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GUARDIANSHIP PACKET

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Guardianship Checklist for Clinical Team Report (CTR), Ages <18

Samples of required forms can be found at:

<http://www.mass.gov/courts/selfhelp/guardians/guardian-ip-forms.html>

Step 1: Testing & Evaluation

- Beginning after the age of 17, obtain testing or organize previous neuropsychological testing and bring them to your appointment at the MGH Down Syndrome Program.
- Neuropsychologist, physician, and social worker will need to complete the Clinical Team Report (Form MPC 402). This can all be accomplished by our MGH Down syndrome Program.

Step 2. Prepare Paperwork

- Potential legal guardians(s) must complete Petition (Form MPC 120) and Bond (Form MPC 801) after receiving Clinical Team Report.
- Make copies of all documents for your records.

Step 3. File Paperwork with Court

- After steps 1 and 2 are complete, potential legal guardians(s) file all paperwork with the Court, which must occur within 6 months of the date of your first visit (not the signature date on the Clinical Team Report!) by our physician, social worker, or psychologist (whichever is earliest) on the Clinical Team Report. The following paperwork must be filed:
 - Clinical Team Report (Form MPC 402)
 - Petition (Form MPC 120)
 - Bond (Form MPC 801)
 - Rogers (only if applicable, please see “Frequently Asked Questions” resource.)

Step 4. Before the Hearing

- Potential legal guardian(s) will receive Citation Giving Notice (Form MPC 520).
 - Give to all immediate family (next of kin) that are listed on the petition to sign consent OR post in local newspaper if immediate family members are not able to sign.
 - Have your child “served” (i.e., given notice) by a neighbor or other family member. Make sure they sign and date the form.
 - Return documentation to the court as soon as possible – legally within 14 days.

Step 5. After the Hearing

- Within 60 days, fill out and submit the first Guardian’s Care Plan/Report (Form MPC 821) report to the court.
- Every year, fill out and submit an updated Guardian’s Care Plan/Report (Form MPC 821) report to the court.

Guardianship Checklist for Clinical Team Report (CTR), Ages 18+

Samples of required forms can be found at:

<http://www.mass.gov/courts/selfhelp/guardians/guardian-ip-forms.html>

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- Potential legal guardian(s) obtain testing or organize previous neuropsychological testing and bring them to your appointment at the MGH Down Syndrome Program.
- Neuropsychologist, physician, and social worker will need to complete the Clinical Team Report (Form MPC 402). This can all be accomplished within the MGH Down syndrome Program.

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GUARDIANSHIP FREQUENTLY ASKED QUESTIONS

- What is a guardian?
 - A guardian is a court appointed individual who is responsible for the support, protection, and well-being of another adult considered “incapacitated” or unable to make decisions on their own.
- What is a conservator?
 - A conservator is a court appointed individual who is responsible for the finances, property, and general assets of an individual needing financial protection.
- When is a guardian necessary?
 - A guardian is necessary if an individual is deemed “incapacitated.” This would require that the individual in question is at least 18 years of age, has a “clinically diagnosed condition,” and is unable to evaluate information and/or communicate decisions in order to protect his or her health and/or safety.
 - Consider different components of the person’s life (such as medical, educational, financial, vocational, living arrangements, legal, self-care, safety, communication, etc.) and determine if the young adult has the ability to self-advocate and self-sustain regarding those significant components of daily life.
- Who can legally be a guardian of an “incapacitated” adult?
 - Any person who is 18 years of age, or older, may be court appointed as guardian. Different states may have more specific requirements of who qualifies as a guardian such as whether or not they must be related by at least blood or marriage, whether or not the same person can serve as guardian and conservator, etc.
- How is a guardian appointed?
 - For a step-by-step description of the process, please see the checklists which can be found on the website. In brief, a guardian is court appointed through either the filing of a Clinical Team Report (CTR) or a Medical Certificate (MC).
 - A “petition” is filed with the District Court in the county where the “incapacitated” adult resides. The petition must distinguish the extent of the guardianship that is requested, the names and addresses of heirs apparent and potential guardians, and information from the “incapacitated” adult’s physician or psychologist.
 - If using a Medical Certificate (MC), the assessment must be within 30 days of the hearing in order to prove the lack of capacitance of the adult in question. Most families who have sons and daughters with Down syndrome do NOT use the MC route.
 - If using a Clinical Team Report (CTR), the assessment must be within 180 days of the hearing if the allegedly incapacitated adult has been clinically diagnosed with a chronic condition. Most families who have sons and daughters with Down syndrome use this route in applying for guardianship, as a CTR must be used if a diagnosis of a developmental delay has been given.
 - A Probate Court hearing will be held to determine whether or not guardianship will officially be established. Note that the Medical Certificate must be submitted within a 30 day period prior to the court hearing. Therefore, if a substantial time has passed between filing the petition and the hearing date (more than 30 days), an updated Medical Certificate or, if no changes have occurred, a Medical Certificate Affidavit will be required. Assuming that guardianship is approved, the guardian must file a report indicating a plan of action for care within 60 days of being appointed. If the Guardian is also appointed as Conservator for the patient, he or she must submit a plan regarding

financials, assets, plans of investment, and an inventory of the estate within 90 days of being appointed.

- Should guardianship be requested through a Clinical Team Report (CTR) or a Medical Certificate (MC)?
 - If the incapacity of the patient is due to developmental disability, a CTR should be filed with the Petition for guardianship.
 - If the incapacity is due to any other condition (mental illness, neurological injury, dementia, etc.), a MC must be filed. This would be an option for an adult with Down syndrome, whose family has not sought guardianship, who subsequently has a pressing need for guardianship that is unrelated to his or her developmental disability.
- What is a “Rogers,” and when is it applicable?
 - A “Rogers” is a more specific form of guardianship in which additional paperwork is required to be filed. Rogers guardianship paperwork must be filed if antipsychotic medications are required to be used for the patient’s well being. Other medications would require insight from a physician. There are also other “Extraordinary Treatments” (such as major surgery, amputation, general anesthesia, Comfort Measures Only Orders, etc.) which require court authority to be given before a guardian can consent to them.
- What is a “Guardian ad Litem”?
 - A Guardian ad Litem (GAL) is a court-appointed individual who is tasked with reporting back to the court on his or her opinion as to whether a guardian is needed, who should be named guardian, the suggested limits on such guardian’s authority, and whether any extraordinary treatment authority is required. The court will strive to determine the least restrictive form of guardianship in order to preserve the person’s best interest and allow him or her to maintain as many individual rights as possible.
- Are both a guardian and a conservator required to support an “incapacitated” adult, or can a general guardian also oversee a person’s assets as well?
 - Typically, a general guardian can only oversee the patient’s health care needs, although he or she may have some limited authority to assist with accessing third party reimbursement. However, if the person has assets to deal with, a conservator would be required.
- Can a guardian have limited control in order to allow a respondent to retain certain rights (e.g., voting, medical decisions, etc.)?
 - Guardianship can be and typically is limited. Unlimited guardianship is rarely proscribed. The purpose of guardianship is for the guardian to, wherever possible, put themselves in the shoes of the patient, making the decisions that they would make if they were able to. Where there is no way to know for sure what decision the patient would make, the guardian keeps their best interest in mind. If the potentially “incapacitated” person has areas of his or her life he or she is able to balance and mediate, then those rights should remain with the person. The guardian should only be given the power to control aspects of a person’s life that they themselves are unable to maintain.
 - The format of these limitations would read:
 - Ms. Xxx (the “incapacitated” adult) retains the right to (vote, make medical decisions, manage medications, drive, seek employment, etc.)
- Can limited guardianship be revised over time?
 - Limitations of a guardian can be increased or decreased over time, but these changes must be appointed by a court. An application to modify the guardianship would be

submitted to the court outlining why a modification of limitations is necessary and specifically what modifications will occur within the guardianship agreement.

- What if there is more than one person who would like to serve as guardian?
 - A person can have co-guardians, although it is less common and not recommended. If this does occur, these guardians must be able to work together in order to best serve the incapacitated person. Both guardians must be available to make decisions and must agree on such decisions. Regarding signatures, both guardians are not required to co-sign all documents but may be called upon to do so in certain circumstances, such as consent for a medical procedure. It is more efficient and clear for a single guardian to be appointed. Over time, a sibling or independent guardian may transition into a co-guardian position in order to eventually succeed the initial guardian.
- What if a potentially “incapacitated” individual is already 18 years old and is only then recognized as requiring the assistance of a guardian?
 - Upon turning 18 years old, an individual is legally an adult and is responsible for both their self and financials. Decisions made by a legal adult are considered to be legitimate. Therefore, if it is not recognized that an individual is in need of a guardian until after they are 18 years of age, an emergency or temporary guardian can be appointed by a court in order to protect the rights of an allegedly “incapacitated” adult. This guardian would only be appointed for a limited period of time while the process of proving the need and establishing a permanent guardian is completed.
- What are the responsibilities of a guardian?
 - A guardian must make decisions on the person’s behalf (abiding to any limitations regarding the extent of guardianship), encourage self-advocacy, make decisions based on the person’s best interests, determine housing, provide daily care (food, clothing, shelter), make decisions regarding medical treatment, and manage financials (assuming that a conservator is not required).
 - A conservator will be responsible for the care of the person’s finances. The fiduciary is responsible for taking inventory of the person’s assets, filing an annual account, detailing spending and receipts, and balancing the ward’s accounts.
 - Typically the guardian of the person and the conservator are the same individual, but this is not required. Regarding documentation, a guardian must be court appointed and must file a plan for care of the person within 60 days of being appointed. A guardian must also submit annual reports regarding the status of the guardianship.
- Is a guardian financially responsible and legally liable for a person?
 - A guardian is not personally responsible for funding a person and they are not personally responsible for housing a person. (A guardian must locate and establish suitable housing for a person, but they, themselves, are not required to provide that housing.)
 - Liability of a guardian is protected. A guardian is not liable for a person’s actions. A guardian is also not liable for any harm that may be caused to a person by a caregiver appointed by the guardian (assuming that the caregiver was properly screened and had appropriate credentials for such a position).
 - Note that the guardian is a fiduciary and will be held accountable for how the “incapacitated” adult’s money is managed. They are also responsible for the adult in question getting care, etc.
- How is guardianship terminated?
 - Upon the death of the person, guardianship would be terminated.

- If evidence is provided indicating that the guardian no longer meets the standards of a guardian, he or she may be stripped of the position. A petition for removal of the guardian can be submitted to a court, which will review the evidence. Should the evidence be substantial enough to deem the individual in question unfit as a guardian, a successor guardian will then be appointed.
- A guardian may resign with court approval assuming that a successor guardian has been appointed.
- What are possible alternatives to guardianship and conservatorship?
 - A health care proxy (HCP), who serves as the surrogate medical decision maker for an “incapacitated” adult.
 - A durable power of attorney (DPOA), which designates specific rights to be forfeited by a person and given to a legal agent upon the signing of a power of attorney form (or, depending on the language of the document, upon the patient becoming incapacitated). In MA, these rights are limited to financial and legal decision making. DPOAs cannot be used for health care decision making. HCPs must be used for that.
- What is a health care proxy?
 - A health care proxy (HCP) agent is an individual who is responsible for the medical decisions of an “incapacitated” adult. A HCP agent must be appointed by the “incapacitated” adult in question at a time when they retain sufficient capacity to understand what the document is, what it means, and who they are appointing. If the adult in question does have the capacity to make such decisions, executing an HCP is preferable to having a court appointed guardian, who has less authority and more obligations to the court. Further, it is a clear expression by the incapacitated person as to who he or she trusts to make these hugely important decisions for him or her.
- Is appointing a guardian expensive?
 - It can be. Court fees are very expensive; motions, pleadings, filing fees, all of these actions require charges. Note that charges may be waived by the court, should it become evident that a family does not have the means to pay. A lawyer may be helpful to facilitate the court proceedings properly and to supply the appropriate paperwork, although the clerks in the Probate Court can also be very helpful in this regard. Note that some guardianship cases are “pro se” (meaning that a person represents themselves), and the court will provide limited assistance to “pro se” litigants. The guardian is also required to have a bond that requires an annual premium payment. Additional fees may be required.

"This has been reviewed by the Joshua Abrams, JD, Rebecca Brendel, MD, JD and Karon Konner, LICSW"

<http://www.abilityconnectioncolorado.org/guardianshipallianceofcolorado/faqs/>
http://texasprobate.net/faqs/faq_about_guardianships.htm
<http://www.disabilityrightsohio.org/faq-guardianship#types>
<http://www.gac.state.il.us/guardfaq.html#7>
<http://www.lawbmstx.com/CM/Custom/Guardianship-FAQ.asp>
<http://www.disabilityrightswa.org/tools-help-you/guardianship-0>
<http://www.massguardianshipassociation.org/information/guardianship-of-an-adult-2/rogers-guardianship/>