

HOUSE BILL 436

N2

9lr1264

By: **Delegates Hill, Jalisi, Jones, and McComas**

Introduced and read first time: January 31, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Protection of Minors and Disabled Persons – Guardianship**

3 FOR the purpose of altering the circumstances under which a guardian of the property of
4 a person with a physical or mental disability, a guardian of the property of a person
5 with certain other conditions, and a guardian of the property of a minor shall be
6 appointed; establishing certain procedures for the appointment of certain guardians
7 of the property; requiring a certain petition alleging that a person has a mental
8 disability or disease to include certain certificates of competency from certain health
9 care professionals; establishing certain rights of an alleged disabled person;
10 authorizing a certain closed hearing under certain circumstances; prohibiting the
11 court from appointing certain individuals as guardian under certain circumstances;
12 authorizing the court to ensure that a certain disabled person has access to funds
13 under certain circumstances; establishing certain procedures for the payment of
14 attorney’s fees under certain circumstances; authorizing a certain guardian to file a
15 certain fee petition and authorizing a court to order certain attorney’s fees to be paid
16 under certain circumstances; authorizing the court to require the deposit of certain
17 money into the court registry or an appointed guardian’s escrow account under
18 certain circumstances; altering the circumstances under which a court is not
19 required to give notice of certain actions; granting a person filing a certain petition,
20 participating in the making of a certain report, or participating in a certain
21 investigation or proceeding certain immunity from certain civil liability or criminal
22 penalty; requiring certain health care professionals providing a certain certificate of
23 competency to be appropriately credentialed; repealing a certain exception that
24 allowed certain medical care to be rendered in a certain State mental hospital;
25 defining the terms “beneficiary” and “benefit” for the purpose of making certain
26 provisions of law concerning the guardianship of certain minors and disabled persons
27 who are U.S. Department of Veterans Affairs beneficiaries applicable only to
28 monetary benefits paid by the U.S. Department of Veterans Affairs and recipients of
29 those monetary benefits; authorizing a court to order the examination of an alleged
30 disabled person who receives medical treatment at a U.S. Department of Veterans

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Affairs facility under certain circumstances; making certain conforming and stylistic
2 changes; and generally relating to guardianship of minors and disabled persons.

3 BY renumbering

4 Article – Estates and Trusts

5 Section 13–801

6 to be Section 13–801.1

7 Annotated Code of Maryland

8 (2017 Replacement Volume and 2018 Supplement)

9 BY repealing and reenacting, without amendments,

10 Article – Estates and Trusts

11 Section 13–101(a)

12 Annotated Code of Maryland

13 (2017 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Estates and Trusts

16 Section 13–101(f), 13–201, 13–203, 13–210, 13–211, 13–212, 13–218,
17 13–704, 13–705, 13–709(a), and 13–802

18 Annotated Code of Maryland

19 (2017 Replacement Volume and 2018 Supplement)

20 BY adding to

21 Article – Estates and Trusts

22 Section 13–201.1, 13–201.2, 13–201.3, 13–223, and 13–801

23 Annotated Code of Maryland

24 (2017 Replacement Volume and 2018 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That Section(s) 13–801 of Article – Estates and Trusts of the Annotated Code of Maryland
27 be renumbered to be Section(s) 13–801.1.

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
29 as follows:

30 **Article – Estates and Trusts**

31 13–101.

32 (a) In this title the following words have the meanings indicated.

33 (f) “Disabled person” means, unless the context requires otherwise, a person
34 other than a minor who:

35 (1) (i) Has been judged by a court to be unable to manage the person’s
36 property for reasons listed in [§ 13–201(c)(1)] **§ 13–201(B)(1) OR § 13–201.1(B)(1)** of this

1 title; and

2 (ii) As a result of this inability requires a guardian of the person's
3 property; or

4 (2) (i) Has been judged by a court to be unable to provide for the
5 person's daily needs sufficiently to protect the person's health or safety for reasons listed
6 in § 13-705(b) of this title; and

7 (ii) As a result of this inability requires a guardian of the person.

8 13-201.

9 (a) [Upon] **ON** petition, and after [any] notice [or] **AND A** hearing **AS** prescribed
10 by law or the Maryland Rules, the court may appoint a guardian of the property of [a minor
11 or] a disabled person.

12 (b) [A guardian shall be appointed if the court determines that:

13 (1) A minor owns or is entitled to property that requires management or
14 protection; or

15 (2) Funds are needed for his support, care, welfare, and education and
16 protection is necessary or desirable to obtain or provide funds.

17 (c)] A guardian **OF THE PROPERTY** shall be appointed if the court determines **BY**
18 **A PREPONDERANCE OF THE EVIDENCE** that:

19 (1) The person is unable to manage [his] **EFFECTIVELY THE PERSON'S**
20 property and affairs [effectively] because of physical or mental [disability, disease, habitual
21 drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by
22 a foreign power, or disappearance; and] **DISABILITY OR DISEASE;**

23 (2) The person has or may be entitled to property or benefits which require
24 proper management; **AND**

25 **(3) NO LESS RESTRICTIVE FORM OF INTERVENTION THAT IS IN THE**
26 **DISABLED PERSON'S BEST INTEREST IS AVAILABLE.**

27 **(C) (1) A PETITION FOR GUARDIANSHIP OF A DISABLED PERSON**
28 **ALLEGING THAT THE PERSON HAS A MENTAL DISABILITY OR DISEASE SHALL**
29 **INCLUDE SIGNED AND VERIFIED CERTIFICATES OF COMPETENCY FROM THE**
30 **FOLLOWING HEALTH CARE PROFESSIONALS, APPROPRIATELY CREDENTIALLED TO**
31 **GIVE AN OPINION AS TO THE COMPETENCY OF THE DISABLED PERSON:**

1 **(I) TWO LICENSED PHYSICIANS WHO HAVE EXAMINED THE**
2 **ALLEGED DISABLED PERSON; OR**

3 **(II) 1. ONE LICENSED PHYSICIAN WHO HAS EXAMINED THE**
4 **ALLEGED DISABLED PERSON; AND**

5 **2. A. ONE LICENSED PSYCHOLOGIST WHO HAS**
6 **EVALUATED THE ALLEGED DISABLED PERSON; OR**

7 **B. ONE LICENSED CERTIFIED SOCIAL**
8 **WORKER-CLINICAL WHO HAS EVALUATED THE ALLEGED DISABLED PERSON.**

9 **(2) AN EXAMINATION OR EVALUATION BY AT LEAST ONE OF THE**
10 **HEALTH CARE PROFESSIONALS UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
11 **BE CONDUCTED WITHIN 21 DAYS BEFORE FILING A PETITION FOR GUARDIANSHIP OF**
12 **A DISABLED PERSON.**

13 **(D) (1) THE ALLEGED DISABLED PERSON IS ENTITLED TO:**

14 **(I) BE PRESENT AT THE HEARING UNLESS THE PERSON HAS**
15 **KNOWINGLY AND VOLUNTARILY WAIVED THE RIGHT TO BE PRESENT OR CANNOT BE**
16 **PRESENT BECAUSE OF PHYSICAL OR MENTAL INCAPACITY; AND**

17 **(II) PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES.**

18 **(2) WAIVER OR INCAPACITY UNDER PARAGRAPH (1)(I) OF THIS**
19 **SUBSECTION MAY NOT BE PRESUMED FROM THE FAILURE OF THE PERSON TO**
20 **APPEAR BUT SHALL BE DETERMINED ON THE BASIS OF FACTUAL INFORMATION**
21 **SUPPLIED TO THE COURT BY COUNSEL OR A REPRESENTATIVE APPOINTED BY THE**
22 **COURT.**

23 **(E) (1) DETERMINATIONS UNDER SUBSECTION (B) OF THIS SECTION MAY**
24 **BE MADE AT A CLOSED HEARING ON THE REQUEST OF THE ALLEGED DISABLED**
25 **PERSON OR THE PERSON'S COUNSEL.**

26 **(2) A HEARING HELD IN ACCORDANCE WITH THIS SECTION SHALL BE**
27 **CONFIDENTIAL AND SEALED UNLESS OTHERWISE ORDERED BY A COURT OF**
28 **COMPETENT JURISDICTION FOR GOOD CAUSE SHOWN.**

29 **(F) THE COURT MAY NOT APPOINT AS GUARDIAN UNDER SUBSECTION (A)**
30 **OF THIS SECTION:**

1 **(1) AN ATTORNEY WHO IS REPRESENTING A PARTY IN THE PETITION**
2 **FOR GUARDIANSHIP; OR**

3 **(2) A PERSON WHO IS A PARTNER OR BUSINESS ASSOCIATE OF AN**
4 **ATTORNEY REPRESENTING A PARTY IN THE PETITION FOR GUARDIANSHIP.**

5 **13-201.1.**

6 **(A) ON THE FILING OF A PETITION, AND AFTER ANY NOTICE AND HEARING**
7 **AS PRESCRIBED BY LAW OR THE MARYLAND RULES, THE COURT MAY APPOINT A**
8 **GUARDIAN OF THE PROPERTY OF AN ADULT NOT UNDER A DISABILITY.**

9 **(B) A GUARDIAN OF THE PROPERTY SHALL BE APPOINTED IF THE COURT**
10 **DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:**

11 **(1) IF IT APPEARS FROM SPECIFIC FACTS SHOWN BY AFFIDAVIT OR**
12 **EXHIBIT IN COMPLIANCE WITH THE MARYLAND RULES, THE PERSON IS UNABLE TO**
13 **MANAGE EFFECTIVELY THE PERSON'S PROPERTY AND AFFAIRS BECAUSE OF**
14 **HABITUAL DRUNKENNESS, ADDICTION TO DRUGS, IMPRISONMENT, COMPULSORY**
15 **HOSPITALIZATION, DETENTION BY A FOREIGN POWER, OR DISAPPEARANCE;**

16 **(2) THE PERSON HAS OR MAY BE ENTITLED TO PROPERTY OR**
17 **BENEFITS THAT REQUIRE PROPER MANAGEMENT; AND**

18 **(3) NO LESS RESTRICTIVE FORM OF INTERVENTION THAT IS IN THE**
19 **PERSON'S BEST INTEREST IS AVAILABLE.**

20 **(C) THE COURT MAY NOT APPOINT AS GUARDIAN UNDER SUBSECTION (A)**
21 **OF THIS SECTION:**

22 **(1) AN ATTORNEY WHO IS REPRESENTING A PARTY IN THE PETITION**
23 **FOR GUARDIANSHIP; OR**

24 **(2) A PERSON WHO IS A PARTNER OR BUSINESS ASSOCIATE OF AN**
25 **ATTORNEY REPRESENTING A PARTY IN THE PETITION FOR GUARDIANSHIP.**

26 **13-201.2.**

27 **(A) ON THE FILING OF A PETITION, AND AFTER ANY NOTICE AND HEARING**
28 **AS PRESCRIBED BY LAW OR THE MARYLAND RULES, THE COURT MAY APPOINT A**
29 **GUARDIAN OF THE PROPERTY OF A MINOR.**

30 **(B) A GUARDIAN OF THE PROPERTY SHALL BE APPOINTED IF THE COURT**

1 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:

2 (1) A MINOR OWNS OR IS ENTITLED TO PROPERTY THAT REQUIRES
3 MANAGEMENT OR PROTECTION; OR

4 (2) FUNDS ARE NEEDED FOR THE MINOR'S SUPPORT, CARE,
5 WELFARE, AND EDUCATION, AND PROTECTION IS NECESSARY OR DESIRABLE TO
6 OBTAIN OR PROVIDE FUNDS.

7 (C) THE COURT MAY NOT APPOINT AS GUARDIAN UNDER SUBSECTION (A)
8 OF THIS SECTION:

9 (1) AN ATTORNEY WHO IS REPRESENTING A PARTY IN THE PETITION
10 FOR GUARDIANSHIP; OR

11 (2) A PERSON WHO IS A PARTNER OR BUSINESS ASSOCIATE OF AN
12 ATTORNEY REPRESENTING A PARTY IN THE PETITION FOR GUARDIANSHIP.

13 **13-201.3.**

14 (A) THE COURT MAY ENSURE THAT A DISABLED PERSON HAS ACCESS TO
15 FUNDS CONSIDERED APPROPRIATE BY THE GUARDIAN OR ORDERED BY THE COURT.

16 (B) (1) ON THE FILING OF A PETITION FOR ATTORNEY'S FEES MADE IN
17 REASONABLE DETAIL BY THE PETITIONER OR CROSS-PETITIONER, AN INTERESTED
18 PERSON, OR AN ATTORNEY EMPLOYED BY AN INTERESTED PERSON, THE COURT MAY
19 ORDER REASONABLE AND NECESSARY ATTORNEY'S FEES, AS DETERMINED BY THE
20 COURT SUBJECT TO THE MARYLAND RULES, INCURRED IN BRINGING A PETITION
21 FOR APPOINTMENT OF A GUARDIAN OF THE PROPERTY OF AN ALLEGED DISABLED
22 PERSON TO BE PAID FROM THE ESTATE OF THE ALLEGED DISABLED PERSON, BY THE
23 ALLEGED DISABLED PERSON, OR BY A FIDUCIARY FOR THE ALLEGED DISABLED
24 PERSON.

25 (2) BEFORE ORDERING THE PAYMENT OF ATTORNEY'S FEES UNDER
26 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL CONSIDER:

27 (I) THE FINANCIAL RESOURCES AND NEEDS OF THE ALLEGED
28 DISABLED PERSON; AND

29 (II) WHETHER THERE WAS SUBSTANTIAL JUSTIFICATION FOR
30 THE FILING OF THE PETITION FOR GUARDIANSHIP.

31 (3) ON A FINDING BY THE COURT OF AN ABSENCE OF SUBSTANTIAL

1 JUSTIFICATION FOR BRINGING THE PETITION FOR GUARDIANSHIP, THE COURT
2 SHALL DENY A PETITION FOR ATTORNEY'S FEES FILED UNDER PARAGRAPH (1) OF
3 THIS SUBSECTION.

4 (4) A COURT MAY NOT AWARD ATTORNEY'S FEES UNDER PARAGRAPH
5 (1) OF THIS SUBSECTION IF THE PETITION FOR GUARDIANSHIP IS BROUGHT BY:

6 (I) A GOVERNMENT AGENCY PAYING BENEFITS TO THE
7 ALLEGED DISABLED PERSON;

8 (II) A LOCAL DEPARTMENT OF SOCIAL SERVICES; OR

9 (III) AN AGENCY ELIGIBLE TO SERVE AS THE GUARDIAN OF THE
10 DISABLED PERSON UNDER § 13-707 OF THIS TITLE.

11 (C) IF THE APPOINTED GUARDIAN OF THE PROPERTY IS AN ATTORNEY, THE
12 COURT MAY REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT
13 REGISTRY OR THE APPOINTED GUARDIAN'S ESCROW ACCOUNT WITHIN 30 DAYS
14 AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER
15 ORDER OF THE COURT.

16 13-203.

17 (a) (1) While a petition for appointment of a guardian or other protective order
18 is pending, the court may preserve and apply the property of the alleged disabled person or
19 minor as may be required.

20 (2) The court [need not] IS NOT REQUIRED TO give notice OF ITS
21 ACTIONS UNDER THIS SUBSECTION to other persons, INCLUDING THE ALLEGED
22 DISABLED PERSON IF THE COURT FINDS THAT GIVING NOTICE WOULD:

23 (I) CAUSE HARM OR INCREASE THE POTENTIAL OF HARM TO
24 THE ALLEGED DISABLED PERSON;

25 (II) UNACCEPTABLY DELAY THE EXECUTION OR
26 IMPLEMENTATION OF THE ACTION; OR

27 (III) IN ANY OTHER WAY NOT SERVE THE BEST INTEREST OF THE
28 ALLEGED DISABLED PERSON.

29 (b) (1) The court may not exercise the power conferred by subsection (a) of this
30 section unless it appears from specific facts shown by affidavit that immediate, substantial,
31 and irreparable injury will result to the applicant or to the minor or disabled person before
32 an adversary hearing can be held.

1 (2) The court may communicate informally with the minor or disabled
2 person [~~prior to~~] **BEFORE** taking action.

3 (3) Any order shall be served immediately on the minor or disabled person.

4 (c) (1) Except for the limitations contained in § 13–106 of this title, after
5 appointment of the guardian, the court has all the powers over the property of the minor or
6 disabled person that the person could exercise if not disabled or a minor.

7 (2) The powers that a circuit court has under paragraph (1) of this
8 subsection include the power to [authorize]:

9 (I) **AUTHORIZE** or direct the guardian to:

10 [(i)] 1. Make gifts from the principal and income of the estate; and

11 [(ii)] 2. Disclaim on behalf of the minor or disabled person, in
12 whole or in part, the right of succession or transfer to that person of any property or interest
13 in any property; **AND**

14 (II) **IF THE APPOINTED GUARDIAN OF THE PROPERTY IS AN**
15 **ATTORNEY, REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT**
16 **REGISTRY OR THE APPOINTED GUARDIAN’S ESCROW ACCOUNT WITHIN 30 DAYS**
17 **AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER**
18 **ORDER OF THE COURT.**

19 (3) The powers that a circuit court has under paragraph (2) of this
20 subsection are in addition to and may not limit the power:

21 (i) Conferred [upon] **ON** the guardian to make distributions under
22 § 13–214 of this subtitle; and

23 (ii) Conferred [upon] **ON** the guardian or the circuit court, without
24 appointing a guardian, to disclaim or authorize or direct a disclaimer on behalf of a minor
25 or disabled person under § 9–201(c) of this article.

26 (d) A guardian or any other interested person may invoke the jurisdiction of the
27 court at any time to resolve questions concerning the estate or its administration.

28 13–210.

29 (a) An interested person may file a petition for an order:

30 (1) Requiring bond, security, additional bond, or security in an estate
31 where bond can be required;

- 1 (2) Requiring an accounting of the administration of the estate;
- 2 (3) Directing distribution;
- 3 (4) Removing the guardian and appointing a successor guardian; or
- 4 (5) Granting other appropriate relief.

5 (b) A guardian may petition the appointing court for permission to act in any
6 matter relating to the administration of the estate.

7 (c) [Upon] ON hearing after notice and [upon] ON good cause shown, the court
8 may issue an appropriate order.

9 **(D) IF THE APPOINTED GUARDIAN OF THE PERSON IS AN ATTORNEY, AND ON**
10 **PETITION BY THE APPOINTED GUARDIAN OF THE PROPERTY, THE COURT MAY**
11 **REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT REGISTRY OR**
12 **THE APPOINTED GUARDIAN'S ESCROW ACCOUNT WITHIN 30 DAYS AFTER THE ORDER**
13 **OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER ORDER OF THE**
14 **COURT.**

15 13-211.

16 (a) **(1)** There shall be no jury trial in protective proceedings.

17 **(2)** Procedures for notice to interested persons, the forms of petitions, and
18 the conduct of and requirements at hearings are as provided in the Maryland Rules.

19 (b) Unless the alleged disabled person has **CHOSEN** counsel [of his own choice],
20 the court [shall]:

21 **(1)** **SHALL** appoint an attorney to represent [him] **THE PERSON** in the
22 proceeding; **AND**

23 **(2)** **MAY REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE**
24 **COURT REGISTRY OR THE APPOINTED ATTORNEY'S ESCROW ACCOUNT WITHIN 30**
25 **DAYS AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO**
26 **FURTHER ORDER OF THE COURT.**

27 13-212.

28 [In the administration of the estate and the exercise of his powers, a] **A** guardian
29 shall exercise the care and skill of [a man] **A PERSON** of ordinary prudence dealing with
30 [his] **THE PERSON'S** own property **IN THE ADMINISTRATION OF THE ESTATE AND THE**

1 **EXERCISE OF THE GUARDIAN’S POWERS.**

2 13–218.

3 (a) (1) Except in unusual circumstances and as provided in subsection (b) of
4 this section, the guardian is entitled to the same compensation and reimbursement for
5 actual and necessary expenses as the trustee of a trust.

6 (2) No petition or hearing is required to entitle the guardian to
7 compensation and expenses.

8 (3) [Upon] **ON** the petition of any interested person and [upon] **ON** a
9 finding by the court that unusual circumstances exist, the court may increase or decrease
10 compensation.

11 (b) If the guardian is appointed as the guardian of a disabled person who is a
12 recipient of long-term care services and supports under the Maryland Medical Assistance
13 Program and whose income is subject to § 15–122.3 of the Health – General Article, the
14 guardian is not entitled to receive more than \$50 per month in compensation unless the
15 court makes a finding that unusual circumstances exist.

16 (c) (1) **IF THE APPOINTED GUARDIAN IS AN ATTORNEY, THE ATTORNEY**
17 **MAY FILE A FEE PETITION TO BE COMPENSATED AT THE ATTORNEY’S CUSTOMARY**
18 **HOURLY RATE IF THE GUARDIAN:**

19 (i) **IS PROVIDING LEGAL SERVICES; AND**

20 (ii) **WOULD OTHERWISE NEED TO HIRE AN ATTORNEY TO**
21 **PROVIDE THE LEGAL SERVICES.**

22 (2) **ON THE FILING OF A PETITION FOR ATTORNEY’S FEES MADE IN**
23 **REASONABLE DETAIL BY THE GUARDIAN, THE COURT MAY ORDER REASONABLE AND**
24 **NECESSARY ATTORNEY’S FEES, AS DETERMINED BY THE COURT SUBJECT TO THE**
25 **MARYLAND RULES, TO BE PAID FROM THE ESTATE OF THE DISABLED PERSON.**

26 (3) **BEFORE ORDERING THE PAYMENT OF ATTORNEY’S FEES UNDER**
27 **PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL CONSIDER THE FINANCIAL**
28 **RESOURCES AND NEEDS OF THE DISABLED PERSON.**

29 13–223.

30 **A PERSON FILING A PETITION, PARTICIPATING IN THE MAKING OF A**
31 **GOOD-FAITH REPORT, OR PARTICIPATING IN AN INVESTIGATION OR A JUDICIAL**
32 **PROCEEDING RESULTING FROM AN INVESTIGATION UNDER § 13–201, § 13–203, OR**
33 **§ 13–220 OF THIS SUBTITLE, SHALL HAVE THE IMMUNITY FROM CIVIL LIABILITY OR**

1 **CRIMINAL PENALTY DESCRIBED UNDER § 5-618(A) OF THE COURTS ARTICLE.**

2 13-704.

3 (a) The court may:

4 (1) Superintend and direct the care of a disabled person;

5 (2) Appoint a guardian of the person; and

6 (3) Pass orders and decrees respecting the person as seems proper,
7 including an order directing the disabled person to be sent to a hospital.

8 (b) Procedures in these cases shall be as prescribed by the Maryland Rules and
9 in accordance with the provisions of this subtitle and Title 13.5 of this article.

10 (c) (1) On the filing of a petition for attorney's fees made in reasonable detail
11 by **THE PETITIONER OR CROSS-PETITIONER**, an interested person, or an attorney
12 employed by [the] AN interested person, the court may order reasonable and necessary
13 attorney's fees, **AS DETERMINED BY THE COURT SUBJECT TO THE MARYLAND RULES**,
14 incurred in bringing a petition for appointment of a guardian of the person of [a] AN
15 **ALLEGED** disabled person to be paid from the estate of the **ALLEGED** disabled person, **BY**
16 **THE ALLEGED DISABLED PERSON, OR BY A FIDUCIARY FOR THE ALLEGED DISABLED**
17 **PERSON**.

18 (2) Before ordering the payment of attorney's fees under paragraph (1) of
19 this subsection, the court shall consider:

20 (i) The financial resources and needs of the **ALLEGED** disabled
21 person; and

22 (ii) Whether there was substantial justification for the filing of the
23 petition for guardianship.

24 (3) On a finding by the court of an absence of substantial justification for
25 bringing the petition for guardianship, the court shall deny a petition for attorney's fees
26 filed under paragraph (1) of this subsection.

27 (4) The court may not award attorney's fees under paragraph (1) of this
28 subsection if the petition for guardianship is brought by:

29 (i) A government agency paying benefits to the **ALLEGED** disabled
30 person;

31 (ii) A local department of social services; or

1 (iii) An agency eligible to serve as the guardian of the disabled person
2 under § 13–707 of this subtitle.

3 13–705.

4 (a) On petition and after any notice [or] **AND** hearing prescribed by law or the
5 Maryland Rules, a court may appoint a guardian of the person of a disabled person.

6 (b) A guardian of the person shall be appointed if the court determines from clear
7 and convincing evidence that [a]:

8 **(1)** A person lacks sufficient understanding or capacity to make or
9 communicate responsible **PERSONAL** decisions [concerning his person], including
10 provisions for health care, food, clothing, or shelter, because of any mental disability,
11 disease, habitual drunkenness, or addiction to drugs[,]; and [that no]

12 **(2)** **NO** less restrictive form of intervention is available [which] **THAT** is
13 consistent with the person's welfare and safety.

14 (c) (1) Procedures and venue in these cases shall be as described by Title 10,
15 Chapters 100 and 200 of the Maryland Rules.

16 (2) Notwithstanding the provisions of paragraph (1) of this subsection, a
17 petition for guardianship of a disabled person shall include signed and verified certificates
18 of competency from the following health care professionals, **APPROPRIATELY**
19 **CREDENTIALLED TO GIVE AN OPINION AS TO THE COMPETENCY OF THE DISABLED**
20 **PERSON:**

21 (i) Two licensed physicians who have examined the disabled person;
22 or

23 (ii) 1. One licensed physician who has examined the disabled
24 person; and

25 2. A. One licensed psychologist who has evaluated the
26 disabled person; or

27 B. One licensed certified social worker–clinical who has
28 evaluated the disabled person.

29 (3) An examination or evaluation by at least one of the health care
30 professionals under paragraph (2) of this subsection shall occur within 21 days before filing
31 a petition for guardianship of a disabled person.

32 (d) (1) (i) Subject to paragraph (2) of this subsection, unless the alleged
33 disabled person has counsel of the person's own choice, the court shall appoint an attorney

1 to represent the person in the proceeding and may require the deposit of an appropriate
2 sum into the court registry or the appointed attorney's escrow account within 30 days after
3 the order of appointment has been entered, subject to further order of the court.

4 (ii) If the person is indigent, the State shall pay a reasonable
5 attorney's fee.

6 (iii) The court may not require the deposit of an appropriate sum into
7 the court registry or the appointed attorney's escrow account under subparagraph (i) of this
8 paragraph if payment for the services of the court-appointed attorney for the alleged
9 disabled person is the responsibility of:

10 1. A government agency paying benefits to the disabled
11 person;

12 2. A local department of social services; or

13 3. An agency eligible to serve as the guardian of the disabled
14 person under § 13-707 of this subtitle.

15 (2) In any action in which payment for the services of a court-appointed
16 attorney for the alleged disabled person is the responsibility of the local department of
17 social services, unless the court finds that it would not be in the best interests of the alleged
18 disabled person, the court shall:

19 (i) Appoint an attorney who has contracted with the Department of
20 Human Services to provide those services, in accordance with the terms of the contract; and

21 (ii) In an action in which an attorney has previously been appointed,
22 strike the appearance of the attorney previously appointed and appoint the attorney who
23 is currently under contract with the Department of Human Services, in accordance with
24 the terms of the contract.

25 (e) (1) (I) The person alleged to be disabled is entitled to be present at the
26 hearing unless [he] **THE PERSON** has knowingly and voluntarily waived the right to be
27 present or cannot be present because of physical or mental incapacity.

28 (II) Waiver or incapacity may not be presumed from nonappearance
29 but shall be determined on the basis of factual information supplied to the court by counsel
30 or a representative appointed by the court.

31 (2) The person alleged to be disabled is also entitled to present evidence
32 and to cross-examine witnesses.

33 (3) The issue may be determined at a closed hearing without a jury if the
34 person alleged to be disabled or [his] **THE PERSON'S** counsel so requests and all hearings

1 herein shall be confidential and sealed unless otherwise ordered by a court of competent
2 jurisdiction for good cause shown.

3 (f) The court shall hear and rule on a petition seeking appointment of a guardian
4 of the person of a disabled person in connection with medical treatment on an expedited
5 basis.

6 **(G) THE COURT MAY NOT APPOINT AS GUARDIAN UNDER SUBSECTION (A)**
7 **OF THIS SECTION:**

8 **(1) AN ATTORNEY WHO IS REPRESENTING A PARTY IN THE PETITION**
9 **FOR GUARDIANSHIP; OR**

10 **(2) A PERSON WHO IS A PARTNER OR BUSINESS ASSOCIATE OF AN**
11 **ATTORNEY REPRESENTING A PARTY IN THE PETITION FOR GUARDIANSHIP.**

12 13-709.

13 (a) **(1) [When] A LAW ENFORCEMENT OFFICER SHALL TRANSPORT AN**
14 **ADULT TO AN APPROPRIATE MEDICAL FACILITY, WHICH SHALL IMMEDIATELY**
15 **NOTIFY THE NEXT OF KIN AND THE DIRECTOR, IF, from personal observation of [a law**
16 **enforcement] THE officer, it appears probable that [an]:**

17 **(I) THE** adult will suffer immediate and serious physical injury or
18 death if not immediately placed in a health care facility[, that the];

19 **(II) THE** adult is incapable of giving consent[,]; and [that it]

20 **(III) IT** is not possible to follow the procedures of this section[, the
21 officer shall transport the person to an appropriate medical facility which shall immediately
22 notify the next of kin and the director].

23 **(2) [This medical] MEDICAL care PROVIDED UNDER PARAGRAPH (1)**
24 **OF THIS SUBSECTION** may not be rendered in a State mental [hospital other than, in an
25 appropriate case, the Walter P. Carter Community Mental Health and Retardation Center
26 and the Highland Health Facility] **FACILITY** unless authorized by the courts in a civil
27 commitment proceeding.

28 **(3) (I)** The director **OF A MEDICAL FACILITY TO WHICH A PERSON**
29 **HAS BEEN TRANSPORTED UNDER PARAGRAPH (1) OF THIS SUBSECTION** shall file a
30 petition pursuant to subsection (b) of this section within 24 hours after the transfer of the
31 person has taken place.

32 **(II)** The court shall hold a hearing on the petition and render its
33 decision within 48 hours after [the] **A transfer [has occurred] MADE UNDER THIS**

1 SUBSECTION.

2 13-801.

3 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (B) "BENEFICIARY" MEANS A PERSON RECEIVING A MONETARY BENEFIT.

6 (C) (1) "BENEFIT" MEANS A MONETARY PAYMENT.

7 (2) "BENEFIT" DOES NOT INCLUDE A PENSION PLAN OR HEALTH
8 CARE.

9 13-802.

10 (A) If a petition is filed for the appointment of a guardian for a minor who is a
11 U.S. DEPARTMENT OF Veterans [Administration] AFFAIRS beneficiary, a certificate of
12 the [Administrator] SECRETARY or [his] THE SECRETARY'S authorized representative,
13 setting forth the age of the minor as shown by the records of the U.S. DEPARTMENT OF
14 Veterans [Administration] AFFAIRS and the fact that appointment of a guardian is a
15 condition precedent to the payment of any money due the minor from the U.S.
16 DEPARTMENT OF Veterans [Administration] AFFAIRS shall be prima facie evidence of
17 the necessity for the appointment.

18 (B) THE COURT MAY, IN ACCORDANCE WITH THE MARYLAND RULES,
19 ORDER THE EXAMINATION OF AN ALLEGED DISABLED PERSON WHO RECEIVES
20 MEDICAL TREATMENT AT A U.S. DEPARTMENT OF VETERANS AFFAIRS FACILITY IF:

21 (1) THE PETITION FOR THE APPOINTMENT OF A GUARDIAN FOR THE
22 PERSON DOES NOT INCLUDE TWO CERTIFICATES OF COMPETENCY IN ACCORDANCE
23 WITH § 13-201 OF THIS TITLE; AND

24 (2) THE REASON FOR THE FAILURE TO INCLUDE THE CERTIFICATES
25 IS THAT THE FACILITY IS PROHIBITED FROM DISCLOSING RECORDS UNDER 5 U.S.C.
26 § 552A.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2019.