

# Chapter 6



## MENTAL HEALTH CODE (EXCERPT)

### Act 258 of 1974

#### Chapter 6

#### GUARDIANSHIP FOR THE DEVELOPMENTALLY DISABLED

Section	Description
Section 330.1600 -	Definitions.
Section 330.1602 -	Guardianship; use; design; limitation; partial guardianship.
Section 330.1604 -	Jurisdiction; provisions applicable to appointment of guardian.
Section 330.1607 -	Court as guardian; appointment of temporary guardian; hearing; rights and privileges of respondent.
Section 330.1609 -	Petition for appointment of guardian; filing; contents.
Section 330.1612 -	Petition for appointment of guardian; accompanying report; psychological tests; evaluations; availability of report.
Section 330.1614 -	Hearings; date and place; notice.
Section 330.1615 -	Right to legal counsel; appointment of counsel; preferred counsel; compensation of appointed counsel.
Section 330.1616 -	Guardian ad litem.
Section 330.1617 -	Right to jury; evidence; witnesses; closing hearing to public; presence of respondent; testimony of person who prepared report or performed evaluation; independent evaluation.
Section 330.1618 -	Hearing; powers and duties of court.
Section 330.1620 -	Contents of court order establishing partial guardianship; legal and civil rights; effect of appointment of partial guardian.
Section 330.1623 -	Placement of individual with developmental disability in facility; appropriateness of placement; appropriate treatment and residential programs; reports from public agencies.
Section 330.1626 -	Duration of term of guardianship; new petition for guardianship.
Section 330.1628 -	Qualifications of guardian; preference.
Section 330.1629 -	Routine or emergency medical treatment or surgery or extraordinary procedures; liability of guardian.
Section 330.1631 -	Guardian; duties; filing, contents, and review of report.
Section 330.1632 -	Guardian as fiduciary.
Section 330.1634 -	Notice of right to dismiss guardian or modify guardianship order; procedures.
Section 330.1637 -	Discharge or modification order; petition; hearing; order.
Section 330.1640 -	Standby guardian.
Section 330.1642 -	Testamentary guardian.
Section 330.1644 -	Termination of guardianship; legal and civil rights; applicability of section to termination by term expiration and court order.



**CHAPTER 6**  
**GUARDIANSHIP FOR THE DEVELOPMENTALLY DISABLED**

**330.1600 Definitions.**

Sec. 600. As used in this chapter, unless the context requires otherwise:

(a) “Facility” means all of the following that regularly admit individuals with developmental disability and provide residential and other services:

(i) A facility as defined in section 100b.

(ii) A child caring institution, a boarding school, a convalescent home, a nursing home or home for the aged, or a community residential program.

(b) “Court” means the probate court or the court with responsibility with regard to mental health services for the county of residence of an individual with developmental disability, or for the county in which the individual was found if a county of residence cannot be determined.

(c) “Interested person or entity” means an adult relative or friend of the respondent, an official or representative of a public or private agency, corporation, or association concerned with the individual's welfare, or any other person found suitable by the court.

(d) “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.

(e) “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.

(f) “Respondent” means the individual who is the subject of a petition for guardianship filed under this chapter.

**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

**330.1602 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

### **330.1604 Jurisdiction; provisions applicable to appointment of guardian.**

Sec. 604. (1) The court has jurisdiction over guardianship proceedings for developmentally disabled persons.

(2) An appointment of a guardian for a developmentally disabled person shall be made only under this chapter, except that a guardian may be appointed for a minor where appropriate under sections 5201 to 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5219.

**History:** 1974, Act 258, Eff. Aug. 6, 1975 ;-- Am. 1978, Act 527, Imd. Eff. Dec. 21, 1978 ;-- Am. 2000, Act 57, Eff. Apr. 1, 2000

**330.1606 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to court as guardian.

### **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 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

**330.1608 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to temporary guardians.

**330.1609 Petition for appointment of guardian; filing; contents.**

Sec. 609. (1) A petition for the appointment of a guardian for an individual who is developmentally disabled may be filed by an interested person or entity or by the individual. The petition shall set forth the following:

- (a) The relationship and interest of the petitioner.
- (b) The name, date of birth, and place of residence of the respondent.
- (c) The facts and reasons for the need for guardianship.
- (d) The names and addresses of the individual's current guardian, and the respondent's presumptive heirs.
- (e) The name and address of the person with whom, or the facility in which, the respondent is residing.
- (f) A description and approximation of the value of the respondent's estate including an estimate of the individual's anticipated yearly income and the source of the income.
- (g) The name, address, and age of the proposed guardian and if the proposed guardian is a current provider of services to the developmentally disabled.
- (h) A factual description of the nature and extent of the respondent's developmental disability.

**History:** Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978

**330.1610 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to filing petition for appointment of guardian.

**330.1612 Petition for appointment of guardian; accompanying report; psychological tests; evaluations; availability of report.**

Sec. 612. (1) The petition for the appointment of a guardian for an individual who has a developmental disability shall be accompanied by a report that contains all of the following:

- (a) A description of the nature and type of the respondent's developmental disability.
- (b) 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.

(c) 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.

(d) A recommendation as to the most appropriate rehabilitation plan and living arrangement for the individual and the reasons for the recommendation.

(e) 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 or experience, is competent in evaluating individuals with developmental disabilities.

(f) 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.

(2) Psychological tests upon which an evaluation of the respondent's mental condition have been based may be performed up to 1 year before the filing of the petition.

(3) If a report does not accompany the petition, the court shall order appropriate evaluations to be performed by qualified individuals who may be employees of the state, the county, the community mental health services program, or the court. The court may order payment for evaluations of respondents by a public agency that treats or serves the developmentally disabled. State compensation for evaluations paid for by public mental health agencies shall be determined under sections 302 to 310, and sections 800 to 842. Compensation for an evaluation shall be in an amount that is reasonable and based upon time and expenses. The report shall be prepared and filed with the court not less than 10 days before the hearing.

(4) A report prepared under this section 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.

**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

### **330.1614 Hearings; date and place; notice.**

Sec. 614. (1) Upon the filing of a petition, the court shall fix a date and a place for a hearing to be held within 30 days after the filing date of the petition.

(2) Hearings may be held either within or without the county in which the court has its principal office, and in quarters as the court directs, including a facility or other convenient place.

(3) Notice of the time and place of the hearing shall be given to the petitioner, to the respondent, to the respondent's presumptive heirs, to the preparer of the report or another appropriate person who performed an evaluation, to the director of any facility in which the respondent may be

residing, to the respondent's guardian ad litem if one has been appointed, and to the respondent's legal counsel.

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

**330.1615 Right to legal counsel; appointment of counsel; preferred counsel; compensation of appointed counsel.**

Sec. 615. (1) A respondent is entitled to be represented by legal counsel.

(2) Unless an appearance has been entered on behalf of the respondent, the court, within 48 hours of its receipt of a petition together with the other documents required by section 612, shall appoint counsel to represent the respondent. Counsel may be appointed from a system or organization that provides legal counsel to indigents, or that has been established for the purpose of providing representation in the proceedings governed by this chapter.

(3) If the respondent prefers counsel other than the counsel appointed, if preferred counsel agrees to accept the appointment, and the court is notified of the preference by the respondent or preferred counsel, the court shall replace the initially appointed counsel with preferred counsel.

(4) If the respondent is indigent, the court shall compensate appointed counsel from court funds in an amount which is reasonable and based upon time and expenses.

(5) The supreme court by court rule may establish the compensation to be paid for counsel of indigents and may require that counsel be appointed from a system or organization that serves developmentally disabled or indigent people.

**History:** Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978

**330.1616 Guardian ad litem.**

Sec. 616. If, after a petition has been filed, the court determines that the respondent requires a person to represent his or her best interests and to assist legal counsel, the court shall appoint an interested person or entity to act as guardian ad litem for the respondent.

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

**330.1617 Right to jury; evidence; witnesses; closing hearing to public; presence of respondent; testimony of person who prepared report or performed evaluation; independent evaluation.**

Sec. 617. (1) A respondent in a guardianship proceeding conducted pursuant to this chapter may demand that a jury decide any issue or issues of fact. A jury shall consist of 6 persons to be chosen in the same manner as provided in the probate court rules.

(2) A respondent in a guardianship proceeding conducted pursuant to this chapter shall have the right to present evidence, and to confront and cross-examine all witnesses.

(3) The hearing may be closed to the public on the request of the respondent or the respondent's legal counsel.

(4) The respondent shall be present at all proceedings conducted pursuant to this chapter. 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.

(5) A guardian shall not be appointed under this section unless 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 testifies in person in court.

(6) The respondent has the right, at his or her own expense, or if the respondent is indigent, at the expense of the state, to secure an independent evaluation. Compensation for an independent evaluation at public expense shall be in an amount which is reasonable and based upon time and expenses and approved by the court.

**History:** Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978

### **330.1618 Hearing; powers and duties of court.**

Sec. 618. (1) The court, at a hearing convened under this chapter for the appointment of a guardian, shall do all of the following:

(a) Inquire into the nature and extent of the general intellectual functioning of the respondent asserted to need a guardian.

(b) Determine the extent of the impairment in the respondent's adaptive behavior.

(c) Determine the respondent's capacity to care for himself or herself by making and communicating responsible decisions concerning his or her person.

(d) Determine the capacity of the respondent to manage his or her estate and financial affairs.

(e) Determine the appropriateness of the proposed living arrangements of the respondent and determine whether or not it is the least restrictive setting suited to the respondent's condition.

(f) If the respondent is residing in a facility, the court shall specifically determine the appropriateness of the living arrangement and determine whether or not it is the least restrictive suited to the respondent's condition.

(2) The court shall make findings of fact on the record regarding the matters specified in subsection (1).

(3) If it is determined that the respondent possesses the capacity to care for himself or herself and the respondent's estate, the court shall dismiss the petition.

(4) If it is found by clear and convincing evidence that the respondent is developmentally disabled and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or the respondent's estate, the court may appoint a partial guardian to provide guardianship services to the respondent, but the court shall not appoint a plenary guardian.

(5) If it is found by clear and convincing evidence that the respondent is developmentally disabled and is totally without capacity to care for himself or herself or the respondent's estate, the court shall specify that finding of fact in any order and may appoint a plenary guardian of the person or of the estate or both for the respondent.

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

### **330.1620 Contents of court order establishing partial guardianship; legal and civil rights; effect of appointment of partial guardian.**

Sec. 620. (1) A court order establishing partial guardianship shall contain findings of fact, shall define the powers and duties of the partial guardian so as to permit the individual with a developmental disability to care for himself or herself and his or her property commensurate with his or her ability to do so, and shall specify all legal disabilities to which the individual is subject.

(2) An individual with a developmental disability for whom a partial guardian has been appointed retains all legal and civil rights except those that have by court order been designated as legal disabilities or that have been specifically granted to the partial guardian by the court.

(3) The appointment of a partial guardian under this chapter does not constitute a finding of legal incompetence or incapacity except in those areas specified by the court.

**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

**330.1622 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to examination by court of proposed and alternative living arrangements.

### **330.1623 Placement of individual with developmental disability in facility; appropriateness of placement; appropriate treatment and residential programs; reports from public agencies.**

Sec. 623. (1) A guardian, whether plenary or partial, appointed under this chapter shall not have the power, unless specified by court order, to place an individual with a developmental disability in a facility.

(2) Before authorizing the placement of a respondent in a facility, the court shall inquire into and determine the appropriateness of the placement.

(3) Before authorizing a guardian to make application to place an individual with a developmental disability in a facility, the court 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 respondent and whether there is a less restrictive treatment and residential program available. In ordering a placement, the court shall give preference to an available less restrictive treatment and residential program provided that it is adequate and appropriate to meet the respondent's needs. The court or counsel may request reports from public agencies on the suitability of a particular placement for a respondent.

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

**330.1624 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to testimony as condition to appointment of guardian.

### **330.1626 Duration of term of guardianship; new petition for guardianship.**

Sec. 626. (1) Before the appointment of a guardian, the court shall consider the duration of the term of guardianship. The duration of the term shall be indicated in a court order.

(2) A partial guardian shall not be appointed for a term greater than 5 years.

(3) At the expiration of the term of guardianship a new petition for guardianship may be filed pursuant to this chapter.

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

### **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

### **330.1629 Routine or emergency medical treatment or surgery or extraordinary procedures; liability of guardian.**

Sec. 629. (1) A guardian, temporary guardian, plenary, partial, or standby guardian shall not be liable for civil damages by reason of authorizing routine or emergency medical treatment or surgery or extraordinary procedures when previously ordered by the court for his or her ward if

the guardian acted after medical consultation with the ward's physician, acted in good faith, was not negligent, and acted within the limits established for the guardian by the court.

(2) A guardian, temporary guardian, plenary, partial, or standby guardian who has been authorized by the court to give medical consent, shall not be liable by reason of his or her authorization for injury to the ward resulting from the negligence or other acts of a third person.

(3) Routine medical services do not include extraordinary procedures. Extraordinary procedures includes, but is not limited to, sterilization, including vasectomy, abortion, organ transplants from the ward to another person, and experimental treatment.

**History:** Add. 1977, Act 73, Imd. Eff. July 27, 1977 ;-- Am. 1978, Act 527, Imd. Eff. Dec. 21, 1978

**330.1630 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to report of guardian.

### **330.1631 Guardian; duties; filing, contents, and review of report.**

Sec. 631. (1) 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:

(a) Custody of the ward.

(b) The duty to make provision from the ward's estate or other sources, for the ward's care, comfort, and maintenance.

(c) 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.

(2) The guardian of the person, plenary or partial, shall file with the court at intervals indicated by the court, but not less often than annually, a report which shall contain statements indicating:

(a) The individual's current mental, physical, and social condition.

(b) The individual's present living arrangement and a description and the address of every residence where the individual lived during the reporting period and the length of stay at each residence.

(c) An assessment of the adequacy and appropriateness for the ward of treatment and residential programs in the ward's current residence and a statement on whether the ward will continue to live at the current residence or whether the guardian recommends a more suitable alternative residence.

(d) A summary of the medical, educational, vocational, and other professional services given to the individual.

- (e) A resume of the guardian's visits with and activities on behalf of the individual.
- (f) A recommendation as to the need for continued guardianship.
- (g) A statement signed by the standby guardian, if any have been appointed, that the standby guardian continues to be willing to serve in the event of the death, incapacity, or resignation of the guardian.
- (h) An accounting of all financial transactions made by the guardian involving the ward's estate.
- (i) Other information requested by the court or useful in the opinion of the guardian.

(3) For the purpose of filing this report pursuant to subsection (2), the guardian shall be given access to information, reports and records from facilities, a community mental health board or agency, court staff, a public or private entity or agency, or a suitable person that are necessary for the guardian to perform his or her duties.

(4) The court shall review the report required in subsection (2) and take whatever action it considers necessary.

**History:** Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978

### **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

### **330.1634 Notice of right to dismiss guardian or modify guardianship order; procedures.**

Sec. 634. At the time of the appointment of a guardian, the court shall make a reasonable effort to verbally inform the individual of the individual's right pursuant to section 637 to request at a later date his or her guardian's dismissal or a modification of the guardianship order, and a written statement shall be served upon the ward indicating his or her rights pursuant to section 637 and specifying the procedures to be followed in petitioning the court.

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

**330.1636 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to petition for order dismissing guardian or modifying guardianship order.

### **330.1637 Discharge or modification order; petition; hearing; order.**

Sec. 637. (1) A guardian for an individual with a developmental disability or the individual's estate who was appointed before the effective date of this act under former chapter 3 of Act No. 288 of the Public Acts of 1939 or a guardian appointed under this chapter may be discharged, 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 with a developmental disability, the individual's guardian, or any interested person on his or her behalf may petition the court for a discharge or modification order under this section.

(2) A request under subsection (1), if made by the individual with a developmental disability, may be communicated to the court by any means, including oral communication or informal letter. Upon receipt of the communication the court shall appoint a suitable person who may, but need not be, an employee of the state, county, community mental health services program, or court, to prepare and file with the court a petition reflecting the communication.

(3) The court, upon receipt of a petition filed under this section, shall conduct a hearing. At the hearing, the individual shall have all of the rights indicated in sections 615 and 617.

(4) Upon conclusion of the hearing, the court shall enter a written order setting forth the factual basis for its findings and may do any of the following:

(a) Dismiss the petition.

(b) Remove the guardian and dissolve the guardianship order.

(c) Remove the guardian and appoint a successor.

(d) Modify the original guardianship order.

(e) Make any other order that the court considers appropriate and in the interests of the individual with a developmental disability.

**History:** Add. 1978, Act 527, Imd. Eff. Dec. 21, 1978 ;-- Am. 1995, Act 290, Eff. Mar. 28, 1996 **Compiler's Notes:** Act 288 of 1939, referred to in this section, was repealed by Act 125 of 1949 and Act 642 of 1978.

**330.1638 Repealed. 1978, Act 527, Imd. Eff. Dec. 21, 1978. Compiler's Notes:** The repealed section pertained to proceedings by court upon receipt of petition.

### **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

### **330.1642 Testamentary guardian.**

Sec. 642. (1) The surviving parent of a minor with a developmental disability for whom a guardian has not been appointed may by will appoint a testamentary guardian. The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the parent. A testamentary guardian possesses the powers of a parent, and shall serve subject to the court's power to reduce the scope of guardianship authority or to dismiss a guardian. The appointment shall terminate when the minor attains 18 years of age, or the guardian is dismissed, whichever occurs first. Upon assuming office, the testamentary guardian shall notify the court in which the decedent's will is to be probated.

(2) A parent who has been appointed guardian of his or her minor or adult child with a developmental disability may by will, except in the event that a standby guardian has been designated, appoint a testamentary guardian. The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the initially appointed guardian. The testamentary guardian possesses the powers of the initially appointed guardian, shall be entitled to receive upon request a copy of a court order creating or modifying the initial guardianship, and shall serve subject to the power of the court that appointed the initial guardian to reduce the scope of guardianship authority or to dismiss a guardian. In the event that the court probating decedent's will does not have jurisdiction over the testamentary guardian except if the court finds the will to be invalid, the appointment shall be nullified. Upon assuming office, the testamentary guardian shall notify the probate court that appointed the initial guardian and the probate court in which the will is subject to probate.

**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

### **330.1644 Termination of guardianship; legal and civil rights; applicability of section to termination by term expiration and court order.**

Sec. 644. Upon termination of a guardianship, the developmentally disabled person regains all legal and civil rights that had been designated as legal disabilities or specifically granted to the guardian. This section applies to termination by expiration of the term of a guardianship and termination by court order under section 637(4)(b).

**History:** Add. 1994, Act 182, Imd. Eff. June 20, 1994