

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

- Step 1. Before filing an *Emergency Petition*, you must first file a regular petition (the PG-100 *Petition for Appointment of a Guardian*). Instructions for the regular petition are in the PG-500 Packet. You can file both the regular petition and the emergency petition at the same time.
- Step 2. Fill out the attached *Emergency Petition* (PG-101).
- a. On the “AT” line at the top of the form, write the city where the court is located.
 - b. On the “Respondent” line, write the full name of the person who needs a guardian.
 - c. Case Number. If you are filing this petition at the same time you file the regular petition, leave the “CASE NO.” line blank. If you are filing this petition later, write the case number that the court assigned to the regular petition.
 - d. Paragraph 1. You are the “petitioner,” so fill in information about yourself.
 - e. Paragraph 3. Explain where the respondent (the person who needs a guardian) 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.
 - f. Paragraph 4. Describe the emergency services the respondent needs. Be as specific and complete as possible.

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

¹ AS 13.26.140. Also see AS 13.26.105(c) which states a person petitioning for a regular guardianship may “include a request for temporary guardianship as provided in [AS 13.26.140](#) 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.)

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.

- g. Paragraph 5. Explain why the respondent is not able to get these services on his or her own.
- h. Paragraph 7. Write the name, address, etc. of the person you think should be appointed temporary guardian.
- i. Sign and date the *Petition*.
- j. Verification Section.

If you are going to file the *Petition* in person, wait to sign this section until you are at the court. Bring a photo ID with you so a court clerk can notarize your signature when you sign it. There is no charge for this notarization.

If you mail the *Petition* to the court, you must fill out the Verification section before you mail it. You will have to sign this section in front of a notary public.

Step 3. Make a copy of the *Emergency Petition* for yourself.

Step 4. File the original *Emergency Petition* (either in person or by mail) at the same court in which you filed the regular petition. There is no separate filing fee for this petition. It is covered by the filing fee you paid for the regular petition.

Step 5. 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 notice of the hearing to you, the respondent, the respondent's attorney, and the court visitor. (For information about the "court visitor," see the PG-505 instructions about the regular guardianship petition.)

Step 6. 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 gets to choose whether the hearing will be open to the public or closed.

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

As the petitioner, you have the burden of presenting evidence³ that shows both of the following things:

- (a) The respondent needs immediate services to protect against serious injury, illness or disease, and
- (b) The respondent is not able to get these services on his or her own.

The statute that requires this, AS 13.26.140, is printed on the next page.

Step 7. When the Appointment Ends.

If the judge signs an emergency appointment order, the order will be temporary. It will expire when a regular (full or partial) guardian is appointed or when the petition for appointment of a guardian is dismissed.

Alternatives to this Procedure

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

1. Emergency Life Saving Medical Authorization under Probate Rule 18 and AS 13.26.140(f). If no guardianship petition is pending, the court may authorize emergency life saving services over the telephone as described in this statute and court rule.
2. Designation or Assumption of Authority to Make Health Care Decisions By a “Surrogate” Under AS 13.52.030. If no guardian and no agent for making health care decisions has been appointed (or is available), and if the patient is an adult

² AS 13.26.140(b) and 13.26.113(a)

³ AS 13.26.140(c)

whose primary physician has determined lacks capacity, a “surrogate” can make health care decisions as described in AS 13.52.030.

AS 13.26.140

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 13.26.113](#) (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.