

19. Petitions for Guardianship of a Disabled Person

ESTATES & TRUSTS ARTICLE, § 13-705(a)--(c) and Maryland Rule 10-202(a)

§ 13-705. (a) –(c). Appointment of guardian of disabled person

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

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

(c) Procedures and venue; certificates of competency. --

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

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

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

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

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

B. One licensed certified social worker-clinical who has evaluated the disabled person.

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

Rule 10-202. Certificates –Requirement and content

(a) Generally required. Except as provided in section (d), if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (1) two physicians licensed to practice medicine in the United States who have examined the disabled person, or (2) one licensed physician or who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of the petition.

(b) Contents. Each certificate shall state: (1) the name, address, and qualifications of the person who performed the examination or evaluation, (2) a brief history of the person's involvement with the disabled person, (3) the date of the last examination or evaluation of the disabled person, and (4) the person's opinion as to: (A) the cause, nature, extent, and probable duration of the disability, (B) whether institutional care is required, and (C) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

(c) Delayed filing of certificates.

(1) After refusal to permit examination. If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

(2) Appointment of health care professionals by court. If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

(d) Beneficiary of the Department of Veterans Affairs. If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by section (a) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.