

The purpose of the FAQ is to encourage uniformity of practice under the new law. The answers to frequently asked questions do not constitute legal advice and are for procedural guidance only.

Frequently Asked Questions (FAQs)

Notice of Intent to Admit to a Nursing Facility for Short Term Services (MPC 829)

GENERAL QUESTIONS

Q: What section of the Code authorizes short term admission to a nursing facility without prior Court authorization?

A: Section 5-309(g) of G. L. c. 190B, as amended.

Q: What is the effective date of this amendment?

A: July 8, 2012.

Q: Where can I find a copy of the law?

A: The amendment to section 5-309(g) of G. L. c. 190B can be found in Chapter 140 of the Acts of 2012 and is available on the Probate and Family Court website and at: <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/index.html>

Q: Can a Massachusetts guardian appointed by the Court before July 8, 2012 use this new procedure?

A: Yes. The law applies to all Massachusetts court appointed guardians regardless of the date of appointment.

Q: What is the fee to file MPC 829 with the Court?

A: There is no fee to file form MPC 829 with the Court.

Q: Can a temporary guardian file form MPC 829?

Yes. A temporary or permanent Massachusetts court appointed guardian, whose appointment has not terminated, may file form MPC 829.

Q: Does a guardian file form MPC 829 in the Division where the nursing facility is located?

A: No. Form MPC 829 must be filed in the Division where the guardian was appointed regardless of where the nursing facility is located.

Q: Does the Court issue a notice or a decree/order on form MPC 829?

A: No. The guardian is responsible for providing the notice and no decree/order issues from the Court.

Q: What notice, if any, is required for form MPC 829?

A: On or before the date of admission, a copy of the completed and signed *Notice of Intent to Admit to a Nursing Facility for Short Term Services (MPC 829)* form must be served by the guardian on the incapacitated person, in-hand, and a signed copy provided to the named nursing facility, in-hand, by fax, or by email. If counsel is already appointed, the guardian must also provide a signed copy either in-hand or by fax to counsel. See Rule 3 of the Supplemental Rules of the Probate and Family Court for a guardian's duty to provide notice to counsel.

Q: Can the guardian email counsel a signed copy of form MPC 829?

A: No. The guardian may only provide the nursing facility with a signed copy of form MPC 829 by email.

Q: Is the guardian required to file a certificate of service evidencing the required notice?

A: No. There is no requirement for the guardian to file a certificate of service with the Court. The guardian is making an affirmative statement on form MPC 829, under the penalties of perjury, that he/she has served/provided notice prior to filing the form with the Court. See #5 on form MPC 829. Proof of service is not required to be filed with the Court, but may be requested at any time.

Q: Can a guardian appointed outside of Massachusetts file form MPC 829 to admit an incapacitated person to a nursing facility located in Massachusetts?

A: No. A "foreign guardian" cannot file form MPC 829. Only a Massachusetts court appointed guardian, temporary or permanent, may file this form. A foreign guardian who needs court authority to admit an incapacitated person to a nursing facility must be appointed in Massachusetts by filing a *Petition for Appointment (MPC 120)*.

QUESTIONS RE: APPOINTMENT OF COUNSEL

Q: What is the Court procedure to appoint counsel in these matters, if not already appointed?

A: The Court is required to appoint counsel "forthwith" (i.e., immediately) if counsel has not already been appointed. Other than the statutory requirement to appoint counsel "forthwith", there is no change in the procedure as to *how* counsel is appointed. See SJC Rule 1:07, *Order Appointing Counsel* (MPC 601) & *Statement of Appointment*.

Q: Counsel was previously appointed in the case but no longer represents the incapacitated person because counsel's appointment terminated upon the entry of the decree. Should the previously appointed attorney now be re-appointed?

A: Yes, the previously appointed attorney should be re-appointed, if available. The Statement of Appointment form must reflect the specific reason for the non-successive appointment. For example, the fact that the "appointee has represented this defendant/party on prior occasions" is an appropriate reason.

Q: Who is responsible for providing notice of form MPC 829 to counsel when counsel is appointed by the Court *after* the form is filed?

A: The guardian is responsible for providing a copy of form MPC 829 to counsel, once appointed, either in-hand or by fax. The Court should also send a copy of form MPC 829 to counsel with the Order Appointing Counsel.

QUESTIONS RE: POST FILING ISSUES

Q: What form should counsel for the incapacitated person file if the incapacitated person objects after form MPC 829 was filed with the Court?

A: As legal representative, counsel for the incapacitated person should file a *General Probate Petition* (MPC 200) to request judicial intervention on behalf of the incapacitated person.

Q: Who are the interested persons with the right to object to a short term admission under section 5-309(g)?

A: For purposes of objecting to the short term admission to a nursing facility under section 5-309(g), interested persons are considered by the Court to be the same persons entitled to notice in an initial proceeding as identified in § 5-304 of G. L. c. 190B.

Q: What form should the guardian file IF after filing form MPC 829 with the Court the admission in the nursing facility is expected to go beyond the sixty (60) day period?

A: A permanent guardian must file a *Petition to Expand the Guardian's Authority (MPC 220)* for authority to authorize admission to the nursing facility beyond the sixty (60) day period. A temporary guardian must file a motion to amend the guardianship petition along with a motion to expand his or her authority as temporary guardian.

Q: What form should the nursing facility file if the guardian hasn't filed a Petition to Expand his/her Authority to extend admission beyond the sixty (60) day period?

A: The nursing facility must file a *Petition to Expand the Guardian's Authority (MPC 220)* on behalf of the guardian. A motion to intervene is not required.

Q: What form should counsel for the incapacitated person file if the guardian and/or attorney for the nursing facility do not file a Petition to Expand Authority to extend the admission beyond the sixty (60) day period?

A: As legal representative for the incapacitated person, counsel should file the appropriate pleading(s) to bring this to the Court's attention.