

Guardianships for Developmentally Disabled Individuals

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Michigan's Mental Health Code provides for the appointment of a plenary guardian of an individual if found by clear and convincing evidence that he/she is developmentally disabled and totally without capacity to care for himself or herself or his/her estate. The Mental Health Code provides for the appointment of a partial guardian if found by clear and convincing evidence that he/she is developmentally disabled and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or his/her estate. A developmental disability is defined as either of the following (MCL 330.110a(25)):

1. An individual older than 5 years with a severe, chronic condition that meets all of the following:
 - a. Attributable to a mental or physical impairment or combination of physical and mental impairments.
 - b. Is manifest before the individual of 22 years of age.
 - c. Is likely to continue indefinitely.
 - d. Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - i. Self-care
 - ii. Receptive and expressive language
 - iii. Learning
 - iv. Mobility
 - v. Self-direction
 - vi. Capacity for independent living
 - vii. Economic self-sufficiency
 - e. Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

2. An individual from birth to age 5, with a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in development disability as defined in (1.) if services are not provided.

What are the purposes of guardianship?

The guardianships for individuals with developmental disabilities shall be:

- 1 Utilized only as is necessary to promote and protect the well being of the individual, including protection from neglect, exploitation and abuse;
- 2 Designed to encourage the development of maximum self-reliance and independence in the individual; and
- 3 Ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. If the Court determines that some form of guardianship is necessary, partial guardianship shall be the preferred form of guardianship for an individual with a developmental disability.

Who may petition for appointment of a guardian?

A petition for appointment of a guardian for an individual who has been allegedly diagnosed as developmentally disabled may be filed by any interested person or entity, or by the individual. Use Petition for Appointment of Guardian, Individual with Alleged Developmental Disability ([PC658](#)) and follow the instructions on page three.

In addition to the petition, Report to Accompany Petition to Appoint, Modify or Discharge Guardian of Individual with Developmental Disability ([PC659](#)) must also be filed. If it is not filed, the Court will order appropriate evaluations to be performed.

The proposed guardian must sign an Acceptance of Appointment ([PC571](#)) agreeing to be appointed guardian for the alleged developmentally disabled individual.

It is a good idea to nominate a standby guardian at the time of filing the petition. The Court can make a determination during the hearing and appoint the standby guardian, who would then also file an Acceptance of Appointment ([PC571](#)). In case of emergency and the guardian is unable to act, the standby guardian is then in place to make important decisions concerning the ward.

Who may be appointed guardian?

The Court may appoint as guardian for an individual with a developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with a developmental disability. The Court shall not appoint the Department of Mental Health as guardian or any other agency, public or private, that is directly providing services to the individual with developmental disability unless no other suitable individual or agency can be found.

Before the appointment, the Court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed as guardian, and any preference indicated shall be given due consideration.

The guardianship process

Upon receipt of the filing, the court will appoint an attorney to represent the alleged developmentally disabled individual and schedule a hearing within 30 days from the date of filing the petition. As petitioner, you must give notice to the interested persons -generally the individual (personally), and parents and siblings, but may include others -at least 14 days before the hearing if served by mail or at least 7 days before the hearing if hand-delivered. The court will provide enough copies to serve everyone. After service is complete, complete the Proof of Service ([PC564](#)) and file it with the court before the hearing. THE HEARING CANNOT BE HELD IF THE PROOF OF SERVICE IS NOT FILED.

Northern Lakes Community Mental Health generally provides input and evaluations to determine the need for guardianship services for an adult alleged to be developmentally disabled. Often, the family has had some contact with Community Mental Health and the need for the appointment of a guardian becomes known when the individual nears the age of 18. Community Mental Health then arranges for and/or conducts the required evaluations and makes recommendations to the court. Their offices are located at 105 Hall St., Traverse City, Michigan, and the telephone number is (231) 922-4850.

An individual with an alleged developmental disability in guardianship proceedings has the right to:

- 1 A jury trial;
- 2 Present evidence and to confront and cross-examine witnesses;
- 3 A closed hearing;
- 4 To be present at all proceedings; and
- 5 To secure an independent evaluation at his/her own expense, or at the expense of the state if the alleged individual with developmental disability is indigent.

A Notice of Right to Request Dismissal of Guardian or Modification of Guardianship Order form PC661 is served on the ward, usually by the attorney. This notice informs the ward about his/her rights regarding future requests for modifications or the dismissal of the guardianship.

If the Court, after a full hearing and testimony, grants the guardianship, the new guardian must then go to the Probate Court office where the petition was filed and pick up their copy of the Order Appointing Guardian and a certified copy of the Letters of Guardianship. These papers prove that a guardian has been appointed and that he/she has the authority to act. There is a \$12.00 fee for each additional certified copy of the Letters of Guardianship, if needed.

A guardian appointed by the Court shall not have the power, unless specified by Court order, to place an individual with developmental disability in a facility.

What is the guardian's responsibility after appointment?

As a guardian, you must file a report every year using Report of Guardian on Condition of Individual with Developmental Disability ([PC663](#)). Also, if the individual's address changes, you must notify the court within 14 days of the change. If your address changes, you must notify the court and any interested parties in writing within 7 days of the change.

If you are appointed guardian of the estate you are also responsible for filing financial reports. An Inventory of the assets ([PC674](#)), must be filed within 56 days of your appointment. Also, an Account of Fiduciary ([PC584](#)), must be filed annually with the Court.

As a service, the Leelanau County Probate Court sends reminder notices and required forms to the guardian each year near the anniversary date. The guardian must complete, date and sign the form, and file it with the probate court, along with a Proof of Service ([PC564](#)) showing service on all interested persons. The filing may be made in person or mailed to the court office.

If the Annual Report is not filed within 56 days of the anniversary date, the court will send a Notice of Deficiency. Further delinquency may result in a "show cause" hearing for the guardian to appear in court and explain why the form was not timely filed.

When may a guardian be discharged or have his/her duties modified?

The ward or any interested person who wishes to terminate or modify the guardianship may file a Petition to Terminate/Modify ([PC677](#)). A request made by the individual with developmental disability may be communicated to the court by any means, including oral communication or an informal letter. Upon receiving this communication, the court shall appoint an attorney to prepare and file a petition reflecting the communication. Upon receipt of this petition, the court shall conduct a hearing.