

### **What is a Treatment Guardian?**

A person appointed by a court to make mental health treatment decisions on behalf of an individual who the court finds by “clear and convincing” evidence is not capable of making their own treatment decisions or informed consent.

### **What is Informed Consent?**

A physician has a duty to provide information about recommended treatment. A person who uses this information and, after considering the risks and benefits of proposed treatment, decides to accept or reject treatment is practicing informed consent or making an informed decision. A person is assumed to be capable of giving or withholding informed consent. If it is believed that a person is not capable of informed consent, a petition for a treatment guardian may be filed.

### **What is the Procedure for Petitioning for a Treatment Guardian?**

A “Petition for Appointment of Treatment Guardian” must be filed with a District court. A copy of the petition is served to the individual who is subject of the petition and their attorney. A hearing must be held within 3 court days. At the hearing, the individual has the right to be present, be represented by an attorney, present and cross –examine witnesses. The court will determine by “clear and convincing” evidence whether the individual is capable of *informed consent* or not.

### **Who can petition the court for a treatment guardian?**

Any mental health professional, Developmental Disabilities professional, physician or any interested person who believes the individual is incapable of informed consent can petition a court for the appointment of a treatment guardian.

### **How long can a treatment guardian be appointed?**

Appointment by a court can be no longer than 1 year. If at the end of the treatment guardian appointment; the treatment guardian believes the individual is still incapable of making their own mental health treatment decisions, the treatment guardian may petition the court for a reappointment or appointment of new a treatment guardian. The individual will be represented by an attorney at the hearing and has the right to be present and present evidence supporting individual’s ability to make their own mental health treatment decisions. If the court finds at the time of the hearing that the individual is incapable of informed consent, the treatment guardian appointment may be extended or a new guardian appointed.

### **Who can be a treatment guardian?**

The court will give priority to a court-appointed guardian then to an agent designed or nominated by the individual when the individual was capable of informed consent. An individual may request who is appointed as their treatment guardian including friends, family members or significant others.

### **What Does a Treatment Guardian Do?**

A treatment guardian makes mental health treatment decisions on behalf of an individual who was found by the court to be incapable of making their own mental health treatment decisions. The treatment guardian must consult with the individual, consider their expressed opinions and consider previous decisions made by the individual in similar circumstances when the individual was capable of informed consent, about any proposed mental health treatment. The treatment guardian shall also consult with mental health providers, the individual's attorney, interested friends, relatives, other agents or guardians when reasonably practical in making mental health treatment decisions for the individual. The treatment guardian will make decisions about accepting mental health treatment if it appears that the treatment is in the individual's best interest and is the least drastic means for accomplishing the treatment objective.

### **What kinds of mental health treatment can a treatment guardian authorize?**

A treatment guardian may consent to any mental health treatment including psychotropic medication. The treatment guardian's power may be limited by the court order appointing the treatment guardian. A treatment guardian does not have the authority to make decisions about any other medical treatment.

### **Can a treatment guardian admit me to the hospital?**

No. A treatment guardian can't admit an individual into the hospital or agree to extend a "voluntary admission" to a mental health treatment facility.

### **Can facility administer emergency medications before a treatment guardian is appointed?**

Emergency medications can be initiated by a licensed physician if it is necessary to protect an individual from serious harm which would occur while the treatment guardian is being sought. The treating physician must prepare and place in an individual's medical record a report explaining the nature of the emergency and reason that no treatment less drastic than administration of psychotropic medication without an individual's consent would protect the individual from serious harm. Upon a sworn application from the

treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed if a petition for the appointment of a treatment guardian has been filed with the court. A hearing on the appointment of a treatment guardian is held within 3 court days of the filed petition.

### **Can a treatment guardian decision be appealed?**

Yes. An individual appointed a treatment guardian, physician or other professional must file an appeal with a court within 3 days of receiving notice of the treatment guardian's decision. The individual will be represented by an attorney at the hearing. The court may overrule the treatment guardian's decision if the court finds the decision to be against the best interests of the individual.

### **Can a treatment guardian be used outside of a mental health treatment facility?**

Yes. The treatment guardian can be used to make mental health treatment decisions in a community setting. Additionally, the treatment guardian may apply to the court for an "enforcement" order that authorizes the individual to be taken to an evaluation facility if the treatment guardian believes that the individual has been noncompliant with mental health treatment decision(s) made by the treatment guardian. This order may authorize a peace officer to take the individual into custody and transport the individual to an evaluation facility. This order may also authorize the facility to forcibly administer medications.

### **When can a treatment guardian appointment be terminated?**

A petition to remove the treatment guardian can be filed in a court by the individual, treatment provider, family member, individual's attorney or another person once the individual has regained the ability to make their own mental health treatment decisions. If the court finds the individual capable of making their own mental health treatment decisions, it can terminate the treatment guardian's appointment and restore power back to the individual to make their own mental health treatment decisions.

### **Can a treatment guardian be appointed for a child?**

If the child is under the age of 14, the legal custodian's consent is required before mental health treatment including administration of medications.

A child 14 years of age or older is presumed to have capacity to consent to mental health treatment including medications without the consent of his or her legal custodians. If a child 14 years of age or older is believed to lack capacity to consent to mental health

treatment then the child's legal custodian may make mental health treatment decisions for the child unless the child objects or challenges the determination that he or she lacks capacity. The challenge will prevail unless a petition for a treatment guardian is filed in a court and the court finds that the child is not capable of making his or her own mental health treatment decision and appoints a treatment guardian. The court will appointment the child's legal custodian as the child's treatment guardian unless the legal custodian is not readily available or the court finds that appointing the child's legal custodian is not in the child's best interests. The treatment guardian shall consult with the child and consider his or her expressed opinions regarding any proposed mental health treatment.

The hearing on the appointment of a treatment guardian will be held within 3 days of the petition being filed with a court. The child will be presented by an attorney and has the right to be present, to present witnesses and to cross-examine opposing witnesses.

### **Are treatment guardians legally protected?**

The Mental Health Code states that treatment guardians cannot be held liable in civil or criminal suits as long as they are acting in good faith.

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