

INSTRUCTIONS: HOW TO ASK THE COURT TO APPOINT A TEMPORARY GUARDIAN IN AN EMERGENCY

Introduction

You can find more information about guardianship on the court's self-help website: www.courts.alaska.gov/shc/guardian-conservator/index.htm or at the Office of Public Advocacy's website: www.doa.alaska.gov/opa/pg/pub_guard.html.

You can find all of the court forms referenced in these instructions at: www.courts.alaska.gov/forms/index.htm. You may also get paper copies of court forms from your local court clerk.

Step-by-Step Instructions to File for Emergency Guardianship

Step 1. Before filing an *Emergency Petition*, you **must** first file a regular petition (you may use either [PG-100](#) (*Petition for Appointment of a Full Guardian for an Adult*) or [PG-103](#) (*Petition for Appointment of a Partial Guardian for an Adult*) for this). Instructions to fill out and file these petitions are in form [PG-505](#). You can file both the regular petition and the emergency petition at the same time.

Step 2. Fill out *Emergency Petition for Appointment of a Temporary Guardian* (form [PG-101](#)). The paragraphs below explain certain sections of this form in more detail.

- a. Fill in the top of the form the same as you did the regular petition.
- b. Case Number. If you are filing this emergency petition at the same time you file the regular petition, leave the "CASE NO." line blank. If you are filing this emergency petition later, write the case number that the court assigned to the regular petition.
- c. Section 3. Explain where the respondent is currently located. Describe what the place is (for example: "at his apartment" or "at her daughter's house"), and then give the address and telephone number of that place.
- d. Section 4. Describe the emergency services the respondent needs. Be as specific and complete as possible.

To get a temporary (emergency) appointment, you must show that the respondent needs immediate services to protect against serious injury, illness, or disease.¹

Financial emergencies do not qualify (for example, problems paying for the medical services the respondent is already getting, or problems paying rent that may lead to eviction from a residence). The emergency must be a need for medical services that the respondent is not already getting.

- e. Section 7. You can nominate the same person or agency you nominated in the regular petition, or it can be a different person or agency just for the temporary guardianship.
- f. Sign and date in the area just before the "Verification."

¹ AS 13.26.301. Also see AS 13.26.221(c), which says that a person petitioning for a regular guardianship may "include a request for temporary guardianship as provided in AS 13.26.301 if the petitioner believes there is an imminent danger that the physical health or safety of the respondent will be seriously impaired during the pendency of the guardianship proceeding" (emphasis added).

- g. If you are filing in person, wait to sign the Verification section until you are at the court. Bring a photo ID with you. The court clerk can notarize your petition for free. If you are mailing the emergency petition to the court, fill out the Verification section (in front of a notary public) before you mail it.
- h. Certificate of Service on page 3.

If you are filing this emergency petition at the same time as the regular petition to open the case, then check the first box and sign at the bottom.

If the guardianship case is already open, and before you file the emergency petition in court, you must make a reasonable effort to notify the respondent, the respondent's attorney, the court visitor, and any other persons the court ordered you to notify, that you are going to file this petition. Because it is an emergency, you may use extraordinary service methods, such as a phone call, instead of mail. Check the second box on this page and explain the efforts you made to give notice, then sign at the bottom.

Step 3. Make a copy of the emergency petition for yourself to keep. File the original emergency petition (either in person or by mail) at the same court where you filed the regular petition. There is no separate filing fee for the emergency petition. It is covered by the filing fee you paid (or will pay) for the regular petition.

Step 4. Notice of Hearing.

The court clerk will schedule a hearing on your petition to be held within 72 hours after you file it. The clerk will send or give notice of the hearing to you, the court visitor, the respondent (through the court visitor), the respondent's attorney, the proposed guardian, and any other interested persons as ordered by the court.

Step 5. Court Hearing.²

The respondent has the right to be present at the hearing. The respondent can participate in the hearing by telephone if that is more convenient for the respondent. Usually these hearings are closed to the public, but the respondent has the right to choose to have the hearing open to the public.

At the hearing, the respondent has the right to present evidence and to ask questions of any witnesses. The respondent can remain silent (and not answer any questions) if the respondent wishes to.

As the petitioner, you must present clear and convincing evidence³ that proves BOTH (1) and (2) below:

(1) The respondent needs immediate services to protect against serious injury, illness, or disease,

AND

(2) The respondent is not able to get these services on the respondent's own.

The statute that requires this, AS 13.26.301, is printed on the next page.

² AS 13.26.301(b) and 13.26.251(a).

³ AS 13.26.301(c)

Step 6. When the Appointment Ends.

If the judge signs an emergency appointment order, the order will be temporary. It will expire when the court appoints a regular (full or partial) guardian, or if the court dismisses the regular petition for guardian appointment.

AS 13.26.301

Temporary guardians; authorization of services.

(a) If during the pendency of an initial petition for guardianship it appears that the respondent is in need of immediate services to protect the respondent against serious injury, illness, or disease and the respondent is not capable of procuring the necessary services, the petitioner may request the appointment of a temporary guardian to authorize the services. The request shall state the reasons and factual basis for the request. The petitioner shall immediately file the request with the court and serve copies on the respondent and the respondent's attorney. The court shall conduct a hearing within 72 hours after the filing.

(b) At the temporary guardianship hearing, the respondent shall have the rights set out in AS 13.26.251(a).

(c) The burden of proof at the hearing shall be by clear and convincing evidence and shall be upon the petitioner.

(d) If the court determines that a temporary guardian should be appointed, it shall make the appointment and grant to the guardian only the authority that is least restrictive upon the liberty of the respondent and that enables the temporary guardian to provide the emergency services necessary to protect the respondent from serious injury, illness, or disease.

(e) The temporary guardianship shall expire at the time of the appointment of a full or partial guardian or upon the dismissal of the petition for guardianship.

(f) If no guardianship petition is pending but the court is informed of a person who is apparently incapacitated and in need of emergency life-saving services, the court may authorize the services upon determining that delay until a guardianship hearing can be held would entail a life-threatening risk to the person.

Alternatives to a Temporary Guardianship

Two alternative procedures that can be used in case of certain medical emergencies are:

1. **Emergency Life-Saving Medical Authorization.** If no guardianship petition is pending, the court may authorize emergency life-saving services over the telephone, as described in Probate Rule 18 and AS 13.26.301(f).
2. **Designation or Assumption of Authority to Make Health Care Decisions by a Surrogate.** If no guardian and no agent for making health care decisions has been appointed (or is available), and if the primary physician of an adult patient determines that adult lacks capacity, a "surrogate" can make health care decisions, as described in AS 13.52.030.