IDEAL

Identify Evaluate Assess Limit

Tool and Resource Guide for Maryland Healthcare Settings

A Patient-Centered Approach to Adult Guardianship and Its Alternatives

05/2024

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The information provided in this resource guide does not, and is not intended to, constitute legal advice. This guide is for informational purposes only.

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IDEAL Tool and Resource Guide for Maryland Healthcare Settings:

A Patient-Centered Approach to Adult Guardianship and Its Alternatives

This guide is a resource for exploring alternatives to adult guardianship and, if no alternatives are available, preparing for the guardianship court process.

Purpose

Patients experiencing diminished capacity present unique challenges to healthcare settings. This guide outlines patient-centered options for adult patients in hospitals, skilled nursing facilities, and other healthcare settings who need assistance making personal or financial decisions. Guardianship is one option, but it has significant limitations. Alternatives to guardianship are a range of formal and informal options that alone or together allow someone to have their needs met without a guardian. They may be faster, more effective, less expensive, and less restrictive than guardianship.

"The typical [person subject to guardianship] has fewer rights than the typical convicted felon – they can no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty."
-Former U.S. Congressman Claude Pepper (FL)

Exploring alternatives to guardianship is also important when a patient needs a guardian. To appoint a guardian, a court must find that alternatives to guardianship have been explored and exhausted. Alternatives can also help ensure guardianship is in its least restrictive form for the patient. A person under an unnecessary or overly broad guardianship (where a guardian has more control than is needed) can experience worse life and health outcomes and may be more vulnerable to abuse and exploitation.[1] Additionally, the associated loss of self determination can affect the person's emotional and physical well-being, longevity, and sense of self.[2] The **IDEAL Approach** outlined in this guide can help you address the needs of patients experiencing diminished capacity and ensure guardianship is used appropriately.

Why is exploring alternatives to guardianship important?

Because guardianship is an extreme measure that limits, and in some cases, takes away all of a person's basic rights and liberties. Guardianship also has limits.

- Guardians cannot force someone to comply with treatment or to stay in a care setting.
- Guardianship does not make someone eligible for any special services or benefits.
- Guardians may need permission from the court before they can make certain decisions or act.

Who should use this guide?

Professionals in healthcare settings (hospitals, skilled nursing facilities, and other settings) including:

- Health care providers (doctors, nurses, physician assistants, nurse practitioners, therapists)
- Medical social workers
- Discharge planners
- Attorneys for facilities

[1] Wright, Jennifer L., Guardianship for Your Own Good: Improving the Well-Being of Respondents and Wards in the USA, International Journal of Law and Psychiatry, Vol. 33, pp. 350–368 (2010); U.S. Government Accountability Office, The Extent of Abuse by Guardian is Unknown, But Some Measures Exist to Help Protect Older Adults, GAO-17-33, November 2016.
[2] Winick BJ., The Side Effects of Incompetency Labeling and the Implications for Mental Health Law, Psychology Public Policy & Law (1995).

THE IDEAL APPROACH[3]

4 STEPS

Identify
Evaluate
Assess
Limit

IDEAL is shorthand for a four-step approach that professionals in health care settings can take to address the needs of patients who may be experiencing diminished capacity in a patient-centered way. It is a framework for identifying alternatives to guardianship, which can offer faster, less complicated, less expensive, and less restrictive means to address a patient's unique personal or financial needs or challenges.

Even in situations where guardianship may be unavoidable, The **IDEAL Tool** can help streamline the process and guard against an overly broad guardianship. This approach is also consistent with Maryland law, which treats guardianship as a last resort because it involves the removal of a person's fundamental rights and liberties.

ID — **IDentify**

IDentify the patient's specific needs or areas of concern

E — **Evaluate**

Evaluate the patient's capabilities and resources

A — **Assess**

Assess alternatives to guardianship

L — **Limit**

Limit any guardianship to what is necessary to meet the patient's unmet needs

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[3] Adapted from the ABA "PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making," 2016.

THE IDEAL TOOL

STEP 1: IDentify needs

PATIENT NAME:

IDentify the patient's specific needs or areas of concern

Start by specifying the patient's needs and any reasons for concern. Consider:

Personal decision-making
- ☐ Making decisions
- ☐ Communicating decisions
- ☐ Carrying out decisions (with or without assistance)

Medical treatment and discharge planning
- ☐ Informed consent for medical treatment (including end-of-life care)
- ☐ Following a treatment plan
- ☐ Safe discharge or transfer

Mental health/psychiatric treatment
- ☐ Consent to treatment (including medication management)
- ☐ Admission to mental health facility
- ☐ Psychiatric bed

Managing assets or benefits
- ☐ Access to financial and other records
- ☐ Applying for benefits
- ☐ Spend down options (for benefit eligibility)
- ☐ Paying bills or managing income

Community services and supports
- ☐ Case management
- ☐ In-home care
- ☐ Transportation assistance
- ☐ Home or vehicle modifications
- ☐ Durable medical equipment or assistive technology
- ☐ Residential services
- ☐ Behavioral support services
- ☐ Family caregiver training, support, respite care
- ☐ Other (specify):

Other issues/concerns
- ☐ Patient/family conflict
- ☐ Abuse, neglect, or exploitation
- ☐ Other (specify):

Observations & notes:

THE IDEAL TOOL

STEP 2: Evaluate

Evaluate the patient's capabilities and resources

When exploring alternatives to guardianship, the focus should be on the patient's decision making capabilities. They may be able to make some decisions but not others. The law recognizes that there are intermediate degrees of legal capacity, and that capacity is contextual – the capacity needed to select a health care agent is different from the capacity required to decide where to live. Rather than asking "Does the patient have capacity?" ask "Capacity for what?" In other words, focus on the nature of each decision that goes into addressing the patient's identified needs and assess what the patient *can* do.

Ensure the patient has access to **any reasonable supports or accommodations** they may need and ensure **effective communication.** See Appendix A for guidance on ensuring supports and accommodations. Be mindful of your obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Maryland laws baring discrimination on the basis of disability.

Screen for any **temporary or reversible** conditions or circumstances that may impact decision-making. If these are present, consider whether a decision can be postponed until their condition or circumstances change. Consider:

- **Medical conditions:** Urinary tract or other infections, delirium, dehydration, malnutrition, vitamin deficiencies, traumatic brain injury, poor oral health, etc.
- **Pain:** Chronic or acute pain
- **Sensory deficits:** Poor vision, hearing loss, etc.
- **Medication:** Side effects, polypharmacy
- **Psychological conditions:** Stress, grief, depression, disorientation, etc.
- **Social/interpersonal factors:** Family conflict, cultural barriers

Resources. To the extent a patient is unable to make their own decisions, approach the patient's family members, friends, and other personal contacts as your partners in problem-solving. With education, coaching, and referrals to resources, they may be able help to address the patient's needs. Some may be able to serve as a substitute decision-maker. Consider using open-source tools, databases, or private investigators to locate relatives or people who may have information about the patient's preferences or resources. If there are conflicts among the patient's loved ones, or if they are uncertain about which options are best, consider referring them to a mediator.

Build and maintain effective working relationships with local agencies and community providers who can help you assess a patient's needs or put needed supports and services in place. Key resources are your local **Departments of Social Services (DSS)** and **Area Agencies on Aging (AAA).** They may be able to help you identify options for patients, assist patients and their loved ones, and arrange for services that may eliminate the need for guardianship. If guardianship is needed, any work you do with them before a petition is filed may help streamline the process and limit the scope of any guardianship. If the patient receives services from the **Developmental Disabilities Administration (DDA)**, work with their DDA Coordinator of Community Services or a supports planner to identify options or facilitate discussions. The local **Behavioral Health Authorities** can offer assistance with patients who need mental health services including addiction services. Additional resources are provided in **Appendix E**.

THE IDEAL TOOL

STEP 3: Assess alternatives

Assess alternatives to guardianship

If the patient is unable to make a needed decision, the next step is to screen for alternatives to guardianship that exist or that can be put in place to address the patient's unmet needs. Review the **Alternatives to Guardianship Resource Guide** for more information about the options.

Need/Area of Concern	Options (examples)
Personal decision-making	• Ensuring supports and accommodations • Supported decision-making
Medical treatment and discharge planning	• Advance directive for health care • Surrogate decision-making • Medical Order for Life-Sustaining Treatment (MOLST) • Withholding or withdrawal of medically ineffective treatment • Home & Community Based Services and informal options
Mental health/psychiatric treatment	• Advance directive for mental health services • Voluntary admission to a mental health facility • Involuntary admission a mental health facility • Behavioral Health Administration (BHA) resources
Managing assets or benefits	• Financial power of attorney • Authorized representative for medical assistance • Representative Payees and U.S. Department of Veterans Affairs (VA) Fiduciaries • Achieving Better Life Experience (ABLE) accounts • Trusts including special needs trusts • Banking services • Specific transaction (Transaction authorized by court without appointing guardian)
Other issues/concerns	• Mediation • Long-Term Care (LTC) Ombudsman • Reporting abuse, neglect, or exploitation

Observations & notes:

THE IDEAL TOOL

STEP 4: Limit guardianship

Limit any guardianship to what is necessary to meet the patient's unmet needs

Even if the patient has needs that cannot be addressed by any combination of the alternatives to guardianship described in this guide, you have done important leg work. The court will need to know what alternatives to guardianship have been tried and failed before appointing a guardian. Documentation of your work here can help your facility's attorney prepare a guardianship petition and present evidence. Being specific about the patient's needs and capabilities can help your attorney advocate for a limited guardianship that is tailored to the patient's needs. The patient will be represented by an attorney whose job it is to advocate for the patient's wishes, protect their rights, and argue for any guardianship to be in its least restrictive form. Review the overview of **Guardianship Law and Process** to learn more.

If you are asked to complete a certificate of incapacity, review the guidance on Capacity Assessments in **Appendix B**. Consider using the Guardianship Referral Worksheet in **Appendix C**.

The guardianship process is complex and can take a while depending on the patient's situation. Guardianship also has its limits. Guardians cannot force a patient to comply with treatment or stay in a care setting. Guardians have a duty to make independent decisions based on the patient's preferences, values, and beliefs. They also may need court approval to make certain decisions.

The IDEAL approach (**IDentify** needs, **Evaluate** capabilities and resources, **Assess** alternatives, and **Limit** any guardianship) can help you avoid the need to petition for guardianship altogether or can help you present a petition that contains the necessary information about alternatives and limitations to the guardianship so that the court can consider the matter efficiently.

Observations & notes:

ALTERNATIVES TO GUARDIANSHIP RESOURCE GUIDE

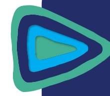
Outlined here are options for addressing the specific needs of or areas of concern regarding a patient who may be experiencing diminished capacity, followed by more comprehensive information about each option. Alone or together, these options can be used to help obviate the need for guardianship or be used to limit, modify, or terminate a guardianship. Alternatives can be put in place at any time and can be faster, less expensive, and more patient-centered than guardianship. You are likely familiar with most of these options. Be intentional about considering them as part of the **IDEAL Approach.** If these options cannot address a specific need, the patient may only need a limited rather than a full guardianship. If guardianship is necessary, consider using the Guardianship Referral Worksheet in **Appendix C** to help your facility's lawyer.

Need/Area of Concern	Options (examples)
Personal decision-making ❑ Making decisions ❑ Communicating decisions ❑ Carrying out decisions (with or without assistance)	• Ensuring supports and accommodations • Supported decision-making
Medical treatment and discharge planning ❑ Informed consent for medical treatment (including end-of-life care) ❑ Following a treatment plan ❑ Safe discharge or transfer	• Advance directive for health care • Surrogate decision-making • Medical Order for Life-Sustaining Treatment (MOLST) • Withholding or withdrawal of medically ineffective treatment • Home & Community Based Services and informal options
Mental health/psychiatric treatment ❑ Consent to treatment (including medication management) ❑ Admission to mental health facility ❑ Psychiatric bed	• Advance directive for mental health services • Voluntary admission to a mental health facility • Involuntary admission a mental health facility • Behavioral Health Administration (BHA) resources
Managing assets or benefits ❑ Access to financial and other records ❑ Applying for benefits ❑ Spend down options (for benefit eligibility) ❑ Paying bills or managing income	• Financial power of attorney • Authorized representative for medical assistance • Representative Payees and U.S. Department of Veterans Affairs (VA) Fiduciaries • Achieving Better Life Experience (ABLE) accounts • Trusts including special needs trusts • Banking services • Specific transaction (Transaction authorized by court without appointing guardian)
Other issues/concerns ❑ Patient/family conflict ❑ Abuse, neglect, or exploitation	• Mediation • Long-Term Care (LTC) Ombudsman • Reporting abuse, neglect, or exploitation

PERSONAL DECISION-MAKING Making decisions, communicating decisions, or carrying out decisions	
Options	**Observations and Notes**
Ensuring supports and accommodations	
Supported decision-making	

Ensuring supports and accommodations. Patients have the right to make informed decisions about their care, even if you don't agree with those decisions. Be mindful of your obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Maryland laws barring discrimination on the basis of disability. If you are presented with signs that a patient appears to be struggling with the ability to receive, understand, or process information, screen for any supports and accommodations they may need. Those may alleviate or eliminate any concerns about their ability to make, communicate, or effectuate the relevant decision(s). Appendix A provides additional guidance.

Supported decision-making (SDM). Supported decision-making is an arrangement in which an individual chooses a 'supporter' or a network of 'supporters' to help them make, communicate, or effectuate important life decisions. A supporter must be someone the individual chooses. It can be a family member, friend, or someone else the individual trusts.[4] The individual also chooses how supporters will assist in their decision-making process. Supporters cannot make decisions for or on behalf of the individual; the ultimate power to make decisions is with the individual. Supporters may ask questions, give the individual advice, explain things in a way that they understand, or serve as an effective communication accommodation. While SDM can be used by anyone, it can serve as an important accommodation for people with disabilities and older adults. SDM arrangements can be informal or a formal written agreements. There is no required format for written agreements, but Disability Rights Maryland offers a template. If a patient has a written SDM agreement, include a copy in their medical records. ***Md. Code, Estates & Trusts Art., § 18-101 et seq.***



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There are many ways an individual can use SDM. Examples of how SDM can be used in healthcare settings include having a supporter:

- Be with the patient during appointments or any discussions about their care (as an accommodation)
- Take notes for or help the patient come up with questions to ask the care team
- Help to ensure the patient understands information and options
- Advocate for extra time, breaks, or other accommodations to ensure the patient has a meaningful opportunity to digest information or make an informed decision
- Help the patient in weighing the benefits and risks of any treatment or procedure
- Assist the patient in communicating their decisions
- Help the patient complete paperwork or access relevant records

[4] A supporter cannot be a minor; someone the individual has a protective order, peace order, or other order prohibiting contact against; or someone who has been convicted of financial exploitation.

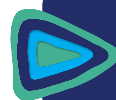
MEDICAL TREATMENT AND DISCHARGE PLANNING* Informed consent for medical treatment (including end-of-life care), following a treatment plan, safe discharge or transfer	
Options	**Observations and Notes**
Advance directive for health care	
Surrogate decision-making	
Medical Order for Life-Sustaining Treatment (MOLST)	
Withholding or withdrawal of medically ineffective treatment	
Home and Community-Based Services and informal options	

** See* ***Appendix E*** *for the Maryland Attorney General's resources for health care professionals and facilities.*

Competent adults have the right to make decisions about their own medical care. This includes the right to refuse treatment. In this context, "competent" means someone who is at least 18 years old and who has not been determined to be incapable of making an informed decision. When providing information to a patient about their care options, consider the **personal decision-making options** discussed above and ensure compliance with relevant state and federal laws. Provide information in a format that is accessible to the patient. If the patient is incapable of making an informed decision about their medical treatment, look to any arrangements the patient made before losing that ability and any available legal representatives.

Advance directive for health care. Sometimes referred to as a "health care power of attorney" or "medical power of attorney," these are instructions for how medical decisions will be made or the types of treatment a person will receive if they later become unable to make their own decisions. An advance directive can appoint a **health care agent** who is authorized to make medical decisions during any period the person is unable to make their own informed decisions. Health care agents are sometimes called medical powers of attorney or health care proxies. An advance directive can also include a **"living will,"** which states the person's treatment preferences, including their wishes regarding life support, CPR, ventilators, feeding tubes, and other life-sustaining treatment.

Any competent person can voluntarily create an advance directive. In this context, a 'competent person' is any individual who is over the age of 18, who understands the purpose and effects of an advance directive, and who has not been deemed incapable of making an informed decision. An advance directive can be written or electronic. It can also be made orally to a health care provider. **There are requirements** for creating an advance directive and who can serve as a health care agent. The Maryland Attorney General's Office also has **resources for individuals and health care providers.**



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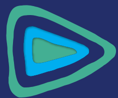
A health care provider can turn to a patient's health care agent or refer to their living will if a patient's attending physician and a second physician certify in writing that a patient is incapable of making informed decisions. If the patient is unconscious, only the written certification of their attending physician is required.
Md. Code, Health-General Art., § 5-601 et seq.

Surrogate decision-making. If the patient is incapable of making informed decisions about their medical care and does not have an advance directive for health care or their health care agent is unavailable, a health care provider can turn to a surrogate decision-maker to make medical decisions on the patient's behalf. Maryland law defines who surrogates are and their priorities (a provider must start at the first level of priority and cannot move to the next unless someone is not available).

Surrogate Priorities:

1. A court-appointed guardian
2. A spouse or domestic partner (even if the couple has been separated for years)
3. Adult children
4. Parents
5. Adult siblings
6. A close friend or relative who is competent and who signs an affidavit (a statement under oath) stating:
   - that they are a close relative or close friend, and
   - specific facts and circumstances that show that they have known the patient for enough time to know their beliefs, wishes, activities, and health



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Multiple people can share decision-making responsibility. For example, a patient may have multiple adult children who need to work together to make decisions. If they cannot reach an agreement, your facility's Patient Care Advisory Committee can review the situation and make a recommendation. A class of individuals with shared surrogate decision-making authority (e.g., a group of siblings), can **execute an agreement** that appoints one or more class members to act as the patient's surrogate.

A surrogate must make decisions based on what the patient would want if they could decide (substituted judgment). If the patient's wishes are unknown or unclear, then the surrogate must act in the patient's best interests and consider a variety of factors when making decisions. These factors include the patient's relevant religious and moral considerations and past behavior and conduct towards the treatment at issue. Surrogates cannot authorize a patient's sterilization or treatment for a mental disorder. A surrogate who is not a court-appointed guardian, however, may have more authority than a guardian to make serious medical decisions. Some guardians must get court approval before they can consent to the provision, withdrawal, or withholding of treatment that involves a substantial risk of life to the patient.
Md. Code, Health-General Art., § 5-605

Medical Order for Life-Sustaining Treatment (MOLST). A MOLST is a written medical order that outlines a patient's preferences regarding life-sustaining treatment including CPR, blood transfusions, artificial ventilation, and medical tests. A MOLST can be created by the patient, their health care agent, a surrogate decision-maker, or a guardian of the person. It must be signed by a physician, nurse practitioner, or physician's assistant. It should also be included in the patient's medical records and be kept with the patient during admission or discharge to a health care facility. For more information and resources for patients, families, and providers visit **marylandmolst.org.**
Md. Code, Health-General Art., § 5-608.1

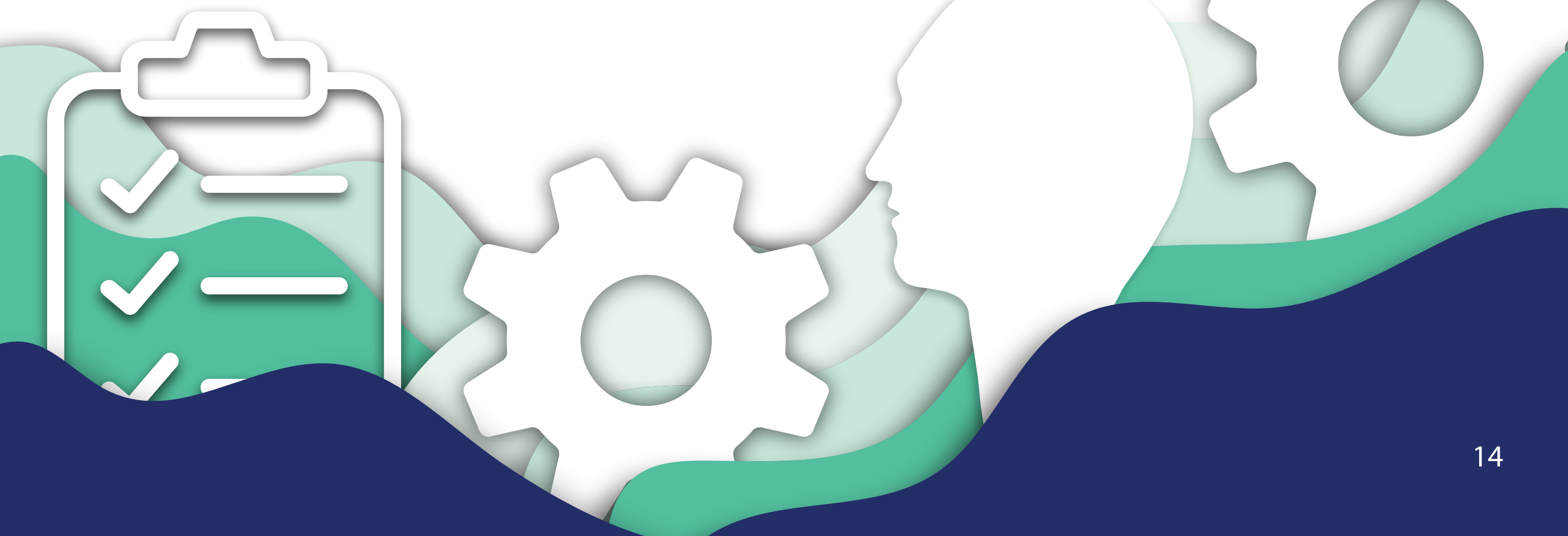
Withholding or withdrawal of medically ineffective treatment. Physicians and physician assistants are not required to provide treatment that they believe is medically ineffective. Medically ineffective treatment is defined as treatment that, to a reasonable degree of certainty, will neither prevent nor reduce the deterioration of an individual's health or prevent their impending death. If the patient's physician, and a second physician, certify in writing that a treatment is considered medically ineffective under generally accepted medical practices, the patient's attending physician can withhold or withdraw the treatment. If they decide to do so, the patient, their agent, or their surrogate must be notified. If the patient has a guardian, the guardian may need to get court approval before consenting to the withholding or withdrawal of medically ineffective treatment. The amount of time it takes for a guardian to get such approval varies.
Md. Code, Health-General Art., § 5-611; Md. Code, Estates & Trusts Art., §13-705

Home and Community-Based Services (HCBS) and informal options. Home and Community-Based Services and informal options allow a patient to be safely discharged to their community. They include:

- **Case management services and options counseling**
- **Supported housing, group homes, and assisted living facilities**
- **In-home aide services (for personal care, chores, other (activities of daily living)**
- **In-home emergency response system**
- **Home delivered meals, group dining programs, and grocery delivery services**
- **Adult day care programs and senior centers**
- **Prescription delivery services or supports**
- **Assistance with medical equipment, supplies, or non-emergency medical transportation**
- **Assistive technology and home modifications**
- **Peer supports and independent living skills training**
- **Informal or professional assistance with money management**
- **Assistance with personal needs from family, friends, and others in the patient's community (check-ins, errand running, reminders, transportation to appointments or stores, etc.)**

The availability of options depends on the patient's needs, location, Medicare/Medicaid eligibility, and other factors. Support planners, service coordinators, local **Departments of Social Services**, and **Area Agencies on Aging** offices can help assess needs and identify appropriate community resources. Options counseling may also be available to Medicare beneficiaries through the **State Health Insurance Assistance Program (SHIP)** and to Medicaid beneficiaries through **Maryland Access Point (MAP)**.

Ensure the patient has access to any needed supports and accommodations (see **Appendix A**), including effective communication supports, when explaining their rights. Advise them on what to expect during the discharge process and what is needed to address their needs. Include those who know the patient best in discussions about potential services as appropriate. With education and support, the patient, family members, and other loved ones can assist in addressing barriers or needs. This may require multiple meetings, additional time for services and supports to be put in place, and de-escalating potential tensions between the patient, family, friends, support persons, or staff. When conflicts or care planning become an issue, consider mediation (discussed below) to help refocus everyone involved on shared goals for the patient.



MENTAL HEALTH/PSYCHIATRIC TREATMENT
Consent to treatment (including medication management), admission to mental health facility, psychiatric beds

Options	Observations and Notes
Advance directive for health care	
Voluntary admission to a mental health facility	
Involuntary admission to a mental health facility	
Behavioral Health Administration (BHA) resources	

Advance directive for mental health services. Sometimes referred to as a "mental health care power of attorney," these are instructions regarding how mental health decisions will be made and treatment preferences if a person later becomes unable to make informed decisions about their own care. This type of advance directive can name an agent who is authorized to make decisions during any period the person is incapable of making their own. It can also include specific instructions or preferences about:

- Medication
- Treatments including electroconvulsive therapy (ECT), transcranial magnetic stimulation (TMS)
- Mental health providers, programs, and facilities
- Experimental treatment or trials
- Information sharing with third parties and visitors
- Other special considerations

Like an advance directive for health care (discussed above), any competent adult can voluntarily create an advance directive for mental health services. An advance directive can be written or electronic. There is no required format, but the Behavioral Health Administration and Mental Health Association of Maryland have templates. It can also be made orally to a health care provider.
Md. Code, Health-General Art., § 5-602.1

Voluntary admission to a psychiatric hospital. A competent person who is at least 16 years old can be voluntarily admitted to a psychiatric facility. In this context, competent means that the person:

- Has a mental disorder that is susceptible to care or treatment,
- Understands the nature of a request for voluntary admission,
- Can give continuous consent to being held at the facility, and
- Is able to request release from the facility.

With appropriate supports and accommodations, a patient may be able to voluntarily participate in the admission process.
Md. Code, Health-General Art., § 10-609

Involuntary admission to a mental health facility. Guardianship is not needed to involuntarily commit a person to a mental health facility. In fact, a guardian does not have authority to involuntarily commit someone under guardianship to a mental facility.

If the patient needs but does not consent to admission to a mental health facility, any individual with a legitimate interest in the patient's welfare can apply to a facility for them to be involuntarily admitted.

The application must be on the facility's form and include certificates from a) two physicians, or b) one physician and one psychologist, psychiatric nurse practitioner, licensed certified social worker-clinical, or licensed clinical professional counselor. The certificate must contain certain information and be based on the clinician's personal examination of the patient, which must occur within a week of signing the certificate or within 30 days of when the facility receives the application. There are conditions under which a facility can accept an application and other requirements if the patient is age 65 or older.

If a patient presents a danger to the life or safety of themselves or others, a clinician, peace or law enforcement officer, and **others can petition for an emergency evaluation.** If the petition is granted, the patient will be transported to an emergency facility for an emergency evaluation, and a physician will determine whether they meet the requirements for involuntary admission.

Within 12 hours of any involuntary confinement, the patient must receive forms in plain language notifying them of their involuntary admission, their right to consult with an attorney of their choice, and the availability of legal services. The patient has the right to request a hearing to dispute the admission, which must be held within 10 days from the patient's initial confinement, and to appeal the outcome of that hearing.
Md. Code, Health-General Art., §§ 10-613 – 10-633

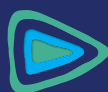
Behavioral Health Administration (BHA) resources.
The **Behavioral Health Administration** provides services and supports to individuals with mental health disorders, substance abuse disorders, and co-occurring disorders. The agency's **Behavioral Health Hospital Coordination Dashboard** provides real-time information about the availability of psychiatric beds in hospitals, including inpatient psychiatric beds and crisis beds for short-term stabilization services. Your local **Department of Health Behavioral Health Administrator** can also assist in finding available beds.

MANAGING ASSETS OR BENEFITS

Access to financial and other records, applying for benefits, spend down options (for benefit eligibility), paying bills or managing income

Options	Observations and Notes
Financial power of attorney	
Authorized representative for medical assistance	
Representative Payees and U.S. Department of Veterans Affairs Fiduciaries	
Achieving Better Life Experience (ABLE) accounts	
Trusts including special needs trusts	
Banking services	
Specific transaction (Transaction authorized by court without appointing guardian)	

Financial power of attorney. A financial power of attorney is a legal document that gives another person (an agent or "attorney-in-fact") legal authority to make decisions for or handle financial or business affairs on behalf of another person (the principal). The principal creates the document, names the agent, defines the agent's powers, and designates what property or affairs the agent can manage. In Maryland, anyone who is at least 18 years old and competent (understands what the document is, what powers they're giving their agent, and what property is covered by the financial POA) can create a POA. There are rules about who can be an agent and what the document needs to include. There are forms that are sometimes referred to a "statutory power of attorney" forms that can be used. Other states may have different requirements.



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The principal also decides when the agent's authority goes into effect. For example, a POA can go into effect right away or when the principal is determined to be incapacitated. The POA is meant to ensure that the principal's wishes, values, and preferences are respected. Under some circumstances, refusal to recognize a valid POA can result in financial penalties.

If a patient has a POA, they likely do not need a guardian of the property. Agents can assist with paperwork associated with discharge or transfer, apply for benefits, and handle other financial matters. Agents have different levels of knowledge and experience. They may need information about options and resources to help them decide how to address the patient's specific needs. Effective communication is key.

Md. Code, Estates & Trusts Art., § 17-101 et seq. (Maryland General and Limited Power of Attorney Act)

Authorized representative for medical assistance. An authorized representative is an individual or organization that can act on behalf of an applicant for or recipient of Medical Assistance (MA). They can help the patient apply or establish eligibility for MA, complete annual redeterminations, appeal denials or terminations, and communicate with the MA program. Even if the patient is unable to complete these tasks, with or without assistance, they may have the level of capacity needed to designate another person or organization to serve as their authorized representative. While a form to designate an authorized representative is available, any signed writing designating an authorized representative is acceptable.

If the patient does not have capacity to designate an authorized representative, any of the following people have legal authority to serve as one:

- A surrogate decision-maker (discussed above)
- A person appointed to make legal or medical decisions on behalf of the patient (e.g., an agent under a financial power of attorney or advance directive
- An attorney or paralegal hired by the patient
- A personal representative or someone who has applied in good faith to become one
- A current guardian or someone who in good faith petitions to become one

If none of the above options exist, certain individuals or organizations can serve as authorized representative for an "Applicant Without Representative Who Lacks Capacity to Appoint a Representative" if they declare under oath that:

- They are in good faith acting in the best interest of the patient
- The patient lacks legal capacity
- To the best of their belief, no other individual or organization is willing or able to act on the applicant or recipient's behalf
- The individual, the organization or any director, employee, officer, or employer of the organization does not have a direct financial interest in the disposition of the MA application or discloses whether such an interest exists

Finally, if a patient or their agent fails to apply for MA, a facility providing care may, without requesting the appointment of a guardian, petition the appropriate circuit court for an order requiring the resident or their agent to seek assistance from the MA program or to cooperate in the eligibility determination process.

If the authorized representative needs access to financial or other records that must be submitted with the MA application, they may need a court order. Consider a specific transaction (discussed below) if the patient or someone else authorized to access those records does not or cannot furnish them.
Md. Code, Health-General Art., § 19-344; COMAR 10.01.04.12 & 10.09.24.04

Representative Payees and U.S. Department of Veterans Affairs (VA) Fiduciaries. These are individuals or organizations appointed to manage income or benefits on behalf of a beneficiary who is unable to due to illness or disability. The Social Security Administration (SSA) and Office of Personnel Management (OPM) have representative payee programs. A representative payee for the Department of Veteran Affairs is called a "VA Fiduciary." Some private pension companies also have similar programs. A guardian is not needed to manage these types of benefits. Each agency has their own application and program requirements.

Achieving Better Life Experience (ABLE) accounts. If a spend down is needed for the patient to qualify for Medicaid or other income-based public benefits (SSI, SNAP, subsidized housing, etc.), an ABLE account may be an option. It is a type of savings account for disability-related expenses. Contributions to an ABLE account will not be counted for purposes of establishing or maintaining a person's eligibility for income-based benefits. A person is eligible to be a "beneficiary" of an ABLE account if they developed a qualifying disability before the age of 26.[5] States have their own ABLE programs with different requirements and contribution limits.

In Maryland, a guardian can but is not needed to create or manage an ABLE account. A beneficiary over the age of 18 can establish their own account, or they can select a person to establish one on their behalf. If they are not

[5] The age of eligibility increases to 46 effective January 1, 2026.

able to establish one or select a person to do so on their behalf, a legally authorized representative can. An agent under a financial power of attorney can establish and manage an account. If the beneficiary does not have an agent, the following people, in order of priority (i.e., if one category does not exist, the next category can), may be able to establish or maintain an ABLE account:

- A guardian or conservator.
- Spouse
- Parent
- Sibling
- Grandparent
- Representative payee appointed by the Social Security Administration

These individuals cannot serve as a legally authorized representative if the beneficiary has obtained a peace or other protective order against them, or if they have been held civilly or criminally liable for financial exploitation.
26 U.S.C.A. § 529A; Md. Code, Education Art., § 18-19C-01 et seq.

Trusts including special needs trusts. Trusts are legal arrangements in which someone, called a trustee, holds and manages property for the benefit of another person, called the beneficiary. A guardian can but is not needed to create a trust. A guardian is also not needed to manage property that is held in trust. There are different types of trusts. They can be general or for a specific purpose. **Special Needs Trusts** are specifically for people with disabilities. Property held in this type of trust does not count against a person for purposes of qualifying them for Medicaid or other income-based public benefits (SSI, SNAP, housing subsidies, etc.).
Md. Code, Estates and Trusts, § 14-404

Banking services. If the patient or their authorized representative has trouble paying bills on time or managing income, banking services, including direct deposit, automatic bill payment, credit freezes, authorized signers, and accounts with shared access can be set up. If the patient or their representative is unable to or unwilling to set up these services, a specific transaction may be an option.

Specific transaction (Transaction authorized by court without appointing guardian). A specific transaction is a court that authorizes or directs a third party to complete an action or series of actions related to another's person's property. A specific transaction can only be ordered if the court determines that there is a legal basis for guardianship. This means that a petition for guardianship must be filed, and the court must determine that 1) the person does not have capacity to manage their property and affair effectively, and 2) they have or may be entitled to property or benefits that require proper management. If the court finds a legal basis, it can order a specific transaction as an alternative to a full guardianship of the property. This would allow the person to have their needs met without stripping them of their rights.
Estates & Trusts Art., § 13-204

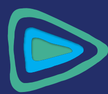
Specific transactions may be helpful for patients who have a limited need that cannot be met by another alternative to guardianship. Examples of specific transactions include:

- Authorizing access to the patient's financial records (e.g., bank records needed to apply for medical assistance)
- Applying for or recertifying a person's eligibility for benefits
- Setting up direct deposit or automatic bill payment
- Restricting another person's access to the patient's accounts
- Selling property to help the person become eligible for Medicaid or other income-based benefits

OTHER ISSUES/CONCERNS
Patient/family conflict, abuse, neglect, exploitation

Options	Observations and Notes
Mediation	
Long-Term Care (LTC) Ombudsmen	
Reporting abuse, neglect, or exploitation	

Mediation. Mediation is a way to resolve conflicts or explore options with the assistance of a trained, neutral professional, called a mediator. Mediators help people have difficult conversations by guiding a discussion, facilitating the sharing of information, identifying what is important to each person, and finding solutions that everyone can support. Mediation may be helpful in resolving disputes with patients or families. It can also be used to explore alternatives to guardianship that can meet a patient's needs. Mediation is faster and less expensive than guardianship and other court processes. Courts are also increasingly turning to mediation to resolve conflicts that give rise to a guardianship petition or as a means to dismiss the case or to limit, modify, or terminate a guardianship.



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Mediation is a voluntary process, meaning a person cannot be forced to participate. It is also confidential, which means that what is said in mediation cannot be used in court and the mediator cannot be called to testify. Mediation allows participants to come up with more flexible and creative solutions than are possible if a court is involved.

Long-Term Care (LTC) Ombudsmen. Long-Term Care Ombudsmen serve as independent advocates for assisted living and nursing home residents. They receive, investigate, and find ways to address resident's complaints about their care. They can educate residents, families, and others. While they are advocates for residents only, they may be helpful partners in resolving conflicts or improving communication with a resident.

Reporting abuse, neglect, or exploitation. Familiarize yourself with the signs of abuse, neglect, and exploitation and mandated reporting requirements. If you suspect a vulnerable adult (a person who is at least 18 years old and lacks the physical or mental capacity to provide for their daily needs) is being abused, neglected, or exploited, there are agencies that can investigate or respond. Which agency will depend on the source or location of the alleged harm. Call 911 if someone is in immediate danger.

Source/Location of Harm	Options
Community (family member, friend, etc.)	Contact a local Adult Protective Services office or call 1-800-91-PREVENT (1-800-917-7383).
Abuse of assisted living or nursing home resident	Contact the local Long-Term Care Ombudsman.
Financial exploitation	Contact a local Adult Protective Services office or call 1-800-91-PREVENT (1-800-917-7383).
Abuse in a licensed or federally certified facility or by a Developmental Disabilities Administration provider	Contact the Office of Health Care Quality. You can file a complaint online or call 410-402-8108.
Medicaid fraud and abuse or neglect of adults in assisted living facilities and facilities that receive Medicaid funds	Contact the Maryland Attorney General's Medicaid Fraud Control Unit at 1-888-743-0023 or email MedicaidFraud@oag.state.md.us.

ADULT GUARDIANSHIP LAW AND PROCESS

If you determine that there are no less restrictive options available to meet a patient's demonstrated needs, guardianship may be necessary.

Guardianship is a process in which a court appoints someone (a guardian) to make personal or financial decisions on behalf of an adult who is unable to because of disease or disability. The court can appoint a guardian of the person, a guardian of the property, or both.

- A **guardian of the person** makes non-financial decisions for things like housing, medical care, clothing, food, education, and everyday needs.
- A **guardian of the property** handles financial affairs such as paying bills, collecting income, filing taxes, and applying for benefits or services.

The guardianship court process that involves several steps and strict requirements. These requirements may seem burdensome but remember, guardianship results in the deprivation of a person's fundamental civil rights and liberties. This cannot be taken lightly.

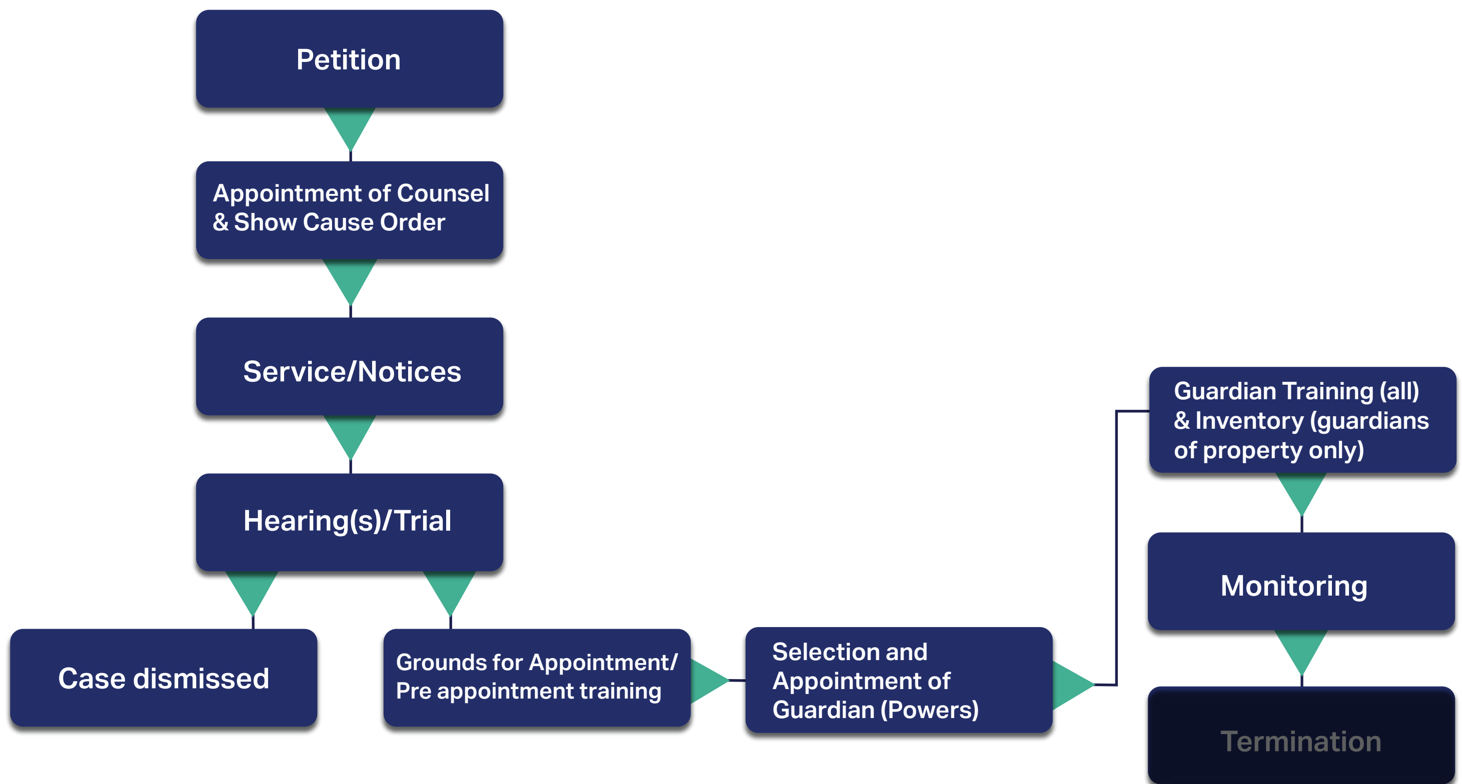
How long the process takes will depends on the court and patient's unique facts and circumstances.

Party	Role
The Petitioner	The person or organization that files the paperwork (the petition) requesting the appointment of a guardian of the person or property. The petitioner's job is to prove to the court that 1) there is a legal reason (ground) to appoint a guardian, and 2) that there are no less restrictive alternatives available. A lawyer can file for guardianship on behalf of the petitioner, or someone can file pro se, meaning without a lawyer. There are forms available at www.mdcourts.gov/guardianship.
The Alleged Disabled Person (ADP)	The person for whom guardianship is sought. This person is also called the "respondent." The word "alleged" is key because there is a presumption that the person has a capacity until proven otherwise. If the court appoints a guardian for the ADP, they will then be referred to as the "disabled person." If the ADP does not have a lawyer of their own choosing, the court will appoint one to represent them. These lawyers are sometimes referred to as the ADP's "court-appointed attorney" or "court-appointed counsel." Their role is analogous to that of a criminal defense attorney. Their job is to advocate for the wishes and preferences of the ADP, protect the rights of the ADP, and make sure the petitioner proves their case. They can **request documents** (including medical records) and **subpoenas**, and **depose witnesses.** In court, they will present evidence, call witnesses, and make their arguments. They may seek to have the guardianship case dismissed, advocate for a limited guardianship (discussed below), or advocate for a certain person to serve as guardian.

Interested Persons	Individuals or agencies that play an important role in a guardianship. Only interested persons can petition for guardianship or serve as a guardian. They are entitled to be notified when a guardianship petition is filed and about what happens in the case. They can challenge the guardianship at any point, present evidence, call witnesses, and request records. After a guardian is appointed, they can ask the court to review the guardianship at any time.
	
	Interested persons are defined by law and include:
	• **The alleged disabled person (ADP)**
	• **Any existing guardian, fiduciary (including an agent under a financial power of attorney), or health care agent**
	• **The ADP's spouse, parents, children, heirs at law**
	• **Government agencies paying benefits to the ADP (Social Security Administration, U.S. Department of Veterans Affairs, the Office of Personnel Management, etc.)**
	• **Any supporter under a supported decision-making agreement**
	• **The local Department of Social Services (for adults under the age 65)**
	• **The local Area Agency on Aging (for adults age 65 and older)**
	• **In guardianship of the property cases:**
	    • Any person who receives income from the ADP or their property
	    • Any fiduciary and co-fiduciary of the ADP's estate
	    • Any creator of a fiduciary estate
	• **Anyone else designated by the court (people or organizations such as healthcare facilities not listed above can ask the court to recognize them as interested persons)**

Establishing a Guardianship

There are three major steps to establishing a guardianship.



Step 1: The Petition. The guardianship process starts with the filling of a **Petition for Guardianship of Alleged Disabled Person** in a **circuit court.** The petition can ask for the appointment of a guardian of the person, a guardian of the property, or both. It must include information about the ADP, interested persons, alternatives to guardianship that have been tried and failed, and the name(s) of any proposed guardian(s).

Two "certificates of incapacity" (capacity assessments) must be attached to the petition. One certificate must be completed by a physician. The other certificate can be completed by another physician, a psychologist, a licensed certified social worker-clinical (LCSW-C), a nurse practitioner, or a psychologist. At least one certificate must be based on an examination or evaluation that is conducted **within 21 days** before the petition for guardianship is filed. Review **Appendix B** for more information on Capacity Assessments.

Other documents related to the case such as any financial power of attorney, advance directive, or written supported decision-making agreement must also be attached to the petition.

Step 2: The Show Cause Order. After the petition and all attachments are filed, the court will issue a show cause order. The petitioner must serve (formally provide) the ADP and all interested persons that order, and all the paperwork filed in the case, along with certain notices that explain the proceedings and their rights. The case cannot move forward unless and until the court receives proof that the paperwork and notices were served to all the parties. The show cause order will set a deadline for when parties need to submit documents to the court and may include a date for a hearing/trial.

If the ADP does not have a lawyer of their own choosing, the court will also appoint one to advocate for what the ADP wants and to protect the ADP's rights.

Step 3: The Hearing or Trial. The court will hold a hearing or trial in every guardianship case. Petitions for guardianship of the person are automatically set for a jury trial. The ADP or their attorney can waive the right to a jury trial and ask that a judge to decide the case in what's call a "bench trial." The petitioner has the burden of proving there are grounds for appointment of a guardian.

Grounds for Guardianship of the Person
To establish that a person needs a **guardian of the person**, the petitioner must prove that the ADP:

1. lacks sufficient understanding or capacity to make or communicate responsible personal decisions, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs; **AND**
2. no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

Grounds for Guardianship of the Property
To establish that a person needs a **guardian of the property,** the petitioner must prove that the ADP:

1. is unable to manage effectively the person's property and affairs because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance; **AND**
2. has or may be entitled to property or benefits which require proper management.

In this context, "capacity" refers to the ADP's decision-making capacity. In other words, the diagnosis of an illness or disability must affect the ADP's ability to make decisions or handle their personal or financial affairs. Even if a person does have a condition that affects their decision-making capacity, guardianship is not necessary if there are alternatives to guardianship available to meet their needs. A list of alternatives is included in the **Alternatives to Guardianship Resource Guide**. Just because a person needs one type of guardian (e.g., a guardian of the person) does not mean they need the other (e.g., a guardian of the property).

The ADP and other interested persons can cross-examine the petitioner's witnesses and present their own evidence or witnesses. If the judge or jury is not persuaded by the petitioner's case, the court can **dismiss** the case without appointing a guardian. If the judge or jury is persuaded that the petitioner has proved all the elements of their case, the next step is for the judge to select the guardian(s).

Selection of a Guardian

The petitioner can make recommendations for who should serve as guardian of the person or property. The ADP or another interested person can propose a different guardian or challenge the petitioner's suggestion(s). The court will consider the recommendations but is not bound by them. Maryland law sets priorities for who can serve as guardian and the court will consider a number of factors including a prospective guardian's:

- **Nature and length of the guardian's relationship with the ADP**
- **Capacity to serve as guardian (skills, abilities, knowledge, availability, other demands, etc.)**
- **History of any disqualifying criminal offense**
- **Willingness to complete orientation and training programs**
- **Other relevant factors**

The court will first look to people who were chosen by the person under guardianship (e.g., a health care agent or someone designated by the person), family members, and other people who know them. Guardians need to **follow certain guidelines** and base their decisions on the person's values, wishes, and preferences. This is easier when the guardian knows the person under guardianship and is a more person-centered option.

If there is no available or willing family member or person known to the ADP who can serve as guardian of the person, the court will appoint a public guardian.

- **Local Departments of Social Services serve as public guardians for adults under the age of 65.**
- **Local Area Agencies on Aging serve as public guardians for adult age 65 or older.**

The appointment of a public guardian is the most restrictive form of guardianship. While DSS and AAA staff are eminently qualified, they will have little to no information about the person under guardianship's wishes, values, and preferences. Public guardians usually need court approval to make end-of-life decisions or to consent to the administration or withdrawal of treatment that poses a substantial risk to life. The court process for getting that approval can be time-consuming. These are restrictions that do not exist with certain alternatives to guardianship or for some family guardians.

There is no public guardian option in guardianship of the property cases. When there is no available or willing family member or other appropriate person to serve as guardian of the property, the court may ask a local lawyer to serve. If the person has a guardianship estate, money from the estate can be used to pay the lawyer to serve as guardian. If there are no assets and no one else is willing to pay the lawyer, it can be very difficult to find a lawyer willing to serve as guardian of the property. The work is time consuming and can be challenging. If the person needs a guardian to apply for Medical Assistance or other benefits, they will need someone with training or experience handling those matters.

Determining the Guardian's Powers

The court will also decide the scope of the guardian's powers. This refers to the types of decisions they can make or actions they can take on behalf of the person under guardianship. The guardian's powers will be laid out in a court order appointing the guardian. The court can order a limited or a full guardianship.

- A **limited guardianship** gives the guardian only those powers that are needed to meet demonstrated needs of the person under guardianship (e.g., authority to consent to one type of treatment, to access bank records, or to complete a Medicaid application). A limited guardianship can also give the guardian power to make all decisions on behalf of the person under guardianship but only for a limited time (e.g., authority to make all decisions until a person has been transferred to a different care setting or until in-home services are in place). Limited guardianships are preferred to full guardianships as they allow the person under guardianship to retain some rights or to have their rights restored. They can also be used when there are alternatives to guardianship that are available to meet some of a person's needs.
- A **full guardianship** gives the guardian the power to make all personal or financial decisions on behalf of the person under guardianship for an indefinite period. It means that the person under guardianship loses the legal ability to make decisions about their personal affairs and property. Full guardianships should only be used when a person has no decision-making capacity and there are not less restrictive options available.

In court, the parties can argue what powers a guardian should have, but the court is the ultimate decision-maker.

Monitoring the Guardianship

The court will regularly monitor the guardianship to review whether it is functioning properly or needs to be continued, modified, or terminated. It has an ongoing responsibility to monitor whether the guardian is doing their job. A guardian's powers can change over time as a person under guardianship's needs increase or decrease, or if alternatives to guardianship become available. At any time, a party in the case can ask the court to review a guardianship. This may involve evaluating the guardian's actions or powers, removing the guardian, or assessing whether guardianship is still needed.

"In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility." Kircherer v. Kircherer, 285 Md. 114, 118 (1979).

Guardians must also file regular reports with the court.

- **Guardians of the person** must file a report to the court at least once a year. Public guardianships (when a Local DSS or AAA serves as guardian of the person) are also reviewed by an **Adult Public Guardianship Review Board.** These multidisciplinary boards review public guardianship cases every six months and make recommendations to the court about whether a guardianship should be continued, modified, or terminated.
- **Guardians of the property** must file an **initial inventory** of all the property, interests, and liabilities the person under guardianship has and must file **an accounting** at least once each year.

At any time, the court can ask the guardian or other parties to provide more information. The court can also appoint an independent investigator to look into conflicts that arise, problems the court identifies, or to confirm that the guardianship is serving its purpose. **The court is the ultimate guardian.**

Termination

Guardianships end when there is no longer a need for them. For example, a guardianship can end based on the "cessation of disability," which means that the person regains capacity to make decisions without a guardian. The termination of a guardianship on the basis of cessation of disability is sometimes referred to as "restoration of rights." A guardianship can also end if there are alternatives to guardianship available to meet the person's needs. Finally, a guardianship ends if the person under guardianship dies.

The court must issue an order formally ending the guardianship. Until then, the guardian must keep performing their duties.

APPENDIX A
SUPPORTS AND ACCOMMODATIONS[6]

Federal and state laws require healthcare providers to provide individuals with disabilities full and equal access to health care services and facilities and bar discrimination on the basis of disability. This involves ensuring patients have access to appropriate "supports and accommodations," which refer to a broad and evolving range of formal and informal options that enable a person to live independently, communicate, make decisions, or function. These options can also help facilitate meaningful discussions about a patient's abilities, needs, and ways to meet those needs.

Because guardianship hinges on a person's ability to make, communicate, and effectuate decisions, specific guidance on effective communication supports is provided here along with guidance on working with people with disabilities generally. This is not an exhaustive guide.

What is Effective Communication?

Effective communication means providing information, whether written or spoken, in a way that is as clear and understandable to people with disabilities as it is for people who do not have disabilities.[7] It means identifying and facilitating access to supports and accommodations that enable a person to receive, digest, and provide information. Examples of effective communication supports and services include auxiliary aids and services such as:

- **Sign language interpreters**
- **Assistive technology**
- **Notetakers**
- **Closed-caption decoders**
- **Qualified readers**
- **Other similar services and actions**
- **Assistance from third parties**

Ensuring effective communication also involves recognizing non-traditional forms of communication. For example, people who do not communicate with speech or who have slurred or difficult-to-understand speech may use body language, vocal sounds, gestures, pictures, assistive technology, communication devices, and other **augmentative and alternative communication** tools.

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[6] Adapted from Assessment of Older Adults with Diminished Capacities, A Handbook for Lawyers, 2nd Edition (2021); Disability Etiquette Tips, People on the Go Maryland; Inclusive Communication: An Introduction to the Vocabulary of the Disability Community (Webinar) (RespectAbility); and The Words We Use, CommunicationFIRST Style Guide.

[7] U.S. Department of Justice, Civil Rights Division, ADA Best Practices Tool Kit for State and Local Governments, Chapter 3, General Effective Communication Requirements Under Title II of the ADA, March 9, 2017, available at https://www.ada.gov/pcatoolkit/chap3toolkit.htm.

Augmentative and Alternative Communication (AAC)

AAC refers to ways to communicate other than speech. This includes pointing, looking at things, or using tools such as:

- **A speech-generating device.** Typing or choosing words, and the device "speaks" them aloud.
- **A letterboard.** Pointing to letters to spell out the words.
- **A revoicer.** Speaking words and someone or a tool says them again, more clearly, faster, or louder.
- **Writing.** Communicating by writing or typing.

Some people rely on both formal and informal communication and decision-making assistance from family, friends, or support staff who know them well.

Some individuals who have developmental disabilities, acquire a neurocognitive disorder, or have other cognitive disabilities may need support beyond traditional auxiliary aids and services. For instance, they may:

- **Take longer to absorb information**
- **Not respond in a timely manner**
- **Have difficulty understanding or remembering questions, abstract concepts, or instructions**
- **Have difficulty with reading or writing**
- **Have difficulty with problem-solving**
- **Have a short attention span or be easily distracted**
- **Find it difficult to maintain eye contact**
- **Find it difficult to adapt to new situations, plan ahead, or solve problems**
- **Find communication over the phone or on telehealth platforms difficult**
- **Have difficulty expressing their needs**
- **Be easily influenced by others and eager to please people**

A person who is experiencing these challenges may still have the capacity to make, communicate, and effectuate decisions. Everyone has different levels of capacity based on the task before them or the circumstances. In other words, capacity can be task-specific, situational, and can change.

Ensuring effective communication can help you interact more effectively with everyone, not just people with disabilities. Family members and loved ones who are under stress or feeling overwhelmed by decisions may have trouble processing information and would benefit from adjustments in your approach.

See next page *Tips for Ensuring Effective Communication and Interacting with People with Disabilities*

Tips for Ensuring Effective Communication and Interacting with People with Disabilities	
Ask questions	Ask the person how they prefer to communicate and get input from family and friends if needed. Determine whether they entered your care setting with any aids or resources they need to meaningfully engage with you. Without those supports, they may appear to have less capacity or functioning than they actually have.
Use person-first language	Focus on the person, not on the disability – A person is not "disabled," "an epileptic," or "bound to a wheelchair." They "have a disability," are "a person with epilepsy," or "use a wheelchair." Your words can suggest bias or create power imbalances. **Words matter**.
Do not assume someone needs assistance. Ask before acting.	Not all people with disabilities need assistance. It is both respectful and empowering to let a person choose what, if any, help they need. Offer assistance and act only if your offer is accepted. Ask for instructions if needed. ("Do you need help opening the door?" [If yes]: "Okay, should I prop it open like this?").
Speak to the person, not a supporter	If the person relies on a family, friends, support staff, or an interpreter, look at and speak directly to the person, not their support person. Do not provide information to the support person that is not also given to the person.
Provide information in small chunks, repeat key information, and check for understanding	Avoid complex and long sentences. Rephrase or provide information in writing if needed. If someone is unable to read, you may need to use simple pictures or drawings to show instructions. Don't ask, "Do you understand?" Instead, ask the person to repeat (or write or type) what you said back in their own words.
Avoid behaviors that may be viewed as patronizing	Avoid changing your tone, patting the person's head or shoulders, calling them by their first name if the same familiarity is not used with others. Do not approach someone as if they are "fragile." Even subtle changes in how you interact with someone may affect your ability to build rapport or cause offense.
Check for bias	Recognize how judgments, assumptions, or stereotypes about a person or a diagnosis influences how you and others view and interact with people with disabilities or older adults. These can lead to people being excluded from or ignored in conversations. This also can affect your ability to get important information about a patient. People who have experienced bias based on their race, ethnicity, nationality, language, gender, socioeconomic status, physical and mental ability, or sexual orientation may be less trustful of providers. Building rapport is key. As always, be mindful how different cultures view disability, illness, healing, autonomy, family involvement, and privacy.

Offer people the same dignity, consideration, respect, and rights you expect for yourself	Make it a priority to provide patients and their caregivers assistance and information that facilitates, maintains, and promotes their well-being, freedom of choice, autonomy, and dignity. Afford everyone the **dignity of risk**, which is "being able to make choices that could have negative consequences and getting to experience those consequences."[8] Disagreeing with someone's choices is not sufficient grounds for guardianship.
Be aware of the barriers people with disabilities encounter	Don't assume the person knows about or has had access to supports and accommodations. People with disabilities do not have equal access to resources that can help them make decisions or live independently. You may be the first person they encounter who can link them to resources.
Do not be afraid to make mistakes. Relax.	Continue to educate yourself about supports and accommodations that help people with disabilities live independently. The devices and services improve and evolve all the time.
Share information	As you learn what a person needs to effectively and meaningfully communicate, share that information with your team.

[8] Mental Health & Developmental Disabilities National Training Center.

Interacting with people with visual disabilities (no vision, low vision)

- Ensure the person has access to glasses or other visual aids when engaging with them or performing tests.
- When offering help, identify yourself. If they need more assistance, help them locate you, gently touch their arm and tell them as you do.
- Speak directly facing the person in a natural tone and minimize background noise.
- When serving as a guide:
  - Ask for permission ("Would you like to take my arm?")
  - Avoid pointing and give specific directions ("The restroom is about seven steps in front of you.")
  - When leading a person through a narrow space, give verbal instructions ("We'll be walking through a narrow row of chairs."). If they are holding onto your arm, put your arm behind your back to signal they should walk directly behind you.
- Increase the lighting if needed, reduce glare, and have the person face away from bright windows or light sources.
- Format documents in large print (14- or 16-point font and double-spaced). Do not use glossy print materials as they are particularly vulnerable to glare.
- Provide additional time for the person to read documents or refocus their gaze when shifting between reading and viewing objects at a distance.
- Have reading glasses and magnifying glasses available.
- Arrange furnishings so pathways are clear.

Interacting with people with hearing challenges

- Ensure the person has access to any hearing devices or aids when communicating with them or performing tests. If the person communicates with an interpreter, face and talk to the person, not the interpreter.
- To get a person's attention wave or lightly touch their shoulder.
- Arrange yourself or the seating to be conducive to conversation, close to and facing the person and a light source.
- Minimize background noise.
- Keep your hands away from your face when speaking and avoid chewing gum or food.
- Some people with hearing loss read lips to compensate, but not everyone can lip read. Slow your speaking rate and speak distinctly. Do not over-articulate or shout as this can distort speech and facial gestures.
- Speak in a normal tone unless you are asked to raise your voice.
- Use a lower pitch of voice when interacting with an older adult in case their ability hear high frequency tones may be impaired.
- Do not run words together. Avoid complex and long sentences. Pause between sentences.
- Provide written summaries of conversations and specific information (e.g., the date, time, and location of a follow-up appointment) or instructions in writing.
- If you are having trouble understanding what the person is trying to communicate, do not guess. Ask them to repeat, write, or type their response.

Interacting with people with speech difficulties

- Ensure the person has access to any support person, devices, or tools they need to communicate. This might include paper and pens, letter or word boards, a phone or computer, or a device that produces speech.
- Speak normally unless you are asked to raise your voice.
- Give the person your full attention and give them more time to respond to questions.
- Repeat what the person tells you to confirm you understand what they said.
- Ask questions one at a time.
- Pay attention to pointing, gestures, nods, sounds, eye gaze, and blinks.
- Do not interrupt or finish the person's sentences.
- If you have trouble understanding a person's speech, do not guess. Do not be afraid to ask them to repeat what they are saying, even three or four times. It is better to understand than be wrong.
- Ask about communication. For example, ask "Show me how you say [yes, no, I don't know, repeat, I don't understand, etc.]." The person may move different hands to indicate yes or no, blink once if they do not know an answer, blink twice if they need you to repeat what you said, or blink three times if they do not understand.

Interacting with people with cognitive, intellectual, or psychiatric disability (affecting understanding, memory, language, judgment, learning, information processing, or communication)

- Meet with the person when they are likely to be at peak performance (e.g., older adults may peak in the morning) and in a quiet and comfortable space.
- Begin conversations with simple questions that require brief responses. This will help you to assess the person's understanding and the optimal pace.
- Offer information in a clear, concise, and simple manner. Use common words, short simple sentences, and limit each sentence to one idea.
  - If information is not understood or misunderstood, provide corrective feedback and check again for comprehension.
  - Repeat, paraphrase, summarize, and check periodically for the accuracy of communication and comprehension.
  - Provide notes or information sheets to facilitate later recall. Include key points, decisions to be made, and documents to bring to next meeting.
- Be patient and comfortable with silences.
  - A slow response or lack of response does not necessarily mean the person is not aware of you or what you said. They may need more time to process information and respond in their own way.
  - Consider meeting with the person over multiple, shorter sessions rather than one lengthy one. Multiple sessions can also assist in identifying the person's performance rhythms and cycles.
  - Provide time for rest and bathroom breaks.

Interacting with people with physical disabilities (affecting movement, strength, or endurance)

- If the person uses a wheelchair:
  - Avoid leaning or holding onto it.
  - Let the person know when you are ready to push.
  - Avoid sudden turns or speed changes and carefully watch for changes in levels and pavement cracks.
- Do not move a person's cane, crutches, walker, or wheelchair. If something needs to be moved, explain why and ask the person what they prefer.
- When giving directions, be specific about distance and barriers such as steps, stairs, ramps, or construction areas.
- People with limited hand use or who use prostheses can usually shake hands. Ask before touching them or ask what they prefer.

Additional Resources

- Disability Resources for Effective Communication (U.S. Department of Health and Human Services)
- Title II, ADA State and Local Governments Tool Kit
  - Communicating Effectively with People with Disabilities
  - Access to Medical Care for Individuals with Mobility Disabilities
  - Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices
- Disability Etiquette Tips (People on the Go Maryland)
- The Words We Use Style Guide / Short Version (CommunicationFIRST)
- Inclusive Communication: An Introduction to the Vocabulary of the Disability Community (Webinar) (RespectAbility)
- Accommodation Examples (JAN)

APPENDIX B

CAPACITY ASSESSMENTS

In the context of considering guardianship and its alternatives, clinical capacity assessments are used to ascertain whether someone has legal capacity. The use of the term "capacities" here is in recognition of the task-specific nature of, and different standards for, legal (vs. clinical) capacity. For example, the standard for legal capacity to execute an advance directive is different from the standard to enter a supported decision-making agreement or to choose where to live. The standard for establishing that someone needs a guardian is very high. The standard is outlined in the **Guardianship Law and Process** section.

The law recognizes that there are intermediate levels of decision-making capacity and that a person may have more capacity in some domains than others. It also recognizes that capacity can be fluid, task-specific, situational, and can change.

In a guardianship case, capacity assessments weigh heavily in the determination of whether a person needs a guardian but they are not dispositive. Even if the court determines that a person meets the standard of (in)capacity, the court still needs to be persuaded that there is no alternative to guardianships available to meet their needs. Capacity assessments are used in proceedings to establish and terminate a guardianship. They can also be used to support a request to limit or modify one.

Capacity Can (be):

- Fluid
- Situational
- Vary with complexity of the task
- Assumed based on biases
- Maximized with supports and accomodations

Capacity decline (with):

- Progressive dementia
- Not taking medication
- Overmedication
- In facilities
- Stress, grief, traumatic events
- Physical trauma
- Medical factors
- Under an unnecessary or overly broad guardianship

Capacity Improve (with):

- Recovery from an accident, stroke, traumatic brain injury, etc.
- Changes in medication
- With medical or mental health treatment
- Supports and accommodations
- Less restrictive environments

Establishing a Guardianship: "Certificates of Incapacity"

With limited exceptions, a petition for guardianship must be filed with two (2) certificates of incapacity.2 At least one certificate must be completed by a **physician**. The second assessment can be completed by:

- **Another physician**
- **A psychologist**
- **A licensed certified social worker-clinical (LCSW-C)**
- **A nurse practitioner**

One certificate must be based on an examination or evaluation that is conducted within **21 days before the filling of the petition for guardianship.**

Terminating Guardianship: "Cessation of Disability"

A guardianship can be terminated (ended) based on a "cessation of disability." This means that the person no longer has an illness or disability that affects their ability to make, communicate, or effectuate decisions about their personal affairs or property. This can happen when a person recovers from an illness or has demonstrated the ability to make decisions without the need for a guardian, even if they still have a diagnosed disability. A request (petition) to terminate a guardianship on the basis of cessation of disability, must include one (1) **medical certificate** completed by a physician.

Considerations for Performing Capacity Assessments

If you are tasked with performing a capacity assessment, take care to thoroughly examine or evaluate the patient. The clearer and more comprehensive your assessment is, the less likely the court or other parties in the case will have questions. This, in turn, will reduce the chances that you will need to testify in court or sit for a deposition. Attach any documentation that provides a more comprehensive understanding of the patient, any diagnosis, and how that diagnosis affects their functioning. When possible, use language non-clinicians can understand. Each section of the certificate form should be completed. Write "not applicable" where appropriate.

Your assessment will influence whether the patient loses basic rights and liberties. It can be difficult get out of a guardianship, even if the person recovers or regains capacity. Use the **IDEAL Approach** as a framework for identifying and documenting what the patient *can* do, their specific needs, and what services and supports can help address those needs. This can help safeguard against an overly restrictive legal arrangement.

Considerations for Remote Capacity Assessments

- Be mindful of the patient's access to and comfort with HIPAA compliant technology with clear video and audio feeds.
- Utilize a neutral third party (if available) who can help the patient with the technology if needed.
- Ensure the patient will be in a space that is comfortable, well-lit, private, and free from distractions.
- Confirm your ability to ensure the interaction is not recorded and that another person is not in the background.
- Be mindful of the type of assessments needed and consider whether they can be administered remotely without compromising the reliability of results.
- Consider whether a remote interaction will interfere with the patient's speech, hearing, or comfort.
- Consider barriers to build rapport with the patient or learn from body language.

General Considerations

- Ensure the patient has access to any supports or accommodations they may need during the assessment, including auditory or visual devices, interpreters, or support persons. Modify your communication style to ensure effective communication as needed. See **Appendix A** additional guidance.
- Document the types of supports the patient may need to make, communicate, or effectuate decisions.
- Unless the patient needs an interpreter or the support of a third party as an accommodation, examine/evaluate the patient alone and in a quiet space.
- Conduct a thorough clinical interview and examination and review relevant records. Explain:
  - **The patient's cognitive (including executive), emotional, and behavioral functioning as well as their functional abilities**
  - **Relevant medical factors including any temporary or reversible conditions and environmental factors that may affect decision-making; and o any relevant personal or cultural values that may impact their decision-making**
- Review the patient's medical records and talk to the other providers, family members, and other collateral sources of information if possible. They can provide greater insight into the patient's functioning prior to your interaction and the types of support that is available to them.
- Be mindful of how any assumptions or judgments about the patient, people with disabilities, or older adults might influence your or collaterals' assessments of the patient. Past experiences of discrimination may impact how the patient, or their loved ones, interact with you or their willingness to be forthcoming.
- Be mindful of any conflicts of interest in performing the assessment. Do not let them influence your assessment.

Additional Resources

- **Elder Justice Decision-Making Capacity Resource Guide** (U.S. Department of Justice Elder Justice Initiative)
- **Adult Capacity and Assessment** (ABA resource for lawyers, judges, psychologists, and physicians)
- **Assessments of Older Adults with Diminished Capacity: A Handbook for Psychologists** (ABA/APA)
- **Understanding Ableism and Negative Reactions to Disability** (APA)
- **Implicit Bias & People with Disabilities** (ABA Commission on Disability Rights)

APPENDIX C

GUARDIANSHIP REFERRAL WORKSHEET

☐ Guardianship of the Person ☐ Guardianship of the Property

Referral Source:

Patient name:		Pronouns:	
Title:			
Department/Unit:			
Telephone:		Email:	
Other information:			

Patient Information

Full Name:			DOB:	
Gender:	☐ Male ☐ Female ☐ Other:		Pronouns:	
Marital Status:		Race:		
Telephone:		Email:		
Street Address:				
City, State, Zip:				
Current Location:				
Language:	☐ English ☐ Other:			
Communication preferences/ accommodations:				
Advance directive?	☐ Yes ☐ No ☐ Unsure	Financial Power of Attorney?	☐ Yes ☐ No ☐ Unsure	

Pre-admission living arrangements (type of housing, address, list of individual residing with the patient, if any, and their contact information):
Brief description of medical/mental health condition and its impact on the patient's ability to make personal or financial decisions:

Insurance & Government Benefits/Services

Insurance coverage:	
Medical Assistance:	☐ MA recipient ☐ MA/LTC application has been made
Benefits:	☐ Social Security Administration (SSA) beneficiary (SSI/SSDI) ☐ U.S. Department of Veterans Affairs (VA) beneficiary ☐ Developmental Disabilities Administration (DDA) services recipient
☐ Other:	

Attach any insurance information and other relevant records.

Reason(s) for Referral:

Description of the patient's immediate need(s):

Description of the patient's potential long-term need(s):

Description of alternatives to guardianship that were attempted/explored and reasons they failed:

Capacity Assessments

Clinician's Full Name:			
Title/Department:			
Telephone:		**Email:**	
Date of examination/ evaluation:			
Notes/Comments:			

Clinician's Full Name:			
Title/Department:			
Telephone:		**Email:**	
Date of examination/ evaluation:			
Notes/Comments:			

Other health care providers:

Type	Full Name	Address	Telephone/Email

<u>Interested Persons</u>

Provide the names, relationships, and contact information of any known family members, agents under an advance directive or financial power of attorney, supporter under a supported decision-making agreement, and anyone else involved with the patient. *Attach copies of any advance directives, powers of attorney, written support decision-making agreements, or other relevant documents. Attach additional sheets if needed.*

Full Name	Relationship to Patient	Address	Telephone/Email

Description of attempts to identify and locate interested persons not listed above:

Description of any of the patient's known property, assets, interests, etc.

Proposed guardian of the person (if applicable):

☐ Interested person:

Full name:			
Relationship to patient:			
Street address:			
City, State, Zip:			
Telephone:		Email:	
Convictions for any crimes?			

☐ Local Department of Social Services (patient under age 65)

☐ Local Area Agency on Aging (patient age 65 or older)

Proposed guardian of the property (if applicable):

☐ Interested person:

Full name:			
Relationship to patient:			
Street address:			
City, State, Zip:			
Telephone:		Email:	
Convictions for any crimes?			

☐ Other

Full name:			
Relationship to patient:			
Street address:			
City, State, Zip:			
Telephone:		Email:	
Convictions for any crimes?	☐ Yes (list below): ☐ No ☐ Unknown		

Other relevant information:

APPENDIX D
ACRONYMS AND GLOSSARY OF TERMS

AAA – Area Agency on Aging
ADP – Alleged Disabled Person
APS – Adult Protective Services
BHA – Behavioral Health Administration
DDA – Developmental Disabilities Administration
DSS – Department of Social Services
LTC – Long-term Care
MAP – Maryland Access Point
MOLST – Medical Order for Life-Sustaining Treatment
POA – Power of Attorney
SDM – Supported Decision Making

Term	Definition
Ableism	Systematic stereotyping and discriminating against individuals or groups on the basis of disability.
Adult guardianship	A court process in which a court appoints someone (a guardian) to make personal or financial decisions on behalf of an adult who is unable to because of disease or disability.
Advance directive	Instructions for how medical decisions will be made or the types of treatment a person will receive if they later become unable to make their own decisions. An advance directive can also name a health care agent or proxy.
Ageism	Systematic stereotyping and discriminating against individuals or groups on the basis of age.
Agent	A person appointed to make decisions for or take actions on behalf of another person. An agent can be appointed under a financial power of attorney or an advance directive. The agent is bound by the directive or document that appoints them.
Alleged disabled person (ADP)	The term used to describe an adult who is the subject of a petition for guardianship. Sometimes called the "respondent."
Alternatives to guardianship	Formal and informal options that alone or together allow someone to have their personal or financial needs met without a guardian. Sometimes called "less restrictive options."
Area Agency on Aging (AAA)	Local agency that provides services and supports to adults who are over the age of 65 Each county and Baltimore City have a **local AAA**. If there is no available family member or other appropriate person to serve as guardian of the person of an adult over the age of 65, the court will appoint the local AAA to serve as public guardian.

Behavioral Health Administration (BHA)	State agency with oversight over publicly funded inpatient and outpatient behavioral health services including services for individual with substance abuse disorders, mental health disorders, and co-occurring disorders.
Best interest	A standard for decision-making on behalf of another person that is based on a judgment of what services or actions will best serve another person. Best interest determinations should only be used if substituted judgment is not an option
Center for Independent Living (CILs)	Community-based organizations designed and operated by people with disabilities. CILs provide services including peer support, information and referrals, individual and systems advocacy, and independent skills training.
Certificate of Incapacity (Capacity Assessment)	A document that contains the findings of a capacity assessment conducted by a clinician. A petition for guardianship must include two certificates of incapacity.
Cessation of disability	A basis for ending (terminating) a guardianship based on the person under guardianship's gaining or regaining the capacity to make and communicate decisions without a guardian. This does not require that the person no longer have a diagnosed disability. Terminating a guardianship on this basis is sometimes referred to as "restoration of rights."
Court-appointed counsel	A lawyer appointed to represent the alleged disabled person in a guardianship case. This lawyer's job is to advocate for the alleged disabled person and ensure their rights are protected.
Decision-making capacity	A person's ability to make, communicate, or effectuate decisions.
Department of Social Services (DSS)	Local human services agencies. Each county and Baltimore City has a **local DSS office**. If there is no available family member or other appropriate person to serve as guardian of the person of an adult under the age of 65, the court will appoint DSS to serve as public guardian.
Developmental Disabilities Administration (DDA)	State agency that provides services and supports for eligible people with developmental disabilities in the areas of self-determination, self-advocacy, supporting families, housing, employment, and assistive technology. DDA can provide Coordinators of Community Services (CCS) to help eligible individuals obtain services.
Effective communication	Providing information, whether written or spoken, in a way that is as clear and understandable to people with disabilities as it is for people who do not have disabilities.

Full guardianship	When the guardian is granted legal authority to make all personal or financial decisions on behalf of a person under guardianship.
Guardian	A person appointed by the court who has the legal authority to make some or all personal or financial decisions on behalf of another person.
Guardian of the person	A person appointed by a court to make non-financial decisions on behalf of a person under guardianship. This may include decisions about the person's housing, medical care, clothing, food, education, social life, and everyday needs.
Guardianship estate	Property or assets a person under guardianship owns or has an interest in that is under the control of a guardian of the property. This includes income, real and personal property, benefits, stocks, bonds, and investments.
Guardian of the property	A person appointed by a court to handle financial affairs on behalf of a person under guardianship. This may include paying bills, collecting income, filing taxes, and applying for benefits or services.
Guardianship order	A directive signed by a judge appointing a guardian of the person or property and specifying the guardian's authority. There are consequences for not following a court order.
Implicit bias	The process of associating stereotypes or attitudes toward categories of people without our conscious awareness.
Interested person	**Individuals or agencies** with the right to participate in a guardianship case. Interested persons are defined by law and include parents, adult children, siblings, spouses, grandchildren, heirs, agents under a financial power of attorney or advance directive, and certain government agencies.
Legal capacity	A determination about a person's ability to make a legally relevant decision. There are different standards for legal capacity. For example, the standard to execute a contract is different from the standard to enter a supported decision-making arrangement.
Limited guardianship	An arrangement in which the court grants a guardian only certain powers. The person under guardianship retains any powers not mentioned in the court order. For example, in a limited guardianship of the person, the guardian may only have authority to make medical decisions for the person under guardianship. The person under guardianship retains the right to make all other personal decisions.
Maryland Access Point (MAP)	A gateway for individuals seeking long term support services and community supports including home & community-based services, housing, insurance, caregivers, Alzheimer's and related dementia services, advance care planning, healthy living, and financial assistance program. There are **local MAP offices**, a help line through **Maryland 211**, and a **searchable database**.

Mediation	A process in which a trained impartial person, called a mediator, helps people communicate, understand each other, and reach agreement. It can be a way to resolve disagreement, have difficult conversations, or explore options. It can be used to discuss or find creative solutions to legal and non-legal issues. For legal issues, it can be a faster, less expensive, and more flexible option than going to court.
Medical Orders for Life-Sustaining Treatment (MOLST)	A **medical order form** covering an individual's preferences about life-sustaining and other medical treatment.
Monitoring	In a guardianship, refers to the court's oversight of how a guardianship is being managed. Monitoring entails ensuring the well-being of a person or property under guardianship through regular reports filed by the guardian and other means.
Petition for guardianship/petitioner	Paperwork filed in court formally requesting the appointment of a guardian of the person or property. The person or organization making the request is called the "petitioner."
Power of attorney	A tool that gives another person (an agent) authority to make decisions for or handle the financial or business affairs of another person (the principal). The principal selects the agent, determines their powers, and decides when the agent's powers go into effect (e.g., immediately or upon the principal's incapacity). A financial power of attorney covers the principal's legal or financial affairs. A health care or medical power of attorney is also called an advance directive.
Public guardianship	Refers to when a local Area Agency on Aging or Department of Social Services is appointed as guardian of the person of an adult.
Representative payee	A person appointed by the Social Security Administration (SSA) or Office of Personnel Management (OPM) to receive, manage, and spend benefits on behalf of a beneficiary who is unable to do so themselves. Certain pension companies also have representative payee programs. A guardian is not needed to manage these benefits.
Show cause order	A court order asking parties involved in a case to respond to explain or justify why a court should or should not take a certain action. For example, when a petition for guardianship is filed, the court will issue a show cause order directing interested persons to respond if they support or oppose the petition.
Specific transaction (Transaction authorized by court without appointing guardian)	A court order authorizing or directing a third party to complete an action or series of actions related to another's person's property. A specific transaction can only be ordered if the court determines that there is a legal basis for guardianship.
Social Security Administration (SSA)	Federal agency that, among other things, administers retirement, disability, and survivor, and family benefits **(Social Security, Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI)).**
Substituted judgment	A standard for decision-making on behalf of another person that is based on what that person would have done or wanted if they were able to make their own decisions.

Supported decision making	An informal or formal (written) arrangement that involves using a person – called a supporter – or a network of supporters to assist a person in making, communicating, or effectuating decisions.
Supports and accommodations	A broad and evolving range of formal and informal options that enable a person to live independently, communicate, make decisions, and function.
Surrogate decision-making	A provision in law that allows health care provider to turn to another person (a surrogate) to make medical decisions on behalf of patient who is unable to make informed decisions about their care and who has not appointed a health care agent.
Trust	A financial instrument that holds assets or income. Someone (called the trustee) is appointed to manage money or property for the benefit of the owner. There are several different kinds of trusts.
VA Fiduciary	The person appointed by the Department of Veterans Affairs (VA) to receive benefits on behalf of a VA beneficiary who is unable to manage their own benefits.

APPENDIX E
RESOURCES AND LINK INDEX

Service Locators

- Maryland Access Point (MAP)
- Maryland 2-1-1
- Eldercare Locator

Maryland Attorney General's Resources

- Health Care Decisions Act: Text and Educational Materials
- Life-sustaining treatment for incapacitated patients (decision trees)

Maryland Department of Aging

- Area Agencies on Aging
- Maryland Access Point
- Maryland Long-Term Care Ombudsman Program
- Public Guardianship Program

Maryland Department of Human Services – Office of Adult Services

- Local Departments of Social Services
- Adult Public Guardianship
- Adult Protective Services

Maryland Developmental Disabilities Administration

- Home and Community-based Waiver Programs

Maryland Behavioral Health Administration

- Local Behavioral Health Authorities
- Maryland Crisis Hotlines Resource Guide
- Behavioral Health Hospital Coordination Dashboard

Maryland Guardianship (Maryland Courts)

- Alternatives to Guardianship
- Guardian video series
- Guardianship forms

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https://dhs.maryland.gov/local-offices/

Area Agencies on Aging (Page 7)
https://aging.maryland.gov/Pages/area-agencies-on-aging.aspx

Developmental Disabilities Administration (Page 7)
https://health.maryland.gov/dda/Pages/home.aspx

Behavioral Health Authorities (Page 7)
https://health.maryland.gov/bha/Documents/Directory%20MABHA.pdf

Disability Rights Maryland (Page 11)
https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdisabilityrightsmd.org%2Fwp-content%2Fuploads%2FMaryland-Model-Supported-Decision-Making-Agreement__Final.docx&wdOrigin=BROWSELINK

Ways an individual can use SDM (Page 11)
https://thearcofnova.org/wp-content/uploads/sites/6/2019/11/100-Ways-to-Use-SDM-10.29.19.pdf

How SDM can be used in healthcare settings (Page 11)
https://www.ndrn.org/resource/faqs-for-people-with-disabilities-and-their-family-members-supported-decision-making-and-health-care/

There are requirements (Advance Directives) (Page 12)
https://www.peoples-law.org/advance-directives

Resources for individuals and health care providers (Page 12)
https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx

Execute an agreement (Decision Maker) (Page 13)
https://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/surrogate_decisionmakin_agreement.pdf

Home delivered meals, group dining programs, and grocery delivery services (Page 14)
https://aging.maryland.gov/pages/nutrition.aspx

Medical equipment, supplies, or non-emergency medical transportation (Page 14)
https://health.maryland.gov/mmcp/communitysupport/Pages/Home.aspx

Assistive technology and home modifications (Page 14)
https://mdod.maryland.gov/mdtap/Pages/MDTAP-Home.aspx

Peer supports and independent living skills training assistance with personal needs (Page 14)
https://www.ilru.org/projects/cil-net/cil-center-and-association-directory-results/MD

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https://health.maryland.gov/bha/Pages/newforms.aspx

Mental Health Association of Maryland (Page 15)
https://www.mhamd.org/information-and-help/adults/resources/

Petition for an emergency evaluation (Page 16)
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Behavioral Health Administration (Page 16)
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Social Security Administration (SSA) (Page 18)
https://www.ssa.gov/payee/

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https://www.opm.gov/retirement-center/my-annuity-and-benefits/representative-payees/

VA Fiduciary (Page 18)
https://www.benefits.va.gov/fiduciary/

Qualifying disability (Page 18)
https://www.ssa.gov/ssi/spotlights/spot-able.html

States have their own ABLE programs (Page 18)
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https://aging.maryland.gov/Pages/state-long-term-care-ombudsman.aspx

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