



HEALTHCARE PIPELINE TO GUARDIANSHIP

THE HEALTHCARE-TO-GUARDIANSHIP PIPELINE

- Hospitals
- Skilled nursing facilities
- Other healthcare settings
- Risk:
 - Unnecessary or overly broad guardianships



UNDERSTANDING THE PIPELINE

Consent for medical care

- Barriers:
 - Lack of accommodations or supports
 - No surrogate decision-maker
 - Unavailable, unresponsive, abusive surrogate

Discharge Planning

- Concerns:
 - Risk of infection
 - Increase dementia and/or disorientation in some patients
 - Limits on available beds
 - Uncompensated care
 - Effect on hospital ratings
 - Standard of care
 - Risk of readmission
 - Logistics of home & community-based services (HCBS)

Payment

- Barriers:
 - May be an expectation of a skilled nursing facility
 - Application for Medicaid
 - Access to financial records
 - Financial exploitation

DRIVERS OF THE PIPELINE



NEED FOR
EDUCATION



FINANCIAL
INSTITUTIONS



CAPACITY
ASSESSMENTS



NEED FOR
RESOURCES



COURT
PROCESSES



Need for education

- Alternatives to guardianship
- Supports & accommodations
- Representation of respondents and persons subject to guardianship
- Advanced planning



Financial Institutions

- Access to records/accounts
- Powers of attorney
- Court orders
 - Limited/temporary
 - Protective arrangements

FINANCIAL INSTITUTIONS

Concerns:

Confidentiality

Identity

Validity

Authority





Capacity assessments

- Qualifications
- Competing interests
- Access to independent assessments (\$)
- Reevaluation



Need for resources

- Placements & case management
- Medicaid eligibility
- Agency budgets
- Guardians



Court practices

- Case processing times
- Limited guardianships
- Restoration of rights
- Monitoring practices

OTHER DRIVERS



Abuse, neglect, exploitation

Family conflict

“School-to-guardianship pipeline”

Fear

Bias

ADDRESSING THE PIPELINE

MARYLAND'S IDEAL APPROACH

Framework for:

- Identifying alternatives to guardianship
- Avoiding unnecessary or overly broad guardianships

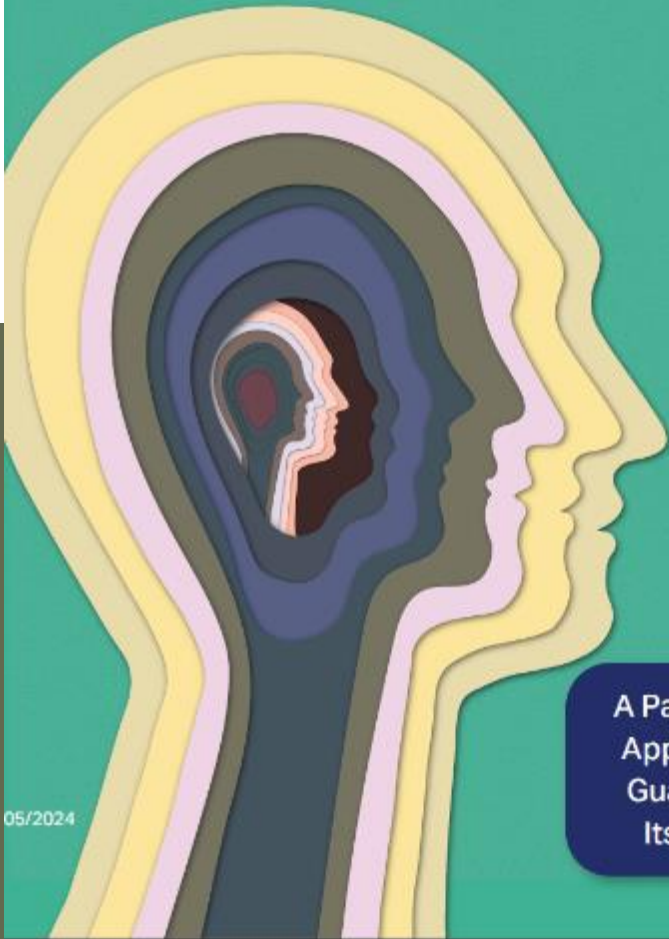




IDEAL

Identify Evaluate Assess Limit

Tool and Resource Guide for Maryland Healthcare Settings



A Patient-Centered
Approach to Adult
Guardianship and
Its Alternatives

05/2024

IDEAL TOOL & RESOURCE GUIDE



WHY THE IDEAL APPROACH?

Guardianship is costly, complicated, expensive, and restrictive

- “Civil death”
- Loss of self-determination
- Loss of access to property
- Difficult to get out of
- Has its limitations
- **Guardianship is a last resort**

“The typical [person subject to guardianship] has fewer rights than the typical convicted felon – they can no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.”

-Former U.S. Congressman Claude Pepper (FL)





ID

Identify

Identify the person's specific needs or areas of concern.

E

Evaluate

Evaluate the person's capabilities and resources.

A

Assess

Assess alternatives to guardianship.

L

Limit

Limit any guardianship to what is necessary to meet the person's unmet needs.

THE IDEAL APPROACH

IDENTIFY NEEDS



Personal decision-making

- Making decisions
- Communicating decisions
- Carrying out decisions (with or without assistance)

Post-secondary education needs

- Educational decision-making
- Transition services
- Accessing services

Medical treatment and discharge planning

- Informed consent for medical treatment (including end-of-life care)
- Following a treatment plan
- Safe discharge or transfer

Community services and supports

- Case management
- In-home care
- Transportation assistance
- Home or vehicle modifications
- Durable medical equipment or assistive technology
- Residential services
- Behavioral support services
- Family caregiver training, support, respite care

Mental health/psychiatric treatment

- Consent to treatment (including medication management)
- Admission to mental health facility
- Psychiatric bed

Managing assets or benefits

- Access to financial and other records
- Applying for benefits
- Spend down options (for benefit eligibility)
- Paying bills or managing income

Other issues/concerns

- Patient/family conflict
- Abuse, neglect, or exploitation



EVALUATE CAPABILITIES & RESOURCES

- Legal decision-making capacity
 - Different legal standards
 - \neq Diagnosis
 - Dignity of risk

Medical
decisions

Managing
assets

Applying for
benefits

Signing
contracts

Choosing
visitors

Food, clothing,
housing

Advance
planning

Educational
decisions

Social
activities



SUPPORTS & ACCOMMODATIONS

Options that enable a person to live independently and make, communicate, and effectuate decisions

- Effective communication devices and services
- Assistance of third parties
- Environmental adjustments
- Modifying communication/counseling technique



SUPPORTS & ACCOMMODATIONS

Plain language

Qualified interpreters
on site or through
video remote
interpreting (VRI)

Note takers

Braille

Real-time computer
aided transcription
services (CART)

Written materials

Telephone handset
amplifiers

Hearing aids

Assistive listening
devices

Open and closed
captioning

Text telephones
(TTYs)

Augmentative and
alternative
communication
devices

Checklists

Timing of
appointments

Letterboards

iPad

Extra time

Breaks

Large print materials

Easy read materials

Visual supports

Quiet room

Minimal sensory
distractions

Stim toys/tools

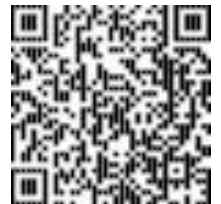
Supported decision-
making



EVALUATING RESOURCES

- Access to supports & accommodations
- Other community service providers (DSS, AAA)
- Family, friends, community members
 - Education
 - Effective communication
- Mediation
 - Conflicts
 - Exploring alternatives to guardianship

Exploring the Options with
a Mediator





ASSESS ALTERNATIVES TO GUARDIANSHIP

Formal or informal options that alone or together allow a person to have their personal or financial needs met without a guardian

- Can be used to avoid, limit, modify, or terminate a guardianship
- Can be put in place at any time
- Options based on need, location, Medicaid/Medicare eligibility, resources
- Ongoing analysis





ASSESS ALTERNATIVES TO GUARDIANSHIP

Pre-appointment

- Means of settling or dismissing a case before trial

Appointment

- Limited guardianship/Specific transaction

Post-appointment

- Means to modify or terminate a guardianship

ASSESS ALTERNATIVES TO GUARDIANSHIP



Need/Area of Concern	Options (Examples)
Personal decision-making	<ul style="list-style-type: none">• Ensuring supports and accommodations• Supported decision-making
Medical treatment and discharge planning	<ul style="list-style-type: none">• Advance directive for health care• Surrogate decision-making• Medical Orders for Life-Sustaining Treatment (MOLST)• Withholding or withdrawal of medically ineffective treatment• Home & Community Based Services and informal options
Mental health/psychiatric treatment	<ul style="list-style-type: none">• Advance directive for mental health services• Voluntary admission to a mental health facility• Involuntary admission a mental health facility• Behavioral Health Administration (BHA) resources
Managing assets or benefits	<ul style="list-style-type: none">• Financial power of attorney• Authorized representative for medical assistance• Representative Payees and U.S. Department of Veterans Affairs (VA) Fiduciaries• Achieving Better Life Experience (ABLE) accounts• Trusts including special needs trusts• Banking services• Protective arrangement/specific transaction
Post-secondary education needs	<ul style="list-style-type: none">• Transitional planning• Community supports and resources
Other issues/concerns	<ul style="list-style-type: none">• Mediation• Long-Term Care (LTC) Ombudsman• Responses to abuse, neglect, or exploitation



LIMIT ANY GUARDIANSHIP

Limited guardianships

- Best practice
- Allows the person to retain some rights
- Allows for greater control and oversight over guardians
- Can resolve certain conflicts of interest
- Case-by-case determination
- Powers can be modified at any time



LIMIT ANY GUARDIANSHIP



Document:

- The person's needs and functional capabilities
- Challenges
- Screening for alternatives to guardianship and conservatorship
- Alternatives tried and failed
- Attempts to locate interested persons



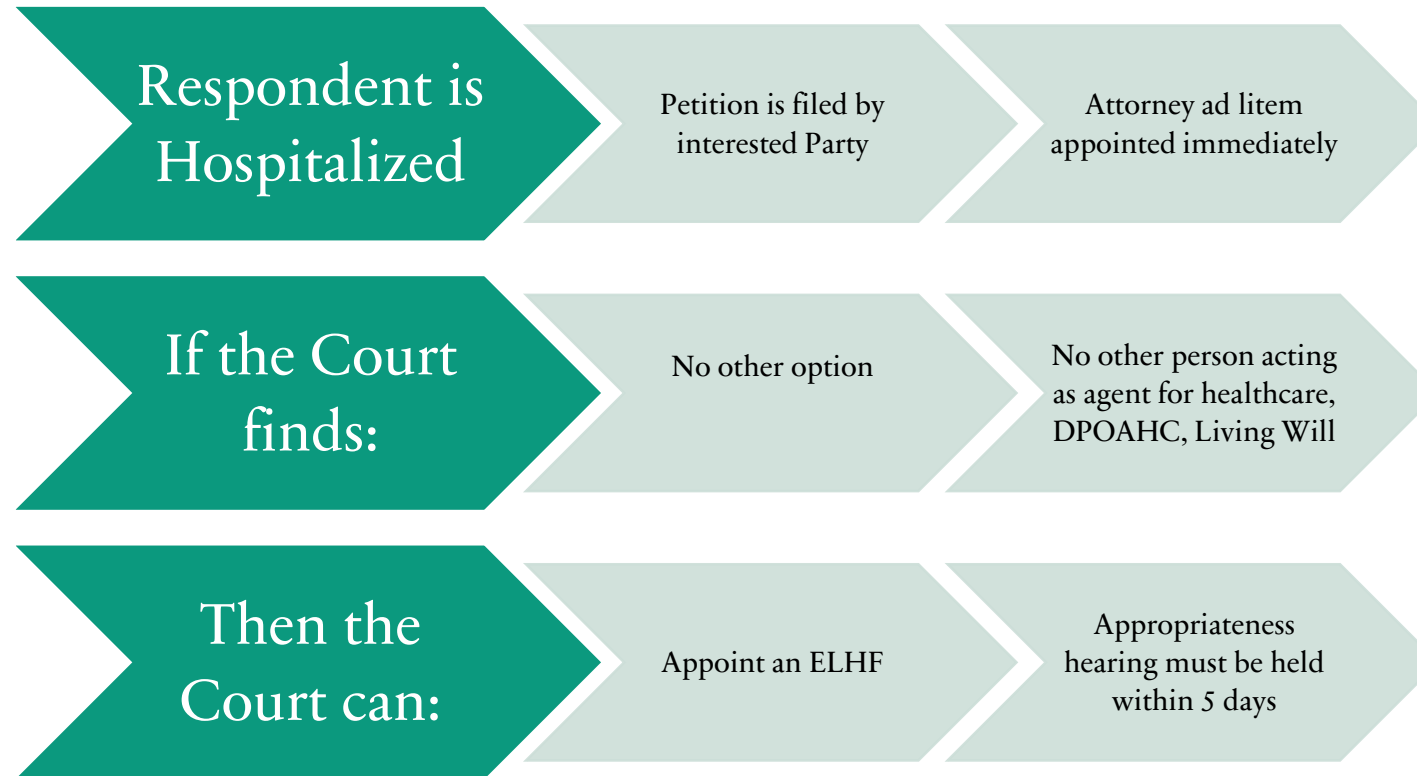
EXPEDITED LIMITED HEALTHCARE FIDUCIARY

EMERGENCY CONSERVATOR

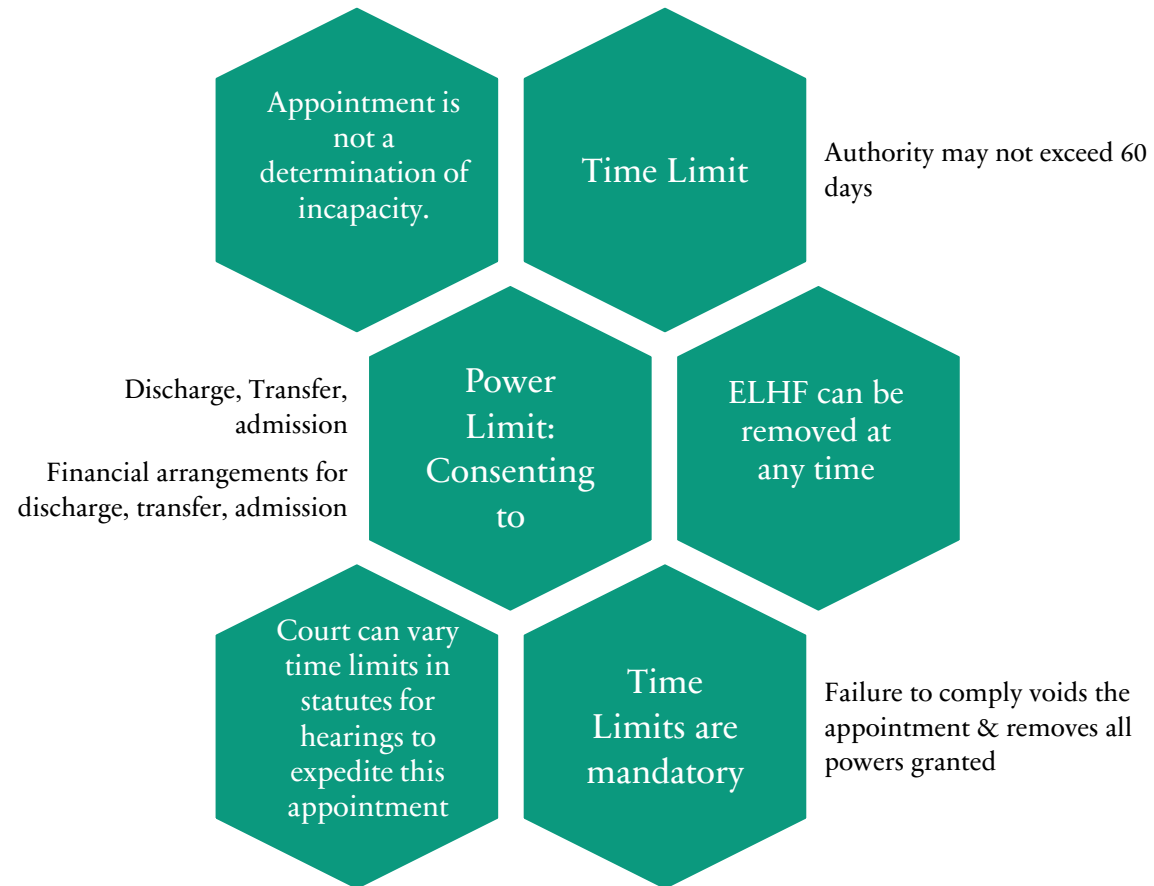
TN CODE ANN §34-1-132



EXPEDITED LIMITED HEALTHCARE FIDUCIARY (ELHF) TN CODE ANN §34-1-133



EXPEDITED LIMITED HEALTHCARE FIDUCIARY (ELHF)



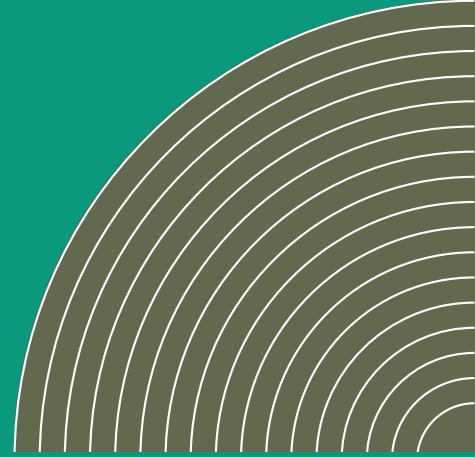


**HOW ARE THE DUTIES OF
THE ELHF CARRIED OUT?**



EXERCISING DUTIES

It is important to make relationships with a point person at as many different financial institutions as possible and go spend some face-to-face time with them to explain what you are doing, what your role is and why this proceeding is taking place.



PLACEMENT



SNF to LTC vs ALF vs Group Home Scenario



Determine Income



Work with the social worker at the hospital



Determine family and friend involvement and try to work closely with any other family members or contacts



If the individual is not in a facility where they have a social worker or case manager who can help, maintain a list of group homes and try to work closely with any other family members or contacts

PERSON CENTERED DECISION MAKING

Ascertain if the person can talk, do they have any appreciation of understanding to what decisions are being made, if they have an opinion on placement.



If so, include them. If not, attempt to determine their opinion from family and friends.

ELHF BARRIERS

- The name: A lot of places get confused because ELHF stands for Expedited Limited Healthcare Fiduciary and the feedback multiple times is “well I thought it was just for healthcare”
- Banks!!
 - Access to accounts, statements, cashiers checks and purchasing power
- Inconsistencies with the Social Security Administration.
 - May take 2-3 months to complete
 - SSA requires certified court orders to get any information. Wait time on drafting and filing varies.
- Long processing time for Medicaid applications.
 - Some facilities may be willing to take on this task

POTENTIAL CHANGES



Change the name to Expedited Limited Fiduciary



Social Security process changes for efficiency



Get Orders faster

WHY BECOME AN ELFH?



You really do get to help someone and truly make a difference in their life



The pay is good since you are paid by the medical facility

LIMITED OPTIONS IN OTHER STATES





MARYLAND

EMERGENCY GUARDIANSHIP PERSON SEE MD. CODE, ESTATE & TRUSTS ART., § 13-709 AND MD. RULE 10-211

It allows for the appointment of a temporary guardian of the person if a high burden is met.

Courts have authority to appoint a temporary guardian of the property to “preserve and apply” property of a respondent if there is evidence that “immediate substantial, and irreparable injury will result” before a hearing on a guardianship petition can be held (required in all cases)

EXPEDITED PROCESS FOR PETITIONS

There is an expedited process for petitions for guardianship of the person “in connection with medical treatment” that maintains all the safeguards of the guardianship process but allows the court to consider cases faster if the petitioner does some extra leg work. It is primarily used by healthcare settings who need someone to consent to discharge or treatment.

When the court determines that there is basis for appointment of a guardian of the person, it can choose to give the guardian limited powers.



ALASKA

EMERGENCY GUARDIANSHIP

When the petition is filed where a hearing could be set within 3 business days and the idea is to only address the emergency.

A Motion for Hearing on a Shortened Time Frame which is equivalent to an expedited petition.

A hearing in maybe 10 days or within 30 or less.

Hospitals are often the petitioner in these cases.

SINGLE TRANSACTIONS

It is more for financial authority but if there is a placement and say a monthly payment needs to be made or applications for benefits started, anyone can petition for a single transaction.

It is hoped that this would be something to do prior to needing a guardianship appointment but it is very limited in scope and not for medical decisions at all.

A vibrant landscape photograph of a mountain meadow in Oregon. The foreground is filled with a dense carpet of wildflowers, primarily purple lupines and red columbines, with some white daisies scattered throughout. The flowers are in full bloom, and the green foliage is lush. In the middle ground, the terrain rises slightly, showing more rocks and patches of snow. A few evergreen trees are visible on the left. The background features a range of rugged, rocky mountains with significant snow cover, particularly in the crevices and along the ridges. The sky is a clear, bright blue with a few wispy clouds. The word "OREGON" is superimposed in the center of the image in a bold, dark blue, sans-serif font.

OREGON

TEMPORARY APPOINTMENTS

They are valid for up to 30 days with an option to renew for up to another 30 days.

Their statutes do allow for special crafting of a protective order that could do the same thing, but attorneys seldom use this process.

In our state the courts generally leave it up to the attorney(s) to draft the orders their clients want so that is what happens.

An aerial photograph of the Minneapolis skyline. The word "MINNESOTA" is written in large, bold, blue capital letters across the center of the image. The background shows a dense urban landscape with various skyscrapers, including the prominent, pointed-top tower of the Wells Fargo Center. In the foreground, there are multi-lane highways with traffic, green spaces with trees, and a bridge over a river. The sky is blue with scattered white clouds. The image is framed by decorative white concentric circles on the left and right sides.

MINNESOTA

EMERGENCY APPOINTMENTS

They have 60 and 90 day emergency appointments. The decision is up to the judicial officer.

Extensions of 30 days can be granted if needed.

Emergency appointments are generally used when a hospital states that a guardian needs to be in place before an individual can be released or placed into another facility.

A photograph of the Seattle skyline featuring the Space Needle prominently in the center. The city is filled with various skyscrapers and buildings under a clear blue sky. The image is framed by decorative white concentric circles on the left and right sides.

WASHINGTON

EMERGENCY GUARDIANSHIP AND CONSERVATORSHIP

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

3 conditions must be met. Shall not exceed 60 days

- The court must find that appointment of an emergency guardian is likely to prevent substantial harm to the respondent's health, safety or welfare.
- There needs to be no one else willing and with authority to act to meet the adult's need.
- The court must have reason to believe that there is a basis to appoint a guardian.



NEW JERSEY

EMERGENCY N.J.S.A. 3B:12-24.1(C)

Has temporary pendente lite guardianships that can be ordered on an emergent basis. These are governed by the courts.

In addition, county Bureaus of Social Services may apply for protective arrangements on an emergent basis for at-risk individuals living in community settings. These usually arise as a result of APS investigations.

They are limited in scope and less restrictive than guardianships, but may ultimately result in permanent guardianships. There is a protective arrangement statute.

New Jersey does not have expedited limited healthcare fiduciaries. The hospitals instead usually apply for permanent guardianship, which is not always the best fit.

TIPS

Coordinate with healthcare settings and community partners

Collaborate with family, friends, agents, service providers

- Education
- Ensure effective communication
- Mediation (conflicts and exploring options) or Eldercaring Coordination
- Help educate your bench and bar

THANK YOU

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