

**DETERMINING COUNTY OF RESIDENCE FOR RESIDENTS OF WISCONSIN  
AND  
TRANSFER TO WISCONSIN OF FOREIGN GUARDIANSHIPS**

Wisconsin Adults-at-Risk Conference  
October 16, 2007  
Paul Harris, Attorney,  
Wisconsin Department of Health & Family Services

**A. DETERMINING COUNTY OF RESIDENCE FOR RESIDENTS OF WISCONSIN**

1. Chapters 51 and 55 of the Wisconsin Statutes base a client's residency on the principles of the "voluntary concurrence of the individual's **physical presence** with his or her **intent to remain in a place of fixed habitation**. Physical presence is *prima facie* evidence of intent to remain." (*Prima facie* means that the presumption may be overcome by evidence to the contrary.) See 51.01(14) (which refers to definitions in Chapter 49) and 55.01(6t). Evidence of intent may include such things as: tax filing, driver's license, voting records, bank accounts, rent payments, and many other indicators. Generally, such factors carry persuasive value, but may be overcome by other evidence, especially by recent oral or written expressions of good faith intent by the client or guardian.
2. **Section 51.40 of the Wisconsin Statutes** specifies how the county of residence will be determined for persons with certain chronic conditions (**serious and persistent mental illness, developmental disability, degenerative brain disorder, or other like incapacities**) who are **in a facility**. ["Facility" is defined in 51.40(1)(em) as a place other than a hospital that is licensed, registered, certified or approved by DHFS or a county under Chapter 50 or 51, Wis. Stats.]
3. Subsection 51.40(2)(a) applies to persons committed or placed **by court order under Chapter 51 or 55 or by a county agency**. Generally, the court or agency action determines the county of residency. If any county or party objects to the "proposed finding of a court," the county or party may request DHFS to determine residence under 51.40(2)(g). The court may suspend transfer of venue for the court case while DHFS makes a determination.
4. Subsection 51.40(2)(b) applies to persons not covered by 51.40(2)(a). Consult the statute for specific criteria.
5. For cases covered by section 51.40, a court-appointed **guardian may determine residence for the guardian's ward under limited conditions** specified in 51.40(2)(f).

6. On January 8, 2007, **DHFS revised its long-standing “numbered memo” addressing residency determinations**, to comply with the new legislation in 2006. This memo is 23 pages long, and covers formal DHFS determinations under section 51.40 [which may be appealed for court review in accordance with 51.40(2)(g)5]. The memo also covers informal “administrative determinations” of residency for persons who are **not** covered by section 51.40. This memo (DDES Numbered Memo Series 2007-01) is available on the Department’s website at: [http://dhfs.wisconsin.gov/dsl\\_info/NumberedMemos/DDES/CY2007/2007-01.pdf](http://dhfs.wisconsin.gov/dsl_info/NumberedMemos/DDES/CY2007/2007-01.pdf). Page 15 (the last page of the memo before the statutory appendix) provides the address for sending requests for residency determinations: Residency Determination Facilitator (currently, Chris Hendrickson) DHFS Office of Strategic Finance, P.O. Box 7850, Madison, WI 53707-7850.
7. **“State-at-large”** is a concept that **does not apply** to Wisconsin residents. DHFS is responsible for funding services for non-residents of Wisconsin (except short-term emergency services which are a county responsibility). If a person is a resident of this state, but has been **transient** between counties (and even out of state) so that the county of residence is uncertain, the person is **not** a “state-at-large” (DHFS) funding responsibility. This is so because:
8. **A person does not lose their legal residency in a county/state unless and until the person establishes a new residence at another location.** This principle is recognized by common law (court decisions based upon long-held or commonly accepted public policy or legal principles).

## **B. ADMISSION OF NON-WISCONSIN RESIDENTS TO NURSING HOME AND OTHER FACILITIES**

1. For many years, it was often very difficult for persons living in other states to be admitted to nursing homes and other facilities in Wisconsin, particularly when they might later need community services. In 1997, the U.S. Court of Appeals in Chicago held that Wisconsin statutes imposed an unconstitutional barrier on disabled persons who wanted to be admitted to facilities in Wisconsin. See *Bethesda Lutheran Homes v. State DHFS and Jefferson County*, August 21, 1997, 122 F.3<sup>rd</sup> 443, 7<sup>th</sup> Circuit.
2. In 2005, the Wisconsin Supreme Court issued a decision addressing similar issues in the case entitled *In the Matter of the Guardianship of Jane E. P.*, July 7, 2005, reported at 2005 WI 106. The Supreme Court adopted specific procedures enabling guardians **to transfer guardianship cases from other states (these are called “foreign guardianships”)** to Wisconsin courts, and to process petitions for protective placement of the guardians’ wards into facilities for treatment in Wisconsin.

3. By passage of 2005 Wisconsin Act 387, the Wisconsin Legislature adopted (with slight modification) the July 7, 2005, decision of the Wisconsin Supreme Court in the *Jane E.P.* case cited above. **These new statutes appear in sections 54.30(1) & (2), 54.34(3), and 54.38(1m), Wis. Stats.** They were effective beginning December 1, 2006. See also the definitions in 54.01(9g)-(9p).
4. The petition for guardianship (Chapter 54) and protective placement (Chapter 55) in Wisconsin must include a certified copy of certain guardianship papers and other information from the court in the other state. These court procedures are quite complex. Wisconsin county agencies involved in cases of this nature should consult the county Corporation Counsel Office.

**C. VENUE FOR FILING COURT PETITIONS FOR GUARDIANSHIP (SECTION 54.30 OF THE WISCONSIN STATUTES)**

1. "Venue" means the county where court petitions may be filed.
2. **For residents of Wisconsin**, venue exists (and the petition for guardianship may be filed in) the county of residence for the person who is the proposed ward of the guardian.
3. **For non-residents of Wisconsin** (residents of other states or nations) venue exists in the Wisconsin county in which the non-resident or any of his or her financial assets are located, OR in the county in which the petitioner proposes that the proposed ward reside (where the proposed guardian wants the ward to live).
4. If any potentially responsible or affected county or party (in the court case) objects to the court's finding (acceptance) of venue of the case, the **court may refer the issue to DHFS for determination of the county of residence** under s. 51.40(2)(g).