



 Guardianships for the developmentally disabled derive from Chapter 6 of the Michigan Mental Health Code (MCL 330.1600, et seq.), which establishes the procedures for such proceedings before the probate court.

### GUARDIANSHIPS FOR THE DEVELOPMENTALLY DISABLED – OVERVIEW

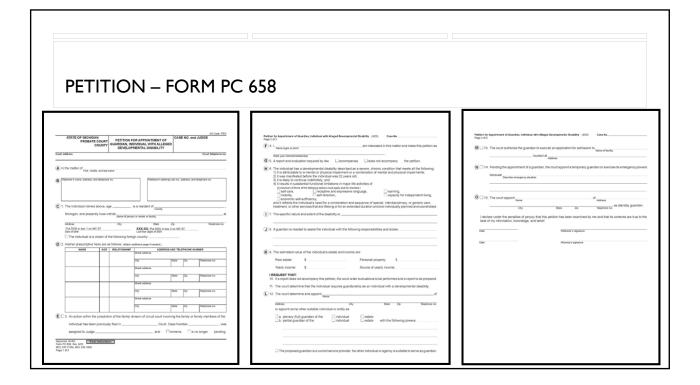
- Specific type of guardianship under the Mental Health Code for individuals with a developmental disability
  - Court appoints a partial or plenary guardian An individual who possesses legal rights and powers
    of a guardian of the person, or of the estate, or both
  - Partial guardian is preferred (MCL 330.1602(2))
- Petition process; Attorney appointed; Hearing required
  - Alleged individual with a developmental disability must be present at the hearing
- Report with evaluation(s) must accompany petition

### WHAT IS A DEVELOPMENTAL DISABILITY?

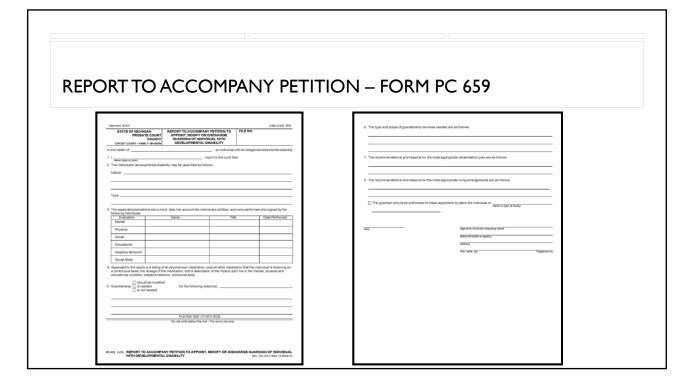
• A severe, chronic condition that meets all of the following requirements:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments
- Is manifested before the individual is 22 years old
- Is 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.

MCL 330.1100a(25)

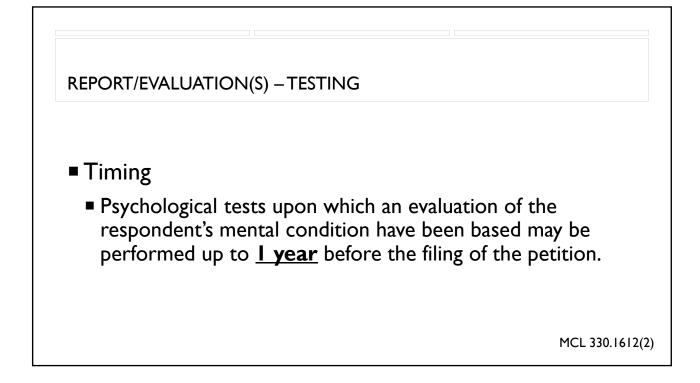


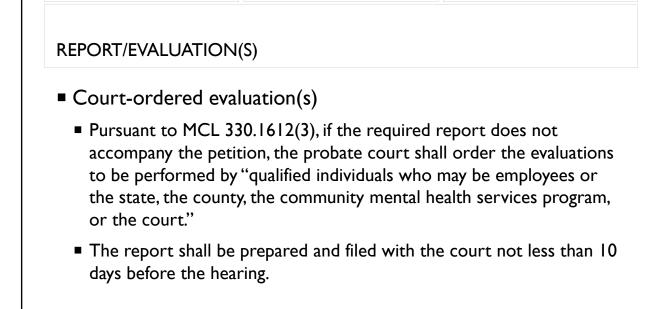
### PETITION • The petition for the appointment of a guardian for an individual who is developmentally disabled shall set forth the following: • The relationship and interest of the petitioner • The name, date of birth, and place of residence of the respondent The facts and reasons for the need for guardianship - The names and addresses of the individual's current guardian, and the respondent's presumptive heirs The name and address of the person with whom, or the facility in which, the respondent is residing • A description and approximation of the value of the respondent's estate including an estimate or the individual's anticipated yearly income and the source of the income • The name, address, and age of the proposed guardian and if the proposed guardian is a current provider of services to the developmentally disabled A factual description of the nature and extent of the respondent's developmental disability MCL 330.1609



## REPORT/EVALUATION(S)

- The petition shall be accompanied by a report that contains all of the following:
  - A description of the nature and type of respondent's developmental disability.
  - Current evaluations of the respondent's mental, physical, social, and educational condition, adaptive behavior, and social skills. These evaluations shall take into account the individual's abilities.
  - An opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and a specific statement of the reasons for the guardianship.
  - A recommendation as to the most appropriate rehabilitation plan and living arrangement for the individual and the reasons for the recommendation.
  - The signatures of all individuals who performed the evaluations upon which the report is based. One of the
    individuals shall be a physician or psychologist who, by training and experience, is competent in evaluating
    individuals with developmental disabilities.
  - A listing of all psychotropic medications, plus all other medications the respondent is receiving on a continuous basis, the dosage of the medications, and a description of the impact upon the respondent's mental, physical and educational conditions, adaptive behavior, and social skills.





### **REPORT/EVALUATION(S) – IMPORTANT ITEMS**

- Report must accompany the petition
  - The evaluation(s) performed must be appended to the report (form PC 659)
- Signature requirement
  - Report shall include signature(s) of all individuals who performed the evaluation(s)
- Physician/Psychologist
  - At least one of the individuals who performed an evaluation upon which the report is based must be a physician *or* psychologist
- Timing for testing
  - Any testing involved in the evaluation must be performed up to I year before the filing of the petition

### REPORT/EVALUATION(S) – IMPORTANT ITEMS

### Report is Non-Public

The report shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court to which the proceedings may be appealed, to the respondent, the petitioner, their attorneys, and to other individuals the court directs.

MCL 330.1612(4)

# PROBATE COURT PROCEEDING

### Appointment of Attorney

- Respondent must be represented by legal counsel
- Court must appoint an attorney within 48 hours of receipt of the petition and attendant documentation
- Court must honor respondent's request for preferred counsel, if preferred counsel agrees to acceptance of the appointment

#### Hearing

- Hearing date must be set within 30 days after the filing of the petition, and may take place in a facility or other location
- Notice of the hearing must be provided to all interested parties to the proceeding:
  - Petitioner,
  - Respondent,
  - Presumptive heirs,
  - Preparer of the report or other appropriate person who performed the evaluation(s)
  - Director of facility (if applicable),
  - Respondent's legal counsel, and
  - Guardian ad litem (if any).

MCL 330.1614

MCL 330.1615

# PROBATE COURT PROCEEDING Hearing The hearing may be closed to the public on the request of the respondent or the respondent's legal counsel The respondent shall be present at all proceedings However, the respondent's presence may be excused by the court only on a showing, supported by an affidavit signed by a physician or psychologist who has recently examined the respondent, that the respondent's attendance would subject him or her to serious risk of physical or emotional harm. The person who prepared the report or at least 1 of the persons who performed an evaluation serving in part as basis for the report must testify in person in court proceeding The respondent has the right to secure an independent evaluation MCL 330.1617

# PLACEMENT IN FACILITY

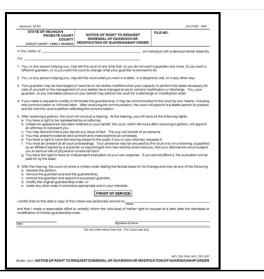
- A guardian for a developmentally disabled individual shall not have the power, unless specified by court order, to place an individual in a facility.
- Before authorizing placement in a facility, the court shall inquire into and determine the appropriateness of the proposed placement, and shall determine, in conjunction with the appropriate community mental health services program, whether the placement offers appropriate treatment and residential programs to meet the needs of the individual and whether there is a less restrictive treatment and residential program available.

CEMENT II	N FACILITY - FOR	MS PC 664 / PC 665
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STATE OF MICHIGAN PROBATECOURT COUNTY OF	PETITION FOR AUTHORITY TO PLACE INDIVIDUAL WITH DEVELOPMENTAL DISABILITY IN A FACILITY	STATE OF IDENDAN PROBATE COURT ORDER TO PLACEMENT OF NEW DATE OF IDENT OF IDENT OF DEVELOPMENTAL DEMAILTY
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		<ol> <li>There appears to be no less relative beatment and residential program available to next the individual's needs.</li> <li>IT is OptiORED.</li> <li>It is quarken a subtrayed to execute the necessary application for the</li> </ol>
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6. IREQUEST that I be authorized	to execute the necessary applications for the administrative admission of the individual to	Dele Judge
Name of ficility I declare under the penalties of per information, knowledge, and belief	ury that this petition has been examined by me and that its contents are true to the best of my	
Attorney signature Name (type or pret) Xddress	Dete Barno, Pettorer upsature Xdores	
City, stale, ap USE NOTE: If this form is being fied in th	Telephone in Originatin do Telephone no. circuit court family division, please effer the court name and county in the upper leth-tend corner of the family Do not write below this line - For court use only	Do not write below this line - For exort sale only
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# NOTICE OF RIGHT TO DISMISS/MODIFY GUARDIANSHIP (FORM PC 661)

Court shall make a reasonable effort to verbally inform the individual of his/her right to dismiss or modify the guardianship order, and a written statement shall be served upon the ward indicating his/her rights to request a discharge or modification of the order and specifying the procedures to be followed in petitioning the court.

MCL 330.1634; MCL 330.1637



# GUARDIANSHIP TYPES

Partial Guardian

- Preferred form of guardianship
- Partial 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 partial guardian shall not be appointed for a term greater than 5 years

Plenary Guardian

 Plenary guardian means a guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both.

## **GUARDIANSHIP TYPES**

- Standby Guardian
  - The Court may designate one or more standby guardians whose appointment shall become effective 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.

MCL 330.1640

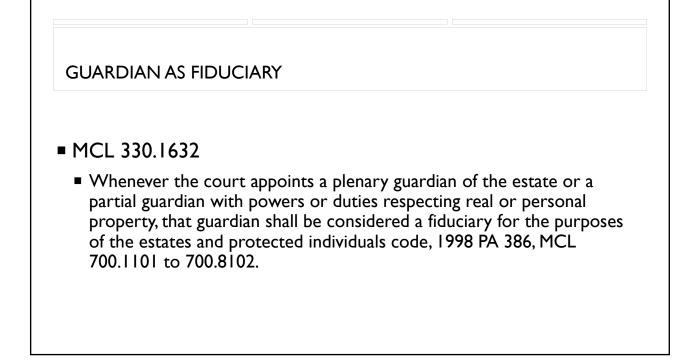
## COURT AS GUARDIAN / TEMPORARY GUARDIAN

- Under emergency circumstances, before appointment of a plenary or partial guardian, the probate court may temporarily exercise the powers of a guardian over an individual with a developmental disability, or may appoint a temporary guardian whose powers duties shall be specifically enumerated by court order.
- If the court serves as guardian or appoints a temporary guardian, a hearing must be held within 14 days.

### **GUARDIAN DUTIES**

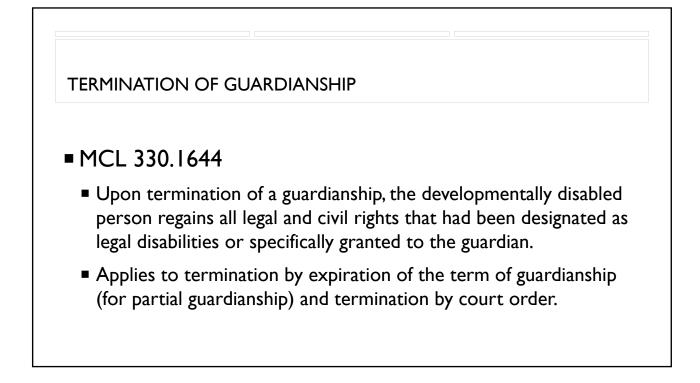
- To the extent ordered by the court, the plenary guardian of the person shall have and a partial guardian of the person may have among others the following duties:
  - Custody of the ward
  - The duty to make provision from the ward's estate or other sources, for the ward's care, comfort, and maintenance
  - The duty to make a reasonable effort to secure for the ward training, education, medical, and psychological services, and social and vocational opportunity as are appropriate and as will assist the ward in the development of maximum self-reliance and independence.
- Annual reporting requirement
- Annual accounting requirement

ANNUAL REPORT OF	GUARDIAN - FORM PC 6	63
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STATE OF INCHIGAN PROBATE COURT CONDITION OF INCHIGAN CON CONDITION OF INCHIGAN NOT	Rejort of Quardian on Condition of Ind visual with Developmental Devalatily (1900) Care No Page 2 of J 10. The individual's social condition has remained about the same improved deteriorated.	Report of duardian on Condition of End violati with Developmental Daubility (1020) Care No Page 3 at 3 STATEMENT BY STANDERY GUARDIAN
ext address	Devide the changes 11. The individual has received the following services:  Intervices.  devided.  devided	I am the apported standby guardian and an willing to continue to serve in the event the guardian data, becomes unable to serve, or resigns from the guardianetip.
the matter of First, midde, and last name of individual with a developmental disability	Desote	Dete Signalure of standby pundlen Alderes Ofly, state, 2p Nephane In
L Same type in giving, am the guardian of the individual named above, and i report for the period To	12. My visits with and activities on behalf of the individual were:	Checkhere if this is a new address
Present age of the individual	13. I believe the individual has the following needs:	
Ohack here fills is a new address		
The individual's prevent living anangement is: own home   Relative's home   bopEal or medical center   guardiaris home   community becoment home   other:	14. I have the following questions concerning the individual or my responsibilities	
The individual has been in the present residence since Descriptions and addresses of every residence where the individual has lived during this reporting period and the length of stay at each residence are	15. Other information requested by the court or necessary in the opinion of the guardian is as follows:	
as follows:		
I rate the individual's present living arrangements as excellent. excellent. below average.	16. The guardianship about be continued because:	
Update the being and a second	7. As quardian. I have been ordered by the court to file an annual account, which is attached.	
The individual's mental condition has	18. Comments:	
Describe the sharpes The individual's physical health has  I remained about the same.  I improved.  I deteriorated.	Date Date Signature of pundan Signature of pundan Signature of exploration	
Describe the changes	Address Address City, skille, itip Telephone no. City, skille, itip Telephone no.	
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lege 1 of 2		



# DISCHARGE/MODIFICATION OF GUARDIANSHIP

- A guardian may be discharged by the court, or have his or her duties modified, when the individual's capacity to perform the tasks necessary for the care of his or her person or the management of his or her estate have changed so as to warrant modification or discharge.
- The individual subject to an order may communicate a request to modify or discharge the guardianship to the court by any means, including oral communication or informal letter. Upon receipt of the communication the court shall appoint a suitable person to prepare and file with the court a petition reflecting the communication.
  - Court must set and conduct a hearing, and attorney must be appointed for the individual.



		FY GUARDIANSHIP – FORM PC 677
	COUNTY COUNTY DUARDIAN FOR DEVELOPMENTALLY DISABLED INDIVIDUAL	Notice to Terresolve Mod By Source for Exercipance and Source (SCI) Page 1 of 2 6. The reasons why the court should take action are
Court address	Court telephone no.	IREQUEST that the court
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1. L <sub>Name (ype or prin</sub>		Bennet guardsn     Control Contro
State interest/telation 2. The development	salp taily disabled individual's address and telephone number are Address	who has has not been suspended.
City 3. The guardian's a	Bale Zp Talephone no	Li e rujuon taasa Aassa Oy taa 29 taabaa - as Diampony gandan Itacoesor parlai gandan Itacoesor pirany gandan
City 4. The development	State Zo faily disabled individual's presumptive heirs are: (Atauh a separate sheet if more space is needed.)	of the individual estate.
NAME	ADDRESS AND TELEPHONE NUMBER RELATIONSHIP AGE [ptexing]	10. Appoint     Name     Address
	City State Zip Seleptone no.	City State Zip Neighoreine, as standby quardian of the individual estate.
	Street address	11. Modify the powers of the      plenary guardian      partial guardian of the      individual      estate
	Oty Bate 20 Telephone no.	as follows:
	City Stale Zip Telephone no.	
	Street address	I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best

# PROBATE COURT FILING

- Petition for Appointment of Guardian, Individual with Alleged Developmental Disability (PC 658)
- Report to Accompany Petition to Appoint, Modify, or Discharge Guardian of Individual with Developmental Disability (PC 659)
- Notice of Hearing (PC 562)
- Order Appointing Attorney (PC 628 or PC 642)
- Notice of Right to Request Dismissal of Guardian or Modification of Guardianship Order (PC 661)

