



GUARDIANSHIP DEFINITIONS

MICHIGAN MENTAL HEALTH CODE CHAPTER 6

"Plenary guardian" (or Full Guardian) means a guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both. This is the last alternative that should be used, and is the most restrictive; essentially this gives powers to the guardian. The guardian has power to do what is possible to provide all personal and medical needs for the incompetent person or minor. A guardian may sign a person in for psychiatric treatment if they assent. A guardian cannot take away the incompetent person's civil rights, they cannot prevent a person from voting, in the state of Michigan, and they cannot perform sterilization, or ECT, on the incompetent person.

"Partial guardian" (or Limited Guardian) means a guardian who possesses fewer than all of the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specifically enumerated by court order. A guardian who makes only those decisions for the individual that the court allows.

"Standby guardian" means the court may designate 1 or more standby guardians whose appointment shall become effective without further proceedings immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian.

"Temporary guardian" means a guardian may be appointed temporarily whose powers and duties shall be specifically enumerated by court order. This may be before appointing a plenary or partial guardian, pending an appeal or action in relation to the appointment, under emergency circumstances and if necessary for the welfare and protection of an individual.

"Fiduciary" (or Conservator) means when the court appoints a plenary guardian of the estate or a partial guardian with powers or duties respecting real or personal property, that guardian shall be considered a fiduciary for the purposes of the estates and protected individuals code. A conservator is a person appointed by probate court and given power and responsibility for the estate (financial assets and property) of an adult (called a protected individual). If an individual has property such as real estate, large bank accounts, or stock that he or she can no longer manage, it may be appropriate to file a petition for a conservator. See separate instructions on Conservatorship Proceedings.

ALTERNATIVES TO A FULL GUARDIAN:

The individual must plan the following alternatives before he or she becomes mentally incapable of making the decisions:

Health Care Power of Attorney

Also called a patient advocate designation or a durable power of attorney for healthcare. This document enables a person to name an agent (called a patient advocate) to make his or her health care decisions when not capable or not competent to do so. The document may cover any type of health care decision including guidance to the agent about the type and extent of health care desired. It can also include authority to withhold or to withdraw life support services.

Do-Not-resuscitate Order

A do-not-resuscitate order is a document directing the person named in the order not be resuscitated if the patient's spontaneous respiration and circulation stop in a setting outside a nursing home, hospital, or mental health facility owned or operated by the Department of Community Health. The patient must sign the document in the presence of his/her attending physician and two adult witnesses. If the patient is an adherent of a religious denomination or a church whose members depend upon spiritual means through prayer alone for healing, the adult patient may sign a do-not-resuscitate order that meets special statutory requirements and that does not require the signature of an attending physician.

Power of Attorney

A power of attorney is a document signed a competent person giving another person the power to manage some or all of his or her affairs. A notary in the presence of at least one witness must sign the document. A power of attorney is durable if it remains valid even if the maker of the power of attorney later becomes disabled or incapacitated. A durable power of attorney is the means for a mentally competent adult to grant a person (called an agent) authority to act for him/her if incapacity occurs. It usually affects property decision-making but may affect health care decisions. See the Health Care Power of Attorney stated.

Trust

A trust may be a substitute for a conservator and a will. The trust expresses the desires of the maker (called a settlor) about the management of his or her assets during his or her lifetime and when physically or mentally unable to manage the assets. Under a trust, assets are owned by the trust and managed by the trustee for the benefit of the persons to be protected. The trust also names the individuals to whom the assets will go upon the settlor's death. A trustee frequently is the maker of the trust at first and usually names a relative to be the successor.

Joint Ownership

Joint ownership involves certain assets to be held by two or more persons and may entitle any of the owners to have control and management of the assets.

Some of the assets that can be held in joint ownership are real estate, bank accounts, corporate stocks, and mutual funds. A joint owner can apply the funds of an account for the disabled co-owner without court action. This can involve the loss of sole control over the funds by the disabled person and can result in dishonest use of funds by the co-owner.

Protective Order

When only a single transaction affecting the property of a disabled person is required, the Probate court may enter a protective order for this one time matter. At a hearing, the court may authorize, direct, or ratify and contract, trust, or other transaction relating to that person's financial affairs or estate without appointing a conservator or a guardian.

Representative Payee

A representative payee is appointed by a government agency to receive, manage, and spend government benefits for a beneficiary. This is most often done for Social Security benefits. The beneficiary may request a representative payee, but usually the agency requires one when the beneficiary is no longer able to manage benefits. A payee is approved by the agency and there is no court involvement. The representative payee's authority is limited to the government funds for which he or she is the payee.

Special Services for the Aging

Many communities have voluntary services available upon request to help the aging with their financial affairs. Services may include depositing and writing checks, balancing checkbooks, paying bills, preparing insurance claims, preparing tax information and counseling, and applying for public benefits and counseling. The Commission on Aging and the Family Independence Agency provide these services in many communities as well as church organizations. A person capable of asking for or accepting the services must request the services to receive them.

MENTAL HEALTH CODE (EXCERPT) Act 258 of 1974 CHAPTER 6 GUARDIANSHIP FOR THE DEVELOPMENTALLY DISABLED

330.1602 Guardianship; use; design; limitation; partial guardianship. Sec. 602.

(1) Guardianship for individuals with 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; shall take into account the individual's abilities; shall be designed to encourage the development of maximum self-reliance and independence in the individual; and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations.

(2) If the court determines that some form of guardianship is necessary, partial guardianship is the preferred form of guardianship for an individual with a developmental disability.

History: 1974, Act 258, Eff. Aug. 6, 1975; Am. 1978, Act 527, Imd. Eff. Dec. 21, 1978; Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1607 Court as guardian; appointment of temporary guardian; hearing; rights and privileges of respondent. Sec. 607.

(1) A court, upon filing of a petition for guardianship under this chapter and before the appointment of a plenary or partial guardian, or pending an appeal or action in relation to the appointment, under emergency circumstances and if necessary for the welfare or protection of an individual with a developmental disability, may temporarily exercise the powers of a guardian over an individual with a developmental disability, or may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order.

(2) If the court, under subsection (1), exercises the powers of a guardian or appoints a temporary guardian before the appointment of a plenary or partial guardian, a hearing on the petition for guardianship shall be rendered Tuesday, July 5, 2022 Page 1 Michigan Compiled Laws Complete Through PA 119 of 2022 Courtesy of www.legislature.mi.gov held within 14 days, or at a time fixed under section 614, whichever is earlier.

(3) If the court, under subsection (1), exercises the powers of a guardian or appoints a temporary guardian pending an appeal or action in relation to the appointment of a guardian under this chapter, a hearing shall be held within 14 days to determine whether the individual is in need of the services of a guardian for the individual's welfare or protection during the pendency of the appeal or action. If the court determines by clear and convincing evidence that a need exists, the court may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order and whose authority shall expire upon resolution of the appeal or action.

(4) At a hearing held under either subsection (2) or (3), a respondent shall have all the rights and privileges otherwise available to an individual subject to proceedings under this chapter.

History: Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978; Am. 1995, Act 290, Eff. Mar. 28, 1996

330.1628 Qualifications of guardian; preference. Sec. 628.

(1) The court may appoint as guardian of 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, unless no other

suitable individual or agency can be identified. In such instances, guardianship by the provider shall only continue until such time as a more suitable individual or agency can be appointed.

(2) 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 guardian, and any preference indicated shall be given due consideration.

History: 1974, Act 258, Eff. Aug. 6, 1975; Am. 1978, Act 527, Imd. Eff. Dec. 21, 1978; Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1632 Guardian as fiduciary. Sec. 632.

Whenever the court appoints a plenary guardian of the estate or a partial guardian with powers or duties respecting real or personal property, that guardian shall be considered a fiduciary for the purposes of the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.

History: 1974, Act 258, Eff. Aug. 6, 1975; □ Am. 2000, Act 57, Eff. Apr. 1, 2000.

330.1640 Standby guardian. Sec. 640.

(1) At a hearing convened pursuant to this chapter the court may designate 1 or more standby guardians whose appointment shall become effective without further proceedings immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian.

(2) The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall notify the court.

(3) In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian.

History: 1974, Act 258, Eff. Aug. 6, 1975; Am. 1978, Act 527, Imd. Eff. Dec. 21, 1978.

RESOURCES:

[Guardianship Rights & Alternatives - Disability Rights Michigan \(drmich.org\)](http://www.drmich.org)

https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder3/Folder91/Folder2/Folder191/Folder1/Folder291/Mental_Health_Code_Chapter_6.pdf?rev=5d015f79d2364023b086ba684e1d2875

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