or older, at risk of entering a nursing home or institution, and with limited income. Senior Care provides a comprehensive assessment of the individual's needs and a case manager to secure and coordinate services. Additionally, the program has a pool of money for necessary services, durable medical supplies, or equipment not available through traditional resources. Services may include personal care, chore service, medications, medical supplies, adult day-care, respite care, home delivered meals, transportation, and emergency response systems. **More information can be found at the Maryland Department of Aging website at the following link, <http://www.mdoa.state.md.us/services.html>, or you can call the Maryland Department of Aging at 1-800-243-3425.**



#### **4. Adult Medical Day Care**

Adult Medical Day Care is a structured group program that provides health, social, and related support services to functionally disabled adults, age 16 and older. The program provides individuals the opportunity to receive medical care during the day in a community-based setting and offers individuals an alternative to nursing facility care. **More information on this service can be found at the following link, <http://www.aging.maryland.gov>.**

#### **5. Respite Care**

Respite care programs provide funding to pay a trained person to stay for short periods with a person so that his or her caregiver can have a certain amount of time off. Medical Assistance may pay for a short stay in a nursing home for respite care as well. **More information on respite care can be obtained at your local Department of Social Services, at the Maryland Department of Human Resources homepage, <http://www.dhr.maryland.gov/oas/respiteservices.php> or the Maryland Developmental Disabilities Administration's website, [http://www.dhmd.state.md.us/dda\\_md/respiteservices.htm](http://www.dhmd.state.md.us/dda_md/respiteservices.htm).**

#### **6. Meals on Wheels**

The Meals on Wheels volunteer agency delivers free or reduced price hot meals to those who are homebound and unable to cook for themselves. This service is especially useful to those who cannot use the stove safely. **More information on Meals on Wheels and help finding a local program can be found at their website, <http://www.mowaa.org/Page.aspx?pid=253>.**



## **7. Transportation to Medical Appointments and Other Activities**

Rides to medical appointments and other activities, such as shopping, are often difficult to arrange for someone who has a disability. Many counties have a fee or reduced price van service. Others provide reduced price taxi vouchers. **More information on this service and a list of local transportation contact numbers can be found at the following link, <http://dhmh.maryland.gov/mma/communitysupport/ambulance/>, or you can call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

## **8. Food and Prescription Drug Deliveries**

Deliveries of groceries and prescription drugs to the home of an individual can often be arranged with local stores and pharmacies. **Call stores near to the individual you are concerned about to find ones that deliver. Prescriptions may also be obtained through mail-order or internet pharmacies and delivered directly to a person's home.**

## **9. Telephone Reassurance Programs**

Some Maryland counties offer programs in which volunteers make daily calls to homebound individuals and those with disabilities to make sure they are well and safe. This service may be part of a larger package of services to a person with a disability. **For more information, please contact your local Area Agency on Aging.**

## **10. Unpaid Utility Bills**

Some Maryland utility companies, such as BGE and Dominion, will notify a third party if a person does not pay his/her utility bill. This acts as a check on someone who forgets or who is not physically able to write monthly payments.

## **11. Postal Service Checks**

The Carrier Alert Program brings together United States Postal Service carriers with a local community agency to assist infirm or aged residents



who may be unable to get help in an emergency. This service usually applies to elderly people who live alone. If a person does not pick up their mail for a pre-determined number of days, the carrier will notify the sponsoring agency. After notification, the agency (not the Postal Service) will attempt to contact the person or send a representative or the local authorities to check on the person. If a local post office facility participates, a caregiver can sign up directly through the local post office.

## **2. What resources are available to help with alternative housing arrangements?**

Sometimes a new and supportive housing arrangement can help with problems such as a person's unsafe cooking habits or wandering outside at night. Alternative housing options provide varying degrees of assistance. Some simply provide housing plus one or two meals a day; others help with all the activities of daily living. They range widely in cost. However, there may be some public funds available to help pay for them.

These housing options can help an individual maintain her independence as long as possible and provide a more home-like setting than does a nursing home. If an individual will move to one voluntarily, there may be no need to file for guardianship.

### **A. Assisted Living Programs**

#### **Assisted Living Programs**

Assisted living is a residential or facility-based program for individuals who have a physical or cognitive impairment and who need help with one or more activities of daily living such as personal care and mobility, meal preparation, and household chores. Assisted living programs provide senior adults and individuals with disabilities with housing and supportive services and may include health related services. This housing option enables people to remain in a home-like setting in their community.

Assisted living facilities may range from a small home with one resident to larger facilities with 100 or more living units. Fees vary depending on the services



provided and may range between \$800 to \$4,000 per month. Financial assistance is available on a limited basis through the Senior Assisted Living Group Home Subsidy Program (see below) or the Medicaid Waiver Home and Community Based Services Program. **More information can be found at the following website, <http://mhcc.maryland.gov/consumerinfo/assistedliving/>. You can also call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

### **B. Senior Assisted Group Home Subsidy Program**

For low and moderate-income seniors, the Senior Assisted Living Group Home Subsidy Program subsidizes the fees charged by small group homes that are licensed by the Department of Health and Mental Hygiene for 4-16 residents. The subsidies are paid from state funds on behalf of eligible residents who are unable to afford the cost of assisted living and might otherwise be in nursing facilities. The subsidy supports the cost of services provided in assisted living programs, including meals, personal care, and 24-hour supervision for elderly residents who are unable to live independently. The homes supported by this subsidy are monitored by the Maryland Department of Aging through Area Agencies on Aging around the state.

A current resident of a participating assisted living program or an applicant to an assisted living program who requires financial assistance may apply to her Area Agency on Aging for a subsidy. In order to be eligible for a subsidy, the individual must be:

- at least 62 years of age and a resident in a facility or approved for entrance into a facility that has entered into a service agreement with the Area Agency on Aging;
- physically or mentally impaired and in need of assistance with the activities of daily living provided by the assisted living program; and
- financially eligible for a subsidy.

**More information on this program can be found at the State Department of Aging's website, <http://www.mdoa.state.md.us/housing.html#SeniorAssited> or call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**



### **C. Congregate Housing Services Program**

The Congregate Housing Services Program provides support services and state subsidies to eligible residents of low and moderate income senior housing who, due to advanced age or chronic health conditions, need daily help with activities such as meals, housekeeping, and personal services.

The Maryland Department of Aging contracts with housing and senior service provider organizations to operate a Congregate Housing Services Program for eligible residents of designated buildings. Eligible residents are those who are at least 62 years of age and in need of assistance in one or more activities of daily living. The program provides meals, weekly housekeeping of each participant's apartment, and limited personal assistance with activities such as bathing, dressing, and laundry. The cost to individual participants of the Congregate Housing Services Program varies by site. **More information on this program and its costs can be found at the Maryland Department of Aging website, <http://www.mdoa.state.md.us/housing.html#SeniorAssited> or call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

### **D. Adult Foster Care**

Under an adult foster care arrangement, a family shares its home with, and provides meals to, an adult who is unable to live alone. These homes have fewer residents than group homes. **For more information on this service and to see where such programs are located, call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

### **E. Project Home**

Project Home is based on the adult foster care model. It licenses Maryland citizens to provide room, board, assistance and supervision in their homes for adults with disabilities who are capable of living in the community, but are unable to live alone. A Project Home residence provides a protective living environment in a homelike setting for an adult with disabilities who cannot live alone primarily due to a mental illness or physical and medical disability. **More information can be found at the Maryland Department of Human Resources website, <http://www.dhr.maryland.gov/oas/projhome.php>.**



## **F. Community Residential Services**

This program, which is a collaborative effort of the Maryland Department of Health and Mental Hygiene, Department of Human Resources, and Department of Aging, provides a variety of home-based support services to elderly adults and adults with disabilities. People may be supported in their own homes, with their family, or in a home owned by an agency that provides residential services. Some people in this program live alone and others choose to live communally to share expenses and/or companionship. **Information about services under this program is available through the Community Residential Information line (1-800-964-2931) or the Maryland Department of Health and Mental Hygiene website, [http://dhmh.maryland.gov/dda\\_md/serv02.htm](http://dhmh.maryland.gov/dda_md/serv02.htm). You can also call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**

## **G. Continuing Care Retirement Communities**

Some retirement communities offer a range of home and health care services in one place. They are called continuing care retirement communities (CCRCs). Residents may enter the facility able to live independently in their own apartment with cooking facilities, and later move to an assisted living arrangement or a skilled nursing unit as their health declines. These communities agree to provide a secure and protected environment and access to medical, nursing home and other health-related benefits as long as the resident lives there. The number and scope of prepaid services varies, as do financial arrangements. Some require residents to be older than a certain age.

Residents in a CRCC pay an entrance fee and sign a residence contract for a period of more than one year. The resident may be required to transfer assets to the community and to pay monthly fees in addition to the entrance fee. The cost for this type of facility is fairly substantial. **More information on this service can be found on the Maryland Department of Aging's website, <http://www.mdoa.state.md.us/housing.html#SeniorAssited> or call the number listed in the Appendix for the Area Agency on Aging or the local Department of Social Services in your county.**





### 3. Decisions about medical care and end of life planning

(see decision-making flow chart on page 27)

If the problem prompting a discussion about guardianship relates to medical care, options exist to help with this situation. One option is an advance health care directive, a document in which a person states her wishes about future health care.<sup>14</sup> Also available in Maryland is an Advance Directive for Mental Health Services. If there is no advance directive or one cannot be completed, the law establishes procedures for a surrogate (or substitute) decision maker to consent or refuse medical treatment without the need for the appointment of a guardian. A surrogate decision maker is someone who acts for the person and can make medical decisions for the person who is unable to make medical decisions for herself. These three methods allow someone else to make a health care decision for an incapacitated person without having to file for guardianship. The methods are described in more detail below.

#### A. Advance Health Care Directives (see sample excerpt in Appendix A)

An advance directive is a statement of a person's wishes about future health care. The advance directive may:

- Appoint another person to make decisions for the person,
- State what type of care the person would want in certain situations, or
- Do both.

It may be made in writing or orally. There are two components of an advance directive:

1. **Appointment of health care agent.** The person making the advance directive, called “the principal,” can appoint a person, called “the agent,” to make health care decisions for her. Unless the advance directive states otherwise, the agent's power becomes effective when the attending physician and a second physician certify in writing that the patient is unable to make an informed decision. (If the person is unconscious or unable to communicate, a second certificate is not necessary).<sup>15</sup>

<sup>14</sup> MD. CODE ANN., Health General § 5-601 et seq.

<sup>15</sup> MD. CODE ANN., Health General § 5-602(e)



Once the document takes effect, the agent has primary authority to make decisions about the person's care. The agent must base his or her decisions on what the patient would have wanted in the situation.<sup>16</sup>

**2. Health care instructions.** An individual may also state in an advance directive exactly what care she would want in a given health situation. Typically, instructions will state whether the person would want life sustaining treatment, such as a respirator or tube feeding, if she is near death or if there is no hope of recovery.<sup>17</sup>

**Oral Directives** - Under certain circumstances, a person can orally appoint a health care agent and give instructions regarding treatment. To make an oral advance directive:

- the person must be mentally competent;
- the person must give the instructions in the presence of the attending physician and one witness; and
- the physician must write the person's instructions or statement in her medical record. Then the physician and the witness must date and sign the notation.<sup>18</sup>

More information on advance directives can be found at the Maryland Attorney General website, <http://www.oag.state.md.us/healthpol/advancedirectives.htm>. Additionally, a user-friendly advance directive form can be found at the following link, <http://www.oag.state.md.us/Healthpol/adirective.pdf>.

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16 MD. CODE ANN., Health General § 5-602(h)

18 MD. CODE ANN., Health General § 5-602(d)

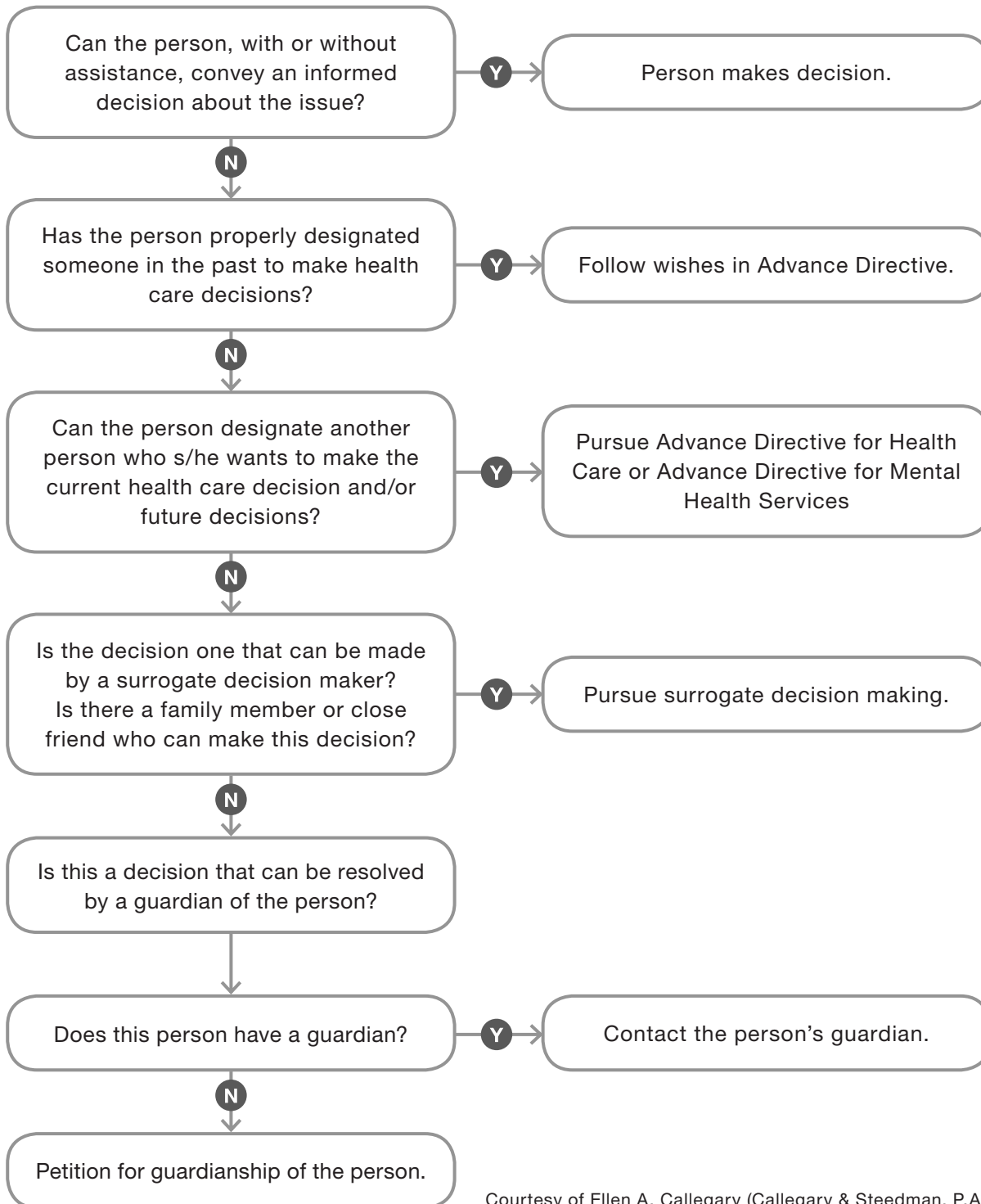
17 MD. CODE ANN., Health General § 5-602(a)



### Flowchart for Non-Emergency Health Care Decisions

The illustration below is a diagrammatic representation of many of the concepts described in this section.

**Is there a health care decision that needs to be made?**



Courtesy of Ellen A. Callegary (Callegary & Steedman, P.A.)



## **B. Advance Directives for Mental Health Services**

(see sample excerpt in Appendix B)

In Maryland, individuals who need mental health services and may become incapacitated in the future or who have intermittent competency can designate a health care agent to ensure that they receive specified mental health services<sup>19</sup> even when they are no longer able to consent to the provision of the services themselves. An advance directive for mental health services may include:

1. The designation of an agent to make mental health services decisions for the declarant;
2. The identification of mental health professionals, programs and facilities that the declarant would prefer to provide her with mental health services;
3. A statement of medications preferred by the declarant for psychiatric treatment;
4. Instruction regarding the notification of third parties and the release of information to third parties about mental health services provided to the declarant.<sup>20</sup>

More information on Advance Directives for Mental Health Services can be found at the Maryland Department of Health and Mental Hygiene website, <http://www.dhmh.state.md.us/mha/index.html>. Additionally, a user-friendly form can be found at the following link, <http://www.dhmh.state.md.us/mha/Miscellaneous/forms/Advance%20Directive%20for%20Mental%20Health%20Treatment%20july%202008.pdf>.

<sup>19</sup> “Mental health services” means health care rendered to a recipient primarily in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of any mental disorder. Health General § 4-301(h)(2)

<sup>20</sup> CALLEGARY at 12 and MD. CODE ANN., Health General § 5-602.1



### C. Surrogate Decision Making

If a person does not have an advance directive, and is unable to consent to treatment, a surrogate decision maker can make health care decisions for her. A surrogate is a person who makes a decision for the incapacitated patient based on what that person would have wanted. If a surrogate decision maker is available, it may not be necessary to appoint a guardian of the person. The use of a surrogate most often happens in emergency medical situations.

**Surrogate decision makers.** The law lists these individuals as surrogate decision makers, in the following order of priority:

- a guardian previously appointed by the court;
- a spouse;
- an adult child;
- a parent;
- an adult brother or sister; or
- a competent friend or other relative who can demonstrate he or she has maintained regular contact with the patient sufficient to be familiar with the patient's activities, health, and personal beliefs.<sup>21</sup>

A surrogate from the last category (other relative or friend) must sign a statement confirming that:

- the patient's wishes are well-known to the surrogate,
- he or she is a close relative or friend of the patient, and
- the surrogate and patient had sufficient regular contact for the surrogate to be familiar with the patient's activities, health and personal beliefs.<sup>22</sup>

The statement should include such facts as how long he or she has known the patient, how frequently they had contact, and what he or she knows about the patient's beliefs and wishes. The statement is given to a physician and is placed in the person's medical record.<sup>23</sup>

21 MD. CODE ANN., Health General § 5-605(a)(2)

23 MD. CODE ANN., Health General § 5-602(a)(3)

22 MD. CODE ANN., Health General § 5-602(a)(3)



### Surrogates May Have More Authority than Guardians

A surrogate acting under the Maryland Health Care Decisions Act may have more authority than a guardian to make serious medical decisions.

A surrogate decision maker who is not a guardian does not have to request the court's permission before making such a decision. The surrogate will only have to consult with the person's physicians and make a decision based on what he or she believes the person would have wanted.<sup>24</sup> This simpler procedure is another reason to avoid the appointment of a guardian of the person unless necessary.

The guardianship law states that a guardian must get the court's approval for a medical decision that poses a risk to the life of the person except under two conditions:

1. If the person has executed an advance directive that authorizes the guardian to consent to the provision, withholding, or withdrawal of a medical procedure that involves a substantial risk to life but does not appoint a health care agent, the guardian does not have to seek the court's permission to make such a decision. However, any other guardian will have to get the court's approval before making a decision about life sustaining treatment.
2. If the guardian is within the class of individuals mentioned in the section of surrogate decision makers on the previous page and is determined by the court to be familiar with the personal beliefs, values, and medical situation of the disabled person.<sup>25</sup>

#### 4. What if a person cannot handle her money or property?

There are several ways to manage money or property without going through the guardianship process. Some arrangements must be made **before** a person becomes incapacitated and others can be put in place **after** a person becomes incapacitated. Some are listed below.

<sup>24</sup> MD. CODE ANN., Health General § 5-605(c)(1)

<sup>25</sup> MD. CODE ANN., Estates and Trusts § 13-708(c)



## A. Representative Payee

### What is a Representative Payee?

Guardianship of the property may be unnecessary if a person's income is mainly from Social Security, Supplemental Security Income, Veteran's Administration or other government benefits. These agencies can appoint another person or agency to receive benefit checks for a beneficiary who is unable to manage her benefits alone. The person appointed is called the representative payee. Once appointed, the representative payee can collect the beneficiary's monthly income and use it to pay her bills.

There are many advantages to the representative payee program. The representative payee serves the same simple money management function as a guardian of the property but it is not necessary to file a petition in court to name a representative payee. The process is much simpler and less expensive than guardianship. The agency paying the benefits will oversee the representative payee in much the same way that the court supervises a guardian of the property. The representative payee must file an annual report with the agency verifying that the beneficiary's funds have been spent on her needs.

Representative payees are usually family members or friends, but service providers, public agencies and volunteer organizations can also serve as representative payees. Federal law limits those who may collect a fee for serving as payee to community-based, non-profit social services agencies, licensed and bonded in the state.<sup>26</sup>

To be named a representative payee, a person must apply to the agency paying the benefits. A physician must sign a medical form that certifies that the individual receiving the benefit check is not able to handle her own money. The form must be filed with the agency. The agency will determine if it is in the best interest of the beneficiary for a representative payee to be appointed. Then, the agency will notify the beneficiary that someone has applied to be her representative payee. If the beneficiary does not object, the agency will send

<sup>26</sup> 20 CFR 404.2040a(g)(i) and 416.640a(g)(i)



the monthly check to the representative payee, for the use of the beneficiary. The representative payee can open a bank account in both names and can pay the beneficiary's bills and buy necessities for her from the monthly income. The representative payee must always act in the best interest of the beneficiary.<sup>27</sup> More information on representative payee programs can be found at the Social Security website, <http://www.ssa.gov/payee/>, or the Maryland Department of Human resources website, <http://dhr.maryland.gov/oas/payee.php>.

## B. Power of Attorney

### The Value of a Power of Attorney Document

A guardian of the property may not be necessary if an elderly person or person with a disability writes or has written a durable power of attorney. A power of attorney is a document that grants authority to a third party, called the "agent", to act in the place of the individual, called the "principal".<sup>28</sup> "Durable" simply means that the agent's authority is still valid if the principal becomes incapacitated.<sup>29</sup>

A power of attorney must be written when a person is mentally competent. For some people with decreased mental capacity, it may be too late to write a power of attorney. However, others affected by confusion or an intellectual disability may be able to adequately express what they want. Even individuals who have been diagnosed with an early stage of Alzheimer's disease, a mental illness, or other disability may possess the necessary competency to execute a power of attorney. The person must be able to understand what property she has, the consequences of appointing an agent, and be able to clearly communicate her wishes, stating that she wants a certain person to handle her financial affairs.

In general, a power of attorney is effective when executed. However, an individual can state in the power of attorney that it becomes effective at a future date or on the occurrence of a future event, such as the principal becoming incapacitated.<sup>30</sup> If a power of attorney becomes effective on the principal's incapacity and the

27 20 CFR 404.2035(a) and 20 CFR 416.635(a)

29 MD. CODE ANN., Estates and Trusts § 17-105(a)

28 MD. CODE ANN., Estates and Trusts § 17-101(d)

30 MD. CODE ANN., Estates and Trusts § 13-711(a)





principal has not authorized a person to determine whether the principal is incapacitated, or the individual authorized is unable or unwilling to make the determination, the power of attorney becomes effective on a determination in writing by:

1. A physician or licensed psychologist; or
2. An attorney at law, a judge, or an appropriate governmental official.<sup>31</sup>

Additionally, unless the power of attorney states otherwise, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.<sup>32</sup> However, the agent is not entitled to compensation, unless the principal allows for compensation in the power of attorney.<sup>33</sup> In that situation, the agent may receive compensation based on what is reasonable under the circumstances or as set forth in the power of attorney.<sup>34</sup>

While it is not required, it is highly recommended that a lawyer draft your durable power of attorney so that the powers you wish to give your agent are clearly spelled out in language that will be legally effective.

### C. Banking Services

Banks often provide some money management services for their banking clients. It may be possible to arrange for the following services:

- **Direct Deposit:** A person's regular income, such as pension or Social Security checks, can be automatically deposited into the individual's account.
- **Direct Payment:** The bank can make direct payments from the individual's account for routine bills such as rent, mortgage payments, nursing home payments, and monthly utility bills. With the bank automatically paying these bills, the individual is relieved of having to remember to write checks for them each month.
- **Personal Money Managers:** If an individual has substantial funds, she can hire a personal money manager to receive funds and pay bills on her behalf.
- **Power of Attorney Accounts:** Banks will establish accounts that allow an agent to act for the owner of the account only in matters at that bank.

31 MD. CODE ANN., Estates and Trusts § 13-711(c)(1) and (2)

32 MD. CODE ANN., Estates and Trusts § 13-714(a)

33 MD. CODE ANN., Estates and Trusts § 13-714(b)

34 *Id.*



## D. Joint Ownership of Bank Accounts

Many individuals with disabilities establish joint bank accounts with their spouses, children or other trusted relatives to make sure that the funds in the account go to the other person when the first one dies. Joint bank accounts, however, also serve another function: they can prevent the need for a guardian of the property.

If two or more people own a checking or savings account, all owners can usually deposit and withdraw money from that account.

For example, if a mother and daughter both have their names on the mother's checking account, the daughter can write checks on the account, even if the mother becomes incapacitated. Joint ownership would prevent the situation in which no one can withdraw funds from the mother's account because she has become incapacitated or unable to sign checks.

A joint account must be established when the joint owners are mentally competent. However, as with a power of attorney, a person who has limited understanding may be able to sign willingly and knowingly a bank's signature card to establish a joint account so that someone else can help with finances.

There are also some disadvantages to joint bank accounts. Because adding a person's name to a bank account gives that person an interest in the funds in the account, government benefit programs, such as Medical Assistance,<sup>35</sup> may see this as making a taxable gift. Medical Assistance may attribute ownership of all the funds in a joint account to the person applying for benefits, regardless of the original ownership of the account. It may change the person's estate plan, so that the money goes to someone other than the people named in a will. The funds in a joint account may also be attached by the co-owner's creditors. A consultation with an attorney can help work through these issues.

## E. Court Authorization of a Specific Transaction

Maryland law provides for court authorization of a one-time transaction to transfer a specific piece of property without the appointment of a guardian of the property.<sup>36</sup> Application of this law is less restrictive than placing the client under a full-

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<sup>35</sup> Medical Assistance is the name of Maryland's Medicaid Program.

<sup>36</sup> MD. CODE ANN., Estates and Trusts § 13-204



fledged guardianship of the property. This procedure is particularly useful when there is only one relatively simple financial matter to be handled, such as a car to be sold, or an insurance policy to be converted to cash so that the person can qualify for Medical Assistance to pay for nursing home care.

The advantage of this one-time authorization is that, although a court proceeding must be filed, once the transaction is completed, the case is closed. There is no permanent guardian of the property, no need to file a yearly accounting, and no need to file a petition to close the guardianship estate after the person dies. Additionally, the person does not permanently lose her independence or rights as in guardianship.

For example, a person with a disability may have only her monthly Social Security income and a small bank account. A representative payee could be appointed to manage the monthly Social Security checks, but no one can withdraw the money from the bank account because it is titled in the name of the incapacitated person alone. A friend, family member or a public agency can file a petition in the circuit court asking for the authority to withdraw the money from the bank account and to spend it for a legitimate purpose, or to deposit it in the joint account set up by the representative payee. Since the account is the only asset that has to be administered, the court can order this one time transaction without appointing a permanent guardian of the property.

The assistance of a lawyer will be required to file a request for authorization of a specific transaction. See the listings in the Appendix for legal services in each Maryland county.

## **F. Trusts**

A trust may be used to avoid guardianship of the property. A trust is a legal arrangement by which one person (the grantor) transfers assets to a trustee to be held and managed for the benefit of one or more beneficiaries of the trust. If a person with a disability is a beneficiary of a trust, and if the disabled person has no other assets in her own name, then it should not be necessary to have a guardian of the property. The trustee would manage the assets in the trust. On the other hand, if the disabled person does have assets in her own name, then it may be necessary to have a guardian of the property appointed to manage the assets outside the trust.



A special needs trust (also referred to as a supplemental needs trust) is a type of trust that is designed for the benefit of a disabled person. One of the purposes of a special needs trust is to prevent a disabled person's assets from disqualifying her from receiving government benefits. Sometimes the special needs trust is funded with the disabled person's own assets. In that situation, upon the death of the disabled person, the assets remaining in the trust are used to pay back the government benefits received by the disabled person. If there are still assets remaining in the special needs trust after the government has been paid back, then those assets may pass to other family members. This type of trust is sometimes referred to as a "pay back special needs trust". If the special needs trust is funded with the assets of someone other than the disabled person, then it is not necessary to include a pay back provision. Upon the death of the disabled person, the assets remaining in this type of special needs trust may pass to other family members.

The non-profit organization, First Maryland Disability Trust, Inc., serves individuals in Maryland with special needs by offering a pooled asset special needs trust, as authorized under the Social Security Act (42 U.S.C. §1396p(d)(4)(C)) and Maryland regulation (COMAR 10.09.24.08-2B(6)(b)). These laws permit a non-profit organization to create a trust which can bring together (or "pool") the assets of many individuals with disabilities in a way that protects each one's assets and income from being counted in determining eligibility for certain public benefits, such as SSI or Medical Assistance. First Maryland Disability Trust provides cost effective trustee and investment management services to enhance the quality of life of beneficiaries while protecting their eligibility for public benefits. **Their phone number is 410-296-4408 and their website is, <http://www.firstmdtrust.org/index.php>.**

In general, a trustee is entitled to receive compensation for serving as trustee. Nevertheless, a trustee who is a family member often waives compensation. A family member who serves as trustee of a pay back special needs trust is prohibited from receiving compensation.

The Code of Maryland Regulations (COMAR) sets forth the requirements of a special needs trust in COMAR 10.09.24.08-2C. The Maryland Office of the Attorney General will review a special needs trust for compliance with this COMAR provision and to ensure that the trust does not prevent the disabled



person from maintaining government benefits such as Medicaid. Information about the review process can be found at the following link, [http://www.oag.state.md.us/Forms/Attorney\\_Review\\_checklist.pdf](http://www.oag.state.md.us/Forms/Attorney_Review_checklist.pdf).

### **What happens if a guardian is appointed even though these alternatives are in place?**

Since the guardian stands in the shoes of the person with a disability, she can take any action that the person with a disability could have taken. Thus, a guardian appointed by the court may have the authority to revoke a power of attorney that has been made in the past, to close or open bank accounts, and to apply to change a representative payee. Generally, a guardian cannot revoke a trust that someone else has established for an incapacitated person although a guardian has the authority to spend the income paid out to the individual for whom the trust was created for the benefit of that person.



## **Chapter 4**

# **Guardianship of the Person and Public Guardianship**

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We have previously discussed several alternatives to guardianship proceedings. However, often there is no way to avoid a guardianship action. Perhaps all other alternatives have been tried and failed, or perhaps the situation is one for which there is simply no other solution. This chapter describes how to file for a guardianship of the person and also explains when a public guardianship may be necessary.

## 1. Guardianship of the Person

### How is a guardian of the person appointed?

A guardian of the person may be appointed by the court upon petition by an interested person. A petition is a document that contains the fundamental details of the case and states what the court is being asked to do. Interested persons include the guardian of the property, the heirs of the person with a disability,<sup>37</sup> any governmental agency paying benefits to the person, or any person or agency eligible to serve as guardian of the person.<sup>38</sup> A lawyer usually writes and files the petition in court.

### Who will file the petition?

The petition can be filed by any interested person. A petition for the appointment of a guardian of the person can be found at the following link, <http://www.courts.state.md.us/family/forms/ccdr084.pdf>. Maryland law requires the court to appoint an attorney to represent an alleged disabled person who is not already represented by her own attorney at the guardianship hearing.<sup>39</sup>

<sup>37</sup> In the chapters relating to guardianships, the terms “person with a disability” and “alleged disabled person” are both used. Maryland law refers to “person with a disability” but some legal practitioners prefer to use the term “alleged disabled person” when referring to someone for whom the

court has not yet made a formal adjudication of disability.

<sup>38</sup> MD. CODE ANN., Estates and Trusts § 13-101(j) and Maryland Rule 10-103(f)(1)

<sup>39</sup> MD. CODE ANN., Estates and Trusts § 13-705(d)



## What does the petition contain?

The petition contains all of the basic facts about the situation. The following is a list of the required contents of the petition for guardianship of the person:

- The petitioner's name, address, age, and telephone number;
- The petitioner's family or other relationship to the alleged person with a disability;
- A brief description of the disability and how it affects the person's ability to function;
- The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a person with a disability, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning her person, including provisions for health care, food, clothing, or shelter, because of a disability or disease and a description of less restrictive alternatives that have been attempted and have failed;
- An identification of any instrument nominating a guardian or constituting a durable power of attorney, with a copy attached to the petition, if possible, and, if not, an explanation of its absence;
- If a guardian or conservator<sup>40</sup> has been appointed for the alleged person with a disability in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court;
- A list of (a) the name, age, sex, and address of the alleged person with a disability, (b) the name and address of the persons with whom the person with a disability resides, and (c) if the person with a disability resides with the petitioner, the name and address of another person on whom service can be made;
- The name, address, telephone number, and nature of interest of all other interested persons and all other persons exercising control of the alleged person with a disability, to the extent known or reasonably ascertainable;

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40 "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property

or a person legally authorized to perform substantially the same functions. MD. CODE ANN., Estates and Trusts § 13-301(d)





- If the alleged person with a disability is represented by an attorney, the name and address of the attorney;
- A statement that physicians' certificates are attached, or if not, why not;
- If the petition also seeks a guardianship of the property, the additional information regarding the property the person owns or to which the person is entitled;
- A statement of the relief sought.<sup>41</sup>

### **What else is filed with the petition?**

In addition to the contents above, the law states that the guardianship petition must also include two certificates of competency from the following health care providers:

1. Two licensed physicians who have examined the person with a disability; or
2. One licensed physician who has examined the person with a disability and one licensed psychologist or licensed certified social worker who has evaluated the person with a disability.<sup>42</sup>

One of the health care providers must have examined the person within 21 days of the filing of the petition.

### **Will there be a hearing?**

In all guardianship cases there will be a hearing before a judge or jury on the facts presented in the petition. The petitioner has the burden of proof and must present clear and convincing evidence of the need for guardianship of the person. In a guardianship of the person case, the petitioner must prove:

- that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provision of health care, food, clothing or shelter;
- that this lack of capacity is caused by mental disability, disease, or addiction to drugs; and
- that no less restrictive form of intervention is available that is consistent with the person's welfare and safety.<sup>43</sup>

41 Maryland Rule 10-102(c)

42 Maryland Rule 10-202(a)

43 MD. CODE ANN., Estates and Trusts §13-705;  
Maryland Rule 10-205



Additionally, the petitioner must also present evidence that the proposed guardian is fit and proper to be appointed, is capable of carrying out the responsibilities of a guardian, and that no one of higher priority is available.<sup>44</sup>

### **Who may be appointed guardian of the person?**

The guardianship law lists potential guardians in order of preference. The court will appoint a guardian of the person in this order of preference:

1. A person, agency or corporation designated in writing by the person when he or she was at least 16 years of age and had the mental capacity at the time of the designation to make an intelligent choice at the time the person with a disability executed the designation.
2. A health care agent appointed by the person with a disability in accordance with the Health Care Decisions Act.
3. The person's spouse.
4. The person's parents.
5. A person, agency, or corporation nominated by the will of a deceased parent of the person.
6. The person's children.
7. Adult persons who would be the person with a disability's heirs if the person with a disability were dead.
8. A person, agency, or corporation nominated by a person caring for the person with a disability.
9. Any other person, corporation or agency considered appropriate by the court.

(continued)

<sup>44</sup> MD. CODE ANN., Estates and Trusts §13-707 *et seq.*



10. For adults less than 65 years old, the director of the local Department of Social Services or, for adults 65 years old or older, the Secretary of Aging or the director of the Area Agency on Aging, except in those cases where the Department of Social Services has been appointed guardian of the person prior to age 65. The Secretary of Aging may delegate responsibilities of guardianship to staff persons whose names and positions have been registered with the court.<sup>45</sup>

(The court must select the best-qualified person among those of equal priority but may disregard priority for good cause.)

### **What are the powers and duties of a guardian of the person?**

A court order appointing a guardian of the person must list the powers and duties given to the guardian. The law states that the court may grant to the guardian only those powers necessary to provide for the demonstrated need of the person with a disability.<sup>46</sup>

For example, the court can appoint a guardian of the person to make a single decision, such as authorizing a medical procedure or a specified change in residence, or the court may decide upon a full guardianship, authorizing the guardian to manage most aspects of an individual's life.

### **When must a guardian seek special permission of the court?**

The order appointing the guardian describes what the guardian can and cannot do. Unless the order says otherwise, the guardian of the person can act without special permission of the court. However, there are some instances in which the guardian must seek special permission of the court:

#### **Life Threatening Medical Treatment**

The court must authorize the guardian's decision to consent to medical treatment that poses a substantial risk to the life of the person with the disability.<sup>47</sup>

45 MD. CODE ANN., Estates and Trusts § 13-707

46 MD. CODE ANN., Estates and Trusts § 13-708(a)(1)

47 MD. CODE ANN., Estates and Trusts § 13-708(c)(1) and (2)



**For example, a guardian would have to get court authorization to consent to major heart surgery or to refuse a feeding tube for a person with Alzheimer’s disease.**

The court may, under certain circumstances, authorize a guardian to make a decision regarding medical procedures that involve a substantial risk to life without further court authorization, if:

1. The person with the disability has executed an advance directive that authorizes the guardian to make such decisions but does not appoint a health care agent; or
2. The guardian is also the individual’s spouse, adult child, parent, adult brother or sister or a friend or relative and is determined by the court to be familiar with the personal beliefs, values, and medical situation of the disabled person.<sup>48</sup>

### **Changes in Abode**

Moving from a familiar environment can be enormously stressful for a person with a disability. Maryland law requires the guardian to obtain court authorization before moving the disabled person from one “classification of abode” to another.<sup>49</sup>

**For example, if the guardian wishes to move the disabled person from a private home to a nursing home, or from an assisted living home to a nursing home, she must ask the court’s permission.**

A guardian does not need permission to move a person with a disability from one nursing home to another.

### **Commitment to a Mental Health Facility**

The guardian of an adult person with a disability does not have the authority to commit that person to a psychiatric facility without an involuntary admission proceeding.<sup>50</sup>

48 MD. CODE ANN., Estates and Trusts § 13-708(c)(1) and (2)

50 MD. CODE ANN., Estates and Trusts § 13-708(b)(2) and MD. CODE ANN., Health General § 10-613 *et seq.*

49 MD. CODE ANN., Estates and Trusts § 13-708(b)(2)



The individual applying for the involuntary admission of another must have a legitimate interest in the welfare of the individual for whom the admission is sought.<sup>51</sup> The applicant must then submit an application on the form required by the Veterans' Administration if the application is submitted to a Veterans' Administration hospital or on the form required by the Maryland Department of Health and Mental Hygiene if the application is submitted to an inpatient facility other than a Veterans' Administration hospital (see form at, <http://www.dhmh.state.md.us/mha/forms.html>).<sup>52</sup> In order to initiate the admission of an individual, two physicians, or one physician and one psychologist, must also complete certificates to be included with the application.<sup>53</sup>

The applicant must demonstrate by clear and convincing evidence that, at the time of the hearing, each of the following elements exist as to the individual whose involuntary admission is sought:

1. The individual has a mental disorder;
2. The individual needs in-patient care or treatment;
3. The individual presents a danger to the life or safety of the individual or of others;
4. The individual is unable or unwilling to be voluntarily admitted to the facility;
5. There is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual;
6. If the individual is 65 years old or older and is to be admitted to a state facility, the individual has been evaluated by a geriatric evaluation team and no less restrictive form of care or treatment was determined by the team to be appropriate.<sup>54</sup> These teams are currently referred to as AERS teams (see box below).

51 COMAR 10.21.01.03A(1)

53 COMAR 10.21.01.04A

52 COMAR 10.21.01.03A(2)(a) and(b)

54 MD. CODE ANN., Health General § 10-632 *et seq*



### **Adult Evaluation and Review Services (AERS)**

Adult Evaluation and Review Services (AERS) is a Maryland Medicaid program that provides comprehensive evaluations for aged and functionally disabled adults who need long term care and are at risk for institutionalization. AERS staff are located in local health departments and perform evaluations on all individuals, ages 65 years or older, who are referred for admission to a state psychiatric facility. The law requires that AERS staff evaluate each individual and makes a recommendation regarding their placement in the least restrictive environment. More information on AERS can be found at the following website, <http://www.dhmh.maryland.gov/mma/longtermcare/html/Adult%20Evaluation%20and%20Review%20Services.htm>.

#### **Must a guardian of the person file an annual report?**

Yes. A guardian of the person must file a report with the court every year. The report is a means for the court to supervise the guardian's actions, to verify that the needs of the person with the disability are being met, and to question whether the guardianship should be modified or terminated.<sup>55</sup> There is a standard annual report form that the guardian can obtain from the county court clerk's office.

#### **Is a guardian of the person entitled to a fee?**

No. A guardian of the person is not entitled to a fee from the person's funds for her services unless she is also providing care and maintenance to the person. In that case, the guardian of the person may ask the guardian of the property for reimbursement for such things as the cost of the person's room and board.<sup>56</sup>

#### **Can a court remove a guardian of the person?**

Yes. If a guardian fails to perform the duties of that position appropriately, she may be removed or subject to other sanctions either on the court's own initiative or on the petition of an interested person.<sup>57</sup> If an interested party files such a petition, the court will set a hearing date. If the court finds grounds for removal

<sup>55</sup> Maryland Rule 10-206(e)

<sup>57</sup> Maryland Rule 10-208

<sup>56</sup> MD. CODE ANN., Estates and Trusts § 13-708(d)(2)



as a result of the hearing, it may remove the guardian and/or require the guardian to perform any neglected duties as well as impose other sanctions as the court deems appropriate.<sup>58</sup>

### **When does a guardianship of the person end?**

The guardianship does not end automatically when the subject of the guardianship dies. The guardian must file a petition to terminate the guardianship, together with a copy of the person's death certificate, within 45 days after discovering that the person has died.<sup>59</sup>

If termination is because of the cessation of the disability that prompted the appointment of a guardian or other good cause, notice and a hearing are required.<sup>60</sup> If the guardian discovers that grounds for termination may exist, she must file a petition requesting termination within 45 days after the discovery. The person with a disability or any other interested party may file a petition to terminate at any time after discovering that grounds for termination may exist.<sup>61</sup> The petition must include the following:

- the petitioner's name, address and relationship to the individual with the disability;
- the name and address of each interested person;
- a statement of facts establishing the grounds for termination; and
- a statement that the guardian has exercised no control over any of the person's property.<sup>62</sup>

If the cause for termination is the cessation of the disability that prompted the appointment of the guardian, a certificate attesting to the cessation of the disability, signed by a physician who has examined the person within 21 days of the filing of the petition, must be attached.<sup>63</sup>

58 Maryland Rule 10-208(d)-(e)

59 Maryland Rule 10-209

60 Maryland Rule 10-209(c)(1)

61 Maryland Rule 10-209(c)(2)

62 Maryland Rule 10-209(c)(4)

63 Maryland Rule 10-209(c)(5)(A)



## **2. Public Guardianship**

### **What is a public guardianship?**

A public guardianship is one in which the director of the local Department of Social Services or the director of the local Agency on Aging is appointed to serve as guardian of the person. This generally happens when there are no willing and responsible family members or friends to serve as guardian or there is an absence of resources to employ a private guardian.

If the individual with a disability is younger than 65 years old, the director of the local Department of Social Services is appointed to serve as guardian; if the person is 65 or older, the director of the Maryland Office on Aging or the local Agency on Aging is appointed guardian. A public agency cannot serve as a guardian of the property. If there is no one willing to act as guardian of the property, the court will usually appoint a private attorney, who will take a fee from the guardianship estate of the individual with a disability.

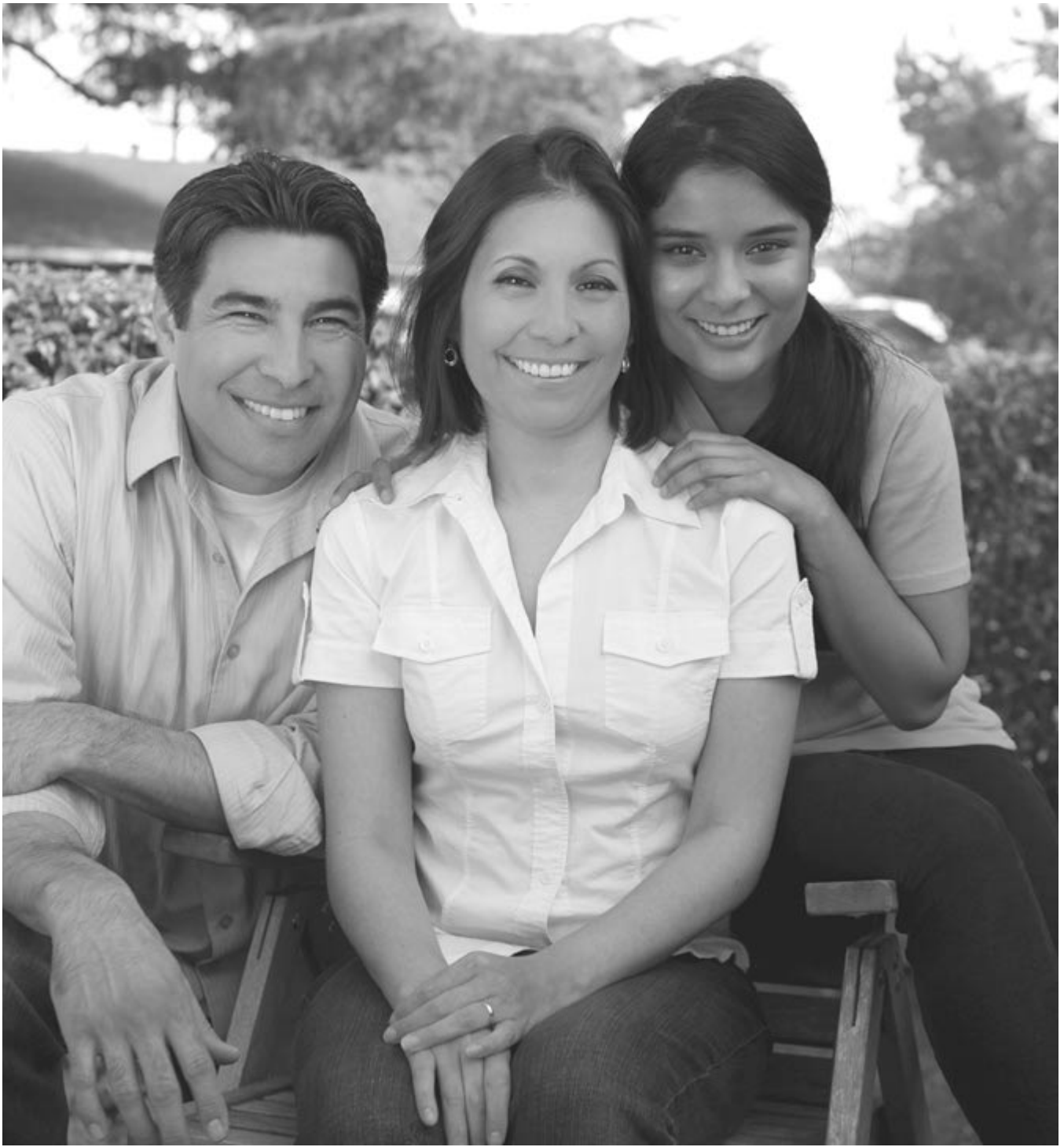
### **What does a public guardian do?**

A public guardian, usually a staff person from a local agency, fills the role of guardian, visiting an individual with a disability on a regular basis and making sure that her needs are met. The public guardian does the same things that a private guardian does, including: buying food or clothing for the person from the person's funds, signing consent forms for medical care, and making decisions about where the person will live.

### **What is the Adult Public Guardianship Review Board?**

There is an Adult Public Guardianship Review Board in each county of Maryland and the City of Baltimore to review public guardianships. It assesses each public guardianship case in that county twice a year. The purpose of the board is to ensure that the public guardian is doing a good job for the individual with a disability. The individual has a right to be at the review, if able, and to be represented by an attorney. The board gathers information and hears testimony from the individual, her attorney or anyone else who has important information about the case. The board decides whether the guardian should be doing anything differently, suggests ways to address problems which arise, and recommends to the court whether the guardianship should be continued, modified or terminated. The court may or may not follow the recommendation of the board.





## Chapter 5

# Guardianship of the Property

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A court can appoint a guardian of the property to manage funds, do banking, pay bills, sell assets, settle claims, and generally act as a property manager for someone who cannot act for herself. This chapter will provide more information on the role and responsibilities of a guardian of the property.

### **How is a guardian of the property appointed?**

A guardian of the property may be appointed by the court upon petition by an interested person. Interested persons include the guardian of the person, the heirs of the individual with a disability, any governmental agency paying benefits to the person, or any person or agency eligible to serve as guardian of the property.<sup>64</sup>

### **Who will file the petition?**

As with guardianship of the person, the petition for guardianship of the property can be filed by any interested person. A petition for the appointment of a guardian of the property can be found at the following link, <http://www.courts.state.md.us/family/forms/ccdr084.pdf>. However, Maryland law requires the court to appoint an attorney to represent an alleged disabled person who is not already represented by her own attorney at the guardianship hearing.<sup>65</sup>

### **What does the petition contain?**

Like the petition for guardianship of the person, the petition generally contains all of the basic facts of the case. The following is a list of the required contents of a petition for guardian of the property:

- The petitioner's name, address, age, and telephone number;
- The petitioner's family or other relationship to the alleged disabled person;
- A brief description of the alleged disability;

64 MD. CODE ANN., Estates and Trusts § 13-101(j) and Maryland Rule 10-103(f)(1)

65 MD. CODE ANN., Estates and Trusts § 13-211(b)



- The reasons why the court should appoint a guardian of the property and allegations demonstrating the inability of the alleged disabled person to manage his or her own property and affairs effectively because of physical or mental disability or disease.
- An identification of any instrument nominating a guardian for the alleged disabled person or constituting a durable power of attorney;
- If a guardian or conservator<sup>66</sup> has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court;
- The name, age, sex, and address of the alleged disabled person, the name and address of the persons with whom the alleged disabled person resides, and if the alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;
- To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;
- If the alleged disabled person is represented by an attorney, the name, address, and telephone number of the attorney.
- The nature, value, and location of the property of the alleged disabled person;
- A brief description of all other property in which the alleged disabled person has a concurrent interest with one or more individuals;
- A statement that all the exhibits required by the law are attached or, if not attached, the reason that they are absent;
- A statement of the relief sought.
- Certificates of competency (see below).<sup>67</sup>

<sup>66</sup> “Conservator” means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor’s property or a person legally authorized to perform substantially

the same functions. MD. CODE ANN., Estates and Trusts § 13-301(d).

<sup>67</sup> Maryland Rule 10-301(c)



### **Certificates of Competency**

In addition to the contents above, the law states that the guardianship petition must also include two certificates of competency from the following health care professionals:

1. Two licensed physicians who have examined the person with a disability; or
2. One licensed physician who has examined the person with a disability and one licensed psychologist or licensed certified clinical social worker who has evaluated the person with a disability.<sup>68</sup>

A copy of any document nominating a guardian of the person or constituting a durable power of attorney should also be included. Moreover, one of the health care providers must have examined the person within 21 days of the filing of the petition.

### **Will there be a hearing?**

In all cases there will be a hearing before a judge on the facts presented in the petition. The petitioner has the burden of proof, although no standard of proof is specified in the statute for guardianship of the property. In a guardianship of the property case, the petitioner must prove:

1. the person is unable to manage his or her property effectively;
2. this lack of ability is caused by physical or mental disability, disease, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance of the person; and
3. the person has or may be entitled to property or benefits that require proper management.<sup>69</sup>

68 Maryland Rule 10-202(a) and Maryland Rule 10-301(d)

69 MD. CODE ANN., Estates and Trusts § 13-201(c)



The petitioner must also present evidence that the proposed guardian is a fit and appropriate person to be appointed, that she is capable of carrying out the responsibilities of a guardian, and that no one of higher priority is available to serve (see list of priority for guardians below).

### **Who may be appointed guardian of the property?**

Maryland guardianship law lists potential guardians in order of preference. The court will appoint a guardian of the property in this order of preference:

1. A conservator, committee, guardian of property, or other like fiduciary appointed by any appropriate court of any foreign jurisdiction in which the minor or individual with a disability resides;
2. A person or corporation nominated by the minor or individual with a disability if the designation was signed by the minor or individual with a disability after her 16th birthday, and, in the opinion of the court, she had sufficient mental capacity to make an intelligent choice at the time she executed the designation;
3. The individual's spouse;
4. The individual's parents;
5. A person or corporation nominated by the will of a deceased parent;
6. The individual's children;
7. The people who would be her heirs if she were dead;
8. A person or corporation nominated by the person or the organization that is caring for her;
9. A person or corporation nominated by a governmental agency which is paying benefits to her;
10. Any other person considered appropriate by the court.<sup>70</sup>

<sup>70</sup> MD. CODE ANN., Estates and Trusts § 13-207



### **What are the powers and duties of a guardian of the property?**

A guardian of the property must act as a fiduciary of the alleged disabled person. A fiduciary is someone who can be trusted to act in the best interest of the person with the disability. In Maryland, the standard of care that must be met by the guardian of the property is that of a person of ordinary prudence dealing with her own property.<sup>71</sup>

The guardian of the property has broad powers to handle the assets and income of the person with the disability. This includes the authority to collect all money due to that individual, such as pension and Social Security checks, debts owed, and rent or mortgage payments.<sup>72</sup>

Bank accounts must be titled in the name of the guardian as “Guardian for” the person with the disability, and the guardian must use those funds for the person’s expenses.<sup>73</sup> The guardian may also spend the person’s money to pay for housing, food, clothing, transportation, medical care, child support or alimony, other bills the person may owe, to file tax returns and pay taxes, and generally to pay for the expenses of the person.<sup>74</sup>

The guardian may also make decisions about the person’s property, such as whether to sell or mortgage real estate, whether to invest in stocks or bonds, or whether to borrow money to make repairs to a home.<sup>75</sup>

### **Does a guardian have to post a bond?**

If the guardian is an individual, the court may, in its discretion, require a bond if necessary for the protection of the assets subject to the guardianship order.<sup>76</sup> A bond is a kind of insurance policy that guarantees that, if the guardian mishandles the person’s funds, the bonding company will cover the loss. Generally, the court will not require a corporate guardian to furnish bond, unless the instrument nominating the guardian or creating the estate specifically requires the guardian to give bond and the estate is valued at more than \$10,000.<sup>77</sup>

71 MD. CODE ANN., Estates and Trusts § 13-212

75 *Id.*

72 MD. CODE ANN., Estates and Trusts § 15-102

76 *Id.*

73 Maryland Rule 10-704(a)(2)

77 Maryland Rule 10-702(a)

74 MD. CODE ANN., Estates and Trusts § 15-102



## What reports must a guardian make to the court?

The guardian of the property must file an inventory of all property within 60 days of being appointed guardian.<sup>78</sup> Each item must be clearly described and the fair market value of each item must be stated. The guardian must also file an annual accounting one year after being appointed and every year after that.<sup>79</sup>

### What is an accounting?

The guardian must keep records of everything she does with the money and property subject to the guardianship order. The accounting must contain the following:

- A description of all assets of the person and where the assets are located.
- A summary of all expenses since the last report was filed, the current balance of bank accounts, and the value of the person's assets.
- A list of all property bought or sold, and the names of the person who bought or sold the assets.
- A summary of all income the person with the disability received.<sup>80</sup>

The trust clerk for the court where the guardianship is filed can supply a form for the accounting. The guardian must swear that the information she is giving is true. Additionally, the Maryland Rules provide a form that describes exactly what needs to be included in the accounting. This can be found at the following link, [http://www.michie.com/maryland/lpext.dll/mdrules/1ba1/9/b65/c20/c38?f=templates&f=document-frame.htm&2.0#JD\\_mr-10-708](http://www.michie.com/maryland/lpext.dll/mdrules/1ba1/9/b65/c20/c38?f=templates&f=document-frame.htm&2.0#JD_mr-10-708).

<sup>78</sup> Maryland Rule 10-707(a)

<sup>80</sup> *Id.*, See also Maryland Rule 10-708

<sup>79</sup> Maryland Rule 10-706(b)



### **Who owns the property—the guardian or the person with the disability?**

The guardian holds legal title to the property after she is appointed, but can only use the property to provide for the best interest of the disabled person.<sup>81</sup> The guardian may not use the person’s property to benefit the guardian. If the exercise of the guardian’s power is improper, the guardian is liable for breach of her fiduciary duty to the disabled person or to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.<sup>82</sup>

### **Is a guardian of the property entitled to a fee?**

Yes. The guardianship statute provides that the guardian of the property can receive a fee for services provided each year. The guardian is entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust. No petition or hearing is required to entitle the guardian to compensation and expenses. Upon the petition of any interested person and upon a finding by the court that unusual circumstances exist, the court may increase or decrease compensation.<sup>83</sup>

### **Can a court remove a guardian of the property?**

Yes. If a guardian of the property fails to perform her duties appropriately, she may be removed or may be subject to other sanctions on the court’s own initiative or on the petition of an interested person.<sup>84</sup> If an interested party files such a petition, the court will set a hearing date. If the court finds grounds for removal as a result of the hearing, it may remove the guardian and appoint a substitute or successor guardian.<sup>85</sup> The removed guardian must file a final accounting and deliver all property to the substituted or successor guardian.<sup>86</sup> The court may also disallow any commissions from the time the default began, require the guardian to perform the neglected duties, and/or impose other sanctions it deems appropriate.<sup>87</sup>

81 MD. CODE ANN., Estates and Trusts § 13-206(c)  
(1). The transfer of title is not a transfer or alienation within the meaning of any federal or State statute or regulation, insurance policy, pension plan, contract, will, or trust instrument that imposes restrictions on or penalties for transfer or alienation by the minor or disabled person of his rights or interest.

82 MD. CODE ANN., Estates and Trusts § 13-206  
and § 13-216

83 MD. CODE ANN., Estates and Trusts § 13-218

84 Maryland Rule 10-712

85 Maryland Rule 10-712(e)

86 Maryland Rule 10-712(f)

87 Maryland Rule 10-712(g)





## When does a guardianship of the property end?

Guardianship of the property ends upon one of the following conditions:

- The cessation of the disability that prompted the appointment of a guardian;
- The individual's death; or
- Any other good cause for termination.<sup>88</sup>

The termination petition must be signed and verified and include a description of the petitioner's interest in the estate, the name and address of each person entitled to notice, a statement of facts establishing grounds for termination, and documentation of those grounds (such as a medical certificate or a death certificate).<sup>89</sup> If the guardian is the petitioner, she must submit a final accounting and a proposed final distribution of any remaining assets. If the petitioner is someone else, the guardian must file a final accounting as directed by the court.<sup>90</sup>

Termination of the appointment of a guardian ends that person's rights and powers pertaining to the office of guardian of the property.<sup>91</sup> Unless the court orders otherwise, the guardian whose appointment has ended has the duty to perform acts necessary to protect the estate and deliver the property to the successor guardian. Termination of the appointment neither discharges the former guardian from liability for transactions or omissions that occurred before the guardianship ended, nor relieves her of the duty to preserve, account for, and deliver the estate's property to the successor guardian.<sup>92</sup>

88 Maryland Rule 10-710(a)

89 Maryland Rule 10-710(d)

90 Maryland Rule 10-710(f)

91 MD. CODE ANN., Estates and Trusts § 13-220(b)(1)

92 MD. CODE ANN., Estates and Trusts § 13-220(b)(2)



## **Chapter 6**

# **Emergency Guardianship**





## What if there is not time to follow normal guardianship procedures?

When the situation is urgent and a guardian must be appointed immediately, the law provides for the appointment of an emergency guardian. Emergency procedures can be used when a person is living in conditions that pose substantial risk of death or serious physical harm to herself or others.

For example, if a person is questionably competent, is living in a home with no heat, refuses to leave the home, and frigid weather is predicted, someone may petition to have an emergency guardian appointed to remove the person to a safe place.

Additionally, sometimes a person needs medical treatment that is not urgent, but should not be delayed for the two to three months that it takes to appoint a guardian of the person. In this situation, an emergency guardianship may be the best solution.

For example, a person may need a heart bypass operation to correct serious heart disease. This procedure would not meet the definition of emergency care, but it should not wait. If the person cannot consent to the operation because she is incapable of making informed decisions, this would be an appropriate case for an emergency guardianship.

## What is the procedure for an emergency guardianship?

The procedure in an emergency guardianship case is similar to that in a standard guardianship case, except that the process is expedited.

To begin a case, an interested person files a petition with the court requesting it to authorize emergency protective services. As with the other guardianship petitions, you should speak with an attorney before filing a petition. If the person is in the hospital, the hospital's social services or legal department may be able to write the petition and pursue emergency guardianship. The petition must contain the following:

- The name and address of the petitioner and the petitioner's relationship to the person alleged to be in need of emergency protective services;
- The name, address, and age of the person alleged to be in need of emergency protective services, and the name, address, and age of the proposed temporary guardian;



- A brief description of the disability;
- The proposed protective services;
- The reason for seeking the assumption of jurisdiction by the court and for the relief sought;
- A statement of reasons why the petitioner believes that: (a) the person alleged to be in need of emergency protective services is living in conditions presenting a substantial risk of death or immediate and serious physical harm to that person or others; (b) the person alleged to be in need of emergency protective services lacks the capacity to make or communicate responsible decisions; and (c) no person authorized by law or court order to give consent is available to consent to emergency protective services;
- An explanation of steps taken by the petitioner to obtain the consent of the person alleged to be in need of emergency protective services to the proposed services and the response of the person; and
- If the person alleged to be in need of emergency protective services is represented by an attorney, the name and address of the attorney. If the person is not represented by an attorney, a request that one be appointed.<sup>93</sup>

It is not necessary to attach physician's certificates to the petition as it is in a standard guardianship of the person filing. However, the judge will require medical evidence of the person's incapacity.

### **What rights does the person with the disability have?**

The person named in an emergency proceeding has rights similar to those in a standard guardianship case, except that the judge may set very short time deadlines, and may waive certain rights because an emergency exists. Those rights are:

- The person must be given notice at least 24 hours before the hearing that a petition has been filed against her and that the hearing will be held, unless the court shortens the time because immediate and reasonably foreseeable harm

(continued)

93 Rule 10-210(b)



may come to the person or others if the proceeding is delayed and attempts to give notice have been made.<sup>94</sup>

- The person has the right to be present at the hearing, unless she has knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity. She also has the right to present evidence and to cross examine witnesses.<sup>95</sup>
- The person has the right to counsel whether or not she is present at the hearing. If the person cannot afford to pay an attorney, one will be appointed for her.<sup>96</sup>
- If the person has a disability and cannot attend a hearing at the courthouse, the court may hold the hearing at a place to which the person has reasonable access.<sup>97</sup>
- If the court does issue an emergency order, the person, the temporary guardian, or any interested person may petition the court to have the emergency order set aside or modified at any time. The person or the guardian of the person may appeal any findings of a court to an appellate court.<sup>98</sup>

### **What does the court decide in an emergency guardianship hearing?**

Using a clear and convincing evidence standard, the court must decide:

1. Whether the person lacks sufficient capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing or shelter, because of any mental disability, disease, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare or safety;<sup>99</sup>

94 MD. CODE ANN., Estates and Trusts § 13-709(e)

95 MD. CODE ANN., Estates and Trusts § 13-709(f)(1)  
(i) and (iii)

96 MD. CODE ANN., Estates and Trusts § 13-709(f)(1)(ii)

97 Rule 10-212(b)

98 MD. CODE ANN., Estates and Trusts § 13-709(h)  
and (j)

99 MD. CODE ANN., Estates and Trusts § 13-709(b)(1);  
MD. CODE ANN., Estates and Trusts § 13-705(b)



2. If the person is living in conditions that present a substantial risk of death or immediate and serious physical harm to himself or herself or to others;<sup>100</sup> and
3. Whether there is anyone else available who is authorized by law or court order to give consent to the emergency protective services requested by the petitioner.<sup>101</sup>

If the court finds that an emergency guardian should be appointed, the court will sign an order specifying what the guardian can do to remove the emergency. The court may authorize the guardian to forcibly enter the premises of the person with the disability in order to provide protective services or to remove the person to a safe location. However, forcible entry may be ordered only after a showing that attempts have been made to gain voluntary access to the premises. Anyone making forcible entry must be accompanied by a police officer, a representative of the local Department of Social Services, and if appropriate, a representative of the local Department of Health.<sup>102</sup> Additional limitations on a court order include the following:

1. The court may only order those services that are necessary to remove the conditions creating the emergency and shall specify the approved services in its order;<sup>103</sup>
2. Protective services may be provided under an initial emergency order for not more than 144 hours;<sup>104</sup>
3. The court may extend the terms of the emergency order and the appointment of the temporary guardian until a guardian of the person is properly appointed, if the petitioner shows that the emergency conditions will probably continue or recur beyond the expiration of the emergency order;<sup>105</sup> and
4. The temporary guardian shall submit a report describing the circumstances of the emergency guardianship including the name, place, date, and nature of the services, and the use of forcible entry, if any, to the court and the director of the local Department of Social Services.<sup>106</sup>

100 MD. CODE ANN., Estates and Trusts § 13-709(b)  
(2); MD. CODE ANN., Estates and Trusts § 13-101(f)

101 MD. CODE ANN., Estates and Trusts § 13-709(b)(3)

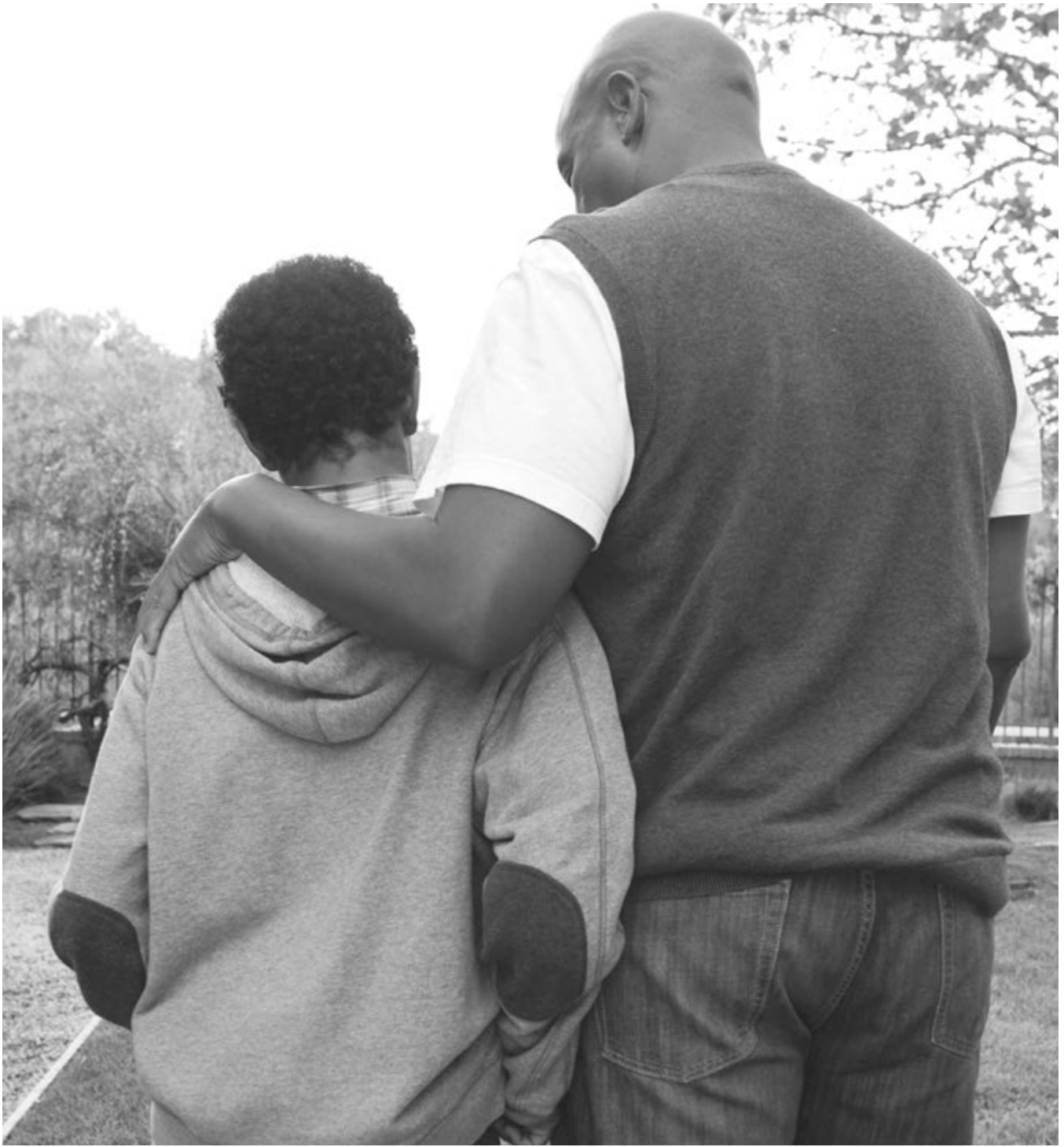
102 MD. CODE ANN., Estates and Trusts § 13-709(c)(7)

103 MD. CODE ANN., Estates and Trusts § 13-709(c)  
(1) and (2)

104 MD. CODE ANN., Estates and Trusts § 13-709(c)(3)

105 MD. CODE ANN., Estates and Trusts § 13-709(c)(5)

106 MD. CODE ANN., Estates and Trusts § 13-709(i)



## Chapter 7

### Where to get Help

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## Statewide

### Senior Information and Assistance

Maryland Department of Aging  
301 W. Preston Street, Suite 1007  
Baltimore, MD 21201  
(410) 767-1100 or (800) 243-3425  
Maryland Relay Service: (800) 201-7165  
Website: <http://www.aging.maryland.gov/contact.html>

### Guardianship

Public Guardianship & Legal Services  
Maryland Department of Aging  
301 W. Preston Street, Suite 1007  
Baltimore, MD 21201  
(410) 767-1074

### Consumer Assistance

Health Education and Advocacy Unit  
Consumer Protection Division Office of the  
Attorney General  
200 Saint Paul Place, 16th Floor  
Baltimore, MD 21202-2022  
(410) 528-1840  
TDD (410) 576-6372

### Statewide Legal Service Programs

*Free legal information and representation  
in cases involving nursing homes:*

Nursing Home Program  
Legal Aid Bureau, Inc.  
29 West Susquehanna Avenue, Suite 305  
Towson, MD 21204  
(410) 296-6705 or (800) 367-7563

### Sixty Plus Program

Maryland Volunteer Lawyers Services  
1 North Charles Street, Suite 222  
Baltimore, MD 21201  
(410) 547-6537  
(800) 510-0050  
Website: <http://www.mvlslaw.org>

## Maryland Legal Services Program Contractor for Adult Legal Services:

### Jennings & Treff

(multiple Maryland counties)  
109 S. Second Street  
Denton, MD 21629  
(410) 479-2800

### Ria P. Rochvarg, P.A.

(multiple Maryland counties)  
P.O. Box 1907  
Ellicott City, MD 21041  
410-313-9725; fax 410-313-8232  
[rrochvarg@comcast.net](mailto:rrochvarg@comcast.net)

### Skolnick & Leishman, PC

(multiple Maryland counties)  
14300 Gallant Fox Ln # 212  
Bowie, MD 20715-4033  
(301) 352-0200

## Allegany County

### Senior Information and Assistance

Human Resources Development Commission  
Area Agency on Aging  
125 Virginia Avenue  
Cumberland, MD 21502  
(301) 777-5970 or TTY (800) 735-2258  
Website: <http://www.alleganyhrdc.org/guardian.html>

### Department of Social Services

1 Frederick Street  
Cumberland, MD 21502  
(301) 784-7000  
Website: <http://www.dhr.state.md.us/county/allegany/contact.php>

### Legal Services Program

Allegany Law Foundation, Inc.  
110 Greene Street  
Cumberland, MD 21502  
(301) 722-3390  
Website: <http://alleganylaw.net/default.aspx>





### **Legal Aid Bureau, Inc.**

110 Greene Street  
Cumberland, MD 21501-1079  
(866) 389-5243  
(301) 777-7474

### **Anne Arundel County**

#### **Department of Aging and Disabilities**

Area Agency on Aging  
2666 Riva Road, Suite 400  
Annapolis, MD 21401  
(410) 222-4464 or (800) 492-2499  
Information & Services Line: (410) 222-4257  
TTY (410) 222-4464  
Website: <http://www.aacounty.org/Aging/index.cfm>

#### **Department of Social Services**

80 West Street  
Annapolis, MD 21404  
(410) 269-4500  
TDD: (410) 974-8590  
Website: <http://www.dhr.state.md.us/county/ann/>

#### **Legal Services Programs**

##### **Senior Citizens Law**

Project Legal Aid Bureau, Inc.  
229 Hanover Street  
P.O. Box 943 (mailing address)  
Annapolis, MD 21401  
Local (410) 263-8330 or (410) 972-2700 or  
(800) 666-8330

##### **Lawyer Referral Service**

(referrals for fee and no-fee services)  
Anne Arundel Bar Association  
P.O. Box 161  
Annapolis, MD 21404  
(410) 280-6950

### **Baltimore City**

#### **Senior Information and Assistance**

Commission on Aging and Retirement  
Education (CARE Services)  
Area Agency on Aging  
1001 E. Fayette Street  
Baltimore, MD 21202  
(410) 396-4932  
Website: <http://www.baltimorehealth.org/care.html>

#### **Department of Social Services**

Talmadge Branch Building  
1910 N. Broadway Street  
Baltimore, MD 21213  
(443) 378-4600  
Website: <http://dhr.maryland.gov/county/baltimorecity/contact.php>

#### **Bar Association of Baltimore City**

##### **Legal Services to the Elderly Program**

111 North Calvert Street, Suite 631  
Baltimore, MD 21202  
(410) 396-1322  
Program Director: Benjamin M. Grossman, Esq.

#### **Sixty Plus Program**

Lawyer Referral and Information Service  
111 North Calvert Street, Suite 627  
Baltimore, MD 21202  
(410) 539-3112 (no walk-ins)

#### **Legal Aid Bureau, Inc.**

500 East Lexington Street  
Baltimore, MD 21202  
(410) 951-7777 or (800) 999-8904  
Website: <http://www.mdlab.org/Home%20Page>

#### **Maryland Volunteer Lawyers Service**

16 South Calvert Street, Suite 700  
Baltimore, MD 21202  
(410) 547-6537  
(800) 510-0050



### **Legal Services to the Elderly**

Baltimore City Bar Association  
111 North Calvert Street, Suite 631  
Baltimore, MD 21202  
(410) 280-6961  
Website: <http://www.aabar.org/find.html>

### **Baltimore County**

#### **Senior Information and Assistance**

Department of Aging  
Area Agency on Aging  
611 Central Avenue  
Towson, MD 21204  
(410) 887-2109 or TTY (410) 887-2594  
Guardianship Office: (410) 887-5793  
Website: <http://www.baltimorecountymd.gov/Agencies/aging/index.html>

#### **Department of Social Services**

6401 York Road  
Baltimore, MD 21212  
(410) 853-3000  
Over 65: (410) 853-3531  
Under 65: (410) 853-3577  
Website: <http://www.dhr.state.md.us/county/balco/>

#### **Legal Services Programs**

Legal Services for the Elderly  
Legal Aid Bureau, Inc.  
29 West Susquehanna Avenue, Suite 305  
Towson, MD 21204  
(410) 296-6705 or (800) 367-7563

#### **Sixty Plus Lawyer Referral Service**

401 Bosley Avenue  
Towson, MD 21204  
(410) 337-9100

### **Calvert County**

#### **Senior Information and Assistance**

Office on Aging  
Area Agency on Aging  
450 West Dares Beach Road  
Prince Frederick, MD 20678  
(410) 535-4606  
D.C. (301) 855-1170  
Website: <http://www.co.cal.md.us/residents/health/aging/>

#### **Department of Social Services**

200 Duke Street  
Prince Frederick, MD 20678  
(410) 550-6900  
Website: <http://www.dhr.maryland.gov/county/calvert/index.php>

#### **Legal Services Programs**

Legal Aid Bureau, Inc.  
Southern Maryland Office  
15364 Prince Frederick Road  
Hughesville, MD 20637  
(301) 932-6661  
(410) 535-3278  
(301) 843-5850 (D.C. area)  
(877) 310-1810

### **Caroline County**

#### **Senior Information and Assistance**

**Upper Shore Aging, Inc.**  
Area Agency on Aging  
100 Shauber Road  
Chestertown, MD 21620  
(410) 778-6000 or (410) 758-6500  
Toll Free: (800) 721-6651  
Website: <http://www.uppershoreaging.org/>

#### **Caroline Senior Center**

403 S. 7th Street, Suite 127  
Denton, MD 21629  
(410) 479-2535



### **Department of Social Services**

207 South Third Street  
Denton, MD 21629  
(410) 819-4500  
Website: <http://www.dhr.state.md.us/county/caroline/>

### **Legal Aid Bureau, Inc.**

Upper Eastern Shore  
210 Marlboro Ave.  
Tred Avon Square, Suite 3  
Easton, MD 21601  
(410) 763-9676  
(800) 477-2543

## **Carroll County**

### **Senior Information and Assistance**

Bureau on Aging  
Area Agency on Aging  
125 Stoner Avenue  
Westminster, MD 21157  
(410) 386-3600—Citizens Services Office  
(410) 386-3800—Bureau of Aging Office  
TDD: 800-735-2258  
Website: <http://ccgovernment.carr.org/ccg/aging/default.asp>

### **Legal Services Programs**

Legal Aid Bureau, Inc.  
Midwestern Maryland Office  
22 S. Market Street Suite 11  
Frederick, MD 21701  
(301) 694-7414  
(800) 679-8813

## **Cecil County**

### **Senior Information and Assistance**

#### **Senior Services and Community Transit**

Area Agency on Aging  
200 Chesapeake Blvd.  
Suite 2550  
Elkton, MD 21921  
(410) 996-5295  
Website: [http://www.ccgov.org/dept\\_aging/](http://www.ccgov.org/dept_aging/)

### **Department of Social Services**

Elkton District Court, Multi Service Building  
170 East Main Street  
Elkton, MD 21921  
(410) 996-0100  
Website: <http://dhr.maryland.gov/county/cecil/>

### **Legal Services Programs**

Legal Aid Bureau, Inc.  
Northeastern Maryland  
103 S. Hickory Ave.  
Bel Air, MD 21014  
(410) 836-8202 (Harford)  
(410) 879-3755 (Baltimore)  
(800) 444-9529

## **Charles County**

### **Senior Information and Assistance**

Department of Community Services  
Aging Division  
Area Agency on Aging  
8190 Port Tobacco Road  
Port Tobacco, MD 20677  
(301) 934-9305 or (301) 870-3388  
TDD: (800) 735-2258  
Website: <http://www.charlescounty.org/cs/aging/default.htm>

### **Department of Social Services**

200 Kent Ave  
La Plata, MD 20646  
(301) 392-6400  
Website: <http://www.dhr.state.md.us/county/charles/index.php>

### **Legal Services Programs**

Legal Aid Bureau, Inc.  
Southern Maryland Office  
15364 Prince Frederick Road  
Hughesville, MD 20637  
(301) 932-6661  
(877) 310-1810



## **Dorchester County**

### **Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
909 Progress Circle, Suite 100  
Salisbury, MD 21804  
(410) 742-0505  
Website: <http://www.macinc.org/>

### **Delmarva Community Services Inc.**

2450 Cambridge Beltway  
Cambridge, MD 21613  
(410) 221-1900  
Website: <http://www.dcsdct.org/>

### **Department of Social Services**

627 Race Street  
Cambridge, MD 21613  
(410) 901-4100  
Website: <http://www.dhr.state.md.us/county/dorch/>

## **Frederick County**

### **Senior Information and Assistance**

Department of Aging  
Area Agency on Aging  
1440 Taney Ave.  
Frederick, MD 21702  
(301) 694-1604  
MD Relay: (800) 201-7165  
Website: <http://www.frederickcountymd.gov/index.aspx?NID=54>

### **Department of Social Services**

100 East All Saints Street  
Frederick, MD 21701  
(301) 600-4555  
Website: <http://www.dhr.state.md.us/county/freder/>

### **Legal Aid Bureau, Inc.**

Midwestern Maryland Office  
22 S. Market Street Suite 11  
Frederick, MD 21701  
(301) 694-7414  
(800) 679-8813

## **Garrett County**

### **Senior Information and Assistance**

Area Agency on Aging  
104 East Center Street  
Oakland, MD 21550-1328  
(301)334-9431  
(888) 877-8403  
(legal services also available)  
Website: <http://www.garrettcac.org/aaa.html>

### **Department of Social Services**

12578 Garrett Highway  
Oakland, MD 21550-0556  
(301) 533-3000  
Website: <http://www.dhr.state.md.us/county/garrett/index.php>

### **Legal Aid Bureau, Inc.**

Western Maryland Office  
110 Greene Street  
Cumberland, MD 21502  
(301) 777-7474  
(866) 389-5243

## **Harford County**

### **Senior Information and Assistance Department of Community Services- Office on Aging**

Area Agency on Aging  
145 North Hickory' Avenue  
Bel Air, MD 21014  
(410) 638-3025 or (410) 879-2000, ext. 3331  
Website: <http://www.harfordcountymd.gov/services/aging/>



### **Department of Social Services**

2 South Bond Street  
Bel Air, MD 21014  
(410) 836-4700  
Website: <http://www.dhr.state.md.us/county/harford/>

### **Legal Services Programs**

Legal Aid Bureau, Inc.  
Northeastern Maryland Office  
103 S. Hickory Ave.  
Bel Air, MD 21014  
(410)836-8202

## **HOWARD COUNTY**

### **Senior Information and Assistance**

Office on Aging  
Area Agency on Aging  
6751 Columbia Gateway Drive, 2nd Floor  
Columbia, MD 21046  
(410) 313-6410  
TTY: (410) 313-5927  
Website: [http://www.co.ho.md.us/oa/cs\\_officeaging.htm](http://www.co.ho.md.us/oa/cs_officeaging.htm)

### **Legal Services for the Elderly/Senior Info, and Assistance**

Florence Bain Senior Center  
5470 Ruth Keaton Way  
Columbia, MD 21044  
(410) 313-7213  
Website: [http://www.howardcountymd.gov/OA/seniorctr\\_florencebain.htm](http://www.howardcountymd.gov/OA/seniorctr_florencebain.htm)

### **Department of Social Services**

7121 Columbia Gateway Drive  
Columbia, MD 21046  
(410) 872-8700  
Website: <http://www.dhr.state.md.us/county/howard/index.php>

### **Howard County Bar Association Lawyer Referral Service**

(410) 313-2035  
Website: [http://www.howardcountybar.org/lawyer\\_referral.php](http://www.howardcountybar.org/lawyer_referral.php)

## **Kent County**

### **Senior Information and Assistance**

Upper Shore Aging, Inc.  
Area Agency on Aging  
100 Schaubert Road  
Chestertown, MD 21620  
(410) 778-6000 or (410) 758-6500  
Toll Free: (800)-721-6651  
Website: <http://www.uppershoreaging.org/>

### **Kent Senior Center**

Amy Lynn Ferris Adult Activity Center  
200 Schaubert Rd.  
Chestertown, MD 21620  
(410) 778-2564

### **Department of Social Services**

350 High Street  
P.O. Box 670 (mailing address)  
Chestertown, MD 21620  
(410) 810-7600  
Website: <http://www.dhr.state.md.us/county/kent/>

### **Legal Aid Bureau, Inc.**

Upper Eastern Shore  
210 Marlboro Ave.  
Tred Avon Square, Suite 3  
Eastern, MD 21601  
(410) 763-9676  
(800) 477-2543



## Montgomery County

### Senior Information and Assistance

Area Agency on Aging  
Division of Aging and Disability Services  
401 Hungerford Drive, 4th Floor  
Rockville, MD 20850  
(240) 777-3000  
Website: <http://www.montgomerycountymd.gov/sentmpl.asp?url=/content/pio/senior/index.asp>

### Department of Social Services

401 Hungerford Drive, 5th Floor  
Rockville, MD 20850  
(240) 777-4513  
TTY: (240) 777-1245  
Website: <http://dhr.maryland.gov/county/mont/>

### Legal Services Programs

Legal Aid Bureau, Inc.  
Metropolitan Maryland  
51 Monroe Street, Suite 1200  
Rockville, MD 20850  
(240) 314-0373  
(888) 215-5316

### Legal Aid Clinic

TESS Community Service Center  
8513 Piney Branch Road  
Silver Spring, MD 20901  
(301) 565-7675  
Website: <http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/offices/tess.asp>

### Lawyer Referral Service/Pro Bono Program

Montgomery County Bar Association  
27 West Jefferson Street  
Rockville, MD 20850  
(301) 279-9100 Referral Service  
(301) 424-7651 Pro Bono Program  
Website: <https://www.montbar.org/>

## Prince George's County

### Senior Information and Assistance

Department of Family Services, Aging  
Services Division Area Agency on Aging  
6420 Allentown Road  
Camp Springs, MD 20748  
(301) 265-8450  
Website: <http://www.princegeorgescountymd.gov/Government/AgencyIndex/FamilyServices/aging.asp>

### Department of Social Services Child, Adult & Family Services

925 Brightseat Road  
805 Brightseat Road (mailing address)  
Landover, MD 20785  
(301) 909-2000  
TDD: (301) 779-2179  
Website: <http://www.dhr.state.md.us/county/pg/>

### Legal Services Programs

Legal Aid Bureau, Inc.  
Metropolitan Maryland  
6811 Kenilworth Avenue, Suite 500  
Riverdale, MD 20737-1333  
(301) 560-2100  
(888) 215-5316  
Senior Helpline: (800) 896-4213 x7750

### Lawyer Referral Service

Law Foundation of Prince George's County  
5303 Baltimore Avenue, Suite 200  
Hyattsville, MD 20781  
(301) 864-8354



## Queen Anne's County

### Senior Information and Assistance

Department of Aging  
 Area Agency on Aging  
 104 Powell Street  
 Centreville, MD 21617  
 (410) 758-0848 or (410) 778-9399  
 TTY (410) 758-2126  
 Website: [http://www.qac.org/default.aspx?pa\\_geid=61&template=3&toplevel=34](http://www.qac.org/default.aspx?pa_geid=61&template=3&toplevel=34)

### Department of Social Services

125 Comet Drive  
 Centreville, MD 21617  
 (410) 758-8000  
 TTY: (410) 758-5164  
 Website: <http://www.dhr.state.md.us/county/queen/>

### Legal Services Programs

Legal Aid Bureau, Inc.  
 Upper Eastern Shore  
 210 Marlboro Ave.  
 Tred Avon Square, Suite 3  
 Easton, MD 21601  
 (410) 763-9676  
 (800) 477-2543

## St. Mary's County

### Senior Information and Assistance

#### Department of Aging

Area Agency on Aging  
 41780 Baldrige Street  
 P.O. Box 653  
 Leonardtown, MD 20650  
 Loffler Center: (301) 737-5670  
 Garvey Center: (301) 475-4200 ext 1050  
 Website <http://www.co.saint-marys.md.us/aging/index.asp>

### Department of Social Services

Joseph D. Carter Building  
 12110 Leonard Hall Drive  
 P.O. Box 509 (mailing address)  
 Leonardtown, MD 20650  
 (240) 895-7000  
 Website: <http://dhr.maryland.gov/county/stmary/index.php>

## Somerset County

### Senior Information and Assistance

MAC, Inc.  
 Area Agency on Aging  
 909 Progress Circle Suite 100  
 Salisbury, MD 21801  
 (410) 742-0505  
 Website: <http://www.macinc.org/>

### Commission on Aging

11916 North Somerset Avenue  
 Princess Anne, MD, 21853  
 (410) 651-3400

### Department of Social Services

30397 Mount Vernon Road  
 P.O. Box 369 (mailing address)  
 Princess Anne, MD 21853  
 (410) 677-4200  
 Website: <http://www.dhr.state.md.us/county/somerset/>

### Legal Aid Bureau, Inc.

Lower Eastern Shore  
 111 High Street  
 Salisbury, MD 21801  
 (410) 546-5511  
 (800) 444-4099





## **Talbot County**

### **Senior Information and Assistance**

Upper Shore Aging, Inc.  
Area Agency on Aging  
100 Schauber Road  
Chestertown, MD 21620  
(410) 778-6000 or (410) 758-6500  
Toll Free: (800)-721-6651  
Website: <http://www.uppershoreaging.org/>

### **Talbot County Senior Center**

400 Brooklets Avenue  
Easton, MD 21601  
(410)822-2869

### **Department of Social Services**

301 Bay Street  
Easton, MD 21601  
(410) 770-4848  
Website: <http://www.dhr.state.md.us/county/talbot/>

### **Legal Aid Bureau, Inc.**

Upper Eastern Shore  
210 Marlboro Ave.  
Tred Avon Square, Suite 3  
Easton, MD 21601  
(410) 763-9676  
(800) 477-2543

## **Washington County**

### **Senior Information and Assistance**

Commission on Aging, Inc.  
Area Agency on Aging  
140 W. Franklin Square, 4th Floor  
Hagerstown, MD 21740  
(301) 790-0275  
Website: <http://www.wccoaging.org/>

### **Department of Social Services**

122 North Potomac Street  
Hagerstown, MD 21740  
P.O. Box 1419 (mailing address)  
Hagerstown, MD 21741 -1419  
(240) 420-2100  
Website: <http://dhr.maryland.gov/county/washing/>

### **Legal Aid Bureau, Inc.**

Midwestern Maryland Office  
22 S. Market Street Suite 11  
Frederick, MD 21701  
(301) 694-7414  
(800) 679-8813

## **Wicomico County**

### **Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
909 Progress Circle, Suite 100  
Salisbury, MD 21801  
(410) 742-0505  
Website: <http://www.macinc.org/>

### **Department of Social Services**

Salisbury District Court  
201 Baptist Street, Suite 27  
Salisbury, MD 21801  
(410) 713-3900  
Website: <http://dhr.maryland.gov/county/wico/>

## **Worcester County**

### **Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
909 Progress Circle, Suite 100  
Salisbury, MD 21804  
(410) 742-0505  
Website: <http://www.macinc.org/>





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**Worcester County Commission on Aging**

Snow Hill Senior Center  
4767 Snow Hill Road  
Snow Hill, MD 21863  
(410) 632-1277  
<http://www.worcoa.org/>

**Department of Social Services**

299 Commerce Street  
P.O. Box 39 (mailing address)  
Snow Hill, MD 21863  
(410) 677-6800  
Website: [http://www.dhr.state.md.us/  
county/worch/](http://www.dhr.state.md.us/county/worch/)

# Appendix A

Sample Excerpt:

First two pages of Maryland's downloadable **Advance Directive form**

<http://dhmh.maryland.gov/yourrights/pdf/advdirform.pdf>

**ADVANCE DIRECTIVE**

**PART A**  
**APPOINTMENT OF HEALTH CARE AGENT**

*(If you want to appoint an agent to make health care decisions for you, fill out this form and cross through any items in the form that you do not want to apply. Cross through this whole page of the form if you do not want to appoint a health care agent)*

1. I, \_\_\_\_\_ residing at  
*(Full Name of Declarant)*

\_\_\_\_\_  
\_\_\_\_\_  
*(Address of Declarant)*

appoint the following individual as my agent to make health care decisions for me:

\_\_\_\_\_  
\_\_\_\_\_  
*(Full Name, Address and Telephone Number of Agent)*

**(Optional)** If this agent is unavailable or is unable or unwilling to act as my agent, then I appoint the following person to act in this capacity:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(Full Name, Address and Telephone Number of Back-up Agent)*

2. My agent has full power and authority to make health care decisions for me, including the power to:

A. Request, receive, and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and consent to disclosure of this information;

B. Employ and discharge my health care providers;

C. Authorize my admission to or discharge from (including transfer to another facility) any hospital, hospice, nursing home, adult home, or other medical care facility; and

D. Consent to the provision, withholding, or withdrawal of health care, including, in appropriate circumstances, life-sustaining procedures,

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## Appendix B

Sample Excerpt:

Two pages of Maryland's downloadable **Advance Directive for Mental Health Treatment form**

<http://dhmh.maryland.gov/mha/Advance%20Directive%20for%20Mental%20Health%20Treatment%20july%202008.pdf>

**Advance Directive for Mental Health Treatment**

I (*name*) \_\_\_\_\_ being an adult, and emotionally and mentally able to make this directive, willfully and freely complete this health care advance directive to be followed if it determined by two physicians that I am not able as a result of a psychiatric or physical illness to assist in my health care treatment. (The second physician may not be involved in my treatment). It is my intent that care will be carried out despite my inability to make choices on my own behalf. In the event that a guardian or other decision-maker is chosen by a court to make health care choices for me, I intend this document to take priority over all other means of discovering intent while able.

The usual symptoms of my identified mental disorder may be include:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I direct my health care providers to follow my choices as set forth below:

**Medications for treatment of my mental illness:**

If I become unable to make informed choices for treatment of my mental illness, my wishes regarding medications are as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I may be allergic to the following medications:

<b>Medication</b>	<b>Reaction</b>
_____	_____
_____	_____
_____	_____

3




# Appendix C

Sample Excerpt:

First page of Maryland's downloadable **Guardianship Petition form**

<http://courts.state.md.us/family/forms/ccdr084.pdf>


**Circuit Court for** \_\_\_\_\_ **Case No.** \_\_\_\_\_  
City or County

In the Matter of \_\_\_\_\_

Name of person for whom guardianship is sought \_\_\_\_\_

**Petitioner:** \_\_\_\_\_

Street Address \_\_\_\_\_ Apt # \_\_\_\_\_ PO Box \_\_\_\_\_  
 ( ) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Area Code \_\_\_\_\_ Telephone \_\_\_\_\_

**PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE**  
 **PERSON**  **PROPERTY** OR  **PERSON AND PROPERTY**

Now comes the Petitioner, \_\_\_\_\_, Your name, address, zip code \_\_\_\_\_, and requests  
 this Court, to appoint \_\_\_\_\_, Name of person you want to be the guardian \_\_\_\_\_  
 guardian of the  person,  property, or  person and property, of \_\_\_\_\_  
 \_\_\_\_\_, Name of person you are requesting a guardian for a person alleged to be under a disability,  
 stating for cause as follows:

1. The person alleged to be under a disability is \_\_\_\_\_, Name of person you are requesting a guardian for  
 an adult  male  female, who was born on \_\_\_\_\_, Date of birth who is currently \_\_\_\_\_, Age  
 years of age, and whose address is \_\_\_\_\_, Address of the person you are requesting the guardian for

2. The name and address of the person(s) the disabled person is now living with:

a. \_\_\_\_\_, Name of person disabled person is living with \_\_\_\_\_  
 \_\_\_\_\_, Address of person disabled person is living with

b. \_\_\_\_\_, Name of person disabled person is living with \_\_\_\_\_  
 \_\_\_\_\_, Address of person disabled person is living with

c. \_\_\_\_\_, Name of person disabled person is living with \_\_\_\_\_  
 \_\_\_\_\_, Address of person disabled person is living with

If the disabled person is now residing with the person who is seeking guardianship, provide the name and address of another person, *who does not live with the disabled person*, on whom service can be made. **(THIS IS MANDATORY):**

\_\_\_\_\_, Name of person not living with the minor who will accept service

\_\_\_\_\_, Address of person not living with the minor who will accept service

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# Notes

# RESPONSES

(to scenarios on inside cover)

1

**Mary Jones** This is exactly the kind of situation in which it is imperative to rule out reversible/treatable conditions that might be causing the behavior that is noted to make sure that her inattention to basic bill payment and her appearance is not the result of depression, malnutrition, dehydration or a medical disorder that can be treated.

If there is an irreversible medical condition that has caused this decline, it still may be possible that Mary has sufficient cognitive ability to execute legal documents such as a durable power of attorney and advance directive. This would make the necessity of obtaining guardianships of the property and person unnecessary. As a practical matter, it would be prudent to obtain medication certification that Mary has sufficient capacity to understand and execute such documents.

If the examination reveals that she no longer has sufficient capacity to execute those legal documents, then you can use the medical certifications to file with the guardianship petition and thereby obtain the authority necessary to pay her bills and ensure that she receives the treatment she needs for the conditions that afflict her. (Response prepared by Jason Frank, J.D.)

**Justin Smith** Given this scenario, Justin’s mother will probably not need to file a guardianship petition for Justin. The alternatives to guardianship, including an advance health care directive, the designation of his mother as his representative payee for any benefits he receives, and a durable power of attorney, should be sufficient to provide any support he may need while continuing to promote his independence and autonomy.

Additionally, if Justin attended public school, it is likely that he would have been found to be a student with a disability under the Individuals with Disabilities Education Act (IDEA, 20 USC Sections 1400 et seq.). In addition to receiving special education and related services, he would then have been entitled to the development and implementation of a transition plan starting at the age of 14. This plan must include any needed post secondary supports such as applications for services from the Developmental Disabilities Administration (DDA) and from the Division of Rehabilitation Services (DORS). (Response prepared by Ellen A. Callegary, J.D.)

**Lisa Adams** Although Lisa has a serious emotional disability, she will most likely not need to have a guardian appointed on her behalf. Most individuals with emotional disabilities are capable of making an informed decision about who they would like to make health care decisions and financial decisions on their behalf should they lose their decision making capacity.

Specifically, Lisa may benefit from executing not only an advance health care directive but also an advance directive for mental health services in which she can designate an agent to make mental health care decisions for her and also designate her preferred mental health providers and preferred medications. She can give her parents power of attorney for financial and property transactions and her parents can be appointed her representative payee for any government benefits she may receive. Her parents could also establish a special needs trust on her behalf. (Response prepared by Ellen A. Callegary, J.D.)

