ALTERNATIVES TO GUARDIANSHIP RESOURCE GUIDE

Outlined here are options for addressing the specific needs of or areas of concern regarding a patient who may be experiencing diminished capacity, followed by more comprehensive information about each option. Alone or together, these options can be used to help obviate the need for guardianship or be used to limit, modify, or terminate a guardianship. Alternatives can be put in place at any time and can be faster, less expensive, and more patient-centered than guardianship. You are likely familiar with most of these options. Be intentional about considering them as part of the **IDEAL Approach.**

Need/Area of Concern	Options (examples)
Personal decision-making ❑ Making decisions ❑ Communicating decisions ❑ Carrying out decisions (with or without assistance)	• Ensuring supports and accommodations • Supported decision-making
Medical treatment and discharge planning ❑ Informed consent for medical treatment (including end-of-life care) ❑ Following a treatment plan ❑ Safe discharge or transfer	• Advance directive for health care • Surrogate decision-making • Medical Order for Life-Sustaining Treatment (MOLST) • Withholding or withdrawal of medically ineffective treatment • Home & Community Based Services and informal options
Mental health/psychiatric treatment ❑ Consent to treatment (including medication management) ❑ Admission to mental health facility ❑ Psychiatric bed	• 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 ❑ Access to financial and other records ❑ Applying for benefits ❑ Spend down options (for benefit eligibility) ❑ Paying bills or managing income	• 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 • Specific transaction (Transaction authorized by court without appointing guardian)
Other issues/concerns ❑ Patient/family conflict ❑ Abuse, neglect, or exploitation	• Mediation • Long-Term Care (LTC) Ombudsman • Reporting abuse, neglect, or exploitation

PERSONAL DECISION-MAKING
Making decisions, communicating decisions, or carrying out decisions

Options	Observations and Notes
Ensuring supports and accommodations	
Supported decision-making	

Ensuring supports and accommodations. Patients have the right to make informed decisions about their care, even if you don't agree with those decisions. Be mindful of your obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Maryland laws barring discrimination on the basis of disability. If you are presented with signs that a patient appears to be struggling with the ability to receive, understand, or process information, screen for any supports and accommodations they may need. Those may alleviate or eliminate any concerns about their ability to make, communicate, or effectuate the relevant decision(s).

Supported decision-making (SDM). Supported decision-making is an arrangement in which an individual chooses a 'supporter' or a network of 'supporters' to help them make, communicate, or effectuate important life decisions. A supporter must be someone the individual chooses. It can be a family member, friend, or someone else the individual trusts.[4] The individual also chooses how supporters will assist in their decision-making process. Supporters cannot make decisions for or on behalf of the individual; the ultimate power to make decisions is with the individual. Supporters may ask questions, give the individual advice, explain things in a way that they understand, or serve as an effective communication accommodation. While SDM can be used by anyone, it can serve as an important accommodation for people with disabilities and older adults. SDM arrangements can be informal or a formal written agreements. There is no required format for written agreements, but **Disability Rights Maryland** offers a template. If a patient has a written SDM agreement, include a copy in their medical records. ***Md. Code, Estates & Trusts Art., § 18-101 et seq.***

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There are many ways an individual can use SDM. Examples of how SDM can be used in healthcare settings include having a supporter:

- Be with the patient during appointments or any discussions about their care (as an accommodation)
- Take notes for or help the patient come up with questions to ask the care team
- Help to ensure the patient understands information and options
- Advocate for extra time, breaks, or other accommodations to ensure the patient has a meaningful opportunity to digest information or make an informed decision
- Help the patient in weighing the benefits and risks of any treatment or procedure
- Assist the patient in communicating their decisions
- Help the patient complete paperwork or access relevant records

[4] A supporter cannot be a minor; someone the individual has a protective order, peace order, or other order prohibiting contact against; or someone who has been convicted of financial exploitation.

MEDICAL TREATMENT AND DISCHARGE PLANNING*
Informed consent for medical treatment (including end-of-life care), following a treatment plan, safe discharge or transfer

Options	Observations and Notes
Advance directive for health care	
Surrogate decision-making	
Medical Order for Life-Sustaining Treatment (MOLST)	
Withholding or withdrawal of medically ineffective treatment	
Home and Community-Based Services and informal options	

Competent adults have the right to make decisions about their own medical care. This includes the right to refuse treatment. In this context, "competent" means someone who is at least 18 years old and who has not been determined to be incapable of making an informed decision. When providing information to a patient about their care options, consider the **personal decision-making options** discussed above and ensure compliance with relevant state and federal laws. Provide information in a format that is accessible to the patient. If the patient is incapable of making an informed decision about their medical treatment, look to any arrangements the patient made before losing that ability and any available legal representatives.

Advance directive for health care. Sometimes referred to as a "health care power of attorney" or "medical power of attorney," these are instructions for how medical decisions will be made or the types of treatment a person will receive if they later become unable to make their own decisions. An advance directive can appoint a **health care agent** who is authorized to make medical decisions during any period the person is unable to make their own informed decisions. Health care agents are sometimes called medical powers of attorney or health care proxies. An advance directive can also include a **"living will,"** which states the person's treatment preferences, including their wishes regarding life support, CPR, ventilators, feeding tubes, and other life-sustaining treatment.

Any competent person can voluntarily create an advance directive. In this context, a 'competent person' is any individual who is over the age of 18, who understands the purpose and effects of an advance directive, and who has not been deemed incapable of making an informed decision. An advance directive can be written or electronic. It can also be made orally to a health care provider. **There are requirements** for creating an advance directive and who can serve as a health care agent. The Maryland Attorney General's Office also has **resources for individuals and health care providers.**

A health care provider can turn to a patient's health care agent or refer to their living will if a patient's attending physician and a second physician certify in writing that a patient is incapable of making informed decisions. If the patient is unconscious, only the written certification of their attending physician is required.
Md. Code, Health-General Art., § 5-601 et seq.

Surrogate decision-making. If the patient is incapable of making informed decisions about their medical care and does not have an advance directive for health care or their health care agent is unavailable, a health care provider can turn to a surrogate decision-maker to make medical decisions on the patient's behalf. Maryland law defines who surrogates are and their priorities (a provider must start at the first level of priority and cannot move to the next unless someone is not available).

Surrogate Priorities:

1. **A court-appointed guardian**
2. **A spouse or domestic partner (even if the couple has been separated for years)**
3. **Adult children**
4. **Parents**
5. **Adult siblings**
6. **A close friend or relative who is competent and who signs an affidavit (a statement under oath) stating:**
   - that they are a close relative or close friend, and
   - specific facts and circumstances that show that they have known the patient for enough time to know their beliefs, wishes, activities, and health

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Multiple people can share decision-making responsibility. For example, a patient may have multiple adult children who need to work together to make decisions. If they cannot reach an agreement, your facility's Patient Care Advisory Committee can review the situation and make a recommendation. A class of individuals with shared surrogate decision-making authority (e.g., a group of siblings), can **execute an agreement** that appoints one or more class members to act as the patient's surrogate.

A surrogate must make decisions based on what the patient would want if they could decide (substituted judgment). If the patient's wishes are unknown or unclear, then the surrogate must act in the patient's best interests and consider a variety of factors when making decisions. These factors include the patient's relevant religious and moral considerations and past behavior and conduct towards the treatment at issue. Surrogates cannot authorize a patient's sterilization or treatment for a mental disorder. A surrogate who is not a court-appointed guardian, however, may have more authority than a guardian to make serious medical decisions. Some guardians must get court approval before they can consent to the provision, withdrawal, or withholding of treatment that involves a substantial risk of life to the patient.
Md. Code, Health-General Art., § 5-605

Medical Order for Life-Sustaining Treatment (MOLST). A MOLST is a written medical order that outlines a patient's preferences regarding life-sustaining treatment including CPR, blood transfusions, artificial ventilation, and medical tests. A MOLST can be created by the patient, their health care agent, a surrogate decision-maker, or a guardian of the person. It must be signed by a physician, nurse practitioner, or physician's assistant. It should also be included in the patient's medical records and be kept with the patient during admission or discharge to a health care facility. For more information and resources for patients, families, and providers visit **marylandmolst.org.**
Md. Code, Health-General Art., § 5-608.1

Withholding or withdrawal of medically ineffective treatment. Physicians and physician assistants are not required to provide treatment that they believe is medically ineffective. Medically ineffective treatment is defined as treatment that, to a reasonable degree of certainty, will neither prevent nor reduce the deterioration of an individual's health or prevent their impending death. If the patient's physician, and a second physician, certify in writing that a treatment is considered medically ineffective under generally accepted medical practices, the patient's attending physician can withhold or withdraw the treatment. If they decide to do so, the patient, their agent, or their surrogate must be notified. If the patient has a guardian, the guardian may need to get court approval before consenting to the withholding or withdrawal of medically ineffective treatment. The amount of time it takes for a guardian to get such approval varies.
Md. Code, Health-General Art., § 5-611; Md. Code, Estates & Trusts Art., §13-705

Home and Community-Based Services (HCBS) and informal options. Home and Community-Based Services and informal options allow a patient to be safely discharged to their community. They include:

- **Case management services and options counseling**
- **Supported housing, group homes, and assisted living facilities**
- **In-home aide services (for personal care, chores, other (activities of daily living)**
- **In-home emergency response system**
- **Home delivered meals, group dining programs, and grocery delivery services**
- **Adult day care programs and senior centers**
- **Prescription delivery services or supports**
- **Assistance with medical equipment, supplies, or non-emergency medical transportation**
- **Assistive technology and home modifications**
- **Peer supports and independent living skills training**
- **Informal or professional assistance with money management**
- **Assistance with personal needs from family, friends, and others in the patient's community (check-ins, errand running, reminders, transportation to appointments or stores, etc.)**

The availability of options depends on the patient's needs, location, Medicare/Medicaid eligibility, and other factors. Support planners, service coordinators, local **Departments of Social Services,** and **Area Agencies on Aging** offices can help assess needs and identify appropriate community resources. Options counseling may also be available to Medicare beneficiaries through the **State Health Insurance Assistance Program (SHIP)** and to Medicaid beneficiaries through **Maryland Access Point (MAP).**

Ensure the patient has access to any needed supports and accommodations, including effective communication supports, when explaining their rights. Advise them on what to expect during the discharge process and what is needed to address their needs. Include those who know the patient best in discussions about potential services as appropriate. With education and support, the patient, family members, and other loved ones can assist in addressing barriers or needs. This may require multiple meetings, additional time for services and supports to be put in place, and de-escalating potential tensions between the patient, family, friends, support persons, or staff. When conflicts or care planning become an issue, consider mediation (discussed below) to help refocus everyone involved on shared goals for the patient.

MENTAL HEALTH/PSYCHIATRIC TREATMENT
Consent to treatment (including medication management), admission to mental health facility, psychiatric beds

Options	Observations and Notes
Advance directive for health care	
Voluntary admission to a mental health facility	
Involuntary admission to a mental health facility	
Behavioral Health Administration (BHA) resources	

Advance directive for mental health services. Sometimes referred to as a "mental health care power of attorney," these are instructions regarding how mental health decisions will be made and treatment preferences if a person later becomes unable to make informed decisions about their own care. This type of advance directive can name an agent who is authorized to make decisions during any period the person is incapable of making their own. It can also include specific instructions or preferences about:

- Medication
- Treatments including electroconvulsive therapy (ECT), transcranial magnetic stimulation (TMS)
- Mental health providers, programs, and facilities
- Experimental treatment or trials
- Information sharing with third parties and visitors
- Other special considerations

Like an advance directive for health care (discussed above), any competent adult can voluntarily create an advance directive for mental health services. An advance directive can be written or electronic. There is no required format, but the Behavioral Health Administration and Mental Health Association of Maryland have templates. It can also be made orally to a health care provider.
Md. Code, Health-General Art., § 5-602.1

Voluntary admission to a psychiatric hospital. A competent person who is at least 16 years old can be voluntarily admitted to a psychiatric facility. In this context, competent means that the person:

- Has a mental disorder that is susceptible to care or treatment,
- Understands the nature of a request for voluntary admission,
- Can give continuous consent to being held at the facility, and
- Is able to request release from the facility.

With appropriate supports and accommodations, a patient may be able to voluntarily participate in the admission process.
Md. Code, Health-General Art., § 10-609

Involuntary admission to a mental health facility. Guardianship is not needed to involuntarily commit a person to a mental health facility. In fact, a guardian does not have authority to involuntarily commit someone under guardianship to a mental facility.

If the patient needs but does not consent to admission to a mental health facility, any individual with a legitimate interest in the patient's welfare can apply to a facility for them to be involuntarily admitted.

The application must be on the facility's form and include certificates from a) two physicians, or b) one physician and one psychologist, psychiatric nurse practitioner, licensed certified social worker-clinical, or licensed clinical professional counselor. The certificate must contain certain information and be based on the clinician's personal examination of the patient, which must occur within a week of signing the certificate or within 30 days of when the facility receives the application. There are conditions under which a facility can accept an application and other requirements if the patient is age 65 or older.

If a patient presents a danger to the life or safety of themselves or others, a clinician, peace or law enforcement officer, and **others can petition for an emergency evaluation.** If the petition is granted, the patient will be transported to an emergency facility for an emergency evaluation, and a physician will determine whether they meet the requirements for involuntary admission.

Within 12 hours of any involuntary confinement, the patient must receive forms in plain language notifying them of their involuntary admission, their right to consult with an attorney of their choice, and the availability of legal services. The patient has the right to request a hearing to dispute the admission, which must be held within 10 days from the patient's initial confinement, and to appeal the outcome of that hearing.
Md. Code, Health-General Art., §§ 10-613 – 10-633

Behavioral Health Administration (BHA) resources. The **Behavioral Health Administration** provides services and supports to individuals with mental health disorders, substance abuse disorders, and co-occurring disorders. The agency's **Behavioral Health Hospital Coordination Dashboard** provides real-time information about the availability of psychiatric beds in hospitals, including inpatient psychiatric beds and crisis beds for short-term stabilization services. Your local **Department of Health Behavioral Health Administrator** can also assist in finding available beds.

MANAGING ASSETS OR BENEFITS
Access to financial and other records, applying for benefits, spend down options (for benefit eligibility), paying bills or managing income

Options	Observations and Notes
Financial power of attorney	
Authorized representative for medical assistance	
Representative Payees and U.S. Department of Veterans Affairs Fiduciaries	
Achieving Better Life Experience (ABLE) accounts	
Trusts including special needs trusts	
Banking services	
Specific transaction (Transaction authorized by court without appointing guardian)	

Financial power of attorney. A financial power of attorney is a legal document that gives another person (an agent or "attorney-in-fact") legal authority to make decisions for or handle financial or business affairs on behalf of another person (the principal). The principal creates the document, names the agent, defines the agent's powers, and designates what property or affairs the agent can manage. In Maryland, anyone who is at least 18 years old and competent (understands what the document is, what powers they're giving their agent, and what property is covered by the financial POA) can create a POA. **There are rules** about who can be an agent and what the document needs to include. There are forms that are sometimes referred to a "statutory power of attorney" forms that can be used. Other states may have different requirements.

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The principal also decides when the agent's authority goes into effect. For example, a POA can go into effect right away or when the principal is determined to be incapacitated. The POA is meant to ensure that the principal's wishes, values, and preferences are respected.

Under some circumstances, refusal to recognize a valid POA can result in financial penalties.

If a patient has a POA, they likely do not need a guardian of the property. Agents can assist with paperwork associated with discharge or transfer, apply for benefits, and handle other financial matters. Agents have different levels of knowledge and experience. They may need information about options and resources to help them decide how to address the patient's specific needs. Effective communication is key.
Md. Code, Estates & Trusts Art., § 17-101 et seq. (Maryland General and Limited Power of Attorney Act)

Authorized representative for medical assistance. An authorized representative is an individual or organization that can act on behalf of an applicant for or recipient of Medical Assistance (MA). They can help the patient apply or establish eligibility for MA, complete annual redeterminations, appeal denials or terminations, and communicate with the MA program. Even if the patient is unable to complete these tasks, with or without assistance, they may have the level of capacity needed to designate another person or organization to serve as their authorized representative. **While a form to designate** an authorized representative is available, any signed writing designating an authorized representative is acceptable.

If the patient does not have capacity to designate an authorized representative, any of the following people have legal authority to serve as one:

- A surrogate decision-maker (discussed above)
- A person appointed to make legal or medical decisions on behalf of the patient (e.g., an agent under a financial power of attorney or advance directive
- An attorney or paralegal hired by the patient
- A personal representative or someone who has applied in good faith to become one
- A current guardian or someone who in good faith petitions to become one

If none of the above options exist, certain individuals or organizations can serve as authorized representative for an "Applicant Without Representative Who Lacks Capacity to Appoint a Representative" if they declare under oath that:

- They are in good faith acting in the best interest of the patient
- The patient lacks legal capacity
- To the best of their belief, no other individual or organization is willing or able to act on the applicant or recipient's behalf
- The individual, the organization or any director, employee, officer, or employer of the organization does not have a direct financial interest in the disposition of the MA application or discloses whether such an interest exists

Finally, if a patient or their agent fails to apply for MA, a facility providing care may, without requesting the appointment of a guardian, petition the appropriate circuit court for an order requiring the resident or their agent to seek assistance from the MA program or to cooperate in the eligibility determination process.

If the authorized representative needs access to financial or other records that must be submitted with the MA application, they may need a court order. Consider a specific transaction (discussed below) if the patient or someone else authorized to access those records does not or cannot furnish them.
Md. Code, Health-General Art., § 19-344; COMAR 10.01.04.12 & 10.09.24.04

Representative Payees and U.S. Department of Veterans Affairs (VA) Fiduciaries. These are individuals or organizations appointed to manage income or benefits on behalf of a beneficiary who is unable to due to illness or disability. **The Social Security Administration (SSA)** and **Office of Personnel Management (OPM)** have representative payee programs. A representative payee for the Department of Veteran Affairs is called a **"VA Fiduciary."** Some private pension companies also have similar programs. A guardian is not needed to manage these types of benefits. Each agency has their own application and program requirements.

Achieving Better Life Experience (ABLE) accounts. If a spend down is needed for the patient to qualify for Medicaid or other income-based public benefits (SSI, SNAP, subsidized housing, etc.), an ABLE account may be an option. It is a type of savings account for disability-related expenses. Contributions to an ABLE account will not be counted for purposes of establishing or maintaining a person's eligibility for income-based benefits. A person is eligible to be a "beneficiary" of an ABLE account if they developed a **qualifying disability** before the age of 26.[5] **States have their own ABLE programs** with different requirements and contribution limits.

In **Maryland**, a guardian can but is not needed to create or manage an ABLE account. A beneficiary over the age of 18 can establish their own account, or they can select a person to establish one on their behalf. If they are not

[5] The age of eligibility increases to 46 effective January 1, 2026.

able to establish one or select a person to do so on their behalf, a legally authorized representative can. An agent under a financial power of attorney can establish and manage an account. If the beneficiary does not have an agent, the following people, in order of priority (i.e., if one category does not exist, the next category can), may be able to establish or maintain an ABLE account:

- A guardian or conservator.
- Spouse
- Parent
- Sibling
- Grandparent
- Representative payee appointed by the Social Security Administration

These individuals cannot serve as a legally authorized representative if the beneficiary has obtained a peace or other protective order against them, or if they have been held civilly or criminally liable for financial exploitation.
26 U.S.C.A. § 529A; Md. Code, Education Art., § 18-19C-01 et seq.

Trusts including special needs trusts. Trusts are legal arrangements in which someone, called a trustee, holds and manages property for the benefit of another person, called the beneficiary. A guardian can but is not needed to create a trust. A guardian is also not needed to manage property that is held in trust. There are different types of trusts. They can be general or for a specific purpose. **Special Needs Trusts** are specifically for people with disabilities. Property held in this type of trust does not count against a person for purposes of qualifying them for Medicaid or other income-based public benefits (SSI, SNAP, housing subsidies, etc.).
Md. Code, Estates and Trusts, § 14-404

Banking services. If the patient or their authorized representative has trouble paying bills on time or managing income, banking services, including direct deposit, automatic bill payment, credit freezes, authorized signers, and accounts with shared access can be set up. If the patient or their representative is unable to or unwilling to set up these services, a specific transaction may be an option.

Specific transaction (Transaction authorized by court without appointing guardian). A specific transaction is a court that authorizes or directs a third party to complete an action or series of actions related to another's person's property. A specific transaction can only be ordered if the court determines that there is a legal basis for guardianship. This means that a petition for guardianship must be filed, and the court must determine that 1) the person does not have capacity to manage their property and affair effectively, and 2) they have or may be entitled to property or benefits that require proper management. If the court finds a legal basis, it can order a specific transaction as an alternative to a full guardianship of the property. This would allow the person to have their needs met without stripping them of their rights.
Estates & Trusts Art., § 13-204

Specific transactions may be helpful for patients who have a limited need that cannot be met by another alternative to guardianship. Examples of specific transactions include:

- Authorizing access to the patient's financial records (e.g., bank records needed to apply for medical assistance)
- Applying for or recertifying a person's eligibility for benefits
- Setting up direct deposit or automatic bill payment
- Restricting another person's access to the patient's accounts
- Selling property to help the person become eligible for Medicaid or other income-based benefits

OTHER ISSUES/CONCERNS
Patient/family conflict, abuse, neglect, exploitation

Options	Observations and Notes
Mediation	
Long-Term Care (LTC) Ombudsmen	
Reporting abuse, neglect, or exploitation	

Mediation. Mediation is a way to resolve conflicts or explore options with the assistance of a trained, neutral professional, called a mediator. Mediators help people have difficult conversations by guiding a discussion, facilitating the sharing of information, identifying what is important to each person, and finding solutions that everyone can support. Mediation may be helpful in resolving disputes with patients or families. It can also be used to explore alternatives to guardianship that can meet a patient's needs. Mediation is faster and less expensive than guardianship and other court processes. Courts are also increasingly turning to mediation to resolve conflicts that give rise to a guardianship petition or as a means to dismiss the case or to limit, modify, or terminate a guardianship.

Mediation is a voluntary process, meaning a person cannot be forced to participate. It is also confidential, which means that what is said in mediation cannot be used in court and the mediator cannot be called to testify. Mediation allows participants to come up with more flexible and creative solutions than are possible if a court is involved.

Long-Term Care (LTC) Ombudsmen. Long-Term Care Ombudsmen serve as independent advocates for assisted living and nursing home residents. They receive, investigate, and find ways to address resident's complaints about their care. They can educate residents, families, and others. While they are advocates for residents only, they may be helpful partners in resolving conflicts or improving communication with a resident.

Reporting abuse, neglect, or exploitation. Familiarize yourself with the signs of abuse, neglect, and exploitation and mandated reporting requirements. If you suspect a vulnerable adult (a person who is at least 18 years old and lacks the physical or mental capacity to provide for their daily needs) is being abused, neglected, or exploited, there are agencies that can investigate or respond. Which agency will depend on the source or location of the alleged harm. Call 911 if someone is in immediate danger.

Source/Location of Harm	Options
Community (family member, friend, etc.)	Contact a local Adult Protective Services office or call 1-800-91-PREVENT (1-800-917-7383).
Abuse of assisted living or nursing home resident	Contact the local Long-Term Care Ombudsman.
Financial exploitation	Contact a local Adult Protective Services office or call 1-800-91-PREVENT (1-800-917-7383).
Abuse in a licensed or federally certified facility or by a Developmental Disabilities Administration provider	Contact the Office of Health Care Quality. You can file a complaint online or call 410-402-8108.
Medicaid fraud and abuse or neglect of adults in assisted living facilities and facilities that receive Medicaid funds	Contact the Maryland Attorney General's Medicaid Fraud Control Unit at 1-888-743-0023 or email MedicaidFraud@oag.state.md.us.