

EXPEDITED LIMITED HEALTHCARE FIDUCIARY § 34-1-133

SUBSECTION A:

1) IF RESPONDENT IS HOSPITALIZED (*statute refers to definition in another statute*)

AND PETITION FILED BY PERSON INTERESTED IN PERSON'S WELFARE

2) IMMEDIATELY COURT MUST:

- appoint attorney ad litem

3) IF COURT FINDS:

1) NO OTHER OPTION: NO OTHER PERSON appears to have authority to act, is willing to act, or is acting in best interests of respondent in the circumstances
this includes: acting as agent for healthcare, DPOAHC, living will

NOTE: Court CAN vary time limits in statutes for guardianships/conservatorships for hearings in order to expedite this appointment

NOTE: Court CANNOT vary requirements necessary to determine need of the fiduciary

4) THEN COURT CAN:

1) Appoint an expedited limited healthcare fiduciary

TIME LIMIT: authority may not exceed sixty (60) days

POWER LIMIT: authority is for the limited purpose of

- consenting to discharge, transfer, and admission and

- consenting to any financial arrangements or medical care necessary to affect such discharge, transfer or admission to another healthcare facility

5) HEARING MUST BE HELD WITHIN FIVE DAYS OF APPOINTMENT (SUBSECTION B)

- to determine appropriateness of appointment

TIME LIMITS ARE MANDATORY - FAILURE TO COMPLY VOIDS THE APPOINTMENT & REMOVES ALL POWERS GRANTED (SUBSECTION E)

THIS APPOINTMENT IS NOT A DETERMINATION OF INCAPACITY (SUBSECTION C)

EXPEDITED LIMITED HEALTHCARE FIDUCIARY CAN BE REMOVED BY COURT ANY TIME (SUBSECTION D)

§ 34-1-133

(a) If the respondent is under hospitalization in a hospital as those terms are defined in TCA title 68, chapter 11, part 2, and no other person, including an agent acting under the Healthcare Decision Act TCA title 68, chapter 11, part 8, a person acting under the Durable Powers of Attorney for Healthcare Act title 34, chapter 6, part 2 or a living will under TCA title 32, chapter 11, Part 1 appears to have the authority and willingness to act and is acting in the best interest of the respondent, the court on petition of a person interested in the respondent's welfare may appoint an expedited limited healthcare fiduciary whose authority is for the limited purpose of consenting to discharge, transfer, and admission and consenting to any financial arrangements or medical care necessary to affect such discharge, transfer or admission to another healthcare facility and whose authority may not exceed sixty (60) days. Immediately upon the receipt of the petition for an expedited limited healthcare fiduciary, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. In expediting the appointment of an expedited limited healthcare fiduciary, the court may vary the time periods for hearings including but not limited to the minimum number of days before a hearing under TCA § 34-1-108 or the number of days before appointment of a guardian ad litem under TCA § 34-1-107 or other time periods, but shall not vary requirements as necessary to determine the respondent is in need of a fiduciary.

(b) The court shall hold a hearing on the appropriateness of the appointment within five (5) days of the appointment.

(c) Appointment of an expedited limited healthcare fiduciary is not a determination of the respondent's incapacity.

(d) The court may remove an expedited limited healthcare fiduciary at any time.

(e) The time periods set forth in this section are mandatory and not directory. Failure to comply with those provisions shall void any expedited appointment and remove the authority previously granted to the expedited limited healthcare fiduciary.

EMERGENCY TEMPORARY CONSERVATOR/GUARDIAN § 34-1-132

SUBSECTION A:

- 1) PETITION FILED BY PERSON INTERESTED IN PERSON'S WELFARE
- 2) IMMEDIATELY COURT MUST:
 - appoint attorney ad litem
- 3) NOTICE MUST BE GIVEN OF TIME/PLACE OF HEARING
 - to respondent
 - to any other person the court directs

EXCEPTION TO NOTICE REQUIREMENT SUBSECTION B:

IF:

- 1) petition is sworn AND
- 2) court finds that respondent will be substantially harmed before a hearing on the appointment can be held

THEN:

- 1) court may appoint emergency guardian/conservator
- 2) does not have to give notice to respondent or attorney ad litem

BUT:

If court does appoint one without notice:

- 1) WITHIN 48 HOURS of appointment: Respondent must be given notice
- 2) WITHIN 5 DAYS of appointment: Hearing must be held on appropriateness of the appointment

TIME LIMITS ARE MANDATORY - FAILURE TO COMPLY VOIDS THE APPOINTMENT & REMOVES ALL POWERS GRANTED
(SUBSECTION E)

4) AT HEARING, IF COURT FINDS:

- 1) SUBSTANTIAL HARM: compliance with procedures of normal conservatorship will **LIKELY** result in **SUBSTANTIAL** harm to respondent's health, safety, or welfare
- 2) NO OTHER OPTION: NO OTHER PERSON appears to have authority to act, is willing to act, or is acting in best interests of respondent in the circumstances
this includes: acting as agent for healthcare, DPOAHC, living will

5) THEN COURT CAN:

- 1) Appoint an emergency guardian or conservator
TIME LIMIT: authority may not exceed sixty (60) days
POWER LIMIT: only the powers specified in the order.

THIS APPOINTMENT IS NOT A DETERMINATION OF INCAPACITY (SUBSECTION C)
TEMPORARY GUARDIAN/CONSERVATOR CAN BE REMOVED BY COURT AT ANY TIME (SUBSECTION D)
COURT MAY APPOINT GUARDIAN AD LITEM TO INVESTIGATE CIRCUMSTANCES (SUBSECTION D)
IN ALL OTHER RESPECTS, CONSERVATOR/GUARDIAN STATUTES APPLY TO TEMPORARY G/C

§ 34-1-132

(a) If the court finds that compliance with the procedures of this title will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person, including an agent acting under the Health Care Decision Act compiled in title 68, chapter 11, part 18, or a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title or a living will pursuant to title 32, chapter 11, appears to have authority to act, willingness to act, and is acting in the best interests of the respondent in the circumstances, then the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian or conservator whose authority may not exceed sixty (60) days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship or conservatorship, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition shall be given to the respondent and any other person as the court directs.

(b) An emergency guardian or conservator may be appointed without notice to the respondent and the attorney ad litem only if the court finds upon a sworn petition that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian or conservator without notice to the respondent, the respondent shall be given notice of the appointment within forty-eight (48) hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment.

(c) Appointment of an emergency guardian or conservator, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian or conservator at any time. The court may appoint a guardian ad litem to investigate the circumstances. An emergency guardian or conservator shall make any report the court requires. In other respects, the provisions of this title concerning guardians or conservators apply to an emergency guardian or conservator.

(e) The time periods set forth above in this section are mandatory and not directory. Failure to comply with those provisions shall void any emergency appointment and remove the authority previously granted to an emergency fiduciary.