

HOUSE BILL 672

N2
HB 753/06 – JUD

71r0457

By: **Delegates McComas, Aumann, Bartlett, Braveboy, Elmore, McConkey, Shewell, Sossi, Stocksdale, Stull, and Walkup**

Introduced and read first time: February 8, 2007

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 2006 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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

7 (c) (1) Procedures and venue in these cases shall be as described by Title
8 10, Chapters 100 and 200 of the Maryland Rules.

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

12 (i) Two licensed physicians who have examined the disabled
13 person; or

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

16 2. A. [one] **ONE** licensed psychologist who has
17 evaluated the disabled person[.]; **OR**

18 **B. ONE LICENSED CERTIFIED SOCIAL**
19 **WORKER—CLINICAL WHO HAS EVALUATED THE DISABLED PERSON.**

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

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

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

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

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

8 (e) The person alleged to be disabled is entitled to be present at the hearing
9 unless he has knowingly and voluntarily waived the right to be present or cannot be
10 present because of physical or mental incapacity. Waiver or incapacity may not be
11 presumed from nonappearance but shall be determined on the basis of factual
12 information supplied to the court by counsel or a representative appointed by the
13 court. The person alleged to be disabled is also entitled to present evidence and to
14 cross-examine witnesses. The issue may be determined at a closed hearing without a
15 jury if the person alleged to be disabled or his counsel so requests and all hearings
16 herein shall be confidential and sealed unless otherwise ordered by a court of
17 competent jurisdiction for good cause shown.

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2007.