

THE IDEAL TOOL

STEP 1: IDentify needs



PATIENT NAME:

Identify the patient's specific needs or areas of concern

Start by specifying the patient's needs and any reasons for concern. Consider:

Personal decision-making

- ☐ Making decisions
- ☐ Communicating decisions
- ☐ Carrying out decisions (with or without assistance)

Medical treatment and discharge planning

- ☐ Informed consent for medical treatment (including end-of-life care)
- ☐ Following a treatment plan
- ☐ Safe discharge or transfer

Mental health/psychiatric treatment

- ☐ Consent to treatment (including medication management)
- ☐ Admission to mental health facility
- ☐ Psychiatric bed

Managing assets or benefits

- ☐ Access to financial and other records
- ☐ Applying for benefits
- ☐ Spend down options (for benefit eligibility)
- ☐ Paying bills or managing income

Community services and supports

- ☐ Case management
- ☐ In-home care
- ☐ Transportation assistance
- ☐ Home or vehicle modifications
- ☐ Durable medical equipment or assistive technology
- ☐ Residential services
- ☐ Behavioral support services
- ☐ Family caregiver training, support, respite care
- ☐ Other (specify):

Other issues/concerns

- ☐ Patient/family conflict
- ☐ Abuse, neglect, or exploitation
- ☐ Other (specify):

Observations & notes:

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STEP 2: Evaluate



Evaluate the patient's capabilities and resources

When exploring alternatives to guardianship, the focus should be on the patient's decision making capabilities. They may be able to make some decisions but not others. The law recognizes that there are intermediate degrees of legal capacity, and that capacity is contextual – the capacity needed to select a health care agent is different from the capacity required to decide where to live. Rather than asking "Does the patient have capacity?" ask "Capacity for what?" In other words, focus on the nature of each decision that goes into addressing the patient's identified needs and assess what the patient *can* do.

Ensure the patient has access to **any reasonable supports or accommodations** they may need and ensure **effective communication**. See [Appendix A](#) for guidance on ensuring supports and accommodations. 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.

Screen for any **temporary or reversible** conditions or circumstances that may impact decision-making. If these are present, consider whether a decision can be postponed until their condition or circumstances change. Consider:

- **Medical conditions:** Urinary tract or other infections, delirium, dehydration, malnutrition, vitamin deficiencies, traumatic brain injury, poor oral health, etc.
- **Pain:** Chronic or acute pain
- **Sensory deficits:** Poor vision, hearing loss, etc.
- **Medication:** Side effects, polypharmacy
- **Psychological conditions:** Stress, grief, depression, disorientation, etc.
- **Social/interpersonal factors:** Family conflict, cultural barriers

Resources. To the extent a patient is unable to make their own decisions, approach the patient's family members, friends, and other personal contacts as your partners in problem-solving. With education, coaching, and referrals to resources, they may be able help to address the patient's needs. Some may be able to serve as a substitute decision-maker. Consider using open-source tools, databases, or private investigators to locate relatives or people who may have information about the patient's preferences or resources. If there are conflicts among the patient's loved ones, or if they are uncertain about which options are best, consider referring them to a mediator.

Build and maintain effective working relationships with local agencies and community providers who can help you assess a patient's needs or put needed supports and services in place. Key resources are your local **Departments of Social Services (DSS)** and **Area Agencies on Aging (AAA)**. They may be able to help you identify options for patients, assist patients and their loved ones, and arrange for services that may eliminate the need for guardianship. If guardianship is needed, any work you do with them before a petition is filed may help streamline the process and limit the scope of any guardianship. If the patient receives services from the **Developmental Disabilities Administration (DDA)**, work with their DDA Coordinator of Community Services or a supports planner to identify options or facilitate discussions. The local **Behavioral Health Authorities** can offer assistance with patients who need mental health services including addiction services. Additional resources are provided in [Appendix E](#).



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STEP 3: Assess alternatives

Assess alternatives to guardianship

If the patient is unable to make a needed decision, the next step is to screen for alternatives to guardianship that exist or that can be put in place to address the patient's unmet needs. Review the [Alternatives to Guardianship Resource Guide](#) for more information about the options.

Need/Area of Concern	Options (examples)
Personal decision-making	<ul style="list-style-type: none">• Ensuring supports and accommodations• Supported decision-making
Medical treatment and discharge planning	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Mediation• Long-Term Care (LTC) Ombudsman• Reporting abuse, neglect, or exploitation

Observations & notes:

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STEP 4: Limit guardianship



Limit any guardianship to what is necessary to meet the patient's unmet needs

Even if the patient has needs that cannot be addressed by any combination of the alternatives to guardianship described in this guide, you have done important leg work. The court will need to know what alternatives to guardianship have been tried and failed before appointing a guardian. Documentation of your work here can help your facility's attorney prepare a guardianship petition and present evidence. Being specific about the patient's needs and capabilities can help your attorney advocate for a limited guardianship that is tailored to the patient's needs. The patient will be represented by an attorney whose job it is to advocate for the patient's wishes, protect their rights, and argue for any guardianship to be in its least restrictive form. Review the overview of [Guardianship Law and Process](#) to learn more.

If you are asked to complete a certificate of incapacity, review the guidance on Capacity Assessments in [Appendix B](#). Consider using the Guardianship Referral Worksheet in [Appendix C](#).

The guardianship process is complex and can take a while depending on the patient's situation. Guardianship also has its limits. Guardians cannot force a patient to comply with treatment or stay in a care setting. Guardians have a duty to make independent decisions based on the patient's preferences, values, and beliefs. They also may need court approval to make certain decisions.

The IDEAL approach (**I**dentify needs, **E**valuate capabilities and resources, **A**ssess alternatives, and **L**imit any guardianship) can help you avoid the need to petition for guardianship altogether or can help you present a petition that contains the necessary information about alternatives and limitations to the guardianship so that the court can consider the matter efficiently.

Observations & notes:

