

# EMERGENCY GUARDIANSHIP

## WHAT IF THERE IS NOT TIME TO FOLLOW NORMAL GUARDIANSHIP PROCEDURES?

When the situation is urgent and a guardian must be appointed immediately, the law provides for the appointment of an **emergency guardian**. Emergency procedures can be used when a person is living in conditions which pose a substantial risk of death or serious physical harm to himself or to others.

✓ For example, if a person is questionably competent, is living in a home with no heat, refuses to leave the home, and frigid weather is predicted, someone may petition to have an emergency guardian appointed to forcibly remove the person to a safe place.

Emergency procedures may also be used to remove an incompetent person from an abusive living situation, or to remove an incompetent person who is abusive to others.



*Emergency guardianship is used when there is a risk of death or severe bodily harm.*

## WHAT ABOUT EMERGENCY MEDICAL CARE?



**E**mergency *medical* procedures are a different case. Maryland law allows doctors to give emergency medical treatment to an incompetent person *without consent* if—

- ◆ there is a substantial risk of death or immediate and serious bodily harm to the patient, and
- ◆ delay in treating the person would be harmful to the patient.

Thus, doctors in hospital emergency rooms do not have to seek consent before treating most patients.

Sometimes a person needs medical treatment which is not urgent, but should not be delayed the two to three months that it takes to appoint a guardian of the person. In this situation, an emergency guardianship may be the best solution.

✓ For example, a person may need a heart bypass operation to correct serious heart disease. This procedure would not meet the definition of emergency medical care, but it should not wait. If the person cannot consent to the operation

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because of incompetency, this would be an appropriate case for an emergency guardianship.

### **WHAT IS THE PROCEDURE FOR AN EMERGENCY GUARDIANSHIP?**

The procedure in an emergency guardianship case is similar to that in a standard guardianship case, except that the process is very quick or “expedited.”

To begin a case, an interested person files a petition with the court. The petition contains—

- ◆ the name, address and date of birth of the alleged disabled person;
- ◆ the nature of the alleged disability;
- ◆ what emergency services the person needs;
- ◆ verification that a bona fide emergency exists and that there is no one else who can authorize the emergency action; and
- ◆ an outline of the efforts the petitioner made to obtain the person’s consent to services.

It is not necessary to file doctors' certificates with the emergency petition, although medical evidence of the person’s incompetency will certainly be required by the judge.

### **WHAT RIGHTS DOES THE ALLEGED DISABLED PERSON HAVE?**

The subject of the petition has the same rights that she would have in a standard guardianship case, except that the judge may set very short time deadlines, and may waive certain rights because an emergency exists.

- ◆ The person must be given notice at least 24 hours before the hearing that a petition has been filed against her and that a hearing will be held, unless the judge waives this requirement.
- ◆ The person has the right to an attorney. If she cannot afford to pay an attorney, one will be appointed for her.
- ◆ The person has the right to be present at the hearing and to present evidence and cross examine witnesses.
- ◆ If the person has a disability and cannot attend a hearing at the courthouse, the court may hold the hearing at a place accessible to the person.
- ◆ If the court does issue an emergency order, the person may petition to have the order set aside or modified at any time. She may also appeal the appointment of a temporary guardian to the appellate court.



*The judge may order an emergency guardianship on the same day it is filed.*

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## WHAT DOES THE COURT DECIDE?

The court must decide, based on clear and convincing evidence,

- ◆ whether the person lacks capacity,
- ◆ whether an emergency exists, and
- ◆ whether there is anyone else available who can consent to the emergency procedures requested by the petitioner.

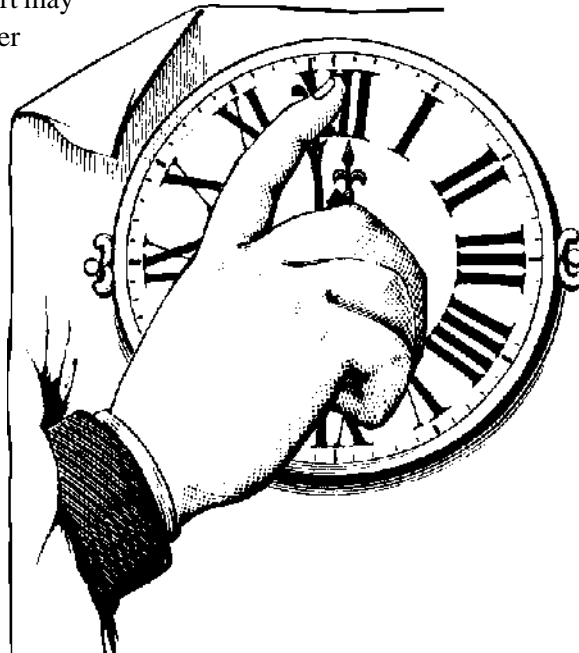
If the court finds that an emergency guardian should be appointed, the court will sign an order specifying what the guardian can do to remove the emergency. The court may authorize the guardian to forcibly enter the premises of the disabled person in order to provide services to the person or to remove the person to a safe location. If the guardian is making a forcible entry, the police should accompany her. The court may only order those services necessary to remove the emergency situation.

- ✓ For example, in the first situation described above, in which the person could have suffered death or serious injury from the extreme cold, the court might order that the person be removed from her home and housed in a shelter until her heat is fixed or the weather improves. The court could not appoint a guardian

of the woman's property as an emergency remedy, since no emergency exists regarding her finances.

## HOW LONG DOES THE EMERGENCY GUARDIANSHIP ORDER LAST?

The order appointing a temporary guardian lasts for 144 hours, or 6 days. After that the order expires unless the petitioner asks to extend the order until a permanent guardian can be appointed. The petitioner has to show that the emergency condition will continue unless there is an extended emergency order.



*The judge may confer with doctors on the telephone in an emergency case.*