

# Individuals with Developmental Disability

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There are a variety of protective proceedings that fall within the jurisdiction of the Probate Court, including guardianships. While adult and minor guardianships are covered under the provisions of the Estates and Protected Individuals Code (EPIC), the statutes governing guardianship proceedings for individuals with developmental disability (IDD) are found in the Mental Health Code.

A developmental disability is defined under MCL 330.1100a(20) and depends on the age of the respondent. For individuals more than 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 three 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 defined as 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.

A petition for the appointment of a guardian for an individual with an alleged developmental disability may be filed by:

- 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.<sup>1</sup>

The process of filing a petition in an IDD situation is slightly more complex than that of filing for an adult or minor guardianship under EPIC. Each IDD petition must be accompanied by a report that contains evaluations performed within the last year regarding the individual's mental, physical, social and educational condition, adaptive behavior and social skills.<sup>2</sup> The required evaluations must be performed

by a physician or psychologist who by training or experience is competent to consider the various evaluation areas.

Once the petition and report are filed, an attorney will be appointed to represent the respondent. At the hearing on the petition, the preparer of the report that accompanied the petition, or at least one of the individuals who performed an evaluation on which the report was based, must testify in-person as well.<sup>3</sup>

Depending on the court's exact findings, there are different types of guardianships that it may order. A *plenary guardian* possesses full legal rights and powers. A *partial guardian* possesses fewer than all the legal rights and powers of a plenary guardian and the rights must be specifically enumerated by the court in an order of appointment. Partial guardianships may last no more than five years, at which time a new petition must be filed.

In addition, the court may make a designation as to whether the appointment is as guardian of the person or of the estate. A *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. The same person may be guardian of both the person and the estate, or they may be separate appointments.

Also, unlike an EPIC guardianship, a *standby guardian* may be appointed to act upon the death, incapacity or resignation of the initially appointed guardian without any further court proceeding.<sup>4</sup>

When assessing whether it is appropriate to seek guardianship of an individual, it is imperative to review whether the individual meets the definition of an individual with a developmental disability. MCL 300.1604 provides that an appointment of a guardian for an individual with a developmental disability shall only be made under the provisions of the Mental Health Code, except for a minor where appropriate under EPIC, MCL 700.5201 to 700.5219.

Further details regarding guardianships for individuals with a developmental disability and the appropriate forms may be found on the court's Web site at [www.oakgov.com/probate](http://www.oakgov.com/probate).

## Footnotes

- 1 MCL 330.1600(c) and 330.1609(1).
- 2 MCL 330.1612.
- 3 MCL 330.1617.
- 4 MCL 330.1640.