

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 672

(Delegate McComas, *et al.*)

Judiciary

Judicial Proceedings

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

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.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

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. A petition may be filed in any county in which a nonresident disabled person is physically present. 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.

Background: The Department of Human Resources advises that LCSW-C social workers are clinically trained to assess the mental and cognitive impairments of disabled persons and are more readily accessible in the community and through local departments of social services than licensed physicians or psychologists.

Additional Information

Prior Introductions: An identical bill was introduced in the 2006 session as HB 753. The bill was passed by the House, but was unfavorably reported by the Senate Judicial Proceedings Committee.

Cross File: None.

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

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ncs/jr

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