

# **GUARDIANSHIP OF AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY**

**Oakland County Probate Court**

**and**

**Honorable Jennifer Callaghan**

**Honorable Linda S. Hallmark**

**Honorable Daniel A. O'Brien**

**Honorable Kathleen A. Ryan**

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**A series of brochures presented to you by the Oakland County Probate Court**

## **WHAT IS A DEVELOPMENTAL DISABILITY**

**MCL 330.1100a(20)**

For individuals over five years old, it is a severe chronic condition that meets all of the following requirements:

- Attributable to a mental or physical impairment or a combination of mental and physical impairments
- Manifested before the individual is 22 years old
- Likely to continue indefinitely
- Results in substantial functional limitations in 3 or more of the following areas of major life activity:
  - Self-care
  - Receptive and expressive language
  - Learning
  - Mobility
  - Self-direction
  - Capacity for independent living
  - Economic self-sufficiency
- 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

For children up to age five, it is a substantial developmental delay or specific congenital or acquired condition with a high probability of resulting in developmental disability, as defined above, if services are not provided.

## **PURPOSE OF A GUARDIANSHIP**

**MCL 330.1602**

A guardianship establishes a relationship between the guardian and the developmentally disabled ward similar to that of a parent and child, with duties and responsibilities of the ward as determined by the Probate Court.

A guardianship for an individual with a developmental disability shall:

- Be utilized only as is necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation and abuse
- Take into account the individual's abilities
- Be designed to encourage the development of maximum self-reliance and independence in the individual
- Be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations

## **WHO MAY PETITION FOR APPOINTMENT OF A GUARDIAN?**

**MCR 330.1600(c)  
and 330.1609(1)**

- The individual with a developmental disability
- An adult relative or friend of the individual
- An official or representative of a public or private agency, corporation or association concerned with the individual's welfare
- Any other person found suitable by the Court

The alleged individual with developmental disability is also referred to as a "respondent" during these proceedings and a "ward" if a guardian is appointed.

## **WHO MAY BE APPOINTED GUARDIAN?**

**MCL 330.1628**

The Court will generally appoint a competent family member. Parents are frequently guardians. However, the Court may appoint any suitable person or agency, public or private, including a private association capable of conducting an active guardianship program.

The Court will not appoint a governmental entity or agency (public or private) that is directly providing services to the individual, unless no other suitable individual or agency can be identified.

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

## **WHAT IS THE DIFFERENCE BETWEEN A "GUARDIAN OF THE PERSON" AND A "GUARDIAN OF THE ESTATE"?**

Generally, the guardian of the person makes personal and physical decisions such as medical or housing decisions. The guardian of the estate makes decisions about the property or finances of

the individual with a developmental disability. A guardian of the person and a guardian of the estate can be the same person or institution, or they may be different. For example, a guardian of the person could be a parent and a guardian of the estate could be an attorney.

### **TYPES OF COURT-APPOINTED GUARDIANS**

A **Plenary Guardian** possesses full legal rights and powers. It is possible to be the Plenary Guardian of the person, or of the estate, or both. **MCL 330.1600(d)**

A **Partial Guardian** possesses fewer than all the legal rights and powers of a Plenary Guardian. These rights, powers and duties are specifically enumerated in the Court's order of appointment. It is possible to be the Partial Guardian of the person, or of the estate, or both. Partial guardianships last no more than five years, at which time a new petition must be filed. **MCL 330.1600(e)**

A **Temporary Guardian** possesses only those powers, rights and duties specifically set forth in the Court's order of appointment. This appointment is made pending the appointment of a Plenary or Partial Guardian when it is necessary for the welfare or protection of the person under emergency circumstances. **MCL 330.1607**

A **Standby Guardian** may be designated by the Court to become effective upon the death, incapacity, or resignation of the initially appointed guardian without any further Court proceeding. The Standby Guardian may also temporarily assume the powers and duties in an emergency situation and in the absence and unavailability of the initially appointed guardian. **MCL 330.1640**

### **YOUR PETITION**

If you believe that an individual is developmentally disabled and requires a guardian, you should file the form *Petition for Appointment of Guardian, Individual with Alleged Developmental Disability* (PC 658) in the county of residence of the individual, or in the county in which the individual was found if a county of residence cannot be determined. **MCL 330.1609**  
**and MCL 330.1600(b)**

This petition shall be accompanied by a report that contains current evaluations (performed in the last year) by a physician or psychologist who by training or experience is competent to consider the respondent's mental, physical, social and educational condition, adaptive behavior, and social skills. **MCL 330.1612**

Your petition will be set for hearing generally within 30 days after these documents are filed in the Probate Court. There is no filing fee. Be aware that you may not file a petition for guardianship of a legally incapacitated person under the Estates & Protected Individuals Code if the person is developmentally disabled. **MCL 330.1604**

## **HEARINGS – NOTICE**

The Notice of Hearing and copies of the Petition must be served on the respondent, the respondent's presumptive heirs, the report preparer, the director of the facility where the respondent is residing, the respondent's Guardian Ad Litem, if appointed, and the respondent's legal counsel.

The proposed ward must personally receive notice no less than seven (7) days before the hearing. Other parties must receive notice either personally seven (7) days before the hearing or by mail fourteen (14) days before the hearing. If the parties have not been served, or if no Proof of Service is presented, the case will be dismissed. **MCL 330.1614(3)**

## **AT THE HEARING**

**MCL 330.1617**

The respondent is entitled to legal counsel. A respondent may demand that a jury decide issues of fact. The Court may also appoint a Guardian Ad Litem if the Court believes that it is in the respondent's best interest, or to assist legal counsel.

The petitioner will be required to testify. The respondent has the right to present evidence and to confront and cross-examine all witnesses. At least one of the persons whose evaluative report was filed with the petition must testify in person. The respondent has a right to an independent evaluation.

The Court must determine whether the person is developmentally disabled by clear and convincing evidence, and the court must determine whether a plenary or partial guardianship is appropriate. The Guardian, if appointed, will be authorized to do only those things that the respondent cannot do. **MCL 330.1618**

## **THE COURT'S ORDER AND LETTERS OF AUTHORITY**

The Court will either issue an order appointing a Plenary Guardian, a Partial Guardian with the duties and powers set forth, or will find that the respondent does not require a guardian.

The Court may add to the order that the guardian is authorized to place the individual in a facility.

Letters of Authority will be issued setting forth the guardian's powers and their duration.

## **EMERGENCIES**

**MCL 330.1607**

If an emergency exists and no guardian has been appointed, you may file the petition for guardianship and state, in addition, why there is a need for the appointment of a temporary guardian. You must have evidence to support the emergency need and convince the Court that the person is developmentally disabled.

If an emergency exists after a guardian has been appointed, but the guardian has not been granted power to take the necessary action, you may file a petition setting forth the need for additional emergency powers and have evidence to support this need.

The Court can then appoint a temporary guardian or temporarily increase the powers of the existing guardian to meet the emergency.

### **RESPONSIBILITY OF THE GUARDIAN**

**MCL 330.1631**

A Plenary Guardian of the person has the following listed duties and responsibilities. A Partial Guardian will have those duties and responsibilities listed on the Letters.

- Custody of the ward and the duty to:
  - Make provisions from the ward's estate for the ward's care, comfort and maintenance
  - Secure training, education, medical and psychologist services, and social and vocational opportunity to assist the ward to develop maximum self-reliance and independence
  - File a report form called *Report of Guardian on Condition of Individual with Developmental Disability* (PC 663)
  
- A Guardian of the Estate shall be considered a "fiduciary" under the Estates & Protected Individuals Code, and must: **MCL 330.1632**
  - File an inventory of the estate with the Court within 56 days of appointment
  - File accounts regarding the status of the estate at least annually

### **GUARDIAN APPOINTMENT BY WILL ("Testamentary")**

**MCL 330.1642**

A surviving parent of a minor with a developmental disability for whom a guardian had not already been appointed may appoint a guardian through a will. A parent who had been appointed guardian of a developmentally disabled minor or adult may also appoint a guardian by a will only if a standby guardian has not been named by the Court.

These appointments of testamentary guardians become immediately effective at the parent's death. Upon assuming the guardianship, notice is to be given to the Probate Court where the initial appointment of the parent was made. Notice should also be given to the Court where the will is to be probated.

The powers and duties of a testamentary guardian may be modified or revoked by the Court. Appropriate forms are obtainable from the court.

### **PROFESSIONAL ASSISTANCE**

Whenever possible you should seek the assistance of an attorney, doctor, psychologist or social worker of your choice. The Court cannot take their places or prepare the papers for you.

Remember that your interest may differ from that of the individual with a developmental disability. The Court is required by law to consider that individual's best interest and not yours. The Court must provide for the ward to care for himself/herself whenever possible and live in the least restrictive environment consistent with his/her capacity to care for himself/herself.

**WHEN MAY A GUARDIANSHIP BE TERMINATED?**

**MCL 330.1644  
and MCL 330.1637**

Anyone, including the individual with a developmental disability, may file a petition to modify or terminate the guardianship or to have a different guardian appointed. If the individual is no longer developmentally disabled or dies, the Court should be notified immediately in order to terminate the guardianship and close the file. Before the guardian can be discharged, a final account must be filed and approved by the Court. The Court must be satisfied that the assets have been properly protected and preserved and the individual or his or her estate has received remaining assets.

**FURTHER QUESTIONS?**

If you have questions after reading this pamphlet, you should call an attorney of your choice. Also, the probate court may be able to assist you if the answers to your questions do not require the giving of legal advice.

**OAKLAND COUNTY PROBATE COURT**

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