

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 753

(Delegate McComas, *et al.*)

Judiciary

Judicial Proceedings

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

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This bill adds licensed certified social worker-clinical (LCSW-C) to the health care professionals who may issue the certificates of competency that must be included in a petition for guardianship of a disabled person. The bill provides that a certificate of competency from a LCSW-C, along with a certificate from a licensed physician, may be included with a petition for guardianship of a disabled person.

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**Fiscal Summary**

**State Effect:** None. The bill's changes will not directly affect State operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A court may appoint a guardian for a disabled person on receiving a petition and after notice and a hearing. The petition may be filed by an interested person in a court in the county in which the disabled person is a resident or in which the disabled person has been admitted for medical care or treatment at specified hospitals. The court must appoint a guardian if it determines that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person (including providing for health care, food, clothing, or shelter), due to a mental disability,

disease, habitual drunkenness, or drug addiction, and no less restrictive intervention is available.

The petition must include signed and verified certificates of competency from either two licensed physicians who have examined the disabled person, or a licensed physician and a licensed psychologist who has evaluated the disabled person. At least one of the examinations or evaluations must have been conducted within 21 days of the petition being filed.

Notice must be served on the disabled person and any parent, guardian, or other person having care or custody of the disabled person, the disabled person's attorney, and all other interested persons. The disabled person is afforded a hearing if desired, in the form of a jury trial, though the right to a jury may be waived. The disabled person has the right to be present at the hearing, present evidence, and cross-examine witnesses. If the disabled person does not already have an attorney, one is appointed by the court. A physician's or psychologist's certificate is admissible as evidence in the hearing, though an interested person may request that the physician or psychologist appear.

A guardian may, on behalf of a minor, apply for the minor's admission to a facility that treats individuals with mental disorders. A minor who has been voluntarily admitted on the guardian's application may be held for more than three days after the applicant for admission asks for release unless the minor's admission status has been changed to involuntary status.

A guardian of a minor may apply on the minor's behalf for admission to a certified inpatient alcohol and drug abuse program or facility. A minor does not have the capacity to refuse treatment for drug abuse or alcoholism in a certified inpatient alcohol or drug abuse treatment program for which a guardian has given consent.

Any person with legitimate interest in the welfare of an individual may apply for services for an individual with a developmental disability. A person licensed by the Department of Health and Mental Hygiene's Developmental Disabilities Administration to provide services to disabled individuals must disclose an individual's record to a guardian if the individual is minor. A disabled adult's record may be disclosed to a guardian only if the disabled adult has not asked the licensee to withhold the information from the guardian.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Register of Wills, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2006  
ncs/jr

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