

Narrative of an Emergency Guardianship Case for an Adult under the CUGPPA

A 17-year-old diagnosed with intellectual developmental disabilities begins to experience suicidal ideations and behaviors in moments of crisis that put him at risk. The teenager's parents see an increase in these behaviors as the teenager confronts significant life changes including graduating high school. These behaviors include poor executive functioning in moments of crisis or upset, including leaving home without a cell phone, wallet, or jacket in winter months and requiring intervention for frost bite upon being located. Several months before turning 18, the teenager attempts suicide and receives inpatient treatment at a mental health facility for children. As the teenager is a minor, the parents are able to promptly provide medical history including current diagnosis and prescription medications. The parents are also able to participate in available inpatient and outpatient interventions and supports, and any recommended changes in prescription medications or therapies.

Six months later when the teenager turns 18 (an adult under Colorado law), the parents begin to confront impediments to supporting the teenager including assisting in the management of his prescriptions or recommended medication changes, facilitating follow up care or treatment, and general oversight of his health, safety, and welfare with his providers. The parents retain legal counsel to advise them on pursuing guardianship. The parents are advised that because the teenager is legally an adult at 18 years of age, the petition for appointment of a guardian for an adult will need to be supported by current medical evidence documenting the teenagers needs and limitations and the support needed for the teenager's health, safety, and welfare.

The parents discuss guardianship with their teenager who is unopposed to the appointment of a guardian. However, the parents wait to file a petition until they receive the written results from the Support Intensity Scale Assessment¹ which will include details about the areas where the teenager needs support based on his current needs and limitations. The parents have prior medical evidence of the teenager's diagnosis but is a result of neurological testing done by the family at their own expense to address the teenager's struggles in school several years before the teenager turned 18.

The parents are also advised that a current basis for an emergency appointment does not exist as the teenager is living at home, going to work several days a week, and generally receiving appropriate medical treatment and supportive services. In sum, the teenager is currently stable so an emergency appointment is not appropriate despite concerns that the teenager's continuity of care requires parental support.

¹ The Support Intensity Scan Assessment is conducted to determine the level of reimbursement available under the HCBS- Development Disabilities waiver.

The Support Intensity Scale Assessment is not issued for six months after the assessment date. Several days after receiving the Assessment, but before the petition for appointment of guardian can be filed, the teenager leaves work, tells a co-worker that the teenager intends to commit suicide, the teenager turns off the teenager's cell phone, and cannot be located.

Family and friends drive around the community for hours attempting to locate the teenager. The teenager is eventually located in a vehicle on a bridge over a large ravine. Upon being approached, the teenager leaves the vehicle and stands near the edge of the ravine. Multiple law enforcement officers and a hostage negotiator spend several hours negotiating with the teenager before convincing the teenager to voluntarily receive medical treatment. The teenager is placed in an ambulance, but the parents are not allowed to accompany the teenager to the hospital. The parents are unable to receive or provide information to the hospital upon the teenager's admission. The teenager is then moved from the hospital to an adult inpatient mental health facility several counties away from the county of the teenager's residence without notification or consent of the teenager's parents. The parents immediately notify legal counsel of the change in circumstances. Legal counsel immediately prepares the additional documents and information required for an emergency appointment of a guardian for adult.

The teenager, due to his disability, cannot communicate the teenager's own medical history, diagnosis, or prescriptions. The teenager is being treated in a new facility, by new providers, without coordination or sharing of information. The parents fear that the teenager may be discharged from the facility in an unknown community without notice to either of them. The parents also fear that they will be unable to coordinate or facilitate outpatient services, medication changes or compliance, or other supports without direct information from the inpatient facility as the teenager is unable to accurately understand or independently report such information.

This is of particular concern to the parents because the teenager can present as neurotypical even though the teenager has an intellectual developmental disability that may result in behaviors that if misunderstood may be construed as inappropriate or threatening. This increases the risk of likely harm to the teenager if discharged into an unfamiliar community with no support.

The petition for appointment of emergency guardian and permanent guardian are filed in the county where the respondent resides while the teenager is receiving inpatient treatment. Within one business day, the court reviews the petition and authorizes the petitioner to set an emergency hearing. The emergency hearing is set for 6 days after the petition was filed. The teenager is personally served with the petition and notice of the hearing four days before the hearing is set to occur. The parents are able to speak to the petitioner and explain the petition to the teenager. The teenager again confirms that the teenager does not object to the appointment of a guardian.

The teenager cannot attend the hearing as the teenager is still receiving inpatient mental health treatment. The parents appear at the hearing. Before the hearing there are third parties in the courtroom waiting to appear for unrelated matters. The petitioner requests that the hearing be closed to protect their, and their teenager's right to privacy, including testimony related to the teenager's specific behaviors and diagnosis, including explicit behaviors, which endanger the teenager's health, safety, and welfare and require support. The court finds good cause to close the proceeding.

The court, after 30 minutes of testimony, appoints the parents as co-emergency guardians for the teenager and offers the family additional information about community resources to support their teenager and the family. The co-emergency guardians immediately provide the inpatient facility with their letters of emergency guardianship. The letters authorize them to speak to the inpatient facility regarding the teenager's protected health care information and to ensure that the teenager is not discharged without notice. The teenager is personally served with the order appointing emergency guardian within 48 hours of the appointment because the teenager was not present at the hearing.

As the respondent was not present at the hearing, the court appoints counsel for the teenager three business days after the hearing. Court appointed counsel will receive state pay as the teenager has no assets and de minimis income. Court appointed counsel contacts counsel for the petitioner 10 days after counsel' appointment to coordinate meeting with the teenager.

The court set a hearing on the petitions for appointment of permanent guardianship and conservatorship to occur 59 days later (one day before the emergency appointment expires).

Analysis

If SB 24-136 is enacted, the emergency guardianship proceedings recounted in the above narrative would have been affected as follows:

1. **Venue.** The petition for emergency appointment could not have been filed in the teenager's county of residence. The petition would have had to have been filed in the county where the teenager was present, specifically, the county where the teenager was receiving inpatient treatment.
 - a. In this care, the teenager's parents were at least able to find out where their teenager had been transferred for inpatient treatment. However, in other instances, a friend or family member may be unable to determine where their loved one is present, or their loved one may be moved without their knowledge to another facility before a petition can be filed with the court.

health, safety, and welfare. Under SB 24-136, the court would have had to have found the following to make the same appointments within the same period of time:

- a. Appointment of an emergency guardian is likely to *prevent* substantial harm to the teenager’s physical health, safety, and welfare; *and*
- b. The teenager’s physical health, safety, or welfare *will be* substantially harmed before a hearing with (14 day notice to the teenager and teenager’s counsel) can be held.
 - i. It is unclear whether a court would find that the risks to the teenager in the above case, specifically that the teenager would be discharge from an inpatient mental health facility in an unknown community without notice to his parents with whom he resides, were legally sufficient to demonstrate that the teenager’s “physical health, safety, or welfare *will be* substantially harmed”. Specifically, while the risk the parents and the teenager in the above case faced were very real and terrifying, whether substantial harm would, in fact, come to the teenager could not have been proven.

Comparison of Current Colorado Law and SB 24-136 for Emergency Guardianships for Adults

Initial Petition for Emergency Guardianship		
<p>CUGPAA</p> <p>For an emergency proceeding the Petitioner completes and files the following Judicial Department Forms (JDF Forms) and related documents in the county where the respondent resides, has been admitted to an institution by order of a court of competent jurisdiction or is present:</p> <ul style="list-style-type: none"> • JDF 705 Probate Case Information Sheet • JDF 805 Acceptance of Office • JDF 841 Petition for Appointment of Guardian for Adult 	<p>SB 24-136</p> <p>For an emergency proceeding, the Petitioner completes and files similar forms each of which would need to be amended by the Judicial Department to conform to SB 24-136.</p> <p>Key Differences</p> <p>§ 15-14.7-106(c) only allows the petitioner to file in the county where the respondent is currently present. This may not be the county where the respondent resides which is the proper venue for a permanent guardian.</p> <p>§§ 15-14.7-117 and 15-14.7-118</p>	<p>Fees, Costs, and Timing</p> <p>Under CUGPAA, the Petitioner incurs the fees and costs to initiate the proceedings for the protection of the respondent. Pursuant to C.R.S. § 15-10-602 the petitioner may request reasonable reimbursement from the respondent’s estate for the expenses incurred that the court determines were beneficial to the respondent but the fees and costs may also be assessed against the Petitioner if the proceedings were prosecuted or defended in bad-faith.</p> <p>SB 24-136 incorporates some of the concepts from Colorado Compensation and Cost</p>

<ul style="list-style-type: none">• JDF 849 Letters of Guardianship – Adult• JDF 843 Order Appointing Emergency Guardian – Adult• JDF 848 Order Appointing Guardian for Adult• CAPS Check Written Authorization Form• Legible Copy of Driver’s License• Colorado Bureau of Investigation Criminal History Record Check• Current Credit Report• Physician’s Letter <p>Note: § 15-14-110 requires that the nominee for appointment to serve as guardian file their acceptance of office and all background check information prior to a hearing on the appointment.</p>	<p>do not require that a nominee for appointment of guardian or conservator submit to the personal jurisdiction of the court prior to appointment. Also, the disclosure requirements are less robust and disclosure of the nominee’s background information need not occur prior to appointment, only after acceptance of appointment.</p> <p>Specifically, SB 24-136 only requires disclosure of bankruptcy, insolvency, or receivership proceeding or convictions. It does not require a criminal background check or credit report to be filed with the court to support those disclosures.</p> <p>Additionally, current Colorado law expressly requires the court to review the information and reports disclosed to determine if the nominee is appropriate for the office and grants the court the authority to require additional background information to determine fitness for office including fingerprint-based criminal history check.</p>	<p>Recovery Act but does not include the process, procedure or standards for fee hearings or disputes. It also does not allow court-appointed counsel to be paid without prior court-approval. This will have a chilling affect on a respondent’s right to counsel or the willingness of attorneys to serve as court-appointed counsel.</p> <p>Under current Colorado law, counsel for a respondent can be paid without court-approval, however, the reasonableness of compensation paid is subject to court review and the objection of interested person. The court may find the compensation unreasonable and order disgorgement.</p> <p>Initial Filing Fee: \$199.50 One Prepaid Certified Letter: \$21.50 Reasonable Attorney Fees if attorney is retained: \$2,500 - \$10,000</p> <p>Note: SB 24-136 applies some portions of the Compensation and Cost Recovery Act but not all of its provisions. Additionally, the current conforming amendments to § 15-10-601 <i>et. seq.</i> are inaccurate or incomplete.</p> <p>SB 24-136</p> <p>The change in venue for the proceeding will likely cause</p>
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<p>Setting a Hearing, Notice, Basis for Appointment for Emergency Guardian and Court Appointed Counsel</p> <p>CUGPAA</p> <p>The court reviews the Petition and determines whether the basis for an emergency appointment exists, specifically, that compliance with the procedural requirements for a permanent appointment will likely result in substantial harm to the respondent’s health, safety, or welfare.</p> <p>The court contacts the petitioner and provides available dates and times for a hearing. Emergency hearings are often set within 2 to 5 business days based on the court’s availability.</p> <p>As soon as a date and time for the hearing is set, the petitioner</p>	<p>SB 24-136</p> <p>§ 15-14.7-312 unlike the CUGPAA, allows the court to appoint an emergency guardian on its own motion after reviewing a petition for appointment of a guardian where no emergency appointment is requested. It also allows the court to find that the appointment is appropriate based on affidavit or testimony. It is unclear whether this change allows a court to appoint an emergency guardian without a hearing.</p> <p>§ 15-14.7-312 also changes the standard for appointment of an emergency guardian by requiring the court to find that appointment of an emergency</p>	<p>Fees, Costs and Timing</p> <p>CUGPAA</p> <p>Costs of mailing notice to interested persons \$5.00-\$35.00 Costs of personal expedited service on respondent \$150-\$225</p> <p>SB24-136</p> <p>Costs of mailing notice to interested persons \$5.00-\$35.00 Costs of personal expedited services on respondent \$150-\$225</p> <p>Reasonable Fees of Court-Appointed Counsel before basis for emergency appointment is established or appointment granted (\$1,500-\$5,000)</p>

<p>must notice interested persons and personally serve the respondent with the petition and notice of hearing. Usually, this requires expedited service of process on the respondent.</p> <p>The court can proceed without notice to the respondent or the respondent's presence at the hearing but only if it finds that the respondent will be substantially harmed if the appointment is delayed.</p> <p><i>See § 15-14-312</i></p>	<p>guardian is likely to <i>prevent</i> substantial harm to the adult's <i>physical</i> health, safety, or welfare.</p> <p>It is unclear how this statutory change in standards may affect a court's ability to intervene to protect a vulnerable individual from substantial harm to their mental, emotional, or social health, safety, or welfare. It should be noted SB 24-136 also changes the standard for appointment of a permanent guardian to require evidence that the respondent lack the ability to meet essentially requirements for <i>physical health, safety, or self-care</i>.</p> <p>Note: It is unclear why the basis for emergency appointment and the basis for permanent appointment of a guardian differ under SB 24-136. Under current law, the health, safety, and welfare standard are used in the basis for both appointments. If a distinction is intended by the use of the terms "welfare" and "self-care" it should be better clarified to avoid unnecessary appeals or misapplication of the intended law.</p> <p>This change from health, safety and welfare to physical health, safety and welfare may require that a petitioner hire an expert witness to offer testimony on the link between a respondent's</p>	<p>Under current Colorado law, the court must appoint court-appointed counsel for a respondent if it <i>grants</i> an emergency guardianship.</p> <p>Under SB 24-136 appointment of court-appointed counsel is required immediately upon the filing of the petition, regardless of whether the court finds a basis for an emergency appointment and intends to set a hearing on the request.</p> <p>The process of appointing counsel can take several days or weeks due to the availability and willingness of court-appointed counsel to serve, the need to clear conflicts, and then issuance of an order.</p> <p>Then, once the appointment is made, the attorney is obligated to meet with the respondent in order to receive direction from the respondent.</p> <p>If the court waits until court appointed counsel has been identified, appointed, and had an opportunity to meet with the respondent, and then is also available to participate at an emergency hearing, the emergency hearing may practically be delayed for 2-3 weeks.</p> <p>If the court does not wait to hold the emergency hearing until this process is completed,</p>
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	<p>mental, social, and emotional health and physical health to support the appointment of a guardian.</p> <p>SB 24-136 requires the appointment of legal counsel for the respondent immediately upon filing the petition, regardless of whether the court finds that a basis exists for an emergency appoint before or at a hearing.</p>	<p>it is hard to see the benefit to the respondent of incurring the costs of court appointed counsel at this stage in the proceeding.</p> <p>Finally, this process does not allow for the respondent to retain or select their own independent counsel before potentially incurring the unnecessary costs of court-appointed counsel who then would need to withdraw or confer with private counsel, at the expense of the respondent.</p>
<p>Notice of Appointment of Emergency Guardian, Court Visitor, Right to Hearing Appropriateness of Appointment</p> <p>CUGPAA</p> <p>If the court grants the appointment of an emergency guardian without the respondent's being present at the hearing (even if the respondent had notice of the hearing), Colorado law requires that the respondent be personally served with the order of appointment within 48 hours.</p> <p>If the emergency guardian is professional without priority to serve as guardian or adult protective services, and the respondent did not have notice of the hearing, then the court must appoint a court visitor to</p>	<p>SB 24-136</p> <p>Requires that the court appoint counsel prior to determining whether to hold a hearing on a petition for appointment of an emergency guardian or making the appointment.</p> <p>SB 24-136 repeals and does not replace the protections offered in CRS §§ 15-14-113.5, 15-14-312(4) and 15-14-412. <i>See SB 20-129.</i></p> <p>SB 24-136 requires that if the respondent and respondent's counsel are not given reasonable notice (presumably 14 days prior to the hearing</p>	<p>Fees, Costs and Timing</p> <p>CUGPAA</p> <p>Costs of mailing notice to interested persons \$5.00-\$35.00 Costs of personal expedited services on respondent \$150-\$225 If professional or APS appointed without notice, emergency court visitor appointment and report costs \$500-\$1,500. Court appointed counsel if emergency appointment is granted \$2,000 to TBD</p> <p>SB 24-136</p>

<p>investigate and complete a report within 14 days of the order appointing the emergency guardian. This additional requirement was added in 2020 by SB 20-129 to serve as an added protection to respondents by requiring a court visitor to interview the respondent early and to identify whether the respondent has other individuals in their lives that should be notified of the proceedings such as a neighbor, non-biological family member, or other member of the respondent's supportive community. SB 24-136 deletes this protection and does not replace it.</p> <p>Current Colorado law requires that the court appoint counsel for the respondent if an emergency guardian is appointed.</p>	<p>pursuant to § 15-14.7-113) of the emergency hearing, then the court <u>must</u> hold another hearing 5 days after the appointment of the emergency guardian to determine the appropriateness of the appointment.</p> <p>SB 24-136 does not make an exception for the required hearing even if the respondent and/or the respondent's counsel were present at the emergency hearing. SB 24-136 mandates that the hearing must occur within 5 days regardless of whether the respondent or respondent's counsel requests the hearing, or are available to participate in the hearing.</p>	<p>Required rehearing within 5 days of emergency appointment to determine appropriateness of appointment if respondent and respondent counsel did not receive reasonable notice of hearing plus personal service of notice of appointment <i>even if the respondent and/or counsel were present at the hearing.</i></p> <p>Attorney fees and costs for Petitioner: \$500-\$2,000 Court-appointed Counsel: \$500-\$2,000 Costs of personal expedited services on respondent \$150-\$225</p>
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