
By: **Delegates McComas, Aumann, Boteler, Cluster, Dumais, Edwards,
Frank, Gaines, Gilleland, Griffith, Jennings, Kohl, Kullen, Marriott,
McConkey, Menes, Shewell, Stocksdale, and Walkup**

Introduced and read first time: February 6, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Petition for Guardianship of Disabled Person - Certificate of Competency by**
3 **Licensed Certified Social Worker-Clinical**

4 FOR the purpose of authorizing a petition for guardianship of a disabled person to
5 include signed and verified certificates of competency by a certain licensed
6 physician and a certain licensed certified social worker-clinical; and generally
7 relating to petitions for guardianship of disabled persons.

8 BY repealing and reenacting, with amendments,
9 Article - Estates and Trusts
10 Section 13-705
11 Annotated Code of Maryland
12 (2001 Replacement Volume and 2005 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Estates and Trusts**

16 13-705.

17 (a) On petition and after any notice or hearing prescribed by law or the
18 Maryland Rules, a court may appoint a guardian of the person of a disabled person.

19 (b) A guardian of the person shall be appointed if the court determines from
20 clear and convincing evidence that a person lacks sufficient understanding or
21 capacity to make or communicate responsible decisions concerning his person,
22 including provisions for health care, food, clothing, or shelter, because of any mental
23 disability, disease, habitual drunkenness, or addiction to drugs, and that no less
24 restrictive form of intervention is available which is consistent with the person's
25 welfare and safety.

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

3 (2) Notwithstanding the provisions of paragraph (1) of this subsection, a
4 petition for guardianship of a disabled person shall include signed and verified
5 certificates of competency from the following health care professionals:

6 (i) Two licensed physicians who have examined the disabled
7 person; or

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

10 2. A. [one] ONE licensed psychologist who has evaluated
11 the disabled person; OR

12 B. ONE LICENSED CERTIFIED SOCIAL WORKER-CLINICAL
13 WHO HAS EVALUATED THE DISABLED PERSON.

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

17 (d) (1) Subject to paragraph (2) of this subsection, unless the alleged
18 disabled person has counsel of his own choice, the court shall appoint an attorney to
19 represent him in the proceeding. If the person is indigent, the State shall pay a
20 reasonable attorney's fee.

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

25 (i) Appoint an attorney who has contracted with the Department of
26 Human Resources to provide those services, in accordance with the terms of the
27 contract; and

28 (ii) In an action in which an attorney has previously been
29 appointed, strike the appearance of the attorney previously appointed and appoint
30 the attorney who is currently under contract with the Department of Human
31 Resources, in accordance with the terms of the contract.

32 (e) The person alleged to be disabled is entitled to be present at the hearing
33 unless he has knowingly and voluntarily waived the right to be present or cannot be
34 present because of physical or mental incapacity. Waiver or incapacity may not be
35 presumed from nonappearance but shall be determined on the basis of factual
36 information supplied to the court by counsel or a representative appointed by the
37 court. The person alleged to be disabled is also entitled to present evidence and to
38 cross-examine witnesses. The issue may be determined at a closed hearing without a
39 jury if the person alleged to be disabled or his counsel so requests and all hearings

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

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2006.