



Guardianship and Its Alternatives:

A Handbook on Maryland Law

Author

Joan O'Sullivan, J.D.

2025 Edition Handbook Co-Editors

Ellen A. Callegary, J.D.

Rebecca Hall, J.D.

James F. Silver, J.D.

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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.

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? All of these 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 guardianship in Maryland, and explains when a guardian must be appointed to act for a person who lacks the capacity to make decisions for themselves. Most importantly, however, this Handbook lists many alternatives to a formal guardianship proceeding.

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

Original Handbook Author

Joan O'Sullivan, J.D.

Professor of Law, University of Maryland Francis King Carey School of Law

2025 Edition Handbook Co-Editors

Ellen A. Callegary, J.D.

Ellen is a retired attorney who spent a decade in the Maryland Attorney General's Office, several decades teaching in the University of Maryland Francis King Carey School of Law's Law & Health Care Program and many years representing individuals with disabilities.

Rebecca Hall, J.D.

Managing Director, Law & Health Care Program
University of Maryland Francis King Carey School of Law

James F. Silver, J.D.

Supervising Attorney, Adult Guardianship Program, Maryland Legal Aid

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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 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 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.

Guardianship and Its Alternatives

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Note about retaining an attorney:

Many of the actions recommended in this Handbook require completion of a form or a petition (used in court proceedings). 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, and information in this Handbook may not constitute the most up-to-date legal or other information. The Handbook will not be automatically updated to reflect changes in the law. The information provided in this Handbook does not, and is not intended to, constitute legal advice. All information, content, and materials available in this Handbook are for general informational purposes only. This Handbook contains links to other third-party websites. Such links are only for the convenience of the reader, user or browser; the Handbook authors, editors, and sponsors do not recommend or endorse the contents of such third-party sites. 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



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 their own affairs effectively because of a disability. The court then appoints someone to act for that person and make decisions affecting the person, their property, or both.

WHY WOULD A PERSON NEED A GUARDIAN?

A person may need a guardian if they are 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 themselves or to make arrangements to meet their 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 Maryland Department of Aging Local Area Agency on Aging or the Maryland Department of Human Services' Local Departments 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.¹

In general, a guardian of the person makes decisions about a person's medical care, maintenance of a residence, 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.

¹ The public guardian can only serve as guardian of the person (and not guardian of property).



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 24 local 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. You can find a list of Maryland's Area Agencies on Aging and contact information for each at <https://aging.maryland.gov/SiteAssets/Pages/area-agencies-on-aging/Area%20Agencies%20on%20Aging%20%28AAA%29%20List%208.3.23%20%281%29.pdf>

About the Maryland Department of Human Services, Office of Adult Services²

The Office of Adult Services focuses on the needs of the 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 and independence. Services are delivered with the principles of personal dignity, quality of life, privacy and the right to make choices. Local Departments of Social Services are listed on this webpage and in the Appendix by county: <http://dhr.maryland.gov/local-offices/>

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 their personal life or property because that authority has been delegated to a guardian, acting as a surrogate decision maker. 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

² <https://dhs.maryland.gov/office-of-adult-services/>

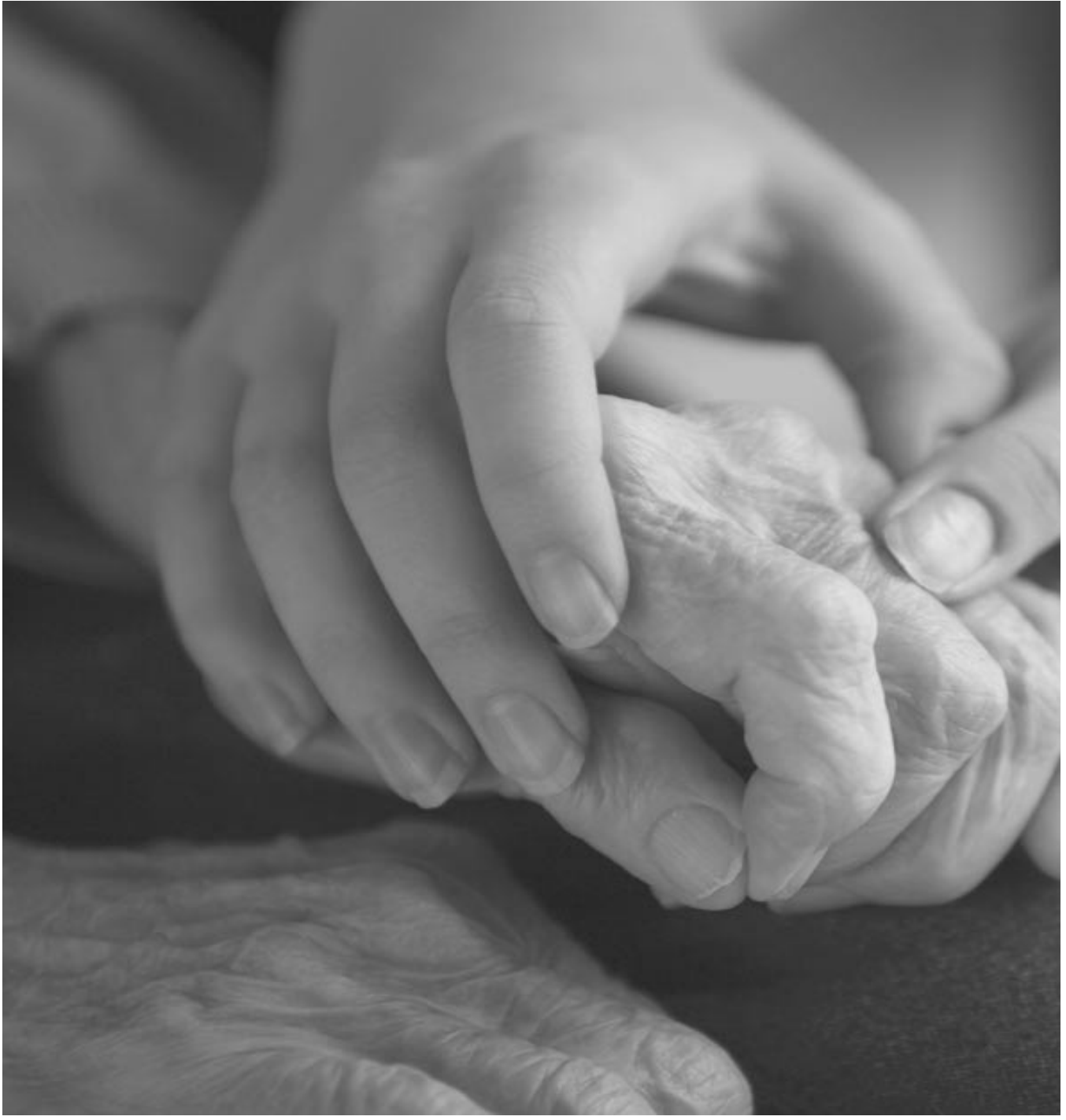


ranking, appointment, the right to apply for voluntary admission to a facility under §10-611 of the Health--General Article, and rights relating to licensure, permit, privilege, or benefit under any law.”³

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, other potential solutions should be considered before guardianship is sought.

³ MD. CODE ANN., EST. & TRUSTS § 13-706(b)(2)



Chapter 2

Determining Competency or Capacity



INTRODUCTION

Every individual who is 18 years of age and older has the right to make informed decisions about how they live their lives and to control their own medical treatment. This includes making poor choices. In order to make these decisions, a person must be “competent” or have the “capacity” to understand the consequences of these decisions. 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.⁴ 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, they should be evaluated by a health care provider for appropriate treatment. This chapter will provide information on competency and help explain how that determination 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. A person’s capacity to make a decision may depend on the complexity of that decision; the decision-making strengths of the person (which may fluctuate during the day or the week); surrounding events; and the person’s ability to communicate with those determining capacity. Does the person understand the implications of their decision?

There is no clear line dividing those who have capacity to make decisions and those who do not. A person can have the capacity to make some decisions, but not others.

For example, a person may be able to express their opinion about whom they trust to handle money, but not be able to fill out an income tax form. They may be able to decide to get a flu shot, but not decide which treatment is best for their cancer.

⁴ Ellen A. Callegary, Consent & Competency, in BEST PRACTICES IN DEVELOPMENTAL DISABILITIES: A MARYLAND RESOURCE (2005).



A diagnosis of mental illness or cognitive impairment does not automatically mean that the person lacks the capacity to make all decisions. Because each person is different and each impairment 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, evaluated by a physician.

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 – such 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 incompetence.

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

“A guardian of the person shall be appointed if the court determines from clear and convincing evidence that: (a) 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, (b) that no less restrictive form of intervention is available that is consistent with the person's welfare and safety.”⁵

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

“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, detention by a foreign power, or disappearance, and (2) The person has or may be entitled to property or benefits which require proper management.”⁶

In another section of the law relating to medical decision-making, a competent individual 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.”⁷

⁵ MD. CODE ANN., EST & TRUSTS § 13-705(c)

⁶ MD. CODE ANN., EST & TRUSTS § 13-201(c)

⁷ MD. CODE ANN., HEALTH-GEN. § 5-601(f)



Additionally, this section defines the phrase “incapable of making an informed decision” as “the inability of an adult patient to make an informed decision about the provision, withholding or withdrawal of a certain medical treatment because the patient is unable to understand the nature, extent, or probable consequences of the proposed treatment or course of treatment, is unable to make a rational evaluation of the burdens, risks, and benefits of the treatment or course of treatment, or is unable to communicate a decision.”⁸ However, individuals who are otherwise “competent” and who are “able to communicate by means other than speech or with other support, including supported decision making...may not be considered incapable of making an informed decision.”⁹

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:

1. Two licensed physicians who have examined or evaluated the disabled person;¹⁰ or
2. One licensed physician who has examined the disabled person and one of the following who has evaluated or evaluated the disabled person: a licensed psychologist, a licensed clinical social worker, or a nurse practitioner.¹¹

The certificates¹² must verify that the person is unable to make or communicate responsible decisions about their person or property. They must also list the person’s physical and mental diagnosis, cognitive functioning and demonstrate that within a reasonable degree of medical certainty, the patient has a disability which prevents them from making or communicating some responsible decisions concerning their person and/or property. 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.¹³

⁸ MD. CODE ANN., HEALTH-GEN. § 5-601(m)(1)

⁹ MD. CODE ANN., HEALTH-GEN. § 5-601(o)(2)

¹⁰ MD. CODE ANN., EST. & TRUSTS § 13-705(c)(2)(i)

¹¹ MD. CODE ANN., EST. & TRUSTS § 13-705(c)(2)(ii)

¹² The forms for the physician’s certificate, psychologist’s certificate, nurse practitioner’s certificate and licensed certified social worker-clinical certificate are available online here: <https://www.mdcourts.gov/family/family-forms#guardianship>.

¹³ MD. CODE ANN., EST. & TRUSTS § 13-705(c)(3)



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. The ability to make decisions can be affected by the person's physical condition at the time (illness, substance abuse, trauma), or mental state (depression, mania).

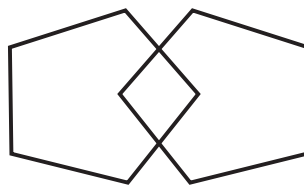
If a person begins to appear confused or to show signs of memory loss, s/he should have a complete physical and mental evaluation. For older individuals, this is called a geriatric evaluation. During a geriatric evaluation, a team of specialists from different fields examine the individual and assesses their abilities and disabilities. They try to diagnose as accurately as possible the causes of the individual's confusion. They may meet as a group or consult with each other to discuss the findings and recommend treatment options and future care.

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, and 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:

Give the individual a piece of paper and ask him/her 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, the assessment should include a thorough 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 decision-making capacity. The doctor will 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 their opinions about certain matters. Especially with Alzheimer's disease, which progresses differently in each patient, the 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; and
- Whether the course of action the person wants to take is consistent with the way the person has lived their past life.



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 they want their sister to handle their financial matters and to execute a power of attorney. Their wishes in this case should be followed.

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

A. Advice for Lawyers

When speaking to the person of questionable competence, the lawyer drafting the legal documents should see the individual alone to ensure they are not being influenced by anyone else. The lawyer should ask the person to explain what legal help they want, to explain their reasons for their actions. If possible, the lawyer should ask the same questions over several visits to determine if the person is consistent in their answers. Some attorneys may want to have a physician examine an individual before asking them to sign legal documents or videotape the interview to show that the person understood the consequences of their actions.¹⁴

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 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 they have refused to get treatment in the past. If refusal of treatment is inconsistent with prior behavior for 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 results of the decisions are 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. If the decision at hand involves a possible health risk, someone else may have to make that decision for the patient in question.

¹⁴Md. R 19-301.14, Client with Diminished Capacity



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?

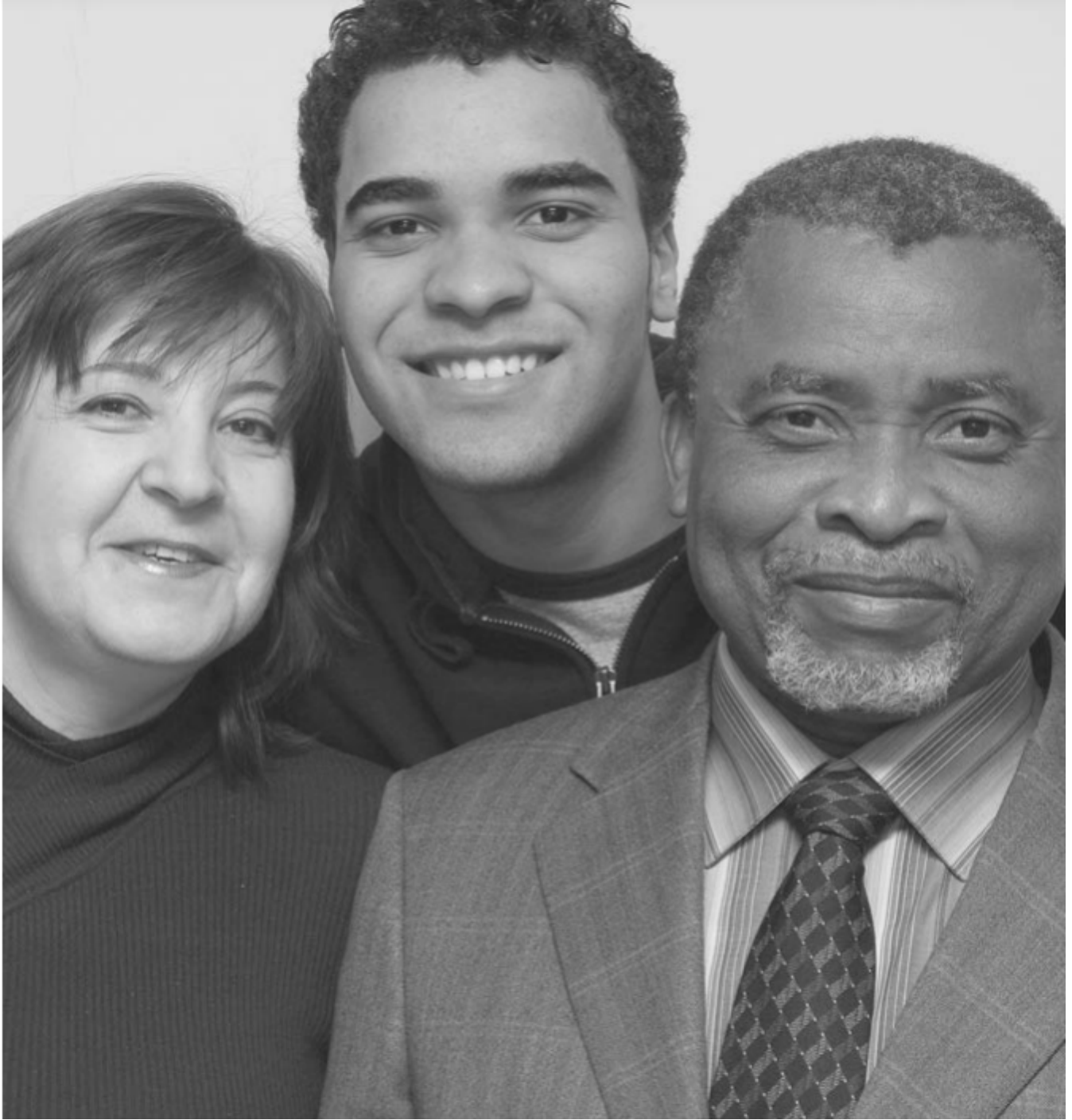
If an individual has never been capable of making informed decisions, such as an individual born with severe intellectual disabilities, creating a special needs trust and/or filing a guardianship petition may be the only two options available.

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. Maryland Code, Estates & Trusts Article, sets forth the requirements of a Special Needs Trust in § 14.5-1002. The Maryland Office of the Attorney General will review a Supplemental or Special Needs Trust for compliance with this section of Maryland Law 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: https://www.marylandattorneygeneral.gov/Forms/Attorney_Review_checklist.pdf

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 his or her own affairs effectively because of a disability. The court then appoints someone else to act for that person and make certain decisions for him or 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 alternatives 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?

- 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.
- 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.¹⁵ In addition, the petition requesting guardianship must contain information about what other alternatives have been tried and failed.¹⁶
- Filing for guardianship is costly and time consuming. Two attorneys (one representing the petitioner and one representing the alleged incapacitated 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.
- In some instances, 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 will 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.¹⁷

¹⁵ MD. CODE ANN., EST. & TRUSTS § 13-705(b).

¹⁶ Md. Rule 10-112

¹⁷ A friend or close relative (of a person who has been certified to be incapable of making an informed decision) who is not a guardian has a lower priority than that person's guardian. MD. CODE ANN., HEALTH-GEN. § 5-605. A guardian can make decisions regarding medical decisions where a procedure presents a substantial threat to a person's life with court authorization. MD. CODE ANN., EST. & TRUSTS § 13-708(c). The court may approve requests for withholding or withdrawal of life-sustaining procedures with evidence that it is in the best interest of the patient. MD. CODE ANN., EST. & TRUSTS § 13-711, § 13-713.



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/Power of Attorney

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, they may be willing, if asked and presented with alternatives, to voluntarily leave their 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 their 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 their home and community. It is not necessary for someone to have a guardian in order to take advantage of these. Someone else can apply for these services for the questionably competent individual. Not all services are available in all communities, and some may have long waiting lists. Some charge a full fee, others have a sliding fee scale, 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 can provide information about what services are available. The Eldercare Locator, at 1-800- 677-1116, or <https://eldercare.acl.gov/>, will identify services elsewhere in the state.

1. Case Management

State and local agencies and 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 they can remain living safely, as independently as possible. 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 an Aging Life Care Professional

To find a private Aging Life Care Professional in Maryland, the Aging Life Care Association (ALCA) maintains a national website with local information at www.aginglifecare.org and the organization's Mid-Atlantic Chapter also provides suggestions for local care managers at www.midatlanticgcm.org.

2. In-Home Aide Services (Maryland Department of Human 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 when needed; individuals at risk of institutional placement; and those at risk of abuse or neglect are given preference for this service, using a ranking scale. *For more information on this service, you can call your local Department of Social Services.* The local department representative will arrange a home visit to conduct an interview with the applicant to determine their 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 local Department of Social Services.



3. Senior Care

Senior Care is a statewide long-term care service delivery system that coordinates community-based services to 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. The program provides a comprehensive assessment of the individual's needs and a case manager to secure and coordinate services. Additionally, the program has a financial allocation 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 found at the following link, <https://aging.maryland.gov/Pages/senior-care.aspx> or you can call your local MAP Information and Assistance Office.*

4. Adult Medical Day Care (Maryland Department of Health)

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: <https://health.maryland.gov/mmcp/longtermcare/Pages/Home.aspx>*

5. Respite Care

Respite care programs provide a break for the family caregiver in various ways, including providing a trained person to stay for short periods with their loved one with a disability, in order to give the caregiver family time off from the stressful job of taking care of an individual with a disability. Medical Assistance may pay for a short stay in a nursing home for respite care as well. *More information on respite care can be found at your local Department of Social Services, and at the Maryland Department of Human Services website <https://dhs.maryland.gov/office-of-adult-services/respite-care-program/>.*



6. Meals on Wheels

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 including information on local programs can be found at their website, <https://www.mealsonwheelsamerica.org/>.

7. Transportation to Medical and Other Appointments

Rides to medical appointments and shopping are often difficult to arrange for someone who has disabilities. Many counties have a free 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 <https://health.maryland.gov/mmcp/communitysupport/Pages/Home.aspx>, 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 the individual you are concerned about to find ones that deliver.*

9. Telephone Reassurance Programs

Some Maryland counties offer programs where 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 persons with disabilities. *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 checks.

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 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 independence as long as possible and provide a more home-like setting than 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 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.

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 \$1,000 to over \$5,000 per month. Financial assistance is available on a limited basis through the Senior Assisted Living Group



Home Subsidy Program or the Medicaid Waiver Home and Community Based Services Program. *More information can be found at the following website, <https://healthcarequality.mhcc.maryland.gov/AssistedLiving/Suggestion>. 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 Living Subsidy Program

For low and moderate-income seniors, the Senior Assisted Living Subsidy program provides access to assisted living facilities that are licensed by the Department of Health. The Assisted Living 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, including meals, personal care and 24-hour supervision for elderly residents who are frail and unable to live independently. In accordance with an interagency agreement with the Department of Health, the homes are monitored by the Department of Health around the state.

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.¹⁸

More information on this program can be found at the State Department of Aging's website, <https://aging.maryland.gov/Pages/senior-assisted-living-subsidy-program.aspx>.

¹⁸ At the time of the 2025 Edition of this Handbook, to be financially eligible for a subsidy, an applicant's net monthly income may not be higher than 60 percent of the state median income with assets no greater than \$20,064 for singles, or \$26,400 for couples. The subsidy may cover the difference between the net monthly income of the resident after a \$130/month personal allowance deduction, and the approved monthly assisted living fee. For more detailed information on consumer price index increases, see <https://aging.maryland.gov/pages/senior-assisted-living-subsidy-program.aspx>



C. Congregate Housing Services Program (Maryland Department of Aging)

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 62 years old or older and physically or mentally impaired who need assistance with one or more of the essential activities of daily living, need one or more of the congregate housing services available in the facility, and are able to function in the facility if provided with those services. 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 of the Congregate Housing Services Program varies by site. *More information on this program and the various costs can be found at the Maryland Department's Department of Aging website, <https://aging.maryland.gov/Pages/congregate-housing.aspx> 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 (also known as the C.A.R.E. - Certified Adult Residential Environment - Program)

Project Home is a supportive housing program for persons with mental illness or other disabilities offering an adult foster family model of care that provides a stable, family-like living arrangement in the community. Project Home provides a more home-like and less costly alternative to nursing homes, psychiatric hospitals and other institutional settings. Residents living in our program are provided with opportunities for growth, stimulation and change in the least restrictive



environment. Where appropriate, clients are encouraged to develop independent living skills. Case management services are offered to our residents linking each resident with appropriate community activities and supports. *More information can be found at the Maryland Department of Human Services website, <http://dhr.maryland.gov/office-of-adult-services/project-home/>.*

F. 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 60 years of age or older may enter the facility **while they are** 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. 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, usually for life. 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 substantial. *More information on this service can be found on the Maryland Department of Aging's website, <https://aging.maryland.gov/Pages/continuing-care-retirement-communities.aspx> 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 chart on page 26)

If the problem prompting a discussion about guardianship relates to medical care, options exist to help with this situation. One option is an advance directive, a document in which a person states their wishes about future health care.¹⁹ 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 consent to medical treatment without the need for the appointment of a guardian.

¹⁹ Maryland law requires an advanced directive to be signed by two witnesses. MD. CODE ANN., HEALTH-GEN. § 5-601 et seq.



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 themselves. Either of these methods would allow someone else to make a health care decision for an incapacitated person without having to file for guardianship. The two methods are described in more detail below.

A. Advance Health Care Directives

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 declarant," can appoint a person, called "the agent," to make health care decisions for them. 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).²⁰ 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.²¹
2. *Health care instructions.* An individual may also state in an advance directive exactly what care she would want in a given situation. Typically, instructions will state whether the person

²⁰ Maryland law authorizes an advanced directive to take effect when the declarant's attending physician and a second physician certify in writing that the patient is incapable of making an informed decision. MD. CODE ANN., HEALTH-GEN. § 5-602(e)

²¹ MD. CODE ANN., HEALTH-GEN. § 5-602(h)



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.²²

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 healthcare provider²³ and one witness; and
- the provider must write the person's instructions or statement in their medical record. Then the provider and the witness must sign and date the notation.²⁴

More information on advance directives can be found at the Maryland Attorney General website, <http://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx>.

²² MD. CODE ANN., HEALTH-GEN. § 5-603

²³ The attending physician, physician assistant or nurse practitioner.

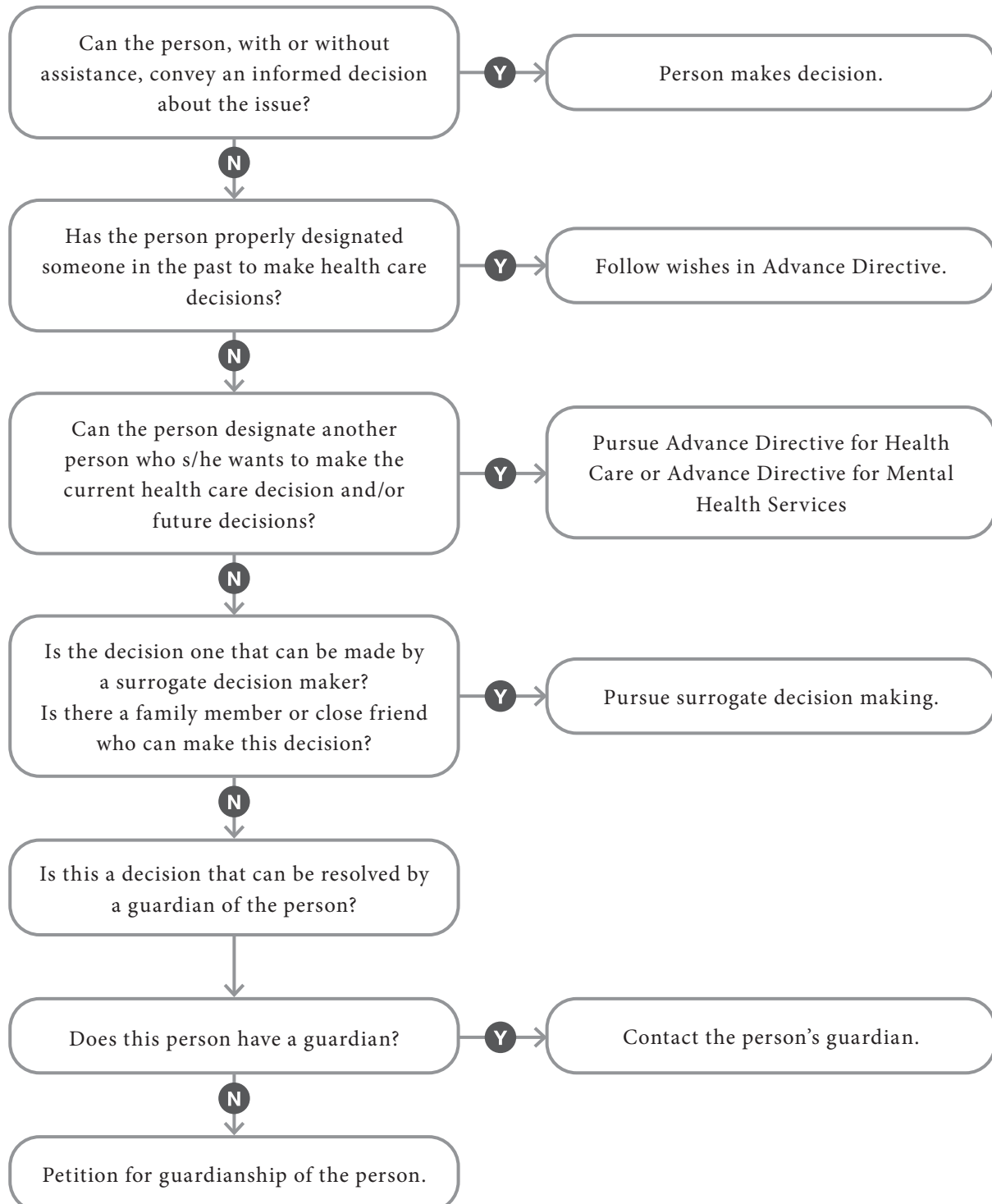
²⁴ MD. CODE ANN., HEALTH-GEN. § 5-602(d)



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?





B. Advance Directives for Mental Health Services

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 services²⁵ 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 them 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.²⁶

All forms can now be downloaded at:

<https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx>

MOLSTs

Medical Orders for Life Sustaining Treatment, or MOLSTs, are forms that healthcare providers should complete with patients during hospital admission or during transfers between healthcare facilities. The form does not require a guardian, and does not replace an advance healthcare directive. However, it can be useful to give healthcare agents, or other surrogate decision makers, information about what kind of life-sustaining care a patient wants to receive. Maryland's state government provides information about MOLSTs at <https://marylandmolst.org/>.

²⁵ "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. MD. CODE ANN., HEALTH-GEN. § 4-301(k)(1)

²⁶ CALLEGARY at 4 and MD. CODE ANN., HEALTH-GEN. § 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 them. 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.²⁷

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.²⁸

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.²⁹

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.³⁰

²⁷ MD. CODE ANN., HEALTH-GEN. § 5-605(a)(2)

²⁸ MD. CODE ANN., HEALTH-GEN. § 5-605(a)(3)

²⁹ MD. CODE ANN., HEALTH-GEN. § 5-605(a)(5)

³⁰ Available at <https://www.marylandattorneygeneral.gov>



Surrogates vs. guardians. A surrogate acting under the Health Care Decisions Act³¹ may have more authority than a guardian to make serious medical decisions.

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.³⁰

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.³² This simpler procedure is another reason to avoid the appointment of a guardian of the person unless necessary.

4. WHAT IF A PERSON CANNOT HANDLE THEIR 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.

³¹ MD. CODE ANN., EST. & TRUSTS § 13-708(c)

³² MD. CODE ANN., HEALTH-GEN. § 5-605(c)(1)



A. Representative Payee

Guardianship of the property may be unnecessary if a person's income is mainly from Social Security, Supplemental Security Income, the U.S. Department of Veterans Affairs, or other government benefits. These agencies will appoint another person or agency to receive benefit checks for a beneficiary who is unable to manage their 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 their 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 their 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.³³

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 their 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 their representative payee. If the beneficiary does not object, the agency will send 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 them from the monthly income. The representative payee must

³³20 C.F.R. § 404.2040a(g)(3)(i); 20 C.F.R. § 416.640a(g)(3)(i)



always act within the best interest of the beneficiary.³⁴ *More information on representative payee programs can be found at the Social Security website, <https://www.ssa.gov/payee/>*

B. Power of Attorney

The Power of a Power of Attorney Document. A guardian of the property may not be necessary if the person of questionable competence 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.”³⁵ “Durable” simply means that the agent’s authority is still exercisable if the principal becomes incapacitated.³⁶

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 they have, the consequences of appointing an agent, and be able to clearly communicate their wishes, stating that they want a certain person to handle their 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.³⁷ If a power of attorney becomes effective on the principal's incapacity and the 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.³⁸

³⁴ 20 C.F.R. § 404.2035(a) (2018); 20 C.F.R. § 416.635(a)

³⁵ MD. CODE ANN., EST. & TRUSTS § 17-101(b)(1) and (j)

³⁶ MD. CODE ANN., EST. & TRUSTS § 17-105(a)

³⁷ MD. CODE ANN., EST. & TRUSTS § 17-111(c)

³⁸ MD. CODE ANN., EST. & TRUSTS § 17-111(c) (2)



Additionally, unless the power of attorney states otherwise, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.³⁹ However, the agent is not entitled to compensation, unless the principal allows for compensation in the power of attorney.⁴⁰ 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.⁴¹

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 those who have accounts. 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 directly 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.
- **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.

³⁹ D. CODE ANN., EST. & TRUSTS § 17-114(a)

⁴⁰ MD. CODE ANN., EST. & TRUSTS § 17-114(b)

⁴¹ 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, may see this as making a prohibited gift. Medical Assistance may attribute ownership of all the funds in a joint account to the person applying for benefits, regardless of 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.

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.⁴² Application of this section is less restrictive than placing the client

⁴²MD. CODE ANN., EST. & TRUSTS § 13-204(a)(1)



under a full-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 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 their independence or rights as in guardianship.

For example, a person with a disability has only their 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 it 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 their 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 their 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 them 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.

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

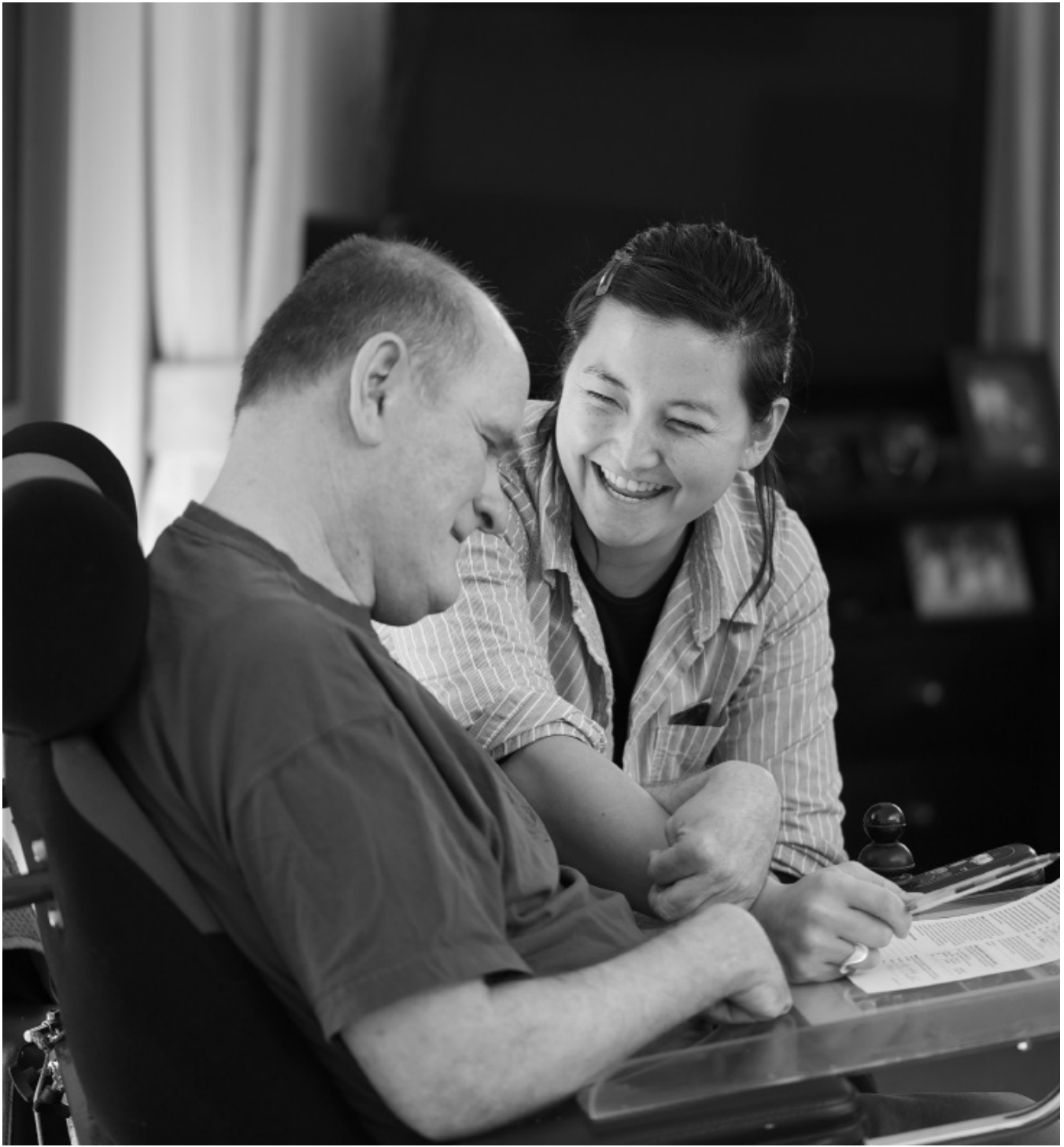
The Code of Maryland Regulations (COMAR) sets forth the requirements of a special needs trust.⁴³ The Maryland Office of the Attorney General will review a special needs trust for compliance with this COMAR provision and to ensure that the trust does not prevent the disabled person from maintaining government benefits such as Medicaid. *Information about the review process can be found at the following link:*

https://www.marylandattorneygeneral.gov/Forms/Attorney_Review_checklist.

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 the guardian has the authority to spend the income paid out by the trustee as the trust states.

⁴³ COMAR 10.09.24.08-2C



Chapter 4



Guardianship of the Person and Public Guardianship



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,⁴⁴ any governmental agency paying benefits to the person, or any person or agency eligible to serve as guardian of the person.⁴⁵ 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 for a person with a disability can be found at the following link, <https://www.mdcourts.gov/family/formsindex#guardianship>. 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.⁴⁶

⁴⁴ 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.

⁴⁵ MD. CODE ANN., EST. & TRUSTS § 13-101(k)(1)-(2) (West 2019); Md. Rules 10-103(f)(1)

⁴⁶ MD. CODE ANN., EST. & 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 minor or alleged person with a disability;
- For a petition involving an alleged disabled person, whether the alleged disabled person is a beneficiary of the Veterans Administration (VA).
- Whether the proposed guardian has been convicted of a qualifying crime and, if applicable, an explanation for why the proposed individual should be appointed as guardian despite conviction.⁴⁷
- Whether the person who is the subject of the petition is a minor or an alleged person with a disability, and, if an 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 the person, including provisions for health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, addiction to drugs, or other addictions 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 conservator⁴⁸ has been appointed for the alleged person with a disability in another proceeding, the name and address of

⁴⁷ The following are qualifying crimes under the statute: a felony, a crime of violence, assault in the second degree, sexual offense in the third or fourth degree, attempted rape or sexual offense in the third or fourth degree, or any crime that reflects adversely on the petitioner's honesty, trustworthiness or fitness to serve as a guardian including fraud, extortion, embezzlement, forgery, perjury and theft. MD. CODE ANN., EST. & TRUSTS § 11-114(a)

⁴⁸ "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., EST. & TRUSTS § 13-301(d)



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 minor or alleged person with a disability, (b) the name and address of the persons with whom the minor or person with a disability resides, and (c) if the minor or 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 minor or alleged person with a disability, to the extent known or reasonably ascertainable;
- If the minor or 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, for VA beneficiaries, a certificate from the Department of Veterans Affairs attesting to the person's disability), 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.⁴⁹

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.⁵⁰

One of the health care providers must have examined the person within 21 days of the filing of the petition.⁵¹

⁴⁹ Md. Rule 10-112

⁵⁰ Md. Rule 10-202(a)

⁵¹ Id.



WILL THERE BE A HEARING?

In all cases, there will be an evidentiary hearing before a judge 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, habitual drunkenness or addiction to drugs; and
- that no less restrictive form of intervention is available that is consistent with the person's welfare and safety.⁵²

Additionally, the petitioner must also present evidence that the proposed guardian is a fit and proper person to be appointed, is capable of carrying out the responsibilities of a guardian, and that no one of higher priority is available.⁵³

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 hierarchy:

1. A person, agency or corporation nominated by the disabled person if the disabled person was 16 years or older when the disabled person signed the designation, and in the opinion of the court, the disabled person had sufficient mental capacity to make an intelligent choice at the time the disabled person executed the designation.
2. A health care agent appointed by the disabled person in accordance with the Health Care Decisions Act.
3. The person's spouse.
4. The person's parents.

⁵² MD. CODE ANN., EST. & TRUSTS §13-705(b)

⁵³ MD. CODE ANN., EST. & TRUSTS §13-707(a) et seq. (providing list of prioritization in potential guardians).



5. A person, agency, or corporation nominated by the will of a deceased parent.
6. The person's children.
7. Adult persons who would be the disabled person's heirs if the disabled person were dead.
8. A person, agency, or corporation nominated by a person caring for the disabled person .
9. Any other person, corporation or agency considered appropriate by the court.
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. Upon appointment as guardian, directors of local departments of social services, directors of area agencies on aging, and the Secretary of Aging may delegate responsibilities of guardianship to staff persons whose names and positions have been registered with the court.⁵⁴

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?

Each 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 disabled person.⁵⁴

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.

⁵⁴ Id.



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 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 (subject to those exceptions listed in Chapter 3).⁵⁵

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.⁵⁶

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.⁵⁷

⁵⁵ MD. CODE ANN., EST. & TRUSTS § 13-708(a)(1)

⁵⁶ MD. CODE ANN., EST. & TRUSTS § 13-708(c)(1) and (2)

⁵⁷ MD. CODE ANN., EST. & TRUSTS § 13-708(c)(1)(ii)



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.⁵⁸

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.⁵⁹ 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 if the application is submitted to an inpatient facility other than a VA hospital (see form here <https://health.maryland.gov/bha/Pages/newforms.aspx>).⁶⁰ 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.⁶¹

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;

⁵⁸ MD. CODE ANN., EST. & TRUSTS § 13-708(b)(2); see also MD. CODE ANN., HEALTH-GEN. § 10-613 et seq.

⁵⁹ MD. CODE ANN., HEALTH-GEN § 10-614

⁶⁰ MD. CODE ANN., HEALTH-GEN § 10-615

⁶¹ MD. CODE ANN., HEALTH-GEN § 10-615(6)



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.⁶²

Assessments, 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, https://health.maryland.gov/qahealth/community-health/Pages/Assessment_Evaluation_and_Review_Services.aspx

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.⁶³ There is a standard reporting form available on the Maryland Judiciary website: <https://www.mdcourts.gov/family/formsindex#guardianship>.⁶⁴

Additional information regarding reporting requirements can be found at the Maryland judiciary website: <https://www.mdcourts.gov/family/guardianship/courtappointedguardians>.

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.⁶⁵

⁶² MD. CODE ANN., HEALTH-GEN § 10-632(e)(vi)

⁶³ Md. Rule 10-206(a)

⁶⁴ Form for Guardian of Disabled Person: CC-GN-013; Form for Guardian of a Minor: CC-GN-014.

⁶⁵ MD. CODE ANN., EST. & TRUSTS § 13-708(d)(2)



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.⁶⁶ If an interested party files such a petition, the court will set a hearing date. If the court finds grounds for removal because 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.⁶⁷

WHEN DOES A GUARDIANSHIP OF THE PERSON END?

The guardianship does not end automatically when the person 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.⁶⁸

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.⁶⁹ If the guardian discovers that grounds for termination may exist, they 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.⁷⁰ The petition must include the following:

- the petitioner's 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.⁷¹

⁶⁶ Form for Guardian of Disabled Person: CC-GN-013; Form for Guardian of a Minor: CC-GN-014.

⁶⁷ MD. CODE ANN., EST. & TRUSTS § 13-708(d)(2)

⁶⁸ Md. Rules 10-208(a) and (b)

⁶⁹ Md. Rules 10-208(d) and (e)

⁷⁰ Md. Rule 10-209(b)(2)

⁷¹ Md. Rule 10-209(c)(1)



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.⁷²

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.

WHEN IS A PUBLIC GUARDIAN APPOINTED?

A public guardian is appointed when there is no family member or friend willing or able to serve as a guardian. In these cases, a staff person from the agency fills the role of the guardian, visiting the individual with the disability on a regular basis and making sure that their 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 their medical care, and making decisions about where the person will live.

⁷² Md. Rule 10-209(c)(2)



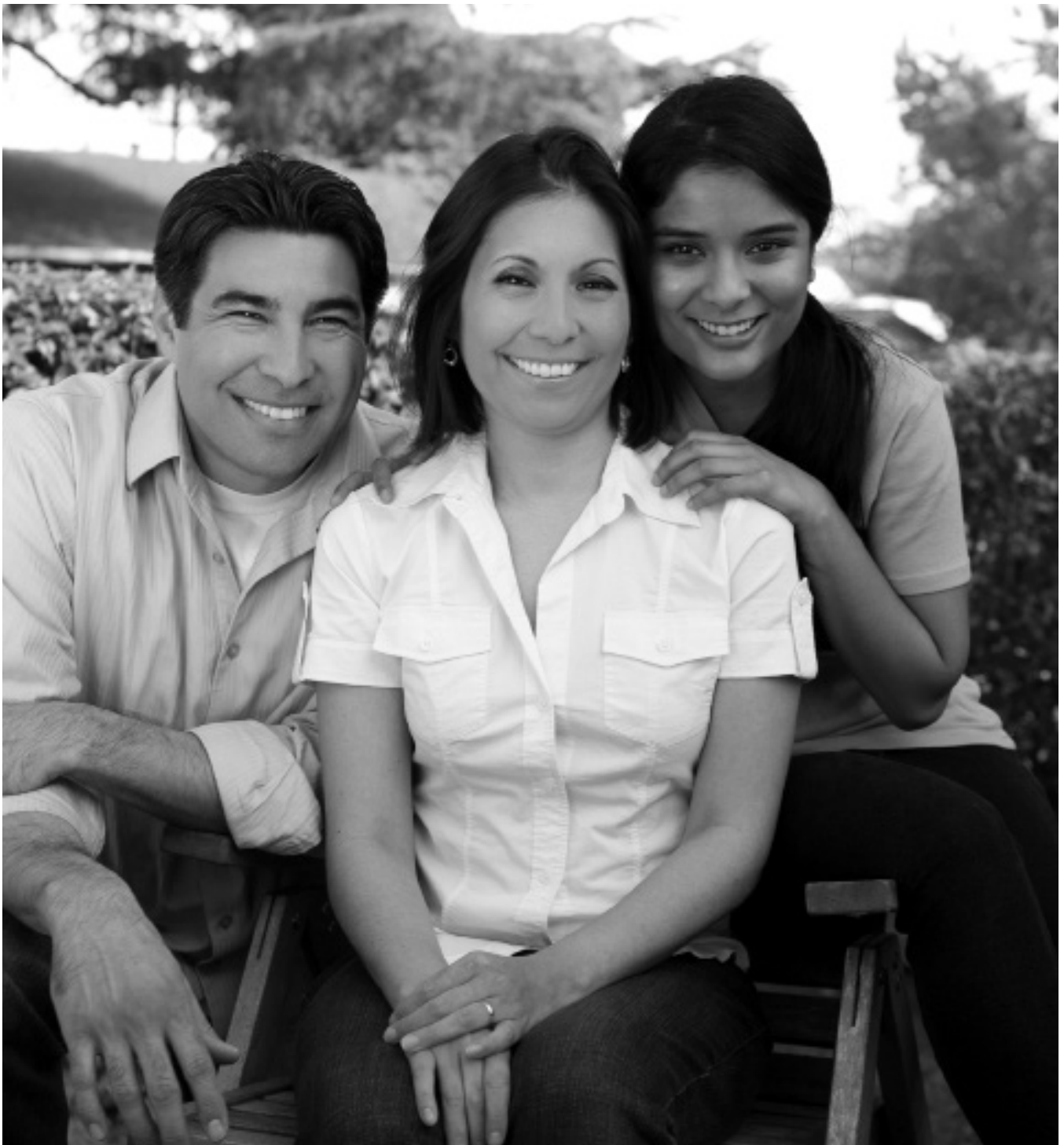
WHAT IS THE ADULT PUBLIC GUARDIANSHIP REVIEW BOARD?

The Adult Public Guardianship Review Board is an advisory board whose purpose is to advise the court regarding what is in the best interest of the guardianship ward. There is an Adult Public Guardianship Review Board in each jurisdiction of Maryland to review public guardianships. The Board assesses each public guardianship case in that jurisdiction two times per year and votes to either continue, amend or terminate guardianship. The individual has a right to be at the review, if able, and to be represented by an attorney.

ADULT PUBLIC GUARDIANSHIP REVIEW BOARDS CONSIST OF 8 MEMBERS:

- 1 professional representative of a local department
- 1 physician's assistant, nurse practitioner, or physician who is not a psychiatrist; and 1 psychiatrist
- 1 representative of a local commission on aging
- 1 professional representative of a local nonprofit social service organization
- 1 lawyer
- 1 lay individuals
- 1 registered nurse
- 1 professional in the field of disabilities or a person with physical disability ⁷³

⁷³ MD Code, Family Law § 14-402



Chapter 5

Guardianship of the Property



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 an adult (or minor over the age of sixteen) who cannot act for themselves. This chapter will provide more information on the role and responsibilities of a guardian of the property.⁷⁴

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.⁷⁵ In guardianship of the property cases, an interested party may also be an income beneficiary of the fiduciary estate, a fiduciary of the estate,⁷⁶ or the creator of the fiduciary estate. A fiduciary is someone who can be trusted to act in the best interest of the alleged disabled person.⁷⁷

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, <https://www.mdcourts.gov/family/formsindex#guardianship>. However, Maryland law requires the court to appoint an attorney to represent an alleged disabled person who is not already represented by their own attorney at the guardianship hearing.⁷⁸

⁷⁴ A public guardian cannot serve as guardian of the property.

⁷⁵ MD. CODE ANN., EST. & TRUSTS § 13-101(k); Md. Rule 10-103(f)(1) (including any person designated by the court).

⁷⁶ Md. Rule 10-103(f)(2) (noting that only a current income beneficiary may qualify as an interested person).

⁷⁷ A fiduciary's duty . . . requires that he exercise the care and skill of a man of ordinary prudence dealing with his own property. MD. CODE ANN., EST. & TRUSTS § 13-21

⁷⁸ MD. CODE ANN., EST. & TRUSTS § 13-211(b)



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 standard petition form referenced earlier contains all of the required contents. These include the following:

- The petitioner's name, address, age, and telephone number;
- The petitioner's family or other relationship to the alleged disabled person;
- Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled person, a brief description of the alleged disability;
- The alleged disabled person's status as a beneficiary of the Veterans Administration.
- The reasons why the court should appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs or other addictions, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;
- An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;
- If a guardian or conservator⁷⁹ 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 minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;

⁷⁹ "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., EST. & TRUSTS § 13-301(d)



- 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 minor or 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 minor or alleged disabled person;
- A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;
- A statement that the exhibits required by section (1) of this Rule are attached.⁸⁰

A copy of the standard form is included in the Appendix.

WHAT ELSE IS FILED WITH THE PETITION?

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 (language taken directly from statute):

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 or licensed certified social worker-clinical or nurse practitioner who has evaluated the person with a disability.⁸¹

A copy of any document nominating a guardian of the person or constituting a durable power of attorney should also be included. In addition, one of the health care providers must have examined the person within 21 days of the filing of the petition.⁸²

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:

⁸⁰ Md. Rule 10-301(c).

⁸¹ Md. Rule 10-202(a)(1).

⁸² Id.



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, habitual drunkenness, 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.⁸³

The petitioner must also present evidence that the proposed guardian is a fit and appropriate person to be appointed, that they are 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 their 16th birthday, and, in the opinion of the court, they had sufficient mental capacity to make an intelligent choice at the time they 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 persons who would be their heirs if they were dead;
8. A person or corporation nominated by a person who, or institution, organization, or public agency which, is caring for them;
9. A person or corporation nominated by a governmental agency which is paying benefits to them; and
10. Any other person considered appropriate by the court.⁸⁴

⁸³ MD. CODE ANN., EST. & TRUSTS § 13-201(c)

⁸⁴ MD. CODE ANN., EST. & 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 their own property.⁸⁵

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.⁸⁶

Bank accounts must be titled in the name of the guardian as “A.B., (fiduciary) for _____ (or under the Will of _____)” the person with the disability, and the guardian must use those funds for the person’s expenses.⁸⁷ The guardian may also spend the person’s money to pay for housing, food, clothing, transportation, medical care, to pay child support or alimony, to pay other bills the person may owe, to file tax returns and pay taxes, and generally to pay for the expenses of the person.⁸⁸

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, and whether to borrow money to make repairs to a home.⁸⁹

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.⁹⁰ 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

⁸⁵ MD. CODE ANN., EST. & TRUSTS § 13-212

⁸⁶ MD. CODE ANN., EST. & TRUSTS § 15-102

⁸⁷ Md. Rule 10-704(a).

⁸⁸ MD. CODE ANN., EST. & TRUSTS § 15-102

⁸⁹ Id.

⁹⁰ MD. CODE ANN., EST. & TRUSTS § 15-110



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 \$10,000.⁹¹

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.⁹² 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.⁹³

WHAT IS AN ACCOUNTING?

The guardian must keep records of everything they do 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.⁹⁴

The guardian must swear that the information they are giving is true. Additionally, the Maryland Rules provide a form that describes exactly what needs to be included in the accounting. (See Guardians and Other Fiduciaries Rule 10-708) The form is available from the Maryland Judiciary at the following website, <https://www.mdcourts.gov/sites/default/files/import/family/forms/ccgn012.pdf>.

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.⁹⁵ The

⁹¹ Md. Rule 10-702(a).

⁹² Md. Rule 10-707(a).

⁹³ Md. Rule 10-706(b).

⁹⁴ Id., See also Md. Rule 10-708.

⁹⁵ MD. CODE ANN., EST. & TRUSTS § 13-206(c)(1)(ii). 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.



guardian may not use the person's property to benefit the guardian. If the exercise of a 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.⁹⁶

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 compensation and reimbursement for actual and necessary expenses as a percentage of income to the guardianship estate. 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.⁹⁷

CAN A COURT REMOVE A GUARDIAN OF THE PROPERTY?

Yes. If a guardian of the property fails to perform their duties appropriately, they may be removed or may be subject to other sanctions on the court's own initiative or on the petition of an interested person.⁹⁸ If an interested party files such a petition, the court will set a hearing date.⁹⁹ 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.¹⁰⁰ The removed guardian must file a final accounting and deliver all property to the substituted or successor guardian.¹⁰¹ The court may also disallow any commissions from the time the default began, require the guardian to perform the neglected duties, and impose other sanctions it deems appropriate.¹⁰²

WHEN DOES A GUARDIANSHIP OF THE PROPERTY END?

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

- The occurrence of the event specified in the guardianship order as ending the guardianship;

⁹⁶ MD. CODE ANN., EST. & TRUSTS § 13-206 and § 13-216

⁹⁷ MD. CODE ANN., EST. & TRUSTS § 13-218

⁹⁸ Md. Rule 10-712.

⁹⁹ Md. Rule 10-712(d).

¹⁰⁰ Md. Rule 10-712(e).

¹⁰¹ Md. Rule 10-712(f).

¹⁰² Md. Rule 10-712(g).



- The cessation of the disability that prompted the appointment of a guardian;
- The individual's death; or
- Any other good cause for termination.¹⁰³

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).¹⁰⁴ 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.¹⁰⁵

Termination of the appointment of a guardian ends that person's rights and powers pertaining to the office of guardian of the property.¹⁰⁶ 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 them of the duty to preserve, account for, and deliver the estate's property to the successor guardian.¹⁰⁷

¹⁰³ Md. Rule 10-710(a).

¹⁰⁴ Md. Rule 10-710(d)&(e).

¹⁰⁵ Md. Rule 10-710(f).

¹⁰⁶ MD. CODE ANN., EST. & TRUSTS § 13-220(c)(1)

¹⁰⁷ MD. CODE ANN., EST. & TRUSTS § 13-220(c)(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 her/himself 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 contains 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;



- 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 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.¹⁰⁸

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.

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

¹⁰⁸ Md. Rule 10-210.



come to the person or others if the proceeding is delayed, and reasonable attempts to give notice have been made.¹⁰⁹

- The person has the right to be present at the hearing, unless they have knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity. The person also has the right to present evidence and to cross examine witnesses.¹¹⁰
- The person has the right to counsel whether or not the person is present at the hearing. If the person cannot afford to pay an attorney or lacks the capacity to waive counsel, one will be appointed for them.¹¹¹
- 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.¹¹²
- 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 the appellate court.¹¹³

WHAT DOES THE COURT DECIDE IN AN EMERGENCY GUARDIANSHIP HEARING?

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

1. If 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, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare or safety;¹¹⁴
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;¹¹⁵ and

¹⁰⁹ MD. CODE ANN., EST. & TRUSTS § 13-709(e)

¹¹⁰ MD. CODE ANN., EST. & TRUSTS § 13-709(f)(1)(i) and (iii)

¹¹¹ MD. CODE ANN., EST. & TRUSTS § 13-709(f)(1)(ii)

¹¹² Md. Rule 10-212(b).

¹¹³ MD. CODE ANN., EST. & TRUSTS § 13-709(h) and (j)

¹¹⁴ CODE ANN., EST. & TRUSTS § 13-709(b)(1); MD. CODE ANN., EST. & TRUSTS § 13-705(b) MD.

¹¹⁵ MD. CODE ANN., EST. & TRUSTS § 13-709(b)(2); MD. CODE ANN., EST. & TRUSTS § 13-101(g).



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.¹¹⁶

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.¹¹⁷ Additional limitations on a court order are 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;¹¹⁸
2. Protective services may be provided under an initial emergency order for not more than 144 hours;¹¹⁹
3. The court may extend the terms of the emergency order and the appointment of the temporary guardian until appointment of a guardian of the person, if the petitioner shows that the emergency conditions will probably continue or recur beyond the expiration of the emergency order;¹²⁰ and
4. The temporary guardian shall submit a report describing the circumstances 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.¹²¹

¹¹⁶ MD. CODE ANN., EST. & TRUSTS § 13-709(b)(3)

¹¹⁷ MD. CODE ANN., EST. & TRUSTS § 13-709(c)(7)

¹¹⁸ MD. CODE ANN., EST. & TRUSTS § 13-709(c)(1) and (2)

¹¹⁹ MD. CODE ANN., EST. & TRUSTS § 13-709(c)(3)

¹²⁰ MD. CODE ANN., EST. & TRUSTS § 13-709(c)(5)

¹²¹ MD. CODE ANN., EST. & TRUSTS § 13-709(i)



Chapter 7

Supported Decision Making



In 2022, the Maryland General Assembly passed the Supported Decision Making Act, providing a new less restrictive alternative to guardianship. The purpose of the Supported Decision Making Act is “to assist adults by (1) obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and (2) preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.”¹²² In practice, the Supported Decision Making Act provides for a supporter to gather information, provide explanations in simplified language, and assist the individual with implementing decisions.¹²³

The Supported Decision Making Act formalizes a process that many adults, with and without disabilities, already use. Informally, adults look to friends, family and trusted professionals to give them information about life decisions – for example, what kind of car to buy, or whether to undergo a medical procedure. The adult asks for advice, weighs the information he receives, and then makes a decision. The Supported Decision Making Act recognizes the existence of these informal supported decision making arrangements as less restrictive alternatives to guardianship.¹²⁴

The Supported Decision Making Act, now reflected in Maryland law, sets out a process by which an individual can formally identify “supporters” that she trusts to assist in making decisions in life. In a supported decision making agreement, an adult can authorize supporters to get information from official sources, help the adult to understand that information, and then make a decision based on the supporters’ input and the adult’s wishes.¹²⁵

In informal arrangements, a supporter may just be providing helpful advice. But under the Supported Decision Making Act, the supporter has some specific authority and responsibilities. As noted above, the supported decision making agreement should allow the supporter to obtain information on behalf of the adult. Supporters should also ensure that they “act honestly, diligently and in good faith,”

¹²² Maryland Code, Estates & Trusts Article, § 18-102(a)

¹²³ Maryland Code, Estates & Trusts Article, § 18-104(c)

¹²⁴ Maryland Code, Estates & Trusts Article, § 18-104(e)

¹²⁵ Maryland Code, Estates & Trusts Article, § 18-104(c)



within the scope of the agreement, avoid conflicts of interest, and that they help the adult make her own decision.¹²⁶ Supporters should not try to steer the adult to make a “best interest” decision – they should not substitute their opinions for the adult’s own choice. They should also avoid trying to coerce the adult into making a different decision.

A supporter should also maintain records of their assistance, “which the supporter shall make available to the adult on request, concerning: (i) The supporter’s actions under the supported decision-making agreement; and (ii) How the adult communicates and expresses opinions to the supporter.”¹²⁷

Because supporters have these powers and responsibilities, they must be adults, and not have pre-existing conflicts of interest with the adult they are supporting. (For example, they cannot be the subject of a protective order obtained by the adult they are supporting, and cannot have a conviction for a crime of financial exploitation.) In addition, they can – and should – resign if the role of supporter becomes too hard, or if they encounter a conflict of interest.¹²⁸

Once an adult has identified appropriate supporters, they can enter into a supported decision making agreement by signing a written agreement. The agreement should be dated, should identify any supporter or supporters, describe how the supporters will assist the adult, and describe actions the supporters may not take under the agreement (for example, supporters may not use the agreement to enforce a decision by the adult).¹²⁹ A complete agreement should be signed by the adult and any supporters, with the signatures witnessed by two adults who are not supporters or employees of supporters. The adult can terminate the agreement, and the supporters’ authority, by revoking it in writing, or orally, at any time.¹³⁰

Importantly, a supported decision making agreement can be created even if an adult has already been appointed a guardian.¹³¹ A guardian cannot stop an adult from entering into a supported decision making agreement, as long as

¹²⁶ Maryland Code, Estates & Trusts Article, § 18-105(a).

¹²⁷ Maryland Code, Estates & Trusts Article, § 18-105(a)(5).

¹²⁸ Maryland Code, Estates & Trusts Article, § 18-106.

¹²⁹ Maryland Code, Estates & Trusts Article, § 18-107.

¹³⁰ Maryland Code, Estates & Trusts Article, § 18-108.

¹³¹ Maryland Code, Estates & Trusts Article, § 18-104(b)(1).



the agreement does not stop the guardian from completing their court-ordered responsibilities. However, if an adult under guardianship does enter into a supported decision making agreement, the agreement may require court approval if it “affects the authority of the guardian.”¹³³ In addition, supporters would be required to provide a copy of the agreement to any guardian.¹³⁴ The guardian may ask supporters how they are supporting the adult. However, supporters are required not to disclose information without authorization from the adult.¹³⁵ This could result in a situation where the guardian seeks a court order that the supporter disclose information.¹³⁶

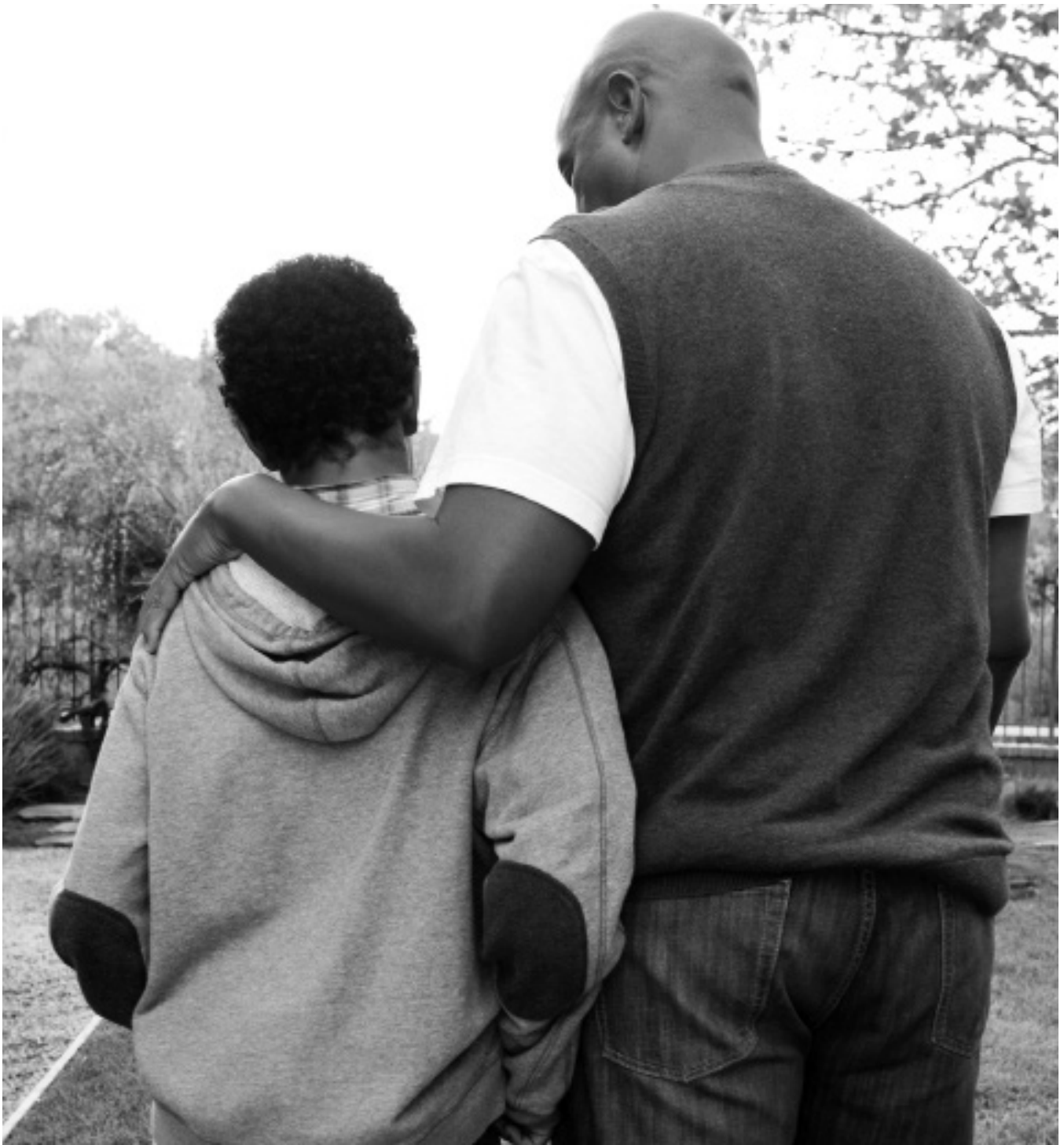
Many sample Supported Decision Making Agreements are available online. For one example, you can find the Sample Supported Decision-Making Agreement developed by the Cross-Disability Supported Decision-Making Coalition at https://disabilityrightsmd.org/wp-content/uploads/Maryland-Model-Supported-Decision-Making-Agreement_Final.docx. This is a sample form. If you have questions about your rights, please contact an attorney.

¹³³Maryland Code, Estates & Trusts Article, § 18-107(b)(8).

¹³⁴Maryland Code, Estates & Trusts Article, § 18-105(a)(7).

¹³⁵Maryland Code, Estates & Trusts Article, § 18-105(a)(6)(ii).

¹³⁶Maryland Code, Estates & Trusts Article, § 18-105(a)(6)(i).



Chapter 8

Where to get Help



STATEWIDE

Consumer Assistance

Health Education and Advocacy Unit
200 Saint Paul Place, 16th Floor Baltimore,
HEAU Hotline: Mon-Fri 9am-4:30pm
(410) 528-1840 or Toll Free: 1 (877) 261-8807
heau@oag.state.md.us
<https://www.marylandattorneygeneral.gov/Pages/default.aspx>

Guardianship

Public Guardianship Services
Maryland Department of Aging
301 W. Preston Street, Suite 1007
Baltimore, MD 21201
(410) 767-1100
<https://aging.maryland.gov/Pages/Guardianship.aspx>

Maryland Courts – Guardianship website

<https://www.mdcourts.gov/family/guardianship/courtappointedguardians>

Maryland Legal Aid

Main Intake: (888) 465-2468
mdlab.org

Maryland Legal Services Program Contractor for Adult Legal Services

The contractors to provide adult legal services through the Maryland Legal Services Program can change from time to time, and there may also be multiple providers for some counties.

For an up-to-date list of contractors, see:
<https://dhs.maryland.gov/maryland-legal-services-program/adult-representation/>

Maryland Senior Legal Helpline

Free telephone hotline for people living in Maryland, aged 60 years and older.

*All counties except Baltimore City, Baltimore County, & Montgomery County - (410) 951-7760
Toll Free: 1 (800) 896-4213 ext. 7760

Senior Information and Assistance

Maryland Department of Aging
301 W. Preston Street, Suite 1007
Baltimore, MD 21201
(410) 767-1100 or 1 (800) 243-3425
<https://aging.maryland.gov/Pages/contactus.aspx>

Sixty Plus Legal Program

Program providing low-cost legal services for qualifying Maryland residents age 60 and older.
<https://aging.maryland.gov/Documents/SixtyPlusLegalProgram.pdf>

ALLEGANY COUNTY

Department of Social Services

1 Frederick Street, Cumberland, MD 21502
(301) 784-7000

Legal Aid Bureau, Inc.

Western Maryland Office
110 Greene Street, Cumberland, MD 21501
(301) 777-7474

Legal Services Program

Allegany Law Foundation, Inc.
110 Greene Street, Cumberland, MD 21502
(301)722-3390
info@alleganylaw.com

Senior Information and Assistance

Human Resources Development Commission
Area Agency on Aging
125 Virginia Avenue, Cumberland, MD 21502
(301) 783-1709
Contact information available at
<https://www.alleganyhrdc.org/contact-us/>



ANNE ARUNDEL COUNTY

Department of Social Services

80 West Street
Annapolis, MD 21404
(410) 269-4500

Lawyer Referral Service

(referrals for fee and no-fee services)
Anne Arundel Bar Association
<https://www.aabar.org/lris>
(410) 280-6950

Legal Services Programs Senior Citizens Law

Project Legal Aid Bureau, Inc.
229 Hanover Street
Annapolis, MD 21404
(410) 972-2700

Senior Information and Assistance

Area Agency on Aging
2666 Riva Road
Annapolis, MD 21401
(410) 222-4464

BALTIMORE CITY

Department of Social Services

Talmadge Branch Building
1910 N. Broadway Street
Baltimore, MD 21230
(443) 378-4600

Legal Aid Bureau, Inc.

500 East Lexington Street
Baltimore, MD 21202
(410) 951-7777 or (800) 999-8904

Maryland Volunteer Lawyers Service

201 North Charles Street,
Suite 1400 Baltimore, MD 21201
(410) 539-6800
Intake Mon-Thurs 9 am to 12 pm
(410) 547-6537

Senior Information and Assistance

Commission on Aging and Retirement Education
(CARE)
Office of Aging and CARE Services
1001 E. Fayette Street
Baltimore, MD 21202
(410) 396-4522

Senior Legal Services

Baltimore City Bar Association
111 North Calvert Street, Suite 631
Baltimore, MD 21202
(410) 396-1322

Sixty Plus Program

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

BALTIMORE COUNTY

Department of Social Services

6401 York Road
Baltimore, MD 21212
(410) 853-3000



Legal Services Programs

Legal Services for the Elderly
Legal Aid Bureau, Inc.
29 West Susquehanna Avenue, Suite 305
Towson, MD 21204
(410) 427-1800

Senior Information and Assistance

Department of Aging
Area Agency on Aging
611 Central Avenue
Towson, MD 21204
(410) 887-2594
aginginfo@baltimorecountymd.gov

Sixty Plus Lawyer Referral Service

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

CALVERT COUNTY

Department of Social Services

Louis Goldstein Building
200 Duke Street
Prince Frederick, MD 20678
(443) 550-6900

Legal Aid Bureau, Inc.

Southern Maryland Office
15364 Prince Frederick Road
Hughesville, MD 20637
(301) 932-6661

Senior Information and Assistance

Area Agency on Aging
450 West Dares Beach Road
Prince Frederick, MD 20678
(410) 535-4606
(301) 855-1170

CAROLINE COUNTY

Department of Social Services

Denton Multiservice Center
207 South Third Street
Denton, MD 21629
(410) 819-4500

Legal Aid Bureau, Inc.

Upper Easton Shore Office
106 N. Washington St., Suite 101
Easton, MD 21601
(410) 763-9676
(800) 477-2543

Upper Shore Aging, Inc.

Caroline Senior Center
100 Shauber Road
Chestertown, MD 21620
(410) 758-6500
Toll Free: 1-800-721-6651

CARROLL COUNTY

Department of Social Services

1232 Tech Court
Westminster, MD 21157
(410) 386-3300

Legal Aid Bureau, Inc.

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

Senior Information and Assistance

Bureau of Aging & Disabilities
125 Stoner Avenue
Westminster, MD 21157
(410) 386-3800



CECIL COUNTY

Department of Social Services

Elkton District Court/Multi Service Building
170 East Main Street
Elkton, MD 21921
(410) 996-0100

Legal Aid Bureau, Inc.

Northeastern Maryland Office
103 S. Hickory Ave.
Bel Air, MD 21014
(410) 836-8202 (Harford)

Senior Information and Assistance

Division of Aging & Disability Services
200 Chesapeake Blvd.
Elkton, MD 21921
(410) 996-8425

CHARLES COUNTY

Department of Social Services

200 Kent Ave
La Plata, MD 20646
(301) 392-6400

Legal Aid Bureau, Inc.

Southern Maryland Office
15364 Prince Frederick Road
Hughesville, MD 20637
(301)932-6661

Senior Information and Assistance

Department of Community Services
Aging and Human Services
8190 Port Tobacco Road
Port Tobacco, MD 20677
(301) 934-9305

DORCHESTER COUNTY

Department of Social Services

627 Race Street
Cambridge, MD 21613
(410) 901-4100

Dorchester Community Services Inc.

2450 Cambridge Beltway
Cambridge, MD 21613
(410) 221-1900

Legal Aid Bureau, Inc.

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

FREDERICK COUNTY

Legal Aid Bureau, Inc.

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

Senior Information and Assistance

Senior Services Division
Area Agency on Aging
1440 Taney Ave.
Frederick, MD 21702
(301) 660-1605



GARRETT COUNTY

Department of Social Services

12578 Garrett Highway
Oakland, MD 21550
(301) 533-3000

Legal Aid Bureau, Inc.

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

Senior Information and Assistance

Aging, Health & Nutrition Services
104 East Centre Street
Oakland, MD 21550
(301) 334-9431

HARFORD COUNTY

Department of Social Services

2 South Bond Street, Suite 300
Bel Air, MD 21014
(410) 837-4700

Legal Services Programs

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

Senior Information and Assistance

Office on Aging
145 North Hickory Avenue
Bel Air, MD 21014
(410) 638-3025

HOWARD COUNTY

Department of Social Services

7121 Columbia Gateway Drive
Columbia, MD 21046
(410) 872-8700

Howard County Bar Association Lawyer Referral Service

(410) 313-3853

Legal Services for the Elderly/Senior Info, and Assistance

The Bain 50+ Center
5470 Ruth Keaton Way
Columbia, MD 21044
(410) 313-7213

Senior Information and Assistance

Office on Aging and Independence (OAI)
Area Agency on Aging
9830 Patuxent Woods Drive
Columbia, MD 21046
(410) 313-6410

KENT COUNTY

Department of Social Services

350 High Street
P.O. Box 670 (mailing address)
Chestertown, MD 21620
(410) 810-7600

Legal Aid Bureau, Inc.

Upper Eastern Shore Office
106 N. Washington St., Suite 101
Easton, MD 21601
(410) 763-9676
(800) 477-2543



Senior Information and Assistance
Upper Shore Aging, Inc.

Area Agency on Aging
 100 Schaubert Road
 Chestertown, MD 21620
 (410) 778-6000
 1 (800) 721-6651

MONTGOMERY COUNTY

Department of Social Services

401 Hungerford Drive, 5th Floor
 Rockville, MD 20852
 (240) 777-4513

Lawyer Referral Service/Pro Bono Program

The Bar Association of Montgomery County
 27 West Jefferson Street
 Rockville, MD 20850
 (301) 279-9100 Referral Service
 (301) 424-7651 Pro Bono Program

Legal Aid Clinic

TESS Community Service Center
 8513 Piney Branch Road
 Silver Spring, MD 20901
 (301) 565-7675

Legal Services Programs

Montgomery County Office
 Legal Aid Bureau, Inc.
 600 Jefferson Plaza, Suite 430
 Rockville, MD 20852
 (240) 314-0373
 (855) 880-9487

Senior Information and Assistance

Department of Health and Human Services,
 Aging and Disability Resource Unit
 Area Agency on Aging

401 Hungerford Drive, 4th Floor
 Rockville, MD 20850
 (240) 777-3000

PRINCE GEORGE'S COUNTY

Department of Social Services

805 Brightseat Road
 Landover, MD 20785
 (301) 909-7000

Lawyer Referral Service

The Prince George's County Bar Association
 (301) 952-1440

Senior Information and Assistance

Department of Family Services, Aging and
 Disabilities Services Division
 Area Agency on Aging
 6420 Allentown Road
 Camp Springs, MD 20748
 (301) 265-8450

QUEEN ANNE'S COUNTY

Department of Social Services

125 Comet Drive
 Centreville, MD 21617
 (410) 758-8000

Legal Aid Bureau, Inc.

Upper Eastern Shore Office
 106 N. Washington St., Suite 101
 Easton, MD 21601
 (410) 763-9676

Senior Information and Assistance

Area Agency on Aging
 104 Powell Street
 Centreville, MD 21617
 (410) 758-0848 or (410) 778-9399



ST. MARY'S COUNTY

Department of Social Services

23110 Leonard Hall Drive
Leonardtown, MD 20650
(240) 895-7000

Legal Aid Bureau, Inc.

Southern Maryland Office
15364 Prince Frederick Road
Hughesville, MD 20637
(301) 932-6661

Senior Information and Assistance

Department on Aging & Human Services
Area Agency on Aging
23115 Leonard Hall Dr.
Leonardtown, MD 20650
(301) 475-4200 ext. 1057

SOMERSET COUNTY

Commission on Aging

8928 Sign Post Road, Suite 3
Westover, MD 21871
(410) 651-3400

Department of Social Services

30397 Mount Vernon Road
Princess Anne, MD 21853
(410) 677-4200

Legal Aid Bureau, Inc.

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

Senior Information and Assistance

Area Agency on Aging

909 Progress Circle
Salisbury, MD 21801
(410) 742-0505

TALBOT COUNTY

Department of Social Services

125 Comet Drive
Centreville, MD 21617
(410) 758-8000

Department of Social Services

301 Bay Street
Easton, MD 21601
(410) 770-4848

Legal Aid Bureau, Inc.

Upper Eastern Shore Office
106 N. Washington St. Suite 101
Easton, MD 21601
(410) 763-9676
(800) 477-2543

Talbot County Senior Center

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

WASHINGTON COUNTY

Department of Social Services

122 North Potomac Street
Hagerstown, MD 21741
(240) 420-2100



Legal Aid Bureau, Inc.

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

Senior Information and Assistance

Commission on Aging, Inc.
Area Agency on Aging
535 East Franklin Street
Hagerstown, MD 21740
(301) 790-0275

WICOMICO COUNTY

Department of Social Services

201 Baptist Street, Suite 27
Salisbury, MD 21801
(410) 713-3900

Legal Aid Bureau, Inc.

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

Senior Information and Assistance

MAC, Inc.

Area Agency on Aging
909 Progress Circle, Suite 100
Salisbury, MD 21801
(410) 742-0505

WORCESTER COUNTY

Senior Information and Assistance

MAC, Inc.

Area Agency on Aging
909 Progress Circle, Suite 100
Salisbury, MD 21804
(410) 742-0505



Appendix A

You can find a sample Advance Directive, link to an Advance Directive for Mental Health Service, and other relevant information, sample forms, and useful links in “A Guide to Maryland Law on Health Care Decisions,” available at

<http://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/adirective.pdf>

Appendix B

You can find a sample Maryland Power of Attorney at:

<http://www.marylandattorneygeneral.gov/Courts%20Documents/17-202.pdf>



Appendix C

You can find a sample Petition for the Appointment of a Guardian at:

<https://www.mdcourts.gov/sites/default/files/court-forms/ccgn002.pdf>

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. Assuming that Mary is cooperative, it is essential that she have a full medical “work up” to make sure that her inattention to basic bill payment as well as the deterioration of her heretofore neat 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 understand and, assuming that she is willing, 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, based on medical examination by a practice that specializes in neurological, cognitive and memory issues, 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. If Justin can complete a supported decision making agreement, he can also name his mother – and other trusted family or family friends – as his supporters. Such an agreement would need to specify in what situations Justin's mother would provide support to Justin, and should be written out and signed by Justin, his mother, and any other supporters.

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). Justin and his parents are equal partners with the school in this transition process which is intended to support Justin in his transition to adult services. (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. It should be noted that guardians do not have the authority to commit the person with a disability to a psychiatric facility without an involuntary commitment proceeding.

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.)