

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES DIRECTIVE	PROGRAM: <b>MENTAL HEALTH SERVICES</b>
	DPSCSD #: 124-403
	TITLE: Petition for Guardianship
	ISSUED:
	AUTHORITY: DIRECTOR
	CLINICAL AUTHORITY: ASSOC. DIRECTOR
	APPROVED: DEPUTY SECRETARY

- I. Policy: It is the policy of DPSCS to allow inmates to accept or refuse medical/mental health treatment up to the degree of their competency. For individuals determined to be incompetent, however, guardianship in some form may have to be secured.
  
- II. Applicable to: Individuals in mental health units, hospitals and infirmaries within the Department.
  
- III. References: Estates and Trusts Article, §§ 13-702, *et seq.*, ACM;  
Health-General Article, §§5-601, 5-605, 5-606  
Maryland Rules of Procedure
  
- IV. Procedure:
  - A. When an inmate suffering from a medical/mental health condition refuses treatment, and there is a belief that the inmate is, by virtue of a medical and/or mental health condition, incompetent to make treatment decisions on his/her own behalf, a petition for guardianship shall be sought.
  
  - B. A psychiatrist assigned by the private medical provider to provide services at the institution where the inmate is housed shall evaluate the individual to determine his/her competency. Nothing herein shall preclude the Chief Psychiatrist for the Department from initiating the process as required.
  
  - C. Once the competency evaluation has been completed and the petition for guardianship is determined to be necessary, the mental health professional most familiar with the individual shall be the facilitator of the guardianship. The responsibilities of that position include, but are not limited to, the following:
    1. Determining whether the inmate had previously appointed a surrogate to make decisions concerning health care in his/her behalf.

2. Seeking an appropriate guardian. The following persons in order of priority are entitled to be a guardian:
  - a. A person, agency or corporation previously nominated by the disabled person if she/he was 16 years of age or older when designated and had sufficient mental capacity to make the decision;
  - b. A health care agency appointed by the disabled person in accordance with Title 5, Subtitle 6 of Health General.
  - c. A spouse;
  - d. A parent;
  - e. A person, agency, or corporation nominated by the will of a deceased person;
  - f. A child, if over the age of 18;
  - g. Adults who would be heirs if the disabled person were dead;
  - h. A person, agency, or corporation named by a person caring for the disabled person;
  - i. A person, agency, or corporation considered appropriate by the court;
  - j. For adults less than 65 years of age, the Director of the local Department of Social Services;
  - k. For adults 65 years or older, the Director of the State Office of Aging or area agency on aging.
3. Notifying potential guardians of the possible filing of the petition for guardianship to determine their willingness to be appointed guardian and to let them know that if they wish, they may seek legal counsel to represent them in the proceeding;
4. Formulating a list of interested persons, providing their complete address, telephone number and relationship to the disabled individual. The following individuals are considered interested persons:
  - a. Spouse;
  - b. Parent;
  - c. Adult Children;
  - d. Proposed guardian;
  - e. Brothers/sisters;

- f. Director of DSS if proposed guardian;
  - g. Director/Superintendent if person resides in a State facility.
- 5. Collecting and providing all the necessary information and paperwork to the Attorney General's Office for filing with the court.
- D. The following information is required for the petition for guardianship:
  - 1. Name of the facility where the individual is located;
  - 2. Name, address and date of birth of the disabled individual;
  - 3. A certificate of medical need completed and signed by the treating physician who will perform the treatment;
  - 4. Affidavits of competency completed by two physicians licensed to practice medicine in the U.S. It is preferred that at least one of the physicians is the psychiatrist who determined competency. The examination/evaluation of the individual must have been performed within 21 days of the filing of the petition for guardianship with the court.
  - 5. The complete address and telephone number of each interested person and the person's relationship to the disabled individual.
  - 6. The name and telephone number of the mental health professional providing the information for the Petition for Guardianship.
- E. A written request to seek guardianship shall be sent to the Department's Director of Mental Health Services/Designee. The request shall include:
  - 1. A copy of the certificate of medical need;
  - 2. A copy of the certificate of competency;
  - 3. A copy of the Guardianship Petition checklist;
  - 4. A narrative of the inmate's condition, duration of the condition, duration of the medication refusal, steps taken to restore competency (if applicable) and any other information that may be pertinent to the guardianship process.
- F. Where appropriate, the Director shall forward the request for appointment of guardian to the Attorney General and request the initiation of court guardianship proceedings.

- V. ATTACHMENTS: Appendix 1, Certificate of Medical Need, DPSCS Form 124-403aR.  
Appendix 2, Certificate of Incompetency, DPSCS Form 124-403bR.  
Appendix 3, Checklist for Guardianship Petitions, DPSCS Form 124-403cR.
- VI. SUPERCEDES: None.