

CF OPERATING PROCEDURE  
NO. 155-58

STATE OF FLORIDA  
DEPARTMENT OF  
CHILDREN AND FAMILIES  
TALLAHASSEE, April 22, 2019

Mental Health/Substance Abuse

GUIDELINES FOR ASSISTING STATE MENTAL HEALTH FACILITY RESIDENTS  
WHO MAY BENEFIT FROM APPOINTMENT OF PUBLIC GUARDIANSHIP

1. Purpose. This operating procedure describes procedures for assisting residents who lack the capacity to make their own decisions and may benefit from the appointment of public guardianship.
2. References.
  - a. Chapter 744, Florida Statutes (F.S.), Guardianship.
  - b. Chapter 394, F.S., Mental Health Act.
  - c. Chapter 916, F.S., Forensic Services Act.
  - d. Chapter 765, F.S., Health Care Surrogate and Proxy.
3. Scope. This operating procedure applies to persons residing in a state civil mental health treatment facility committed pursuant to Chapter 394, F.S., or pursuant to Chapter 916, F.S., due to mental illness and who appear to meet all criteria for eligibility for assistance from the Office of Public Guardianship.
4. Definitions. As used in this operating procedure, the following terms shall mean:
  - a. Advanced Directive. A witnessed written document or oral statement in which instructions are given by a resident or in which the desires of the resident are expressed concerning any aspect of the health care of the resident, and includes, but is not limited to, the designation of a health care surrogate or a living will.
  - b. Community Representative. Staff of the behavioral health service provider, who in conjunction with the resident's recovery team, participate in the resident's treatment and discharge planning. These persons are typically referred to as "case managers," "community liaisons," or "care coordinators."
  - c. Express and Informed Consent (hereafter referred to as consent). Permission voluntarily given in writing by a capable person, after sufficient explanation and disclosure of the subject matter involved, to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.
  - d. Facility Representative. Staff of the mental health treatment facility that, in conjunction with the community case manager, is responsible for coordination of treatment and/or discharge planning for the resident. In some facilities, these functions may be performed by the social services staff, benefits coordinator, or discharge planner.
  - e. Guardian. A person who has been appointed by the Court to act on behalf of a resident's person or property, or both pursuant to Chapter 744, F.S.

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This operating procedure supersedes CFOP 155-58 dated November 1, 2015.

OPR: SMF

DISTRIBUTION: X: OSES; OSGC; ASGO; Region/Circuit Mental Health Treatment Facilities.

f. Guardianship. Describes a legal relationship between the guardian and the ward.

g. Incapacitated Person. A person who has been judicially determined to lack the capacity to manage at least some of their property or to meet at least some of the person's essential health and safety requirements.

h. Limited Guardian. One of the types of guardianship with authority to exercise only those rights removed from the ward in the Court order.

i. Public Guardian. A guardian that provides services for the incapacitated individual who has limited financial means and no willing family member or friend to serve as guardian.

j. Recovery Plan. A written plan developed by the resident and their recovery team. This plan is based on assessment data, identifying the resident's (individual) clinical, rehabilitative and enrichment service needs. The plan further identifies the strategy for meeting those needs, documents treatment goals and objectives, establishes criteria for terminating the specified interventions, and documents progress in meeting specified goals and objectives.

k. Recovery Team. An assigned group of individuals with specific responsibilities identified on the recovery plan, including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member and other treatment professionals as determined by the resident's needs, goals, and preferences.

l. Resident. Person who receives mental health treatment services in a civil mental health treatment facility operated by the state or via a contract with a provider. The term is synonymous with "client", "consumer", "individual", "patient", or "person served."

m. State Mental Health Treatment Facility. A facility operated by the Department of Children and Families or by a private provider under contract with the Department to serve individuals committed pursuant to Chapter 394, F.S., or Chapter 916, F.S.

n. Statewide Public Guardianship Office (SPGO). The State Office, housed within the Department of Elder Affairs, that appoints local public guardianship services to persons who do not have adequate income or assets to afford a private guardian and there is no available, capable, and willing family or friend to serve.

o. Successor Guardian. A person appointed by the Court to assume the duties of a guardian as a result of death, resignation or removal of the previous guardian. For individuals who have been accepted by a nursing home or other provider in another area of the state, the appointment of the guardian may be revised based on where the person will reside.

p. Ward. A person for whom a guardian has been appointed.

## 5. Responsibilities.

a. Facility Representatives. It is the responsibility of the facility administrator, the resident's attending physician, and their recovery team to protect and exercise the legal rights of individuals who lack capacity to make their own decisions. The facilities must ensure that all recovery team staff is trained on the availability of public guardianship support and the processes to refer an individual. Training shall be provided during the staff's orientation to the facility and updated on an annual basis.

b. Recovery Teams. It is the responsibility of the resident's attending physician to review and update the individual's ability to make decisions about their healthcare throughout their stay at the

facility. These responsibilities will be completed in collaboration with the resident's assigned recovery team members including the resident's assigned community representative.

c. Community Representative. It is the responsibility of the resident's community representative, to participate in the resident's treatment, including their discharge plan for the resident's return to the community. The community representative is required to make at least monthly contact with the facility about the resident, as well as any family or friends who may assist the resident with making decisions about their healthcare.

d. Managing Entities. It is the responsibility of the Managing Entity or other contracted provider to ensure the resident's continuity of care. The Managing Entity or other contracted provider will develop needed services and supports not readily available to persons preparing for discharge from the state mental health treatment facilities and monitor provision of all recommended services upon discharge through designated contracted community providers.

6. Public Guardianship Eligibility. In Florida, a public guardian acts as a guardian for individuals who meet ALL three criteria below:

a. The individual lacks the capacity to make decisions for their personal welfare. Individuals are not considered incapacitated solely due to physical limitations, such as lack of speech, lack of movement and use of one or more limbs, or other challenges. Any form of expression that demonstrates the individual understanding of the decisions must be considered prior to alleging the person's incapacity. Results of the assessment shall be documented.

b. There is no other known person closely related to the alleged incapacitated person who is available to assist. This should be re-evaluated throughout the resident's stay at the facility. The petitioner, on behalf of the state mental health treatment facility, must be satisfied that no other individual is:

- (1) Available;
- (2) Capable; and,
- (3) Willing to file this petition on behalf of the resident.

c. The individual is indigent, lacking the income or assets to pay a professional guardian.

7. General Procedures.

a. At admission to the facility, and during the entire resident's stay at the facility, the resident's capacity to make their own decisions should be assessed to determine if the resident may need assistance to make decisions about their care.

b. The resident's attending physician must document that the resident's decision-making was evaluated in the psychiatric assessment. The attending physician's assessment of the resident's capacity to make decisions must be addressed in the resident's recovery team meeting minutes.

c. Upon documentation by the resident's attending physician that the resident lacks the capacity to make decisions about their healthcare, the assigned recovery team staff will identify whether the resident meets the remaining two criteria for public guardianship eligibility identified in paragraph 6 of this operating procedure. Following a review of the resident's guardianship with their assigned recovery team and team consensus, at least two additional recovery team members must document that the resident meets the requirements for a public guardian.

d. Based on the physician's capacity statement and the recovery team's decision to refer the individual to the local office of the public guardian, the assigned facility staff shall:

(1) Complete and submit the resident's referral to the local office of the public guardian where the resident resides (the county of the state mental health treatment facility). The completed referral form provides the data the local office of the public guardian needs to draft the necessary petitions. The list of local offices of the SPGO may be found at <http://elderaffairs.state.fl.us/doea/spgo.php>.

(2) Complete State Mental Health Treatment Facility Tracking Log "Residents in Need of Public Guardian" (Appendix C to this operating procedure) and update the log as items are completed. Enter comments that provide information regarding resident's progress to obtain a Public Guardian.

(3) Maintain at least monthly contact with the local office of the public guardian to obtain status of the resident's guardianship request and document on the Tracking Log.

(4) When the local guardianship office returns the resident's petitions for signature, review the petition for accuracy and route to the facility's Legal Counsel and Hospital Administrator for signature, and return the signed petitions to the local office of the guardian within three working days. Appendices A and B to this operating procedure include Department-approved templates to petition the Court for a public guardian including:

(a) Petition to Determine Incapacity; and,

(b) Petition for Appointment of Plenary Guardian of the Person.

(5) Monitor progress and document on-going assistance with guardianship matters in monthly chart notes and in the Tracking Log in accordance with established requirements. Any documentation of the resident's alleged incapacity to make decisions and the appointment of a guardian for the resident must be completed, distributed, and maintained in accordance with Chapter 65E-5, Florida Administrative Code, and as part of the resident's clinical record.

(6) Update the resident's assigned recovery team reviews and facility's Legal Counsel (when appropriate or with a status change). This information should be documented in the resident's recovery team meeting minutes, as well as in progress notes and reports.

(7) Communicate with the resident's community representative and the resident's aftercare provider if the resident has any Court ordered assistance, including appointment of a public guardian.

BY DIRECTION OF THE SECRETARY:

*(Signed original copy on file)*

WENDY SCOTT  
Director, State Mental Health Treatment Facilities, Policy and Programs

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

Added paragraph 7d(2) to require completion of Tracking Log “Residents in Need of Public Guardian,” and renumbered following paragraphs. Included reference to the Tracking Log in paragraphs 7d(3) and 7d(5).

# TEMPLATE FOR PETITION TO DETERMINE INCAPACITY

IN THE CIRCUIT COURT OF THE (XXXX) JUDICIAL CIRCUIT  
IN AND FOR (XXXX) COUNTY, FLORIDA

IN RE: INCAPACITY DETERMINATION OF

(INDIVIDUAL’S NAME)  
An Alleged Incapacitated Person.

Case Number: \_\_\_\_\_  
Division B

\_\_\_\_\_ /

## PETITION TO DETERMINE INCAPACITY

Petitioner, (NAME OF HOSPITAL ADMINISTRATOR) as HOSPITAL ADMINISTRATOR, alleges:

1. Petitioner is the Hospital Administrator of (FACILITY NAME), a state mental health treatment facility, where (INDIVIDUAL’S NAME) resides. Petitioner’s address is (MAILING ADDRESS OF FACILITY). Petitioner is not related to the alleged incapacitated person.

2. Petitioner believes (INDIVIDUAL’S NAME), whose date of birth is (XXXX), who is (XX) years of age, and whose social security number is (xxx-xx-xxxx), a resident of (COUNTY NAME) County, Florida, whose address is (FACILITY NAME AND MAILING ADDRESS), and whose primary spoken language is (WARD’S PRIMARY LANGUAGE), to be incapacitated, based upon the following factual information:

(INDIVIDUAL’S NAME) lacks the comprehension to make decisions necessary to provide for his/her personal welfare. He/she suffers from various physical and mental illnesses including (PROVIDE SPECIFIC INFORMATION RE: THE WARD’S PHYSICAL AND MENTAL ILLNESSES).

3. The names and addresses of all persons known to Petitioner who have knowledge of such facts through personal observation are members of the alleged incapacitated person’s recovery team including: (WARD’S RECOVERY TEAM MEMBERS WHO HAVE OBSERVED PERSON AND CONCUR THAT HE/SHE MAY LACK CAPACITY)

\_\_\_\_\_

(FACILITY NAME AND MAILING ADDRESS OF FACILITY).

4. The alleged incapacitated person is incapable of exercising the following rights:  
(PLACE AN “(X)” OR ONLY LIST SPECIFIC LEGAL DISABILITIES FOR THE WARD)

- (x) to marry
- (x) to contract
- (x) to sue and defend lawsuits
- (x) to seek/retain employment
- (x) to consent to medical treatment
- (x) to manage property or to make any gift or disposition of property
- (x) to make decisions about his social environment or other social aspects of his life
- (x) to vote
- (x) to have a driver's license
- (x) to travel
- (x) to determine his residency
- (x) to personally apply for government benefits

5. Petitioner is seeking appointment of a plenary guardian of the alleged incapacitated person.

6. There are no known persons closely related to the alleged incapacitated person.

7. Petitioner, on behalf of (FACILITY NAME), is satisfied that no other individual is available, capable, and willing to file this petition on behalf of (WARD’S FULL NAME).

8. The alleged incapacitated person's attending physician is: Dr. (ASSIGNED PHYSICIAN FOR WARD, FACILITY NAME AND MAILING ADDRESS). The alleged incapacitated person (has/does not have) a guardian advocate; however, appointment of a guardian is necessary to secure an appropriate nursing home placement outside of the local area. There are no individuals willing to serve as guardian and the alleged incapacitated person lacks the resources to pay a professional guardian. The Public Guardianship Office for the (XXXX) Judicial Circuit has agreed to serve as guardian following a determination of incapacity.

WHEREFORE, Petitioner requests that an examination be made as to the mental and physical condition of the alleged incapacitated person as provided by law, and that an order be entered determining the mental and physical capacity of said person.

**Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.**

Executed this \_\_\_\_ day of \_\_\_\_\_, (MONTH, YEAR).

\_\_\_\_\_  
HOSPITAL ADMINISTRATOR  
STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Signed in my presence this \_\_\_\_ day of \_\_\_\_\_, (MONTH, YEAR) by  
\_\_\_\_\_ who presented \_\_\_\_\_ as identification.

(seal)

\_\_\_\_\_  
Notary- State of Florida at Large

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of this Petition was served upon the following persons at the addresses shown, by first class United States Mail, this \_\_\_\_ day of (MONTH, YEAR).

(WARD'S NAME)  
(FACILITY NAME AND  
MAILING ADDRESS)

Public Guardianship Office for the (CIRCUIT NUMBER) Judicial Circuit  
(MAILING ADDRESS OF THE LOCAL PUBLIC GUARDIANSHIP OFFICE).

(NAME OF LAW OFFICE)

By: \_\_\_\_\_  
**ATTORNEY NAME, FLORIDA BAR NUMBER AND  
CONTACT INFORMATION**



**TEMPLATE OF PETITION FOR APPOINTMENT OF  
PLENARY GUARDIAN OF THE PERSON**

IN THE CIRCUIT COURT OF THE [XXXX] JUDICIAL CIRCUIT  
IN AND FOR [XXXX] COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF  
[INDIVIDUAL’S NAME],  
An Alleged Incapacitated Person.

Case Number: \_\_\_\_\_  
Division B

\_\_\_\_\_ /

**PETITION FOR APPOINTMENT OF PLENARY GUARDIAN OF THE PERSON**

Petitioner, (NAME OF HOSPITAL ADMINISTRATOR), as HOSPITAL ADMINISTRATOR,  
alleges:

1. Petitioner is the Hospital Administrator of (FACILITY NAME), the state mental health treatment facility where [INDIVIDUAL’S NAME] resides. Petitioner’s address is (MAILING ADDRESS OF FACILITY). The proposed guardian is the Public Guardian for the (CIRCUIT NUMBER) Judicial Circuit, the offices of which are located at (STREET ADDRESS OF LOCAL PUBLIC GUARDIANSHIP OFFICE), mailing address (MAILING ADDRESS OF LOCAL PUBLIC GUARDIANSHIP OFFICE) (hereinafter the “Guardian”).

2. [INDIVIDUAL’S NAME] is an alleged incapacitated person whose date of birth is [XXXX], who is [XX] years of age, and whose social security number is [xxx-xx-xxxx] (hereinafter the “Ward”). The residence of the Ward is the (FACILITY NAME AND MAILING ADDRESS), and his/her mailing address is the same.

3. The nature and scope of the Ward’s incapacity is: the Ward suffers from various physical and medical conditions including (DESCRIPTION OF WARD’S PHYSICAL AND MENTAL CONDITION). The Ward is unable to comprehend or provide for his/her needs.

4. The exact areas in which the Ward lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for his/her physical health and safety are: the Ward lacks ability to (INDIVIDUALIZE FOR THE WARD, ex., make informed decisions regarding

his/her residence, right and ability to travel, medical care, and day-to-day needs. He/She requires continual direction and supervision, as well as physical assistance).

5. The specific legal disabilities to which the Ward is subject are:

(PLACE AN “(X)” OR ONLY LIST SPECIFIC LEGAL DISABILITIES FOR THE WARD)

- (x) to marry
- (x) to contract
- (x) to sue and defend lawsuits
- (x) to seek/retain employment
- (x) to consent to medical treatment
- (x) to manage property or to make any gift or disposition of property
- (x) to make decisions about his social environment or other social aspects of his life
- (x) to vote
- (x) to have a driver's license
- (x) to travel
- (x) to determine his residency
- (x) to personally apply for government benefits

6. There are no interested persons able to accept the duties as guardian of the Ward.

7. The Ward has no property other than social security disability income, which is not subject to state guardianship proceedings and which is managed by (STATE MENTAL HEALTH TREATMENT FACILITY NAME), the state mental health facility where the Ward resides.

8. There are no known persons closely related to the Ward.

9. Petitioner, on behalf of (STATE MENTAL HEALTH TREATMENT FACILITY) is satisfied that no other individual is available, capable, and willing to file this petition on behalf of the Ward.

10. Petitioner requests that the Public Guardianship Office for the (CIRCUIT NUMBER) Judicial Circuit be appointed as guardian of the Ward. The Ward lacks the ability to consent to such appointment.

11. Venue of this proceeding is in [XXXX] County, Florida because the Ward is a resident of [XXXX] County, Florida.

12. In light of the insufficient funds of the Ward, Petitioner requests that bond and auditing fees be waived.

**WHEREFORE**, Petitioner requests that the Public Guardianship Office for the (CIRCUIT NUMBER) Judicial Circuit be appointed as plenary guardian of the person of [XXXXXX], and that the educational requirements, bond and auditing fee be waived.

**Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.**

Executed this \_\_\_ day of \_\_\_\_\_, (MONTH, YEAR).

\_\_\_\_\_  
**Hospital Administrator, Petitioner**

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

Signed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, (YEAR), by \_\_\_\_\_, who presented \_\_\_\_\_ as identification.

(seal)

\_\_\_\_\_  
Notary- State of Florida at Large

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of this Petition for Appointment of Plenary Guardian of the Person was served upon the following persons at the addresses shown, by U.S. Mail, this \_\_\_ day of (MONTH, YEAR):

(WARD’S NAME)  
(FACILITY NAME AND  
MAILING ADDRESS)

Public Guardianship Office for the  
(CIRCUIT NUMBER) Judicial Circuit  
(MAILING ADDRESS OF THE LOCAL  
PUBLIC GUARDIANSHIP OFFICE).

(NAME OF LAW OFFICE)

By: \_\_\_\_\_  
**ATTORNEY NAME, FLORIDA BAR NUMBER AND  
CONTACT INFORMATION)**

