

Guardianship Information

While this information may not be all inclusive, it may be considered an initial reference. It may be helpful for the family to consult a lawyer for more specific advice and assistance with this process.

An individual with a disability who has reached age of majority (18 years old) and is his or her own guardian may need help with important decisions. Although parents and other service providers may offer the individual support, final decisions are made by the individual.

Michigan law allows for the appointment of a guardian for an individual with a disability only when necessary and only if the individual with a disability is unable to care for him/herself or his/her estate. Such an appointment is a legally recognized relationship between a suitable adult (guardian) and an individual with a disability (ward).

The following alternatives do not require guardianship; however, these options may require professional assistance.

1. Medical Needs

- a. Patient Advocate Designation (Medical and Mental Health Power of Attorney) acts as liaison between individual and health care facility

2. Financial Needs

- a. Power of Attorney – an individual grants (in writing) the power to another to manage some of his/her estate or affairs
- b. Representative Payee – a third party to whom Social Security and SSI benefits are paid to be used for the individual
- c. Personal Money Manager - a trusted person who provides advice on money management
- d. Trust Funds – provides for the distribution of income for the benefit of the beneficiary (individual with a disability), before and/or after the death of a parent or spouse
- e. Limited Bank Accounts – accounts requiring a second person's signature before an individual withdrawal or where the size of any one transaction is limited

3. Community Supports and Services

A representative sample of available agencies includes:

- Community Mental Health
- Department of Human Services
- Michigan Rehabilitation Services
- Center for Independent Living
- Michigan Works!
- Social Security Administration

As a parent if you think your child will be unable to make decisions regarding important aspects of life (education, money management, health care, etc), you should consider options to support your child before petitioning for guardianship.

If possible, the individual, for whom guardianship is being considered, should be an active member in the discussion regarding his or her future. The following questions are considerations for discussion.

Suggested Discussion Questions, if applicable, between Potential Guardian and Potential Ward Before Petitioning for Guardianship

1. Will you need help when making medical care decisions?
2. Will you need help understanding contracts and the obligations that come with contracts?
3. Will you need help managing your money?
4. Will you need help locating community services and supports?
5. Do you realize the court will determine if you have the ability to make your own decisions?
6. Do you realize you will have to have your guardian's permission for important decisions?
7. Do you realize your potential guardian would have the final say in important life decisions?
8. Do you realize it takes a court order to change or remove a guardian?
9. Do you realize there may be attorney's fees and evaluation costs?

If guardianship for an individual with a disability is sought a petition with supporting documents must be filed in the Probate Court. There are several types of guardianship options to consider:

1. **Partial Guardianship** – This guardianship option, which will expire in 5 years, will have specific duties outlined by court order.
2. **Plenary Guardian of the Person** – This type of guardianship is established for the purpose of medical care and/or placement decisions.
3. **Plenary Guardian of Estate** – This option is for the purpose of managing financial decisions.

**STEPS TO PETITION FOR GUARDIANSHIP
FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES**

1. The probate court in the county of residence of the person with a disability has jurisdiction over guardianship proceedings. The petition and procedures for filing may be obtained from the probate court.

2. The probate court will provide the petition to the interested petitioner. In all cases the petitioner should include a statement concerning the individual's capacity to care for himself or herself, and a list of areas where a guardian is needed.

In addition, the petition must include:

- a. the relationship and interest of the petitioner,
- b. the name, date of birth, and place of residence of the individual with a disability,
- c. names, addresses, phone numbers and relationship of the individual's presumptive heirs (parents, brother or sister)
- d. names and addresses of caregiver, case manager or facility in which the individual is residing,
- e. description and approximate value of the individual's estate,
- f. a factual description of the nature and extent of the individual's disability.

Reports must be attached to the petition before processing. Reports contain:

- a. evaluations of the individual's mental, physical, social, and educational condition, adaptive behavior and social skills;
- b. description of the nature and type of developmental disability;
- c. an opinion as to whether guardianship is needed, the type and scope;
- d. the specific reason for guardianship;
- e. the signatures of all persons preparing the report(s) – one must be a physician or a professional who makes the recommendation and signs the petition;
- f. a recommendation of the most appropriate rehabilitation plan and living arrangement;

3. Copies of the petition and notice of the hearing will be sent to all parties by the court. The hearing will be held within 30 days. A decision will be given by the court.

4. The following individuals must attend the Probate Court hearing:

- a. petitioner
- b. individual with the disability
- c. proposed guardian
- d. attorney appointed by the court at this hearing (at no charge) to represent the interests of the individual with a disability
- e. professional who has made a recommendation and signed the petition

5. If guardianship is granted through the Probate Court the:

- a. "Guardian of Person" will be required to file an annual report with the Probate Court regarding the condition of the ward.
- b. "Plenary Guardian of Estate" will be required to file an initial inventory regarding the ward's property and income. An annual accounting of income and expenses will be reported to the Probate Court.

6. Guardianship is not "set in concrete". It is flexible and can be modified at any time with supporting documentation (doctors' reports and/or evaluations). If change is desired, it can be requested by petitioning the probate court. This request can be made either by the guardian or the ward.